

**Stow Conservation Commission
Minutes
January 29, 2019**

A meeting of the Stow Conservation Commission was held at the Stow Town Building, 380 Great Road, Stow, Massachusetts, on January 29, 2019 at 7:30 in the evening.

There were present: Cortni Frecha, Vice-Chair
Serena Furman
Ingeborg Hegemann Clark
Sandra Grund
Nicki McGachey
Nick Tepper, Associate

Absent: Jeff Saunders, Chair
Andy Snow

comprising a quorum of the Commission

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

Appointment – John & Peter Melone – J. Melone & Sons – Accept and Execute Deed for Land Gift off White Pond Road – John and Peter Melone were present. The Commission reviewed the deed for the land gift from J. Melone & Sons which was provided in their packets. Sferra noted that the shape of the land is slightly different from the proposed area and includes additional Elizabeth Brook frontage. The Town Clerk was present to notarize signatures of the Commission. *Ingeborg Hegemann Clark moved to accept and sign the deed for the land gift from J. Melone & Sons. Sandra Grund seconded and the motion was approved unanimously.*

Appointment – John & Peter Melone – J. Melone & Sons – Request for Plan Amendment – White Pond Road 299-635 – John Melone stated that the settling tanks installed under Order 299-635 failed and a new water recycling system will be used to filter silt. The proposed effluent treatment thickener will be installed more than 500 feet from the brook. Water will be piped above ground to two settling cells and will cross the brook above ground at the existing bridge. John Melone stated that the new system will have much less impact. Peter Melone provided example photos of what the system and settling cells will look like. The Melone's noted that they do not know if they will remove the failed system or leave it in place. John Melone stated that the settling cells will need to be dug out once a year and the silt will be sold for fill. John Melone confirmed that the pipes will be temporary water pipes that can be pulled apart to clear blockage and removed in the winter while the plant is not operating. John Melone also confirmed that they have hired another consultant to design the detention basin that has not been built yet. The Commission confirmed there are no wetlands in the area of the proposed settling cells. *Ingeborg Hegemann Clark made a motion to approve the minor modification to Order of Conditions 299-635. Sandra Grund seconded the motion and it was passed unanimously.*

Kathy Sferra recused herself at 7:45 pm.

Notice of Intent – Albert and Viola Walkup – 42 Boxboro Road – Jim Morin, NorthEast Classic Engineering, was present to review the proposed septic system replacement for 42 Boxboro Road. Morin informed the Commission that he completed the septic design and wetland delineation and the Board of Health has approved the septic design subject to Commission approval. Morin reviewed the revised plan and noted that the limit of work was brought in and is now farther from the 35' no disturb buffer. Ingeborg Hegemann Clark confirmed she reviewed the wetland line and agreed with the delineation. Morin confirmed eight to ten trees will be removed within the grading area and are all outside the 35' no disturb buffer. The Commission reviewed photos from the site visit and noted a pile of full plastic trash bags within the buffer. Morin stated that they are in the work area and will be removed.

Hegemann Clark noted that she observed large piles of brush and lawn debris within the 35' no disturb buffer and recommended they be removed. Goring reviewed DEP comments and Morin confirmed that the septic designs meets the require 50' offset from the leach field. Morin confirmed the work would be done in the spring and a hold back at the time of sale would be done to avoid the need for a Certificate of Compliance (COC) prior to the sale. Morin added that a COC would be filed for once the site was stable and grass was sufficiently growing. The Commission confirmed that the permit will be valid for three years. *Serena Furman moved to close the hearing. Nicki McGachey seconded and the motion was approved unanimously.*

Kathy Sferra returned at 8:00 PM.

Ingeborg Hegemann Clark recused herself at 8:00 PM.

Appointment – OARS – Funding for Water Chestnut Control – Allen Fierce, Chairman of the Board of OARS, was present to discuss funding for water chestnut control in the Assabet River. Fierce said that OARS has been hand pulling water chestnut from the Assabet River for a decade primarily using volunteers with staff oversight. Fierce noted that OARS has removed the large patches on the river and small patches that come up are addressed quickly. Fierce stated that OARS is paying college students to monitor and map water chestnut and act as rapid response teams to pull patches as they develop. Fierce noted that water chestnut will likely never be eradicated from the Assabet because seed pods can germinate after ten or more years and can be spread by attaching to birds. Fierce noted that OARS does not have the funding to continue the rapid response program and is requesting funds from Towns including Stow to provide funding for the rapid response teams and administrative overhead. OARS has requested \$1,680 from Stow based on the number of hours spent in Stow. Fierce added that OARS budget is extremely tight and donations are down and if the funds requested from Stow were taken from one of their other programs something else would suffer. Fierce noted that Stow has never funded these efforts however has contributed to other water quality programs. Fierce added that the loss of the gains made in eradication in Stow could be exponential even by missing one year.

Fierce provided the Commission a list of funds approved at Town Meeting for invasive weed eradication at Lake Boon and noted that the request from OARS is a fraction of the funds approved for Lake Boon. Fierce noted the funds for OARS could be brought to Town Meeting through a warrant article or a request for CPA funds. The Commission noted that CPA funds can be used for restoration but could not be used for maintenance. Sferra noted that when she received a request from OARS last year the budget had already been submitted and she has spoken with the Town Administrator who recommended that the Commission look to fund the request before submitting a Town Meeting article. Sferra added that funds obtained through Wetland Protection Act permits could not be used for this purpose and the Conservation Fund is used to manage the 1,600 acres of Conservation Land owned by the Commission. Sferra stated that perhaps OARS could modify their request to cover a portion of the costs. The Commission recommended that OARS remove the overhead costs from the request. Sferra added that there is likely a larger constituency for Lake Boon than the Assabet and recommended that OARS enlist the users of the river for funding. Fierce noted that the request for \$1,680 is not significant. Sferra noted that the Commission's entire annual budget is less than \$5,000. Fierce confirmed that OARS is constantly looking for donations and may need to do additional fundraising if OARS will need to appeal the waste water treatment permits. Fierce confirmed that the warrant closes on March 15th and he will meet with the Town Administrator to discuss funding. The Commission commended the work OARS has done to date on the river to remove water chestnut and offered their support on a warrant article requesting funding for OARS and indicated that they would be willing to work with OARS next year earlier in the budget process.

Ingeborg Hegemann Clark returned at 8:23 PM.

Notice of Intent Continuation – 23-25 Hale Road – Brett Sigworth – Greg Roy, Ducharme & Dillis, was present and reviewed the revised plans and letter addressing the concerns identified in the previous hearing. Roy confirmed that the proposed house will be three bedrooms and the proposed fencing within the 35' no disturb buffer was removed from the plan. The remaining fencing will be at least six inches off the ground. Roy reviewed the revised landscape plan and confirmed all proposed plantings are native. Roy reviewed the cross section detail for the

retaining wall removal and beach grading and noted that the beach will only be lowered by a few feet. Roy also noted that a shadbush will be planted to replace the pine tree to be removed within the 35' no disturb buffer. Roy confirmed a small portion of the existing shoreline retaining wall will be removed and replaced and permeable pavers will be used for the landing patio within the 35' no disturb buffer which is located at the door of the cottage. The Commission noted that a cross section of the shoreline retaining wall replacement and additional details on the proposed invasive species removal should be provided for review. Roy noted that the applicant has withdrawn their application with the Zoning Board of Appeals because the house footprint is going to be changed. Roy clarified that the house footprint will likely be getting smaller and will be no closer to Lake Boon. Roy confirmed that the applicant is aware that the Commission will need to approve any changes to the approved plan and will be sending an amended waiver request. *Ingeborg Hegemann Clark moved to close the hearing. Sandra Grund seconded and the motion was approved unanimously.*

The Commission reviewed a draft decision and requested that the Order require a detail for the shoreline retaining wall replacement, invasives species removal plan, and that the Commission must review the final plans for the house reconstruction. The Commission noted that the elimination of parking within the 35' no disturb buffer, overall site improvement, invasive species removal, and planting plan provides public benefit for the work proposed within the 35' no disturb buffer. *Ingeborg Hegemann Clark moved to approve the amended Order of Conditions, Serena Furman seconded and the motion was approved unanimously.*

Decision – 42 Boxboro Road – The Commission reviewed a draft decision and requested that the brush piles within the 35' no disturb buffer be reduced in size by 90% and the plastic trash bags within the 100' buffer be removed. The Commission also requested that the Order reflect that eight to ten trees will be removed within the 100' buffer. *Serena Furman moved to approve the amended Order of Conditions, Sandra Grund seconded and the motion was approved unanimously.*

Minutes: *Serena Furman made a motion to approve the minutes of January 15, 2019 as amended. Nicki McGachey seconded the motion and it was passed unanimously.*

Coordinator's Report

- **New Project:** Sferra informed the Commission that Hudson Road Auto has filed for an after the fact permit for the tree removal completed along the stream behind the property. Andy Snow may take the project.
- **Town Center Park:** Sferra met with the low bidder, JAM Landscaping of West Boylston, and is working with the Town Administrator on the contract. The work could begin within a few weeks. Sferra will record the permits at the Registry of Deeds. Sferra contacted Sue Carter regarding completing the Stormwater Pollution Prevention Plan (SWPPP) and confirmed that her firm could complete the initial draft of the SWPPP for \$1,000. The Commission confirmed with Sferra that the SWPPP was not included in the budget however the bid came in under budget. Sferra will update the Board of Selectmen on the project.
- **Eagle Scout Project:** Sferra noted that Eagle Scout candidate Dylan Gross is interested in doing a deer enclosure for his project. Nick Tepper recommended the enclosure be constructed at Heath Hen and would take ten years before differences could be seen.
- **Enforcement Order:** Sferra informed the Commission that she was made aware of work being done at the corner of Great Road and Harvard Road. Sferra and Hegemann Clark visited the site and confirmed that tree clearing, invasives removal and grading had occurred right up to a wetland. Sferra provided photos and recommended that an Enforcement Order be issued ordering the property owners stop work and file a restoration plan or file a Notice of Intent for any additional work they would like to complete. Sferra noted that she required the property owners install erosion controls immediately. *Serena Furman moved to issue the Enforcement Order for 561 and 549 Great Road, Sandra Grund seconded and the motion was approved unanimously.*

Calendar 2019 Project Planning – The Commission agreed to move the discussion of the calendar 2019 project planning to the February 5th meeting.

Decision – 168 Barton – Sferra informed the Commission that she prepared a deliberation outline to get a sense of direction from the Commission and expected to prepare a decision based on the discussion and bring it to the next meeting. Sferra noted that she met with Jeff Saunders and will review his comments at the appropriate time. Sandra Grund noted she was not able to vote on the project. The Commission discussed the deliberation document for 168 Barton and requested that the background and procedural history clarify that the natural resources impacted by the work include Bank, Land Under Water, and Bordering Land Subject to Flooding (BLSF). The Commission clarified that the shoreline had consisted of an unmortared series of small rocks and discussed the photo presented by the applicant from a 4th of July boat parade some years ago that provided evidence that some trees have fallen from the slope. The Commission requested that the distance Sferra first observed the work out into the lake beyond the base of the slope be included in the findings. The Commission also noted that the Enforcement Order required the applicant provide plans of a proposed method of shoreline protection that meets the performance standards in the Act and Bylaw for Bank, Land Under Water, and BLSF. Sferra noted that she had not yet received the one day extension from the applicant's attorney, but would follow up.

The Commission reviewed the October 2018 submittal and public hearing summary and confirmed that they agree that the applicant should be able to take measures to stabilize the shoreline to prevent erosion in a manner consistent with what other landowners have done along Lake Boon and in a manner that meets the performance standards. The Commission discussed the proposed mitigation in the form of funding for installation of a leaching catch basin on Barton Road and noted that the standing water has no hydraulic connection to Lake Boon. The Commission noted that they are able to fine up to \$300 per day for each day the unpermitted work is in place. The Commission discussed fining the applicant and what the funds could be used for including clean up at the boat ramp. Sferra clarified that fines would be deposited into the general fund and would be required to be raised and appropriated at Town Meeting. The Commission discussed the precedence of this unpermitted work and deterring other Lake residents from doing similar work.

The Commission discussed the resource area impacts and significance and requested that the decision state that the applicant had not overcome the presumption that Bank is insignificant to the Act and Bylaw. Hegemann Clark noted that there was no quantitative data submitted by the applicant to overcome the presumption. The Commission discussed the altered 48 feet of linear bank and noted that some rocks are already in place on both sides of the wall. Additional alteration could result in greater than 50 linear feet of bank alteration. The Commission discussed the definition of bank which is measured in linear feet. The Commission reviewed the Land Under Water Bodies portion of the decision and requested that the decision state that the applicant had impacted 200 square feet of Land Under Water. Members disagreed with the delineation of Land Under Water offered by Grenier. Hegemann Clark noted that she can provide additional text for the decision regarding the applicant not overcoming the presumption for Land Under Water.

Sandra Grund and Nick Tepper left the meeting at 10:00 PM.

The Commission discussed BLSF calculations for the decision and the varied datum presented throughout the hearing process. The Commission requested that the decision state that the applicant has not overcome the presumption of significance of BLSF. The Commission noted that the datum for Greiner's submittal was unknown. There were questions about the amount of BLSF impacted, and the Commission asked Sferra to contact Sue Carter and review the issue with her. Nicki McGachey confirmed her understanding that no amount of displaced flood storage is allowed without providing compensatory flood storage. The Commission discussed the flood storage calculations for the proposed addition of loam and rocks and noted that the calculation for additional BLSF for this work was not provided by the applicant. The Commission noted that a peer review could have been helpful to review the BLSF calculations and datum issues.

Sferra reviewed her discussion with Saunders. The Commission discussed the decision and noted their concerns about precedent, relevance of the proposed mitigation, inability to meet the performance standards, the quality of information in the submittals, missing information including the angle of repose of the slope, and the lack of alternatives, and requested that Sferra prepare a draft denial decision. They asked Sferra to review the draft with

Town Counsel prior to the meeting so that it could be ready for the next meeting. Hegemann offered to work with Sferra on the draft.

Adjournment – *Serena Furman made a motion to adjourn the meeting at 10:53 PM. Cortni Frecha seconded the motion and it was passed unanimously.*

Respectfully submitted,

Jacquie Goring
Conservation Assistant

Materials Used during January 29, 2019 Conservation Commission Meeting:

J. Melone & Sons Deed for Land Gift off White Pond Road and site plans
White Pond Road J. Melone & Sons photos and application/supporting materials
42 Boxboro Road – site visit photos and application/supporting materials, draft decision
Stow Town Meeting Appropriations to Lake Boon Commission for weed control- submitted by Alan Fierce
23-25 Hale Road – site visit photos and application/supporting materials, draft decision
561/549 Great Road Enforcement Order
168 Barton Road – site visit photos and application/supporting materials, draft deliberation document
Draft 1/15/19 Minutes