

Deerfield Conservation Commission – Meeting Minutes
September 22, 2022

Members Present: Peter Law, Kate Devlin, Sean Libbey, Ben Byrne

Members Absent: None

Staff Present: Amy Hahn, Building Assistant

Notes:

The meeting was called to order at 7:00 pm, virtually via Zoom

Minutes of the September 8, 2022 meeting were reviewed and accepted as written with a motion from Sean Libbey, seconded by Kate Devlin. Roll call vote approved, 3-0-1.

New Business:

1. Public Hearing for a Request for Determination of Applicability Form 1 filed by Robert J. Decker III to treat knotweed (Map 140 Lot 16 & 16.1)
 - Mr. Decker presented his plan to spray the knotweed and brush hog the area prior to the Fall. If treatment isn't approved prior to leaf off then he'd just brush hog the area and spray the regrowth next Spring. Annual brush hogging in the Fall has been how he has treated the area in the past.
 - All members of the Commission expressed concern about the brush hogging treatment leading to spread downstream and not solving the knotweed issue.
 - With respect to the current RDA, the board has recently found that the RDA presented by Mr. John Cunningham for the same property and similar work would require the filing of a Notice of Intent.
 - Peter Law mentioned that the landowner has the ability to appeal the Commission's decision to DEP.
 - A motion was made by Sean Libbey to close the RDA Application filed by Mr. Decker with a Positive Determination Number 3. Applicant will need to file an NOI for the work described in the RDA. Motion seconded by Kate Devlin. Roll call vote approved, 4-0-0.

2. Request for Certificate of Compliance for an Order of Conditions issued to New England Natural Bakers on May 5th, 2015 for the locus property (Map 168 Lot 21) filed by SVE Associates on behalf of NUPRO.
 - Mark Stadnicki (SVE) represented the landowner who had been notified by DEP that there was an outstanding order of conditions for a project that a previous landowner never started.
 - Kate Devlin made a motion to approve the WPA Form 8B Certificate of Compliance under Part B "invalid order" because no work has been done. Motion seconded by Sean Libbey. Roll Call vote approved, 4-0-0.

3. Public Hearing Continuation for Notice of Intent filed by NUPRO for construction of a 124,680 square foot building, parking area, loading dock apron site lighting sight landscaping, utilities, stormwater management, riverfront resource area improvements on property identified in the Assessors records as Map 168 Lot 21 and Lot 21.2.
 - Mark Stadnicki (SVE) represented the landowner and provided an overview of the site's history. This is an 8.9 acre property with Blacksmith Brook forming part of the boundary. It is the site of the former Oxford Food pickle factory. In 2015 Ward Smith (Wendell Wetland Services) did a wetland feasibility study and flagged/identified the resource areas. Ward Smith went back in 2018 and reflagged a portion of the resource area. This past January Ward Smith revisited the site to confirm the resource areas (described as well defined). This includes a manmade pond the landowner suggests should be declassified as a BVW. There is 198,000 square feet of river front area with approximately 155,000 square feet currently degraded by former parking and storage areas. The area currently contains three catch basins, two draining to the brook and one draining to the stormwater system located off Merrigan Way. The proposed building would be on Parcel 21 and would include 94 parking spaces, an increase of 75 square feet of impervious area. The project would create two large retention basins with proposed dry wells. This would include a deep sump and oil separator for water caught from the parking area. The current proposal will result in a somewhat smaller area of degraded river front while improving the river front area by removing non-native gravel and adding sod.
 - Peter Law commented that the Commission would like a professional peer review to help make this determination conducted by a consultant the Commission presents to the landowner.
 - Derek Helie spoke as the builder hired to improve the river front area and build the project said the landowner would be willing to pay the cost of a peer review but that delays would cost money and the location is in an expedited permit district as approved by the Zoning Board.
 - Analee Wulfkuhle (Chair Planning Board) commented that a peer review would be appreciated in regards to performing a stormwater review.
 - A motion to continue the Public Hearing for the NOI for Map 168 Lot 21 & 21.2 filed by NUPRO to the next regularly scheduled Conservation Commission meeting and to put out a RFP for peer review was made by Sean Libbey, seconded by Kate Devlin. Roll call vote approved, 4-0-0.

Other Business:

4. Discussion opened up by Peter Law regarding the Mill Village Road violations on (Map 132 Lots 29 & 30) as detailed in the cease and desist letter issued to Mr. Gardner on May 3rd, 2022 from the Commission. Peter Law made note that this was not a hearing therefore only the landowner, the Commission, and their respective representatives may speak at this time.
 - The landowner Mr. Greg Gardner and his lawyer Kathleen Bernardo were present. Kathleen Bernardo began by stating that the landowner has done no

work since 2018 on the property. Kathleen Bernardo then outlined a brief history of the permits, work and discussions had regarding the property beginning in 2014 with the approval of a permit by MassDOT to construct a full asphalt driveway entrance (onto Route 5&10). During the approved timeframe for that permit (3 years) only a gravel entrance was accomplished. In 2016 Mr. Gardner petitioned the Commission for a planned project, as part of that site review the Commission and DEP determined there were no wetland issues. It was at this time in 2016 that trees were cut down without MassDOT approval, resolution of this issue between Mr. Gardner and MassDOT was settled in 2018. Kathleen Bernardo finished this land use history with the statement that there are no projects currently planned for the future.

- Emily Stockman (Stockman Associates LLC, consulting for the Commission) reviewed the timeline as follows. In 2016 the Deerfield Conservation Commission made a determination for a specific area for the RDA for a 6 unit storage facility, the RDA did not include the area associated with MassDOT and doesn't show construction of the curb cut. The permit issued to Mr. Gardner by MassDOT specifically required additional permits be obtained through the Town's Conservation Commission pertaining to work related to the curb cut. Emily Stockman confirmed that there has been resolution between Mr. Gardner and MassDOT regarding the additional tree cutting. The 2016 RDA issued by the Commission expired on December 12, 2019. In November of 2020 the MassDEP issued two superceding Determinations of Applicability and found areas subject to the Act (WPA) and bank associated with streams. These findings were limited only to the requested areas with no boundaries being determined. Emily Stockman confirmed there has been no construction since 2018, but did note that mowing has been observed with potential to alter wetland areas that have not been defined. The regulatory decision from DEP determined that there does exist bordering vegetated wetland (BVW) and river front on the parcels owned by Mr. Gardner and MassDOT.
- Kathleen Bernardo did concur that the 2014 permit does include the need to pursue other permits "if applicable." At the time Mr. Gardner had discussions in the field with members of the Commission and DEP that gave him the impression that there were no wetlands; therefore, no need to file any other permits with the Town. Kathleen Bernardo could not speak to the MassDOT permit of 2020 as she was not currently aware of it.
- Peter Law brought the discussion back to the present regarding the May 3rd letter. The landowner must cease and desist from all activities, including mowing, until the boundaries of the resource areas are delineated.
- Greg Gardner commented that he has the property mowed twice a year and will tell his crew to no longer mow that area anymore.
- Emily Stockman noted she was tasked to review the files of record (not including discussions had in the field at the time). The 2016 RDA didn't specify site plans, one plan indicated "lot 3" the other plan a fax from Oct 20, 2016 designated a specific area within lot 3 simply depicting the location of 6 buildings. Valid through 2019, the period within which the trees were cut and the curb cut on MassDOT lands was put in place and were not covered by the 2016 RDA nor

were these activities presented to the Commission. Satellite imagery shows some activity in 2015 with more defined activity occurring in 2018.

- Peter Law brought the focus of the conversation back to the current activity, reiterating that to do mowing the Commission would require a full delineation of the two properties prior to approval of activity.
- Emily Stockman agreed with Peter Law in the need for a full delineation, and further recapped the series of events that bring us to that need.
 - 2014 MassDOT issued permit for commercial driveway valid for 1 year and extendable for up to 5 years.
 - 2015 Work begins
 - 2016 Landowner files RDA with Commission which does not include a distinct driveway curb cut
 - 2018 Trees cut
- Peter Law further identified that the 2016 RDA showed the overall boundary lines for both lots 29 and 30 but did not include documentation of the approximately 1000 square feet of MassDot lands. Peter Law went on to say that non-compliance of permits requires the Commission to review the work done relative to these permits. Work also started prior to the RDA submission even when communication from MassDOT specifically required such permits to be obtained. The cease and desist order is still in effect until the delineation of resource boundaries has been completed and reviewed by the Commission.
- Peter Law asked the landowner and his representative if they would agree to a voluntary restoration of the area including a wetlands delineation of the area to determine the areas where work may be done.
- After conferring with his counsel Greg Gardner said he be happy to do a delineation of his property, and not the State's property (MassDOT). At this time he is unwilling to restore the area to its original condition. The Commission noted that additional restoration activities may be required based upon the findings of a full site delineation.
- Emily Stockman thinks the MassDOT lands should be included in any wetland delineation and recommends the Commission review the settlement agreement with MassDOT by conversation.
- Peter Law will put together a letter of understanding to include the fact that the cease and desist remains in effect. Peter Law noted that this is not a hearing therefore there is no need to make a motion at this time.

5. Public Hearing Continuation for a Notice of Intent filed by Daniel Hartman/All States Materials Group for 901 River Road (Map 21 Lot 1). NOI to make improvements to an existing gravel road, including widening the road, replacing the stream crossing and constructing a pad site for parking.

- Eileen Piskura representing Daniel Hartman and All States Materials Group spoke about the changes to the site plans that flip the impacts to the north side of the road to reduce overall impacts on the project site.
- The Commission is planning on submitting a peer review response and will look into the ability to approve the current amended plan. There remain peer review items still needing to be addressed.

- A motion to continue the hearing on the NOI filed by Daniel Hartman for Map 21 Lot 1 to the next regularly scheduled Conservation Commission meeting was made by Kate Devlin, seconded by Sean Libbey. Roll call vote approved 4-0-0.
6. Public Hearing Continuation for a Bundled Notice of Intent for the Town of Deerfield, filed by Kevin Scarborough on behalf of the Deerfield Department of Public Works (DPW). Bundled NOI is to conduct routine maintenance and repairs to local roadways to be performed by the Deerfield DPW at various locations in Town.
 - Adrienne Dunk (GZA) provided answers to a few of the Commission's questions prior to Peter Law reading through the Commission's Order of Conditions. Each point was agreed upon prior to moving on. Two changes were made during the course of discussion. Item 6 regarding work within NHESP Estimated Habitat was stricken as only exempt activities are outlined in the Bundled NOI. Item 19 was amended to define rainfall as a ½" rain event within a 24-hour period.
 - A motion to accept the Bundled NOI with the inclusion of the Order of Conditions (with approved amendments striking item 6 and amending item 19) was made by Sean Libbey and seconded by Ben Bryne. Roll call vote approved 4-0-0.
 7. Public Hearing Continuation for an Abbreviated Notice of Resource Delineation (ANRAD) Wetlands Delineation filed by Kenneth Bouquillon, SunnyDayz Inc. The ANRAD asks the Conservation Commission to accept the revised wetlands delineations shown on the submitted plan. The property is located off Greenfield Road (Map 159 Lot 14).
 - Kenneth Bouquillon stated that he'd like to wait for more than the one proposal generated so far for the RFP for a wetland delineation.
 - A motion to continue the hearing on the ANRAD filed by Kenneth Bouquillon to the next regularly scheduled Conservation Commission meeting was made by Sean Libbey, seconded by Kate Devlin. Roll call vote approved 4-0-0.

Review Mail: No mail was presented to review.

Site Visits: Peter Law and Mark Stadnicki (SVE) walked the work area at Tree House Brewery Company (One Community Place) to review erosion control measures. Peter Law noted the erosion control had been removed in 6-7 areas and not been replaced. They were also noted three bridges of new construction (replacing existing structures) and some new cutting of vegetation. Peter Law noted that the Commission was not notified of these activities and they are not part of the approved NOI. Peter Law suggested to the Commission that we reach out to Tree House Brewery to outline the issues and to request that they contact the Conservation Commission prior to activities within regulated resource areas.

- A motion was made to authorize the Chairperson to draft a letter to Tree House Brewery noting current issues, seconded by Sean Libbey. Roll call vote approved, 4-0-0.

Discussion: No further discussion at this time.

Next Meeting:

The next Conservation Commission meeting will be held October 27th, 2022, 7:00 pm. There being no further business before the Commission a motion was made by Sean Libbey, seconded Kate Devlin, to adjourn at 9:30 pm. Approved 4-0-0.

Respectfully submitted, Sean Libbey, Conservation Commission

All Materials and Documents discussed during this meeting are publicly available on the Town of Deerfield's website (excepting those in draft form).

The link to the Conservation Commission page is:

<https://www.deerfieldma.us/243/Conservation-Commission>.