

**Stow Conservation Commission
Minutes
December 4, 2018**

A meeting of the Stow Conservation Commission was held at the Stow Town Building, 380 Great Road, Stow, Massachusetts, on December 4, 2018 at 7:30 in the evening.

There were present: Jeff Saunders, Chair
 Serena Furman
 Ingeborg Hegemann Clark
 Nicki McGachey

Absent: Cortni Frecha, Vice-Chair
 Sandra Grund
 Andy Snow

comprising a quorum of the Commission

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

Minutes: *Serena Furman made a motion to approve the minutes of November 20, 2018 as amended. Nicki McGachey seconded the motion and it was passed unanimously.*

Request for Determination of Applicability – Off Whelden Lane – Claudia Mueller Thomson – Whelden Lane residents Claudia Mueller Thomson, Eric Souza, and Homeowners' Associate President Max Lamson were present. Souza noted that the Pond View Homeowners' Association owns the pond which is approximately 50 acres and surrounded by walking paths. Souza noted that the recent heavy precipitation has required minor repairs to three places on the berm. Lamson noted that water is overtopping the berm in three areas and there is a concern that over time erosion could cause a catastrophic failure of the berm and flood neighboring Minute Man Air Field. The proposed repairs include using densely graded compacted fill material to be installed by hand which will retain water on the pond side. Souza stated that the health of the pond and safety of the airport is important to the residents. Lamson clarified that there are three areas approximately ten feet wide that will require six inches of fill where the pond is overtopping the berm. Mueller Thomson noted that she works to keep the eighteen inch overflow pipe clear from beaver activity and reviewed photos and the site plan for the berm repairs.

Sferra reviewed site visit notes and photos provided by Cortni Frecha. The Commission clarified that the crushed gravel material will be used to fill the areas and be compacted while allowing water to filter through the material. Lamson stated that the work will be done by hand as much as possible but track mounted equipment such as a bobcat or front end loader will be used to bring the material to each location as well as the compactor. Lamson also said that the areas will be filled with six to twelve inches material and will not be covered with loam. Mueller Thomson noted that Association will likely have to file for a Notice of Intent in the future for a long term maintenance plan for the berm including tree removal and removal of invasive plants. Sferra confirmed that Mueller Thomson had used the material used by beavers to block the overflow pipe to fill the low lying places on the berm and there is not enough material to completely fill the three areas. Lamson stated that he did not think using the materials from the beavers would work. The Commission noted that coir logs could be used to hold the berm temporarily and expressed concerns about placing fill in the low lying areas on the berm that could wash away. Mueller Thomson confirmed that the Association has been in contact with an engineering firm to create a long term maintenance plan for the berm.

The Commission also noted that other low points could start forming once the three areas are filled. The Commission confirmed that each of the three locations are approximately eight feet long and four feet wide. Sferra

noted that if the areas are filled with more than six inches material may end up in the pond. Lamson clarified that the densely graded fill material will be compacted and he can provide a specification sheet for the material. The Commission expressed concerns about the areas being moist and confirmed that straw wattle will be installed. The Commission also noted that the Association could consider installing a beaver deceiver device on the outflow pipe. Goring noted that the pond may have a second outflow pipe that was installed to raise and lower the water level seasonally. Mueller Thomson stated that she believes that pipe has collapsed. *Serena Furman moved to close the hearing. Nicki McGachey seconded and the motion was approved unanimously*

Notice of Intent Continuation – Hallocks Point Road – Sarah Bailin – Sferra informed the Commission that the applicant's representative requested a continuation to December 18, 2018. *Ingeborg Hegemann Clark moved to continue the hearing to 12/18/18 at or after 7:30 pm. Nicki McGachey seconded and the motion was approved unanimously.*

Notice of Intent Continuation – Off Barton Road – Robert Collings – Sferra informed the Commission that the applicant's representative requested a continuation to January 15, 2019. *Ingeborg Hegemann Clark moved to continue the hearing to 1/15/19 at or after 7:30 pm. Nicki McGachey seconded and the motion was approved unanimously.*

Notice of Intent Continuation – 168 Barton Road – 168 Barton Road Realty Trust – Ron Ham Jr., owner/applicant, Ron Ham, Sr., Dave Burke, wetland specialist, and Bob Dionisi, Attorney, were present. Jeff Saunders suggested the applicant review any new information and said that at this point the Commission may want to deliberate and take a straw poll to give the applicant a sense of direction. Burke reviewed the resource area calculations agreed upon during a meeting with staff the prior week. Burke noted that the November 28th report he submitted includes a review of the performance standards for Inland Bank, Land Underwater and Bordering Land Subject to Flooding (BLSF) and stated that the retaining wall work completed without a permit meets the performance standards for all applicable resource area impacts with the exception of fisheries impact and the required compensatory flood storage. Burke reviewed the proposed alternatives to provide compensatory flood storage including removing the one inch stone from behind the wall and replacing it with boulders. Burke stated that doing so would allow the circulation of water and provide habitat for small fish while creating an inhospitable landscape for use by future owners. Burke added that there is space behind the blocks and by removing the one inch stone and replacing it with boulders would displace less BLSF. Burke could not confirm the elevation of the changes. Burke added that the existing stone could be removed by vacuum truck and a lid with a bull nosed lip could be added to dissipate wave energy and allow water to flow in and out of the existing wall. Burke also noted that the Stow Wetland bylaw allows for special projects including routine maintenance of lakes, ponds or waterways and stated that the retaining wall work that has been completed is in the nature of maintenance.

Burke also noted the regular impacts on the resource areas as a result of the lake draw down. Burke asked what elevation the flashboards for the dam are kept at and said that the draw down occurs for six months out of the year. Burke also noted that there is a provision in the regulations regarding the requirement to provide compensatory flood storage which provides flexibility to the Commission. Burke added that when the lake is drawn down there is approximately four to six feet of beach in front of the wall. Sferra noted she would try to find out the elevation of the flashboards and clarified that the drawdown is done gradually and does not reach its lowest point until December and the boards are put back as soon as ice is out. The drawdown does not last six months. Burke stated that the habitat of Lake Boon is not that complex or diverse because of the drawdown. Burke also stated that he does not know what the preexisting condition of the wall was but he understands that the initial Order allowed for some fill. Sferra reviewed the photo of the preexisting retaining wall and clarified that the initial Order allowed replacement of stones that fell off the wall and filter fabric to be placed behind them.

Burke clarified that the concrete blocks are solid precast that key together similar to legos and that water can get through the joints. Burke suggested that the stone installed behind the blocks could be removed to decrease the impacts to BLSF. Burke also stated that the lot is unique and that no other lot on Lake Boon is as steep and the shoreline cannot be accessed with equipment. Ham confirmed that the wall was not constructed along the entire bank because of existing stones stuck in the bank. Burke reviewed a proposal for offsite mitigation to install a catch

basin on Barton Road in front of the property that the Highway Department has agreed to fix but has not completed to date. Burke stated that the Hams could install it or pay for the installation and the catch basin is approximately 200 feet from Lake Boon and would purify water prior to entering the groundwater table. Sferra contacted the Superintendent of Streets who confirmed that the Hams had raised the issue of the puddle in front of 168 Barton, minor roadside regrading by Highway was done to improve the issue, and there are other larger puddles on Barton road that are higher priority. Sferra also noted that Clayton confirmed that the materials and labor would cost approximately \$2,000 of which \$1,000 would be materials. The Highway Dept indicated that they should be the ones to perform any work. Burke expressed surprise at the cost and said that perhaps they could do another catchbasin.

The Commission raised the issue that the wall may have been constructed off the property. Sferra reviewed the deed and site plan submitted with the filing and confirmed that the wall appears to be built off the property. The Commission noted that other property owners have had to cut into the bank to replace retaining walls on the Lake rather than build out in front of the existing wall. Burke stated that the bank cannot be accessed with equipment. The Commission noted that retaining wall work on Lake Boon is permitted to be completed during drawdown to allow for space to work out of the water. Sferra noted additional information that would be needed if the wall is to stay in place including: a detail for the wall and the space behind it, details on the 'bull nose lid', how the stones currently sitting in baskets in the lake would be used, and plans for any proposed plantings. Sferra added that if the wall is required to be removed procedurally the application would need to be denied and an Enforcement Order compelling the removal of the wall would need to be issued or the applicant would need a continuation to present an alternative. Sferra added that the supplemental materials that were submitted stated that a sloped revetment would have greater impact than the existing wall but no plan was submitted to show that. Burke described the bull nose lid and stated that the stone in the baskets would be used behind the wall but will fill more flood plain.

The Commission reviewed the quote that was provided to remove the wall and replace it with a rock revetment and noted that the quote was not itemized. John Toole, 34 Pine Point, stated that he is a former Lake Boon Commission Chair and currently on the Lake Boon Association and has 30 years of construction experience. Toole stated that if the wall is allowed to remain this would be the first time the Commission would allow unpermitted work to stay and that he is not comfortable with that. Toole also noted that the property is located where boats turn into the narrows and the wall could be a safety issue for boats and that allowing the wall to stay is not within the best interest of the natural resource. The Commission also noted the precedent of allowing the wall to remain in place. The Commission requested that the 190 elevation be added to the cross section sketch done by Ham which was submitted as part of the supplemental materials and that this be revised to show the proposal, a calculation be done of the storage capacity behind the wall if the $\frac{3}{4}$ inch stone is removed and replaced with the large stones, and clarification of the location of the existing wall on the property. Sferra said that she thought the Commonwealth would be the owner beyond the property line into Lake Boon. Burke stated that if the deed references the extent of the waterbody that the mean annual water level would be complicated by the draw down. The Commission noted that the existing wall would impact more bank and less land under water if the mean annual water level is lower. The Commission added that DEP could be contacted regarding the best way to regulate the shoreline with fluctuating water levels. Dionisi said that he would want to see the plan referenced in the deed.

Sferra noted that while researching the deed she discovered that the current owner of 168 Barton Road is Portside Realty Trust. The Notice was filed by 168 Barton Road Realty Trust; Sferra requested a letter of assent from Portside Realty Trust's Trustees. The Commission discussed the project and how to proceed. Ingeborg Hegemann Clark noted that she appreciated the additional supplemental information submitted by the applicant, abutter comments, and the list of shoreline stabilization projects completed by Sferra which shows the Commission's consistency in permitting retaining wall projects on Lake Boon. Burke noted the proposed mitigation and stated that if there is a location more worthy of need more than one catch basin could be done. Hegemann Clark requested that the cross section sketch include where the previous stone at the shoreline was located to compare how far the existing wall extends into the lake. Serena Furman also requested more information on what will be done to discourage use of the area behind the wall if it is allowed to remain in place. Furman also stated that the existing wall is a taking of land beyond the property line. Nicki McGachey stated that she is most concerned about the precedent of allowing the wall to remain. Jeff Saunders agreed he would like additional information and is not sure

that removing the wall entirely is necessary and asked if it is possible to move the wall back. Ham stated that there is a similar condition to what is behind the wall in the area where the wall could not be extended along the bank due to large stones. The Commission discussed removing or angling the end blocks and pushing the wall into the slope. Ham confirmed the end blocks are not keyed in to the rest of the wall.

The Commission noted the precedent of allowing the wall to stay. Ham asked if the uniqueness of the lot is a factor and added that the wall could not be pushed farther back into the slope due to the existing stones in the bank and not being able to access the bank with equipment. Dionisi addressed the precedent issue and stated he disagreed that the Commission has not allowed other applicants to extend into the lake including 184 Barton Road which has stairs extending further into the lake. Goring clarified that during the meeting with staff Sferra and Goring reviewed numerous projects that did not allow retaining walls to extend further into the lake and the stairs at 184 Barton do not appear to have extended further into the lake although a Certificate of Compliance has not yet been issued for the property. Burke added that they are trying to get the best product which will prevent erosion into lake and acknowledged that the work outran the plan and they can make adjustments doing what is physically possible. Ham reiterated that retaining wall work could be considered a special project under routine maintenance of the lake and they cannot meet the fisheries performance standards and required compensatory flood storage but could be waived by the Commission. The Commission requested the additional information as discussed including adding the 190 contour and the location of the preexisting stones be added to the sketch and requested that pushing the blocks further into the bank be further evaluated to reduce the impact of the project. The Commission noted that if the applicant is willing to come back with more information they recommend getting a copy of the surveyed plan blown up of the preexisting and existing condition of the shoreline as well as a profile plan. Mimi DiMauro, real estate agent for the Hams, noted that the stairs down to lake will have a high railing to keep people off the retaining wall. Furman stated that was not adequate in her opinion. *Ingeborg Hegemann Clark moved to continue the hearing to 1/15/19 at or after 7:30 pm. Nicki McGachey seconded and the motion was approved unanimously.*

Coordinator's Report

- **Potential Associate Commission Member:** Sferra noted that she and Goring met with a recent college graduate, Nick Tepper, who will be applying to be an Associate member of the Commission.
- **MSMCP Holiday Pot Luck:** The Massachusetts Society of Municipal Conservation Professionals (MSMCP) annual holiday pot luck will be held in Stow on December 19th. Members are invited.
- **Annual New Year's Day Hike:** The Annual New Year's Day hike will be held at Town Forest.
- **Enforcement Issues:** Sferra informed the Commission of retaining wall work done on Lake Boon at 46 Davis Road. The homeowner will be filing for an after the fact permit. Sferra also noted that the applicant for retaining wall work at 68 Pine Point Road completed the wall work before draw down and without an erosion control inspection. Furman will visit the site.

Conservation Land Permit Application – Captain Sargent – Alex Townsend – The Commission reviewed the Conservation Land permit application submitted by Alex Townsend to excavate the old foundation on Tuttle Lane. Sferra noted that the town's regulations do not allow collection and the Townsend has not been able to speak to the Massachusetts Historical Commission (MHC) to confirm if a permit is needed from the State. The Commission expressed concerns about the request and noted that Townsend is not professionally qualified to do the work and noted the condition he left the area when he excavated it previously without a permit which required time from Conservation and Highway staff to correct. The Commission agreed not to issue a permit to Townsend and recommend he contact MHC regarding volunteer opportunities.

Kunelius Property Conservation Restriction – Sferra informed the Commission that the Executive Office of Environmental Affairs (EOEA) had requested language in the draft Conservation Restriction (CR) requiring that the Commission provided 60 days' written notice to the Stow Conservation Trust (SCT) for new trail work. Sferra noted that the requirement has not been included in other CRs to date and the town has not required this of SCT. After discussion, SCT agreed to omit the language and EOEA has asked again. The Commission discussed the issue and agreed to defer the decision to Sferra but agreed that they did not want to make land management more difficult or cumbersome.

Jillian's Lane – Sferra noted there has been no update on Jillian's Lane and she will reach out to Sue Carter for an update.

Request for Determination of Applicability – Off Whelden Lane – The Commission discussed the project and requested that the fill material be no more than six inches deep, straw wattle be placed on either side of the berm during work and should remain in place until the areas are stable. The Commission also requested that staff be notified when the erosion controls are installed prior to starting work. *Serena Furman moved to issue a Negative Determination #3. Nicki McGachey seconded and the motion was approved unanimously.*

Adjournment – *Serena Furman made a motion to adjourn the meeting at 9:45 PM. Nicki McGachey seconded the motion and it was passed unanimously.*

Respectfully submitted,

Jacquie Goring
Conservation Assistant

Materials Used during December 4, 2018 Conservation Commission Meeting:

Off Whelden Lane – site visit photos and application/supporting materials
168 Barton Road – site visit photos and application/supporting materials
Alex Townsend Conservation Land Permit Application
Draft 11/20/18 Minutes