

**NATURAL RESOURCES COMMISSION**  
**Meeting Minutes**  
**April 3, 2019**

Pursuant to the notice filed with the Town Clerk, the meeting of the Natural Resources Commission was held at 141 Keyes Road, first floor conference room, Concord, MA at 7:00 p.m. on Wednesday, April 3, 2019. The following Commissioners were present: Greg Higgins, Chair, Judy Zaunbrecher, Lynn Huggins, Jeff Adams, and Ed Nardi. Delia Kaye, Natural Resources Director, and Natural Resources Administrative Assistant Karen Bockoven were also present.

Chair Higgins opened the meeting at 7:00 p.m. in accordance with the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, and the Concord Wetlands Bylaw.

<b>DIRECTOR'S REPORT</b>
<b>OTHER BUSINESS</b>
<ul style="list-style-type: none"> <li>• 2018 Blanding's Turtle Report and Request for 2019 Funding</li> </ul>
<b>TO BE CONTINUED TO MAY 15, 2019</b>
<ul style="list-style-type: none"> <li>• <b>WESTCHESTER COMPANY, INC.</b>, Lot 2A Keuka Road, NOI</li> </ul>
<b>CONTINUANCES</b>
<ul style="list-style-type: none"> <li>• <b>FABIO'S CONSTRUCTION</b>, 70 Elm Street, AMENDED OOC</li> <li>• <b>ANTHONY</b>, 72 Walden Terrace, NOI</li> </ul>
<b>NEW APPLICATIONS</b>
<ul style="list-style-type: none"> <li>• <b>HOLDEN</b>, 426 Strawberry Hill Road / New Public Meeting, RDA</li> <li>• <b>ELTON</b>, 415 Lowell Road / New Public Meeting, AMENDED OOC</li> </ul>
<b>MINOR MODIFICATION</b>
<ul style="list-style-type: none"> <li>• <b>BRIGIOTTA</b>, 41 Lowell Road</li> </ul>
<b>EXTENSION REQUEST</b>
<ul style="list-style-type: none"> <li>• <b>ELTON</b>, 415 Lowell Road</li> </ul>
<b>EMERGENCY CERTIFICATION</b>
<ul style="list-style-type: none"> <li>• <b>CONCORD LAND CONSERVATION TRUST</b>, 9X Westford Road</li> </ul>
<b>CERTIFICATES OF COMPLIANCE</b>
<ul style="list-style-type: none"> <li>• <b>ARADO</b>, 103 Virginia Road</li> </ul>

**DIRECTOR'S REPORT**

- Director Kaye reported that Town Counsel has reached an agreement with Harvard on public access on their portion of the Estabrook Woods trail.
- A pilot garlic mustard pull with the Concord Land Conservation Trust is scheduled for Saturday, May 18<sup>th</sup> through Sunday, May 26<sup>th</sup>. Director Kaye asked if Commissioners to let her know of any specific areas to target. Commissioner Huggins suggested that the Commission join together to pull garlic mustard on a designated piece of land. A photo in the Concord Journal may be a way to encourage more people to participate.
- The annual migratory bird walk with Peter Alden will be held on Saturday, May 11<sup>th</sup>.
- Peter Alden is also coordinating a BioBlitz which is scheduled for Saturday, July 6<sup>th</sup>, in honor of E.O. Wilson's 90<sup>th</sup> birthday. The National Parks and Walden Woods Project are hosting

the event with the goal of identifying 2,000 species identified in Concord and surrounding areas. People will be able to download the iNaturalist App to record and identify species of flora and fauna. This is the third BioBlitz event, which was first held in 1998.

### **OTHER BUSINESS**

#### **2018 Blanding's Turtle Report and Request for 2019 Funding**

Bryan Windmiller of 65 Arrowhead Road and Zoo New England's Grassroots Wildlife Conservation attended tonight's meeting. Mr. Windmiller said that one advantage with working with the zoo is that there is more staff and they have been able to help the people who are raising the turtles. Blanding's turtles are being raised in 27 different schools and three institutions. They have been able to boost the rate of growth. Last year several turtles died of intestinal issues that may have been caused by food. This year 121 Blanding's turtles are alive and well.

Five acres of wildflowers at the Peter Spring field have been planted as a nesting area for the turtles, in the area of the field required to be fallow for Blanding's nesting habitat. In the future they would like to make some mounded nesting areas in the field. Several Blanding's turtles nesting areas in Massachusetts have done this with great success. Mr. Windmiller explained that they are also continuing to work with the zoo and Fish & Wildlife at Great Meadows on planting buttonbush. They are hoping to install sweet gale and swamp rose as well.

Chair Higgins asked if Hanscom is aware of the wood turtles near the Elm Brook area. Mr. Windmiller replied that they are aware. They inform Hanscom operations every time they go out and are given formal permission. Mr. Windmiller said they also had a meeting with Hanscom's operation person last spring. Mr. Windmiller noted that several wood turtles died in 2016 when there was a drought and Elm Brook dried up. That area is probably the last population of wood turtles in Concord. In 2018 they were tracking two male turtles but one left the area and was subsequently located 3.7 miles away. It is very unusual for wood turtles to go that far and cross roads but he was probably in search of a mate. Commissioner Adams said the Blanding's turtles have probably been impacted from the changes at Moore's Swamp. Mr. Windmiller said there is a lot less habitat for the turtles.

Commissioner Zaunbrecher asked about the turtles in the Balls Hill area. Mr. Windmiller said that they are excited about that area now that Mass Audubon has acquired a lot of the former Engelhard property. He spoke with Jeff Collins, Mass Audubon Science Director, to get permission in the future to trap in the large wetland to the left of the parking area. Mr. Windmiller said that they have tracked Blanding's turtles back and forth to that wetland but did not have access to the property. Perhaps Mass Audubon and the NRC will allow the release of Blanding's turtles there.

Mr. Windmiller said he is requesting the usual amount of \$3,000 from the NRC for the Blanding's turtles study at Great Meadows. Most of that will pay for the nesting surveys both in finding the nests, hiring two people to go out every night in June to check the nests, and tracking female turtles until they nest. Towards the end of August the nests will be checked every day for turtles that have hatched. Mr. Windmiller said they are also asking for \$350 for radio transmitters for two wood turtles. They have a three-year contract with Mass. Wildlife to work with wood turtles throughout eastern Massachusetts and they are hoping to see more female adult turtles.

There were no public comments.

Commissioner Adams moved to authorize the expenditure of \$3,350 from the conservation account to be used for Blanding's turtle and wood turtle research and protection. Commissioner Huggins seconded. All so voted.

**TO BE CONTINUED TO MAY 15, 2019 (NO DISCUSSION)**

**Notice of Intent Application, Steve Marsh, Westchester Company, Inc., Lot 2A Keuka Road, DEP File #137-1461**

Chair Higgins reopened the hearing seeking approval to construct a single-family home, with an associated garage, patio, driveway, grading, and utilities within the 100-foot Buffer Zone to Bank and Bordering Vegetated Wetlands.

At the request of the Applicant, Commissioner Huggins moved to continue the hearing until May 15, 2019. Commissioner Adams seconded. All so voted.

**Request for Amended Order of Conditions, Fabio Andrade, Fabio's Construction, 70 Elm Street, DEP File #137-1454**

Chair Higgins recused himself and left the room for this matter because he may have future business dealings regarding 70 Elm Street. Chair Higgins asked Commissioner Huggins to serve as Acting Chair in his absence.

Acting Chair Huggins reopened the meeting requesting an Amendment to the Order of Conditions for after-the fact construction of a wall within Bordering Land Subject to Flooding, the 200-foot Riverfront Area to the Sudbury River, and the 100-foot Buffer Zone to Bank and Bordering Vegetated Wetlands.

List of plans and documents discussed at this meeting:

- Wetland Permitting Plan prepared by Stamski and McNary, Inc. revised on March 21, 2019.

The Applicant, Fabio Andrade, and David Crossman of B&C Associates attended tonight's meeting. Mr. Crossman said a wall was constructed within the floodplain, after the original permit was issued. They have since filed to amend their original Notice of Intent to include the wall. Mr. Crossman has proposed 10 buttonbush as additional mitigation requested by the Commission that will be flood tolerant and also good for wildlife. The 10 buttonbush are in addition to the original plantings that were proposed for the previous mitigation.

Commissioner Adams thanked Mr. Andrade for coming to the meeting tonight. Commissioner Adams noted that there was discussion last fall about a trench that was dug for a retaining wall which was required to be filled back in because it was in the floodplain. Commissioner Adams said that the NRC was surprised to learn about the new wall that had been built which was not on the original plan. Given the sensitivity of the area and previous discussions, the NRC wanted to understand why Mr. Andrade thought it was okay to construct this new wall. Mr. Andrade explained that the existing wall was crumbling and he thought he was improving by building a new wall. He was concerned that water, snow, dirt, and leaves from the driveway would drain into the river. Also, a wall would prevent any cars from rolling down the driveway. Commissioner Adams said the dry pack cement that was used on both sides of the wall needs to be removed, and those areas loamed and seeded. Mr. Andrade said he will take care of that.

Commissioner Zaunbrecher asked Mr. Andrade if he had read the bylaw when he was assessing what needed to be done according to the plan designed by the engineers. Mr. Andrade replied that he did not read the bylaw. He knows what he did was wrong. Next time he will talk with the engineers with regard to what he can and cannot do. Commissioner Adams suggested that any time that he is working near wetlands, to meet with staff and clearly go through all plans. If questions come up even during construction, staff would be more than willing to come to the work site to evaluate. Commissioner Adams said at the last meeting there was also a discussion that while the wall was built not in accordance with the plan, had it been included with the original request, it probably would have been approved. Acting Chair Huggins said that is why the Commission is asking for additional plantings as mitigation because approval was not given for the recent wall construction.

Julia Yoshida of 78 Elm Street asked how many additional plants were being planted. Acting Chair Huggins replied that 10 buttonbush plants are being added. They will be planted close to the river. Mr. Crossman said they have doubled the amount of vegetation and took into consideration how they would survive by the river. Ms. Yoshida said there is a beech tree just outside of the 121 floodplain elevation on the property line. Her certified arborist was doing work on her property when he observed a backhoe running over the roots and putting in several inches of additional soil with rock chips in it. Her arborist was alarmed because the tree was in excellent health. He said the soil should be removed because beech trees have very shallow roots that spread out wide. He also said that compaction would weaken the tree and make it more susceptible to insect infestation and fungus which could lead to the tree dying in 10 years. Ms. Yoshida said the beech tree is about 100 years old. The two previous owners took great care of the tree. She believes that since the roots go onto her property and into the floodplain that the tree should be part of the plan and taken care of. This type of tree could live 200 to 300 years. Ms. Yoshida said her arborist recommended that the soil and rocks be removed and that methods of aerating the soil be considered. She hopes the Commission will take this matter seriously. This is of great concern to her. Mr. Andrade said he would do whatever is recommended. He said that the soil is not compacted around the tree currently. Initially it was compacted, however, the soil is muddy because of water coming down from the hill. The Commission requested that Mr. Andrade hire an arborist to look at the beech tree.

Claudio Topolcic of 78 Elm Street said a trench approximately 10 feet way from the tree was dug for a possible wall. The trench was filled in. This should be considered when an arborist evaluates the tree because some roots may have been damaged.

Commissioner Adams asked if the NRC were to approve the Amended Order of Conditions tonight would the Commission be able to condition that the Applicant provide a report from an arborist. Director Kaye replied that an arborist should provide a recommended approach on how they would care for the beech tree before the Amended Order of Conditions is issued. The NRC agreed.

Jane Deering of 94 Elm Street said that at the last meeting she expressed her concern about more water flowing towards her property because her property is flat. She thanked the Commission for requiring extra plantings.

Mr. Crossman wanted to clarify for the record because the abutters were concerned, the area between the two walls will be loamed and seeded. This has been noted on the plan.

Acting Chair Huggins said the additional mitigation is good. The NRC feels strongly that the Applicant needs to hire an arborist to evaluate the beech tree and make a recommendation to the Commission and that this be done prior to approving the Amended Order of Conditions.

The Applicant agreed to continue the hearing until April 17, 2019.

**Notice of Intent Application, Bryan Anthony, 72 Walden Terrace, DEP File #137-1466**

Chair Higgins reopened the hearing seeking approval to demolish and reconstruct a single-family house within the 100-foot Buffer Zone to Bordering Vegetated Wetlands.

List of plans and documents discussed at this meeting:

- Wetland Permitting Plan prepared by Stamski and McNary, Inc. revised on March 8, 2019.

Homeowner Bryan Anthony and Daniel Carr from Stamski and McNary attended tonight's meeting. Mr. Carr explained that since the last meeting they have made some changes per the Commission's request. The screen porch has been relocated so it is mostly outside of the 50-foot No Build Zone (NBZ). They have updated the plan to include a row of five red maple trees along the rear property line which will help absorb groundwater. Currently there is lawn right up to the wetlands which they will be removing. The proposed house will only have a crawl space and the crawl space will be a foot above groundwater. Mr. Carr said they will install a roof drywell for the proposed new house. The existing foundation drain will be removed.

Chair Higgins asked what will be planted besides the five red maple trees once the lawn is removed. Mr. Carr replied that they will plant a wetland seed mix. They will not be disturbing anything that is on the Concord Housing Authority's property. Mr. Carr added that they are taking down two 10-inch trees where the five red maple trees will be planted. One of the trees being removed is diseased. There is another larger 30-inch tree that will not be removed. Chair Higgins asked if the five trees were to demarcate the property. Mr. Carr said that was the intent.

Commissioner Zaunbrecher asked for confirmation that because the new house will not have a basement it will not have a sump pump either. Mr. Carr said that is correct. Commissioner Zaunbrecher asked when the house is demolished will they be taking out the existing basement walls. Mr. Carr said that he believes that the materials for the walls will be taken out.

Chair Higgins said that staff has noticed invasive knotweed in the lower right hand corner of the property. Will that be removed? Mr. Carr said that the Applicant would be agreeable to removing the invasive knotweed. Director Kaye said most of the knotweed is on Housing Authority land but they would probably be happy to have it removed. The Applicant would need to get their approval before working on their land.

Commissioner Adams said that he saw on the plan that a dewatering location has been provided should it be needed. He also said that the issues discussed at the last meeting have been incorporated into the revised plan.

Mr. Anthony said his goal with his proposed project is to reduce the environmental footprint of the existing house. Even though the new proposed house is bigger will be cheaper to heat and cool. Another benefit is that the sump pump will not run every day, reducing electricity consumption greatly. Mr. Anthony said that approximately 5,000 gallons of water is being pumped every year.

Mr. Anthony said because the new house is designed without a basement, the size is greater in order to accommodate the utilities.

Dean Banfield of 73 Walden Street is worried that invasives will move towards the space that is being naturalized. The Housing Authority land is a tangle of undergrowth. Director Kaye noted that the knotweed patch is relatively small and manageable at this point. Chair Higgins asked Mr. Anthony if he would be willing to plant some blueberry bushes to fight back the invasives around the trees. He could work that out with staff. Chair Higgins said that would enhance his property and also provide mitigation towards the project. Mr. Anthony said he could plant blueberry bushes. Commissioner Adams asked for some information about the two trees the Applicant wants to remove. Mr. Anthony explained that one of the trees has a fungus on it which he is trying to keep from spreading to other trees. The other tree is a scrub cherry tree. Mr. Anthony believes these two trees should come down whether he does the project or not. Commissioner Adams said that the 25-foot waiver request would have to include the tree removal. Commissioner Huggins said to also include the additional blueberry bushes into the waiver.

There were no public comments.

The Applicant agreed to continue the hearing until April 17, 2019.

#### **NEW APPLICATIONS**

##### **Request for Determination of Applicability Application, Carolyn and Reed Holden, 426 Strawberry Hill Road, RDA File #19-2**

Chair Higgins opened the hearing seeking approval to re-route the existing driveway within the 100-foot Buffer Zone to Bordering Vegetated Wetlands.

##### **List of plans and documents discussed at this meeting:**

- Request for Determination of Applicability Application; and
- Site Plan prepared by Snelling & Hamel Associates, Inc. dated March 13, 2019.

Greg Legault of Legault Design attended tonight's meeting. Mr. Legault explained that they are proposing to move the existing driveway further away from the wetland with associated grading. The re-routing of the driveway is part of a project that involves an addition to the house. The house addition is not within the Buffer Zone.

There were no public comments.

Commissioner Adams moved to close the hearing and issue a Negative Determination of Applicability #3 for Carolyn and Reed Holden, 426 Strawberry Hill Road, RDA File #19-2 with the conditions that: 1) A preconstruction site visit shall be held to review erosion controls and the limit of work; and 2) After the project has been completed, the Applicant shall submit a letter to the NRC stating that all work has been conducted in accordance with all conditions of this Determination of Applicability. Any changes from the RDA shall be described. Commissioner Huggins seconded. All so voted.

##### **Request for Amended Order of Conditions, Elton, 415 Lowell Road, DEP #137-1161**

Chair Higgins opened the hearing seeking approval to remove unauthorized fill from Bordering Land Subject to Flooding (BLSF) and to return the area to pre-disturbance condition including

restoration and naturalization of disturbed areas within BLSF and the 100-foot Buffer Zone to Bordering Vegetated Wetlands.

List of plans and documents discussed at this meeting:

- Compensatory Storage Analysis Plan prepared by Hancock Associates revised April 1, , 2019; and
- Floodplain Restoration Plan prepared by Hancock Associates revised April 5, 2019.

Homeowner Anne Elton and David Cowell of Hancock Associates attended tonight's meeting. Mr. Cowell said that a Request to Amend an Order of Conditions has been filed to perform some corrective actions to remove some fill which was errantly placed within Bordering Land Subject to Flooding and a conservation restriction (CR). Mr. Cowell explained that the original Order of Conditions was for a pool addition. When the homeowner went to apply for a Certificate of Compliance it was discovered that fill was placed within the floodplain and the CR. Mr. Cowell said there is 630 cubic feet of fill displaced over a 1,000-square foot area. They have provided a restoration plan detailing the type and location of native plantings, and the sequence of construction. Mr. Cowell said surveyors will come out and locate where the grades are supposed to be and erosion controls will be placed along the previously approved line. Mr. Cowell said that invasives have come in since the prior restoration work so they are not planning on reusing the top soil. The existing top soil will be trucked off site and new clean soil will be brought in. Chair Higgins asked what type of equipment will they be using to do the work. Mr. Cowell believes that smaller scale equipment will be used because of constraints on the property (stone walkway, shed, and septic) on getting to the back of the property. Mr. Cowell said that high visibility fencing will be installed to direct where the equipment and stockpiling can go. If there are any ruts after the equipment is gone, they will fill and reseed the lawn. Mr. Cowell said they are hoping to get this work done before June. Ms. Elton said that she was told that it would take one week to get the work done. They want to make things right as soon as possible.

Commissioner Zaunbrecher asked if the knotweed was there before. Ms. Elton said that nothing grew on the slope for a year and a half but after the erosion controls were installed the knotweed immediately came up. Ms. Elton is not sure if that was coincidental or if something was in the erosion controls. The landscape architect told her that she had seen the knotweed in the woods while doing invasives removal. Ms. Elton said she has been working to remove it but decided since other work had to be done that it would be a good idea to scrape the soil. Director Kaye noted that the knotweed has a long root and stem injection treatment should be considered. Mr. Cowell said that once the top soil is put down and the plantings are in, he is recommending frequent treatment during the first few months of the first growing season and then monitoring can be done once or twice a year. Mr. Cowell explained that Ms. Elton had already planted some native shrubs as part of her initial restoration plan and their intent is to salvage and replant as many plants as possible. Ms. Elton informed the Commission that she has had great success with all the plantings. She has not lost any so far.

Mr. Cowell said that no work will be done within the 25-foot No Disturb Zone (NDZ). The erosion controls will touch a small portion but there will be no disturbance. He verified with Director Kaye that a waiver would not be required. Mr. Cowell said that the CR boundary comes close to the house. There are CR granite markers. The Commission asked that the CR delineation and wetlands boundaries be delineated better on the plan. Mr. Cowell said they will revise the lines on the plan to delineate that better.

Commissioner Adams asked if all monitoring had been completed for the first Amended Order of Conditions. Ms. Elton said she believes there is one more year for that. Ms. Elton said she would provide staff with the invoices she has which explains what work was done. Director Kaye said that moving forward a report should be done for all amended work. Mr. Cowell explained that there will be no foliar application and treatment will be done by a licensed herbicide applicator.

There were no public comments.

The Applicant agreed to continue the hearing until April 17, 2019 to allow plans to be revised.

#### **MINOR MODIFICATION**

##### **Brigiotta, 41 Lowell Road, Infiltration Trench**

Director Kaye said that the NRC recently issued a permit for the tear down of an existing garage and rebuilding a new garage. The new garage has been constructed and it does slope a little. In order to prevent water from collecting in front of the garage the homeowner would like to put in a little infiltration trench which would flow into a concrete drywell chamber. This work is located in the outer Buffer Zone and Riverfront Area and outside of the floodplain.

There were no public comments.

Commissioner Adams moved to approve a Minor Modification for Brigiotta, 41 Lowell Road, for an infiltration trench. Commissioner Zaunbrecher seconded. All so voted.

#### **EXTENSION REQUEST**

##### **Elton, 415 Lowell Road, DEP File #137-1161: 3-year Extension**

Commissioner Huggins moved to approve a three-year Extension Permit for the Order of Condition. Commissioner Zaunbrecher seconded. All so voted.

#### **EMERGENCY CERTIFICATION**

##### **Concord Land Conservation Trust, 9X Westford Road: Beaver Dam Removal and Diversion Fence**

Director Kaye said beavers have begun to build a dam under the footbridge along a trail to the Perry land. Mike Callahan of Beaver Solutions evaluated the dam and recommends encouraging the beavers to move 10 feet upstream by moving the existing sticks and stones upgradient, and the beavers will finish building the dam in the new location. In its current location, a fully constructed dam would flood the trail does and compromise the bridge.

Commissioner Adams moved to ratify the Emergency Certification for the beaver dam removal and installation of a new dam foundation. Commissioner Zaunbrecher seconded. All so voted.

#### **CERTIFICATES OF COMPLIANCE**

##### **Arado, 103 Virginia Road, DEP File #137-1377**

Commissioner Adams moved to issue a Certificate of Compliance for Arado, 103 Virginia Road, DEP File #137-1377. Commissioner Zaunbrecher seconded. All so voted.

Commissioner Adams moved to adjourn. Commissioner Zaunbrecher seconded. All so voted. This meeting adjourned at 8:23 p.m.

Respectfully submitted,

Karen Bockoven  
Administrative Assistant