

Massachusetts Department of Environmental Protection

Bureau of Resource Protection - Wetlands

WPA Form 5 - Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:

MassDEP File #:112-0694

eDEP Transaction #:1252160

City/Town:BOLTON

A. General Information

1. Conservation Commission

BOLTON

2. Issuance

a. ☒ OOC

b. ☐

Amended OOC

3. Applicant Details

a. First Name

DAVID

b. Last Name

RUSSELL

c. Organization

STILL RIVER ROAD DEVELOPMENT, LLC

d. Mailing Address

71 COMMERCIAL STREET #263

e. City/Town

BOSTON

f. State

MA

g. Zip Code

02109

4. Property Owner

a. First Name

DAVID

b. Last Name

RUSSELL

c. Organization

TURN LEFT, LLC

d. Mailing Address

71 COMMERCIAL STREET #263

e. City/Town

BOSTON,

f. State

MA

g. Zip Code

02109

5. Project Location

a. Street Address

STILL RIVER ROAD

b. City/Town

BOLTON

c. Zip Code

01740

d. Assessors

8.B

e. Parcel/Lot#

32 & 33

Map/Plat#

f. Latitude

42.47222N

g. Longitude

71.624783W

6. Property recorded at the Registry of Deed for:

a. County

b. Certificate

c. Book

d. Page

WORCESTER

58346

149

7. Dates

a. Date NOI Filed : 11/30/2020

b. Date Public Hearing Closed: 1/5/2021

c. Date Of Issuance: 01/25/2021

8. Final Approved Plans and Other Documents

a. Plan Title:

b. Plan Prepared by:

c. Plan Signed/Stamped by:

d. Revised Final Date: e. Scale:

NOTICE OF

INTENT PLAN -

STILL RIVER

COMMONS (6

SHEETS)

DUCHARME &

DILLIS CIVIL

DESIGN GROUP LLC

FRANCIS MCPARTLAN,

PE

November 18th 2020 1" = 20'

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act

Following the review of the the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act.

Check all that apply:

a. ☒ Public Water Supply

b. ☐ Land Containing Shellfish

c. ☒ Prevention of Pollution

d. ☒ Private Water Supply

e. ☒ Fisheries

f. ☒ Protection of Wildlife Habitat

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☒ g. Ground Water Supply ☒ h. Storm Damage Prevention ☒ i. Flood Control

2. Commission hereby finds the project, as proposed, is:

Approved subject to:

- a. ☐ The following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.

Denied because:

- b. ☐ The proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect interests of the Act, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**
- c. ☒ The information submitted by the applicant is not sufficient to describe the site, the work or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the interests of the Act, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**

3. ☐ Buffer Zone Impacts: Shortest distance between limit of project disturbance and the wetland resource area specified in 310CMR10.02(1)(a).

a. linear feet

Inland Resource Area Impacts:(For Approvals Only):

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input type="checkbox"/> Bank	a. linear feet	b. linear feet	c. linear feet	d. linear feet
5. <input type="checkbox"/> Bordering Vegetated Wetland	a. square feet	b. square feet	c. square feet	d. square feet
6. <input type="checkbox"/> Land under Waterbodies and Waterways	a. square feet	b. square feet	c. square feet	d. square feet
	e. c/y dredged	f. c/y dredged		
7. <input checked="" type="checkbox"/> Bordering Land Subject to Flooding	810		1084	
	a. square feet	b. square feet	c. square feet	d. square feet
Cubic Feet Flood Storage	584		656	
	e. cubic feet	f. cubic feet	g. cubic feet	h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	a. square feet	b. square feet		

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Cubic Feet Flood Storage	<u> </u> c. cubic feet	<u> </u> d. cubic feet	<u> </u> e. cubic feet	<u> </u> f. cubic feet
9. <input type="checkbox"/> Riverfront Area	<u> </u> a. total sq. feet	<u> </u> b. total sq. feet		
Sq ft within 100 ft	<u> </u> c. square feet	<u> </u> d. square feet	<u> </u> e. square feet	<u> </u> f. square feet
Sq ft between 100-200 ft	<u> </u> g. square feet	<u> </u> h. square feet	<u> </u> i. square feet	<u> </u> j. square feet

Coastal Resource Area Impacts:

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
10. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. <input type="checkbox"/> Land Under the Ocean	<u> </u> a. square feet	<u> </u> b. square feet		
	<u> </u> c. c/y dredged	<u> </u> d. c/y dredged		
12. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input type="checkbox"/> Coastal Beaches	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. c/y nourishment	<u> </u> d. c/y nourishment
14. <input type="checkbox"/> Coastal Dunes	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. c/y nourishment	<u> </u> d. c/y nourishment
15. <input type="checkbox"/> Coastal Banks	<u> </u> a. linear feet	<u> </u> b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	<u> </u> a. square feet	<u> </u> b. square feet		
17. <input type="checkbox"/> Salt Marshes	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. square feet	<u> </u> d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds	<u> </u> a. square feet	<u> </u> b. square feet		
	<u> </u> c. c/y dredged	<u> </u> d. c/y dredged		
19. <input type="checkbox"/> Land Containing Shellfish	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. square feet	<u> </u> d. square feet
20. <input type="checkbox"/> Fish Runs	Indicate size under Coastal Banks, inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above			
	<u> </u> c. c/y dredged	<u> </u> d. c/y dredged		
21. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	<u> </u> a. square feet	<u> </u> b. square feet		

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22.

☐ Restoration/Enhancement (For Approvals Only)

If the project is for the purpose of restoring or enhancing a wetland resource area in addition to the square footage that has been entered in Section B.5.c & d or B.17.c & d above, please entered the additional amount here.

a. square feet of BVW

b. square feet of Salt Marsh

23.

☐ Streams Crossing(s)

If the project involves Stream Crossings, please enter the number of new stream crossings/number of replacement stream crossings.

a. number of new stream crossings

b. number of replacement stream crossings

C. General Conditions Under Massachusetts Wetlands Protection Act

The following conditions are only applicable to Approved projects

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - a. the work is a maintenance dredging project as provided for in the Act; or
 - b. the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. If this Order constitutes an Amended Order of Conditions, this Amended Order of Conditions does not exceed the issuance date of the original Final Order of Conditions.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
8. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Conservation Commission on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work..

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10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,

" Massachusetts Department of Environmental Protection"

[or "MassDEP"]

File Number : "112-0694"

11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before Mass DEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.
17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.
18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.

NOTICE OF STORMWATER CONTROL AND MAINTENANCE REQUIREMENTS

19. The work associated with this Order(the "Project") is (1) ☐ is not (2) ☒ subject to the Massachusetts Stormwater Standards. If the work is subject to Stormwater Standards, then the project is subject to the following conditions;
- a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollutant Discharge Elimination System Construction General Permit as required by Stormwater Standard 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.
- b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that: i. all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all

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construction period sediment trapped in inlet and outlet control structures; *ii.* as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized; *iii.* any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10; *iv.* all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition; *v.* any vegetation associated with post-construction BMPs is suitably established to withstand erosion.

- c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 19(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMP Operation and Maintenance Plan ("O&M Plan") and certifying the following: *i.*) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and *ii.*) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.
- d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollutant Discharge Elimination System Multi-Sector General Permit.
- e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 19(f) through 19(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 19(f) through 19(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.
- f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.
- g) The responsible party shall:
 - 1. Maintain an operation and maintenance log for the last three (3) consecutive calendar years of inspections, repairs, maintenance and/or replacement of the stormwater management system or any part thereof, and disposal (for disposal the log shall indicate the type of material and the disposal location);
 - 2. Make the maintenance log available to MassDEP and the Conservation Commission ("Commission") upon request; and
 - 3. Allow members and agents of the MassDEP and the Commission to enter and inspect the site to evaluate and ensure that the responsible party is in compliance with the requirements for each BMP established in the O&M Plan approved by the issuing authority.
- h) All sediment or other contaminants removed from stormwater BMPs shall be disposed of in accordance with all applicable federal, state, and local laws and regulations.
- i) Illicit discharges to the stormwater management system as defined in 310 CMR 10.04 are prohibited.
- j) The stormwater management system approved in the Order of Conditions shall not be changed without the

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prior written approval of the issuing authority.

- k) Areas designated as qualifying pervious areas for the purpose of the Low Impact Site Design Credit (as defined in the MassDEP Stormwater Handbook, Volume 3, Chapter 1, Low Impact Development Site Design Credits) shall not be altered without the prior written approval of the issuing authority.
- l) Access for maintenance, repair, and/or replacement of BMPs shall not be withheld. Any fencing constructed around stormwater BMPs shall include access gates and shall be at least six inches above grade to allow for wildlife passage.

Special Conditions:

D. Findings Under Municipal Wetlands Bylaw or Ordinance

1. Is a municipal wetlands bylaw or ordinance applicable? ☐ Yes ☒ No

2. The Conservation Commission hereby (check one that applies):

a. ☐ DENIES the proposed work which cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw specifically:

1. Municipal Ordinance or Bylaw _____

2. Citation _____

Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order or Conditions is issued. Which are necessary to comply with a municipal ordinance or bylaw:

b. ☐ APPROVES the proposed work, subject to the following additional conditions.

1. Municipal Ordinance or Bylaw _____

2. Citation _____

3. The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.

The special conditions relating to municipal ordinance or bylaw are as follows:

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E. Signatures

This Order is valid for three years from the date of issuance, unless otherwise specified pursuant to General Condition #4. If this is an Amended Order of Conditions, the Amended Order expires on the same date as the original Order of Conditions.

1/25/2021
1. Date of Original Order

Please indicate the number of members who will sign this form. This Order must be signed by a majority of the Conservation Commission.

3
2. Number of Signers

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

Signatures:

Jim Payne
Carolyn
John Bryan

[Signature]

☐ by hand delivery on

☒ by certified mail, return receipt requested, on

Date

Date

January 25th 2021

F. Appeals

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate MassDEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request for Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.

Any appellants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order, or providing written information to the Department prior to issuance of a Superseding Order.

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act (M.G.L. c. 131, § 40), and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.

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G. Recording Information

This Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on this page shall be submitted to the Conservation Commission listed below.

BOLTON

Conservation Commission

Detach on dotted line, have stamped by the Registry of Deeds and submit to the Conservation Commission.

To:

BOLTON

Conservation Commission

Please be advised that the Order of Conditions for the Project at:

STILL RIVER ROAD

Project Location

112-0694

MassDEP File Number

Has been recorded at the Registry of Deeds of:

County

Book

Page

for:

Property Owner DAVID RUSSELL

and has been noted in the chain of title of the affected property in:

Book

Page

In accordance with the Order of Conditions issued on:

Date

If recorded land, the instrument number identifying this transaction is:

Instrument Number

If registered land, the document number identifying this transaction is:

Document Number

Signature of Applicant

Rev. 4/1/2010

“Still River Commons”
Assessor’s Map and Parcel, 3.D-32
DENIAL ORDER OF CONDITIONS
Massachusetts Wetlands Protection Act & Regulations
Town of Bolton
DEP File #112-694

I. List of Submittals for the Record:

See Appendix A.

II. Background and Procedural History:

On November 30, 2020, the Applicant’s representative, Seth Donohoe of Dillis and Roy Civil Design Group, Inc. filed with the Town Clerk a Notice of Intent (the “NOI”) pursuant to the Wetlands Protection Act for certain work known as Still River Commons (the “Project”), Assessor’s Map and Parcel 8.B Lots 32 & 33, formerly 8.B-32 (the “NOI”). The Project involves the construction of four (4) single-family dwellings, an access driveway, and supporting infrastructure, as authorized by a Comprehensive Permit issued on August 24, 2020, by the Bolton Zoning Board of Appeals. The Comprehensive Permit was issued, in part, based upon waivers of the Town’s Wetlands Bylaw in accordance with M.G.L. c. 40B, and therefore the Commission’s review of the NOI is limited to its jurisdiction under the Wetlands Protection Act.

The Commission opened a public hearing on the NOI on December 15, 2020. With the Applicant’s consent, the Commission held a continued session of the public hearing on January 5, 2021, on which date the Commission closed the public. The public hearing was conducted by remote access using the Zoom platform, in accordance with Section 17(d) of Chapter 53 of the Acts of 2020 and “An Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, § 20” issued by Governor Charles D. Baker on March 12, 2020. Through remote participation, the Commission, the Applicant, and members of the public were able to participate in the hearing through real-time audio and video conferencing. Members of the Commission present and voting for all portions of the public hearing were Brian Berube, Emily Winner, and William Payne.

The Commission met to deliberate on the NOI on January 19, 2021 and January 21, 2021. On January 21st 2021 the Commission voted to deny the issuance of an Order of Conditions for the reasons set forth below.

III. Review of the NOI and Findings:

1. At the public hearing, the Applicant provided a summary of the proposed Project inclusive of the history of the Project through the Comprehensive Permit process by the Bolton ZBA, which ended in a settlement agreement.
2. The NOI identified 10 linear feet of impact to Bank and no impact to Land Under Water or Bordering Land Subject to Flooding from the proposed Project.
3. Several members of the public spoke at the public hearing in opposition to the Project, and submitted written comments, images, and videos concerning the Project and its potential impacts

on jurisdictional areas.

4. During the public hearing, the Town's Conservation Agent and members of the public raised concerns about a possible perennial stream on the Project site and a perennial stream to the north of the proposed Project area that was not identified in the NOI.
5. As part of the Comprehensive Permit issued for the Project by the Bolton ZBA, Horsley Witten Group provided a peer review of the Project's civil engineering design and stormwater issues, detailed in letters dated October 11, 2018, December 18, 2018, January 15, 2019, and February 14, 2019 (the "HW Reports.")
6. The HW Reports state that Horsley Witten Group conducted only a limited peer review of wetlands issues associated with the Project, as the Applicant was to update a prior delineation of the resource areas on the Project site:

HW Reports, October 11, 2018, Page 4 of 10:

We understand that the plans for the current housing proposal depict the older wetland boundary with the exception of the stream. As the outcome of the resource area review may affect the extent of the wetland resource areas at this site, and therefore affect the proposed project currently being reviewed by the Town and the potential impacts to these resource areas, we strongly recommend that this be pursued early in the Town's project review process.

We recommend that the project pursue an Abbreviated Notice of Resource Area Delineation (ANRAD) or Request for Determination of Applicability (RDA) with the Conservation Commission to confirm the wetland resource areas at this site that may be impacted by the proposed project.

HW Reports, October 11, 2018, Page 4 of 10:

The Applicant has noted multiple times in its response letter that it will file with the Conservation Commission after completion of the Comprehensive Permit process. The confirmed location and potential impacts to the wetlands is a critical element in the permitting of this development. In October, HW had strongly recommended that the Applicant pursue confirmation of the resource areas early in the process. However, it appears that the Applicant has opted to complete this additional permitting at a later date.

HW Reports, December 18, 2018, Page 3 of 13:

The following comments correlate to our recommendations and concerns noted in the HW December 18, 2018 peer review letter. Items previously addressed have been removed for simplicity and follow up comments are noted in bold font.

Wetlands Review

The Applicant has not addressed any of the comments regarding the wetlands review provided in the letter, dated December 18, 2018. HW recommends revisiting the above-mentioned letter and to address the listed concerns.

HW Reports, January 15, 2019, Page 2 of 7:

The development is located within the jurisdiction of the Bolton Conservation Commission. HW has previously provided comments that the Applicant has noted will be addressed with the Conservation Commission. During the January 17, 2019 hearing the Applicant stated that it had engaged EcoTech to verify the wetland delineation line, the locating of the redefined line depended on the weather. HW recommends that the Applicant provide a status update on the wetland delineation.

7. The Applicant engaged EcoTec, Inc. Environmental Consulting to verify the wetlands delineation for the Project. As part of this work, EcoTec was unable to define the stream channel on the Project site due to beaver activity. Neither the ZBA nor the Conservation Agent were able to view EcoTec's delineation.

8. By letter on March 14, 2019, the Applicant through counsel stated:

Ecotec was unable to complete the full re-delineation of the site due to weather, frozen ground and snow cover. Therefore, they have not fully completed their work including further delineation work and completion of the associated written report. They are hoping to complete the process soon, provided the weather cooperates. At that time, we will not only be providing a written report, but as we have stated numerous times at the public hearings, we will be filing an NRAD and Notice of Intent with the Bolton Conservation Commission in accordance with all Massachusetts laws and regulations.

9. The Applicant has not filed an NRAD with the Commission.
10. Based upon the information provided in the NOI, the Commission found that the specific location of the stream channel on the Project site was lacking, and that this information was necessary to determine jurisdictional areas with respect to the Project. The Commission further found that the delineation of the stream on the Project site as intermittent was contradicted by field observations by the Agent and members of the public. The Commission also found that a peer review by an outside expert was necessary to review the NOI and determine the extent of impacts on jurisdictional areas.
11. As detailed in the HW Reports, information concerning the specific location of the stream channel was not otherwise available or previously provided to the ZBA or other town agencies.
12. The Commission's Regulations provide in Section 4.3 that the Commission may request that an applicant pay a fee to cover the costs of an outside expert deemed necessary by the Commission to review an application. The Commission's Regulations and M.G.L. c. 44, § 53G provide that the Commission may request the payment of fees for outside experts necessary to assist the Commission with its review of an application under the Wetlands Protection Act.

13. The Commission voted at its meeting on December 15, 2020 to engage an outside expert to conduct a peer review the NOI. At the time of this vote, the Applicant's representatives objected to the Commission hiring an expert other than Horsley Witten Group and requested a limited scope for the peer reviewer.
14. The Applicant reiterated its objections to the Commission's decision to engage an outside expert to conduct a peer review of NOI in a letter from the Applicant's counsel dated December 24, 2020.
15. The Applicant stated at the Commission's meeting on January 5, 2021 that it would not pay a peer review fee based upon the scope of review previously voted by the Commission. The Commission inquired if the Applicant would agree to pay for a peer review once the scope of review had been further defined, but the Applicant declined this request.
16. At the Commission's meeting on January 5, 2021 The Applicant declined to grant a further extension of the time.
17. The Commission voted to close the public hearing on January 5, 2021.
18. The Commission found that it lacks sufficient information with regard to delineating all resource areas on the Project site.
19. The Commission and the Town of Bolton are not in a position to fund the necessary peer review of the NOI independently, and the Conservation Agent's duties and caseload do not permit the level of detailed review necessary for the Commission to make an informed decision on the NOI.
20. Without the Applicant's agreement to pay the fees for a necessary peer review, the Commission and the Conservation Agent do not have sufficient information and expertise to review the NOI to determine the extent of impacts on jurisdictional areas, in particular a possible perennial stream on the Project site and a perennial stream to the north of the proposed Project area.
21. In accordance with 310 CMR 10.05(6)(c), "[i]f the conservation commission finds that the information submitted by the applicant is not sufficient to describe the site, the work or the effect of the work on the interests identified in M.G.L. c. 131, § 40, it may issue an Order prohibiting the work. The Order shall specify the information which is lacking and why it is necessary."

IV. Decision and Order:

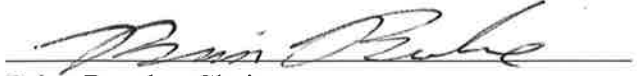
Based upon the findings set forth above, the Commission voted at its meeting on January 21, 2021 to (i) deny the Project proposed in the NOI due to a lack of sufficient information and expertise to review the NOI to determine the extent of impacts on jurisdictional areas, in particular a possible perennial stream on the Project site and a perennial stream to the north of the proposed Project area, and due to a refusal by the Applicant to fund a necessary peer review, and (ii) order that that work on the Project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information.

Voted:

Yes – Brian Berube, Jeffrey Bryan, William Payne, Emily Winner No – N/A Abstentions – N/A

Absent – Lori Stephenson

DATE: January 25th, 2021

A handwritten signature in cursive script, appearing to read "Brian Berube", written over a horizontal line.

Brian Berube, Chair
Conservation Commission

APPENDIX A: RECORD DOCUMENTS

1. Original Notice of Intent and supporting materials received November 30th 2020 by Town Clerk with Narrative from Dillis and Roy Civil Design Group, Inc. and Original Submittal Plan: "Notice of Intent Plan – Still River Commons (6 sheets) prepared by Ducharme & Dillis Civil Design Group, Inc. signed, and stamped by Francis McPartlan P.E., Dated November 18th 2020 with a scale of 1" = 20'.
2. All application materials, meeting minutes, correspondence, and orders associated with the record of DEP#112-0694, Still River Commons.
3. Public Hearing continuation dated December 15th 2020.
4. Comments from NHESP and Commission inquiry.
5. Map showing overlay establishing two potential vernal pools.
6. Comments and images submitted by members of the public (photos, videos, letters).
7. Settlement Decision from Zoning Board of Appeals.
8. Letters from Horsley Witten Group dated October 11, 2018, December 18, 2018, January 15, 2019, and February 14, 2019.