



Bolton Conservation Commission

Meeting Minutes



Date:	Tuesday, January 5 th 2020
Time/Location	7:00 p.m. Zoom (remote participation)
Commissioners Present:	Chair Brian Berube, Emily Winner, William Payne, (Conservation Administrator, Rebecca Longvall)
Guests:	Jim Gerghaty, Richard Davis, Seth Donohoe of Dillis and Roy, Adam Costa, Bob Pace, Matt Silverstein, David McKay, Robin and Joe Picariello, Bob Martel, Pat Westwater-jong, Keith Silver, Anastasia Downey, Doug Duchanes
Next Meeting:	Tuesday, January 19th 2021 7:00pm, Zoom Remote Participation

1.	<p>Notice of Intent – “The Woods at Farm Road” intersection of Farm and Berlin Road Map 3.C Parcel 72 – <i>proposed construction of two (2) single-family dwellings, private well, septic system and associated infrastructure subject to a Comprehensive Permit under the M.G.L. Chapter 40B along with the removal of the existing farm structures on the site.</i></p> <p>Seth Donohoe of Dillis and Roy (previously Ducharme & Dillis) along with Doug Duchane and Bob Pace were present to discuss the proposed project. Seth Donohoe provided a summary of the history of the project and what is before the commission at this time. An ANRAD was issued by the commission, an Invasive Species management plan and planting plan was submitted with the application. The planting plan includes the planning of maples along the roadway at the request of the tree warden specific to species. Emily Winner inquired about the rain garden and the species proposed to be planted in it. She noted two species (purple sage, and Virginia sweet spire) were non-native and requested these plantings be swapped out for a native species to Massachusetts of similar aesthetic structure. The applicant’s representative requests a condition that the applicant shall provide the commission with substitution with two native species under the condition that it would not require returning to ZBA. The Conservation Administrator confirmed that this was a reasonable request but the commission at this time cannot confirm whether or not items will not cause the project to go back to ZBA during this time in the permitting process. She also inquired about stormwater design associated with the proposed project. Seth stated a NPDES permit will be necessary. Emily inquired about the maintenance of erosion and sediment controls, specifically the silt sacs. Seth clarified that the erosion and sediment controls were temporary in the sense that they would be in place for the duration of construction until the site is stabilized. The site would be inspected weekly, or after significant rainfall event and again referenced the need for the NPDES permit. This permit requires set intervals of inspection as well. She also inquired about the mounding to the septic and its proximity to the resource area at a 3:1 slope. The concern is the raising grade to accommodate the septic. She confirmed the hydro cad analysis is within range but still had concerns related to the proximity to wetlands. The Conservation Administrator inquired what the septic area was to be seeded with and what is considered within the planting plan to supplement vegetation on site. Seth clarified that it is typically maintained as lawn as root systems and woody vegetation would have adverse impacts on the infrastructure of the system. It is currently maintained as field and their plan is to maintain a vegetated buffer between the wetland and grade change, he also confirmed that the 3:1 slope is correct as observed. Chair Brian inquired whether or not there was a vernal pool delineated on site. Seth stated this was addressed in the ANRAD there is a farm pond that is reported to have appoint driven well within this area. the ANRAD determined that it does not meet the definition of a closed basin having a perennial stream coming from it, that it would not meet qualifications for the vernal pool. Bill inquired that the notice of intent calls out two single family homes where the plan shows four structures. Seth clarified stating that the two are within jurisdiction of the conservation commission but there are four structures on the lot being proposed. Brian inquired if the septic for all units were in the buffer zone. Seth confirmed the septic is within the jurisdiction. Brian inquired that since they are all served by the same septic system are, they not also jurisdictional. The conservation administrator highlighted that the four structures and associated infrastructure is the current proposed project on the lot. The direct jurisdiction is the two units, however there is language within the regulations that say anything outside that may cause adverse impacts. The ANRAD is in place and the commission is not speaking to that, however it is up to the commission to determine whether or not the proposed work outside of the buffer will cause adverse impacts. Seth stated the applicant is not trying to hide anything. The Conservation Administrator stated that the two are explicitly included as they are in jurisdiction she also inquired if DEP had included any comments to this question. Seth confirmed there were none related to the number of units. The Chair clarified his reason for the inquiry because typically if there were only two single family homes proposed his first question would be, is it possible to shrink the septic system to pull it out of the resource area. This is clearly a four-house plan with a four house septic. The Conservation Administrator also noted, regardless of the septic, there are four separate structures on the site. Two of which have been confirmed to be within jurisdiction clearly. She stated reviewing the plans the</p>
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structures could be combined two units into 1. Thereby reducing the scope of work within the direct jurisdiction of the commission therefore reducing any adverse impacts to the resource area. Seth stated he appreciated the concern, but the rather lengthy comprehensive permit resulted in the requirement of the placement of infrastructure as shown. Under the Wetlands Protection Act only the two units are in the 100' buffer zone and submitted through the notice of intent. Emily inquired who gave the waivers to the local bylaws during the comprehensive permitting process. Seth stated the zoning board of appeals did as part of the Comprehensive Permit process. Emily highlighted questions and comments given to applicant in march and the response of the applicant being "this is considered and shown to be uneconomic and inconsistent with surrounding neighborhood" when addressing the inquire related to reducing then number of structures from four to two. She further stated she did not understand the statement and why it is uneconomic as it should save in excavation cost, reduce payment, utilities, how is it uneconomic to condense the number of structures. Seth stated these comments were received and addressed during the Comprehensive Permit process and the ZBA made a decision based on the information they provided. He further clarified that the applicant was not here to comment on whether 40B or comprehensive permits are good or the right thing to do, the result of the process is that it was granted and requires them to come to Conservation due to alterations proposed within 100' buffer zone. They are not looking to move units or redo negotiations or require another review. Chair Brian stated he appreciates the comments, but reiterates that the commission is tasked with conditioning the site and looking out for conservation efforts within the town. He asked if DEP had any questions, Conservation Agent confirmed there was one statement related to the potential vernal pool. Seth stated this was addressed during the ANRAD confirming it was not certified as such. The Conservation Administrator stated the task is to reduce adverse impacts to the resource areas under the Wetlands Protection Act. She stated looking at the plans before the commission she notes there are proposed disturbance areas that can be moved away from and potentially out of the resource areas and therefore protect the 8 interests in the Wetlands Protection Act. She also noted the proximity of grading to the property line, but noted that ZBA required the applicant to stake and permanently mark the property line. She also asked Seth to walk the commission through the drainage infrastructure on the site and confirmed the outlet from the raingarden to include an apron. Seth stated the runoff from units 3 and 4 are caught in a catch bain, sent to a raingarden for some treatment, only during extreme rain events would the outlet become active. Seth highlighted there can be no impacts to abutters and that the post runoff is matching what exists today. She inquired what the larger storm event considered. Seth stated there is already a higher level of stormwater infrastructure than required. She noted that it is a benefit, but would like clarification on storm event. Emily confirmed it was 100 yr storm. She also inquired about the slope stabilization using geotextile. Seth highlighted the basin upgradient from the slope and noted infrastructure that will infiltrate roof runoff. Emily inquired about the maintenance of the meadow. Seth stated that the maintenance is up to being conditioned by the commission. The conservation administrator inquired about the area left to be meadow in terms of square footage. He did state that he would need to confirm but the development area is just over one acre. Emily stated she looks to the commission related to maintenance of the meadow. Conservation Administrator inquired seed/vegetation that is proposed on the septic. Specifically, could the septic area also be maintained as meadow. Seth stated that the area would need to be maintained as lawn. She clarified and stated areas in town that are maintained as meadow with a wildflower mix or meadow mix noting this is aesthetically pleasing while not encouraging woody vegetation that would otherwise impact the infrastructure. Emily stated 626 main street has this feature over their septic, but highlighted on this site it would benefit from supplemental vegetation along the sides of the system. Seth stated over on the west side/berlin road side within the town right of way there is a failed catch basin and had been agreed to be replaced during the comprehensive permitting process. The existing basin is sunken in, been paved over and in its existing condition is discharging directly into the wetlands. Conservation Administrator asked for confirmation that DPW weighed in on the decision. Seth confirmed they did. Chair Brian opened the hearing for public comment. Seth stated Attorney Duschane is present now. Attorney duschane stated the stormwater has been reviewed by towns peer reviewers, and DPW, they did focus a lot on trying to improve the situation on site as

much as possible knowing the impact to the site. They have done everything in their power to reduce pavement and pull items back and feel they have stepped up the best they can through removing invasive species, correcting drainage as there is currently untreated water discharging directly to the wetlands. They have tried to balance impacts to improvements to the maximum extent feasible.

The Conservation Administrator inquired if there is a required offset between structures related to public safety. Attorney Duschane state this was addressed related to the fire department and was considered in the design of the project. Seth stated the minimum requirement was 20' between structures with sprinkling structures. The access through driveways was also repositioned to meet requirements to accommodate mutual aid equipment. Attorney Duschane stated they were required to provide additional stormwater management for increasing paved areas to meet requirement.

Chair Brian inquired about who maintains the meadow going forward. Attorney stated that this would-be part of the home owner's association much like the septic and well maintenance. Emily stated she would like to bring up the issue of fertilizers and other chemicals to be prohibited on site. This should be incorporated into the HOA document. This would be over the entirety of the parcel not just on the two directly jurisdictional units and associated area. Chair Brian stated the entire site would benefit from reducing use of chemicals and fertilizers. The Conservation Administrator stated that would be able to be a condition in perpetuity but would ultimately benefit from being included and memorialized within the HOA documents. Attorney Duschane agrees with the maintenance should be included in the HOA including the restriction of herbicides and pesticides on the entire parcel. He also stated when an HOA is responsible for maintenance they obviously contract with professionals to do it vs potential maintenance that would not be a uniform approach under individuals. Chair Brian noted the use of HOA documents in contract ensuring everyone is aware of the requirements on site. Conservation Administrator stated to memorialize during the public hearing to ensure there is documentation of the requirement. The HOA documents have not been created yet as they are still receiving potential conditions as being discussed this evening. Attorney Duschane has stated that there may be a condition to require the applicant to provide the HOA documents to the commission for review. Also a condition may be to require the contract to be provided to the town prior to work as a requirement of the order. The Conservation Administrator inquired about the boulders located on the property and the extent of maintained area around unit 1. Seth highlighted that on the plans there is a grade change shown on the slope which then meets the existing grade by unit 1. The area south of unit 1 is a required 15' minimum clear path for public safety for foot and ladder access which includes the steps within the boulder wall/stone wall. Emily inquired if the commission would like to require a split rail fence to identify the 15' away from the structures. She further inquired about existing conditions and vegetation referencing distance from proposed structures. The applicant would not be opposed to demarcate the do not disturb area with iron rods, post, or other. She confirmed the invasive would be removed. She would like to ensure area outside the path is left to naturalized vs being maintained as lawn. Conservation administrator inquired if the infrastructure locations were staked on site. Chair Brain stated he would like to see the site and that the discussions this evening are memorialized for conditions. Emily stated she would like to review the meadow area and had questions about maintenance. Conservation Administrator stated this was up to the commission and their decision weighs in on whether or not to maintain the existing meadow habitat and weigh out ecological values. However, noted the proposed disturbance as well depending on the square footage and the meadow area being upgradient between the two wetlands. The only concern may be that more invasive may accompany less maintenance. Where increased maintenance this may reduce invasive. The Conservation administrator summarized that the commission is requesting a site visit and the staking out of the infrastructure prior to the site visit date. Seth stated he can mark the back and refresh the stakes for the units under the condition the applicant approves of him conducting this work. Emily stated she would now suggest the property is maintained and mowed on a yearly basis specific to the meadow area. The erosion control proposed as haybales would be changed to a request of wattles and silt fence to reduce any impact from the haybales carrying seed. Chair Brian inquired to the applicant if they could continue the public hearing. Attorney Duchane respectfully inquired if a draft of the order of conditions could be brought to the next meeting. Chair Brian confirmed. Conservation

	<p>Administrator stated weather permitting the commission should be able to schedule a site visit prior to the next meeting.</p> <p>Applicant confirmed they are comfortable to continue the public hearing until the next meeting.</p> <p>Chair Brian made a motion to continue the public hearing until Tuesday, January 19th 2021 at 7:00pm for the proposed project to be located at Map 3.C Parcel 72. Emily seconded; all unanimously agree. Roll call vote to continue: BB, EW, WP, unanimous, YAY</p>
2.	<p>Continued Notice of Intent – Century Mill Road Map 3D Parcel 75 – <i>proposed construction of three single family homes and widen and pave an existing gravel driveway</i></p> <p>Kyle MacDonald the applicant's representative requested via email on a continuation until the commissions next public meeting on January 19th 2021.</p> <p>Chair Brian made a motion to continue the public hearing until Tuesday, January 19th 2021 at 7:30pm for the proposed project to be located at Map 3D Parcel 75. Bill seconded; all unanimously agree. Roll call vote to continue: BB, EW, WP, unanimous, YAY</p>
3.	<p>ANRAD – 460 Main Street Map Parcel</p> <p>The commission has scheduled a site visit.</p> <p>The applicant's representative Nicole Hayes, PWS with Goddard Consulting requested a continuation via email on Monday January 4th 2021 on behalf of her client until the next public meeting of the conservation commission.</p> <p>Chair Brian made a motion to continue the public hearing until Tuesday, January 19th 2021 at 7:45pm for the proposed project located at 460 Main Street. Emily seconded; all unanimously agree. Roll call vote to continue: BB, EW, WP, unanimous, YAY</p>
4.	<p>Minutes – Chair Brian made a motion to accept the minutes as drafted from the December 15th 2020 public meetings of the conservation commission. Bill seconded; all unanimously agree. Roll call vote on motion to continue: BB, EW, WP, unanimous, YAY</p>
5.	<p>Conservation Area Updates:</p> <p>Reminders:</p> <p>No motorized vehicles are to be used on conservation land – motorized vehicles are prohibited on conservation land.</p> <p>Please stay on marked trails.</p> <p>One dog per adult hand and must have a leash on person on Conservation Properties. See Dogs on Conservation Land Rules and Regulations.</p> <p>Self-Guided Tour using QR codes has been installed on the Houghton Farm Conservation Area</p> <p>Drafts of Operation and Maintenance plans for Conservation properties have been created and waiting comment from the commission.</p>

5. **Continued Notice of Intent – Still River Road, Map and Parcel 8.B Lots 32 & 33 (formerly 8.B-32).** - proposed “Still River Commons” the construction of four (4) single-family dwellings, access driveway, and supporting infrastructure subject to a Comprehensive Permit under the M.G.L. Chapter 40B.
- Chair Brian asked the Conservation Administrator to provide a summary and update since the last meeting where the commission requested a peer review. She stated the applicant and their representatives are present. At the last meeting the conservation commission requested of the applicant a peer review that was not defined more than the project itself. There was push back as the applicant felt that it was an unreasonable request, they requested the commission limit the scope and addressed an issue to the commission about what that meant, and how they felt the meeting went. There were some questions in terms of technicalities, information shared and the jurisdictional areas of the commission. The Commission is aware that their jurisdiction is under the wetlands protection act and they are also aware that they have the ability to request the peer review. Additionally, the applicant has submitted, after receiving the DEP file#112-0694 they have included some comments related to the amount of acreage being disturbed and therefore the applicant has provided comments specific to that including an area of concern that was identified as an intermittent stream at the eastern portion of the property. The commission is still awaiting the cost of the peer review from the consultant. At least one commission member has some comments and questions specific to jurisdictional items as they reviewed the project. Chair Brian took a moment to inquire to the applicant’s representative to see if the summary provided by the Conservation Administrator was accurate. Attorney Adam Costa stated that the summary is accurate, two pieces of correspondence from Attorney Costa and Seth Donohoe. His letter addressed the peer review and Seth’s letter addressed DEP comments and confirmed this was an accurate summary of the correspondence.
- The Conservation Administrator inquired to the Chair if he would like Seth Donohoe to provide a summary of his comments in response to DEP. Seth Donohoe stated he was willing and proceeded to provide a summary confirming the file # of DEP112-0694 accompanied by two comments. The area of alterations was just over one acre, would the NPDES permit be applied for. Seth confirmed that the answer is yes, it will be applied for as they are just over one acres of disturbance which therefore requires them to file a NPDES permit. This permit is required to be filed a minimum of 14 days prior to construction. The other comment from DEP was related to the seeding or planting of the untouched field. Seth highlighted the parcel is subject to NHESP order of conditions which requires annual mowing and therefore will not be seeding or planting in this area. The final note in the letter was that Seth addressed DEP’s requirements of determining whether a stream is intermittent or perennial. He specifically referenced 310 CMR 10.58(2)a.(1)(c) requirements. If it is not shown as a perennial stream and has a watershed of less than .5 square miles then it would be intermittent. This stream has watershed of .43sq miles thereby meeting the criteria of an intermittent stream. Seth stated in conclusion he is happy to address any questions from the commission.
- Emily stated she had some questions and supplemental information to update the commission and community with. She referenced the future SWPP to be submitted and NPDES permit. She stated she would like a revised drainage plan not a stormwater plan. She had reviewed the calculations done with the 4 duplexes previously brought before the ZBA and could not find any drainage documents that were updated with the present application and set of plans. Emily stated she would like to see the hydrocad calculations. Seth stated that this project is not subject to stormwater DEP standards. The stormwater system on site is what was agreed to during the lengthy settlement process with the town. that there were calculations provided for the Woods at Farm road which is also four units. Seth stated she is correct, that project did not go through a settlement process with the town. Emily inquired that is not a document that we will be reviewing. Seth stated not as part of this application. Emily highlighted the NHESP and Mass department of fisheries. She had concerned with the letter from mass fisheries regarding the endangered species with a concern of blanding’s turtles. The applicant received a letter regarding impacts to the blanding’s turtles habitat. There was photo documentation of the turtles on adjacent properties surrounding the project area. There were no observations on private property were specific as it was private property. Jesse Leddick was contacted and she updated: the results of that phone conversation is that this particular site is not identified as key habitat

for blanding turtles. They may come upland to lay eggs but primarily utilize the wetland. The did consider the locations that had been reported in their analysis (NHESP). The primary habitat is across/to the west of still river road. He also stated that a split rail fence or visual barrier should ne installed along the limit of work on the east side of the property. The mowing to maintain meadow should be out of season related to their nesting period. Emily stated this was an extensive study done by NHESP, showing that the proposed housing is not encroaching on the blandings' turtle habitat. NHESP is updating the atlas to incorporate recent sightings throughout the state. Emily stated the conservation administrator noted the stream on the portion of the property. Emily stated after reviewing one of the letters from Horsley and Witten [of the Comprehensive Permit Process] they had noted the stream at the eastern side identified as perennial now identified as intermittent. She does not believe that was ever addressed. She also highlighted that they also suggested an ANRAD be submitted noting that Rebecca has a call into the DEP wetlands circuit rider for further information. Emily stated the map and water calculation is telling us it is an intermittent stream, but when we look at the actually stream in the field there is running water during the drought. Emily compared the intermittent stream to an area near her home that runs dry at during the drought. Emily inquired about soil, material, and construction vehicles are to be located and associated stock pile areas. The limit of work is very close. Emily noted images of flooding of the adjacent roadway and the property itself is within the floodzone. She has concerns with the amount of water during rain events along with documentation of serious pooling of water and would like to know how that would be addressed. Other concerns are related to the 3:1 grading at the septic system, and between the units themselves. The southern portion of the site around the septic, between units 2 and 3, then again between units 3 and 4. This is concerning as it is just outside the 25' buffer. This 3:1 slope is around the entire perimeter of the proposed project. Emily inquired if a pervious driveway was ever considered. The stormwater management area that includes plantings, she requested the Virginia sweet spire and purple sage be replaced with a native species which may be found through the native plant trust. Emily concluded her initial questions. William Payne stated he has no further initial questions. Conservation Administrator stated she had many of the same highlights, the only other item she had a question with was related to the location of the compensatory flood storage as it is just outside the limit of work and associated erosion control barrier. How is this being addressed if it is outside the limit of work. Seth addressed the Chair and inquired if he were able to address the questions and concerns asked. Seth stated that he would work backwards to address the concerns and questions; first the compensatory flood storage area would have separate supplemental barrier during its completion. Seth stated that they would be agreeable to have the order of conditions require swapping the nonnative species to a native species as long as they would not have to go back through the comprehensive permit process. Seth stated the applicant would be agreeable to place a split rail fence which could be agreeable under the order of conditions. Seth stated the mowing of the field would be limited to time periods outside of the turtle nesting. Attorney Adam Costa inquired to the Chair if he would be able to have Seth address a couple additional items. Seth stated material stockpiling on site is shown on the erosion and sediment control page of the plans which includes construction sequencing. Generally, any excavated material that can be used on site for fill will be used on site in its permanent location, for instance fill slopes associated with the septic. Any material and excavated from the site not being used will be trucked off site. Conservation Administrator asked that it would be done that day. Seth confirmed correct. Attorney Adam Costa inquired about existing flooding on site and would this be addressed with proposed storm water management system and has Seth witnessed the flooding himself how will that be addressed as part of the project. Seth stated a portion of the project is within the FEMA flood zone specific to an elevation set. The entirety of the project is offset from that aside from a small portion of the project. The portion of the project that does require going into that area will be elevated. To compensate for elevating that are they are proposing compensatory flood storage area resulting in an increase in flood storage within the area upon completion of the project. Attorney Adam Costa inquired of Seth to address the concern related to the 3:1 slope area. The slope area primarily associated with septic system, is a requirement of state environmental code. The side slope south of the proposed septic area, the applicant would be agreeable to seed with a conservation mix as it does not need to be mowed annually.

Emily inquired about the slope area between the units and inquired to the commission if these areas would also be seeded the same. Seth stated the area between the units would likely be maintained as a lawn area. Chair Brian inquired about viewing HOA documentation that would include maintenance and no herbicides, pesticides and plowing plan related to snow being moved away from actual wetlands away from the buffer zone but was unsure where that would be considering the amount of buffer zone on site. He inquired if this document has been drafted. Attorney Adam Costa addressed the HOA inquiry. He appreciates the request that the commission is making, typically HOA or condominium documents are not created during the permitting process, although the ZBA made a separate request (prior to him being involved) where form documents were provided for the purpose of ensuring there would-be documentation provided. The conservation commissions typically conditions in the order of conditions that they be made components of the HOA documents to have the conditions in the various documents received during closing. Emily inquired if this was a low salt area and inquired about treatment for ice and snow. The concern is related to items to be considered within HOA documents. Emily stated there should also be a consideration in the HOA documents to prohibit use of pesticides, herbicides and use of fertilizers. The plans of the original duplex times, had a hatched area that had a note of resource are mitigation area to be maintained as native meadow proposed area. Emily inquired if that note and hatching need to be added onto the revised plans, if not she assumes this will be included within the conditions. Jesse Leddick stated that although this was not in his letter but in his comments ensuring the meadow occurs as discussed. Emily inquired whether this would need to be a note on the current plans or conditioned in. Seth stated that this is a requirement of NHESP approval of this site; requiring the mowing outside of the blandings season and that the area is maintained as meadow. The commission is welcome to condition this but it has already been included under NHESP. Emily inquired further that it will be included in the HOA documents. Seth stated as the area is a private property that the town will not be maintaining, it would have to be. Conservation Administrator clarified that the letter issued by NHESP, a map accompanied this which included the hatching Emily was referring to. Seth confirmed. She inquired if the hatching would be included in the final plan. Seth stated they would be able to incorporated into the final with all other alteration's verses creating a draft. Emily inquired if there was ever a pervious driveway proposed. Seth stated no. Conservation Administrator inquired about a prior various presented during the Comprehensive Permit process that had infrastructure below the turnaround. Seth stated during the settlement discussions there was a larger turn around which included drainage infrastructure. Conservation Administrator inquired further about the structure beneath the proposed driveway. Seth respectfully clarified that there was not a chamber nor bricks but may be easily confused. Conservation Administrator inquired further to clarify that this was then not infrastructure beneath a more pervious pavement for infiltration. Seth confirmed that the infrastructure was relevant to receiving water from the basins. Seth noted that the plan before the commission at this time that the stormwater is being controlled in visible planted basins vs plastic chambers. Emily inquired about whether the commission is able to request a pervious driveway. Seth stated this was a very long discussion with numerous parties weighing in and agreed on certain things and are not looking to change the nuts and bolts at this point. Emily inquired if the commission weighed in on these discussions. The Conservation Administrator suggested a redirect of the question to David McKay. David McKay highlighted that the issue regarding the driveway and drainage infrastructure was discussed during prior negotiations with the applicant relevant to the redesign of the site. The commission's jurisdiction under the state Wetlands Protection Act is preserved under that agreement and is a condition of the order of conditions [from the comprehensive permit process]. There was a specific provision within this decision that preserved the commission's jurisdiction and therefore these items are not off the table at least for discussion purposes.

Emily inquired further that the commission request to use wattles instead of haybales. Chair Brian lost internet briefly and the commission waited for him to join again to continue discussion. Chair Brian was able to rejoin successfully and he opened the hearing to public comment.

Joe Picariello of 305 Vaughn Hill Road; inquired about the mowing referencing the order of conditions from NHESP for his property on both properties including this proposed project area. Joe highlighted that it does

not need to be mowed rather maintained as native meadow, but if you decide to mow it, it cannot be mowed until Nov 1st – March 1st. The applicant in 2018 mowed the area in October. Joe discussed this with Jesse at the time. Highlighting it was mowed during a restricted time period. The area is supposed to be labeled to reduce encroachment into the meadow, so landings can move through the meadow. Joe stated there are multiple observations of nesting on their property, in their front lawn on the east side of the property which they said they do not go there but obviously they do. There was a question on trail barriers with any type of building. Prior to April 1st the limit of work prior to construction proposed shall be fully encompassed and encircled with turtle exclusion barriers, they need to be closed and opened every day during work. Is this still part of the conditions? Also they do not agree with the map of water on the plans. The perennial stream to the east of their property runs year-round as observed. The stream between 305 Vaughn Hill and the proposed project area flows intermittently from still river road.

Conservation Administrator clarified that Emily was not quoting NHESP that they do not exist to the east on the project area lot rather the key primary habitat is to the west of still river road. The proposed work area as it is now, NHESP sees that it is far enough away that the turtles are interested in. They are not claiming they are there or not but rather specific to primary habitat that is used.

On the southern side of the proposed project area, it does show a wetland on the proposed plans. Joe confirmed that this is the area noting the intermittent stream. This runs from still river road, east toward and into the perennial stream. They have documented roadkill landings turtles at the driveway location on numerous occasions.

Pat Westwater-jong thanked the commission and applicant; She walks the conservation area in this area, crossing the streams 4 times. They run all year round, through summer and fall. She is wondering where her trail walk extends through this property or part of this development. She is curious if easements will include the current existing trails. She stated this is a sensitive area with small room for error, and inquired about development on sugar road about trees that were restricted that were removed. If there is a developer who has a history of not diligently following the rules and restrictions 1) who ensures that these are being met 2) what kind of enforcement would there be of these restrictions. Is it true that on the other property was to pay money to plant new trees which probably wasn't as great an expense compared to them taking it all down? What kind of incentive is there for the developer to stay within these restrictions that would be required in this small area? is it possible that the plug could be pulled on this if they did just, or if they did not abide by restrictions set forth?

Conservation Administrator through the Chair stated although the trail locations are not jurisdictional under the Wetlands Protection Act unless they fall within jurisdictional areas, can be addressed. The existing trails are across Bolton conservation trust properties but she cannot speak to the trails in Harvard. The trails in Bolton are outside this parcel being discussed. She appreciates the note about the many stream crossings and that it runs year-round. She stated related to any other development, the commission has to be specific to the parcel but the commission is aware of what else is occurring in town. The commission must stick to the wetland protection act jurisdiction. The enforceability of these restrictions is done through a process that may include fines, not only fines but there are other actions that can be taken by the town. They are able to, if egregious enough, there is a process to stop the project. Additionally, because natural heritage is involved, they would have the ability to enforce matters if the project were not following their conditions. Additionally, DEP has oversight and jurisdiction under the wetland protection act and therefore have the ability of enforcement as well when necessary. Not just the town layer, but DEP and NHESP as well. The developer has the incentive beyond the fines, and their significant amount of time going through a permitting process to be in compliance. It would be a significant loss to have a project shut down by state and local agencies. Part of the boiler plate order of conditions that the commission typically issues is a requirement to have a wetland scientist or qualified individual to complete work or inspections. There are also circumstances where the town is able to obtain an inspection themselves through various methods, there is also her as a staff person, there are other departments involved on the project as well. Not only is there someone hired by the applicant, but also the town to provide checks and balances regarding the compliance of the project.

Anastacia Downey inquired about the amount of water around the site, she is grateful that the commission will review the finer points about where the wetlands, water are with their own third-party review. After reviewing submitted documents throughout the Comprehensive Permit Process every time the lines are considered, the wetland line moves closer to the road and encroaching on the project area. This is therefore something important to look into and shows throughout the history of how the plans evolved existing conditions plans C1.2. Every time someone weighs in it changes. This should be reviewed to get down to the bottom of this. She inquired with all of the water on this site, even after mounding septic to meet title V and the reassessment of NAVD potential changes. Basements are being stuck within this area and as a homeowner new owner may have water issues. Where is the town's liability on this and what are the disclosures? Or is the homeowner responsible for this?

Chair Brian passed the question on to the attorneys. Attorney Costa answered the question specific to the applicant; the applicant needs to have affirmative disclosures relative to law specific to a property within flood zone that is addressed at the signing of the purchase and sale agreement or closing. There would be a requirement related to insurance. Another question is liability of the town associated with regulatory process if neighboring property were flooding. Conservation Administrator clarified the original question was specific to the new homeowner's infrastructure but would now add Attorney Costa's point. David McKay stated that the commission's obligation with respect to this obligation is to evaluate the proposal in good faith and impose reasonable condition to protect the wetlands interests. If the commission does those things, he is not overly concerned about the town's liability in issuing the comprehensive permit or this project. Again, if they find that they meet performance standards in respect to the regulations. Regarding the abutting property owner's infrastructure, there is common law that protects property owners from unnatural runoff and stormwater from other properties. That is what every property owner faces this will not change from existing or new property owners. Anastacia inquired further; do we know if this property requires flood insurance. Seth stated the flood zone is established by FEMA, all buildings are set above the flood elevation which may relieve the houses from this requirement. Seth stated he cannot predict what would occur related to future changes in flood elevation date related to FEMA after further inquiry from Anastacia.

Chair Brian stated the commission is still waiting to draft the Order of Conditions.

Conservation Administrator highlighted that is correct but first they are waiting to hear back from the peer review consultant regarding the cost and address that matter.

Emily inquired why was the ANRAD never filed for the property to verify the wetlands delineation. Seth addressed that when the project started there was an order of conditions for a single-family home which approved the resource area at that time and that order of conditions remains valid, but chose not to pursue that order of conditions at this time. Emily inquired when the order of conditions was issued originally. Seth stated he believes Emily and Rebecca were part of the extension that was granted. Conservation Administrator stated she respects that there is an existing order, however there is clearly more resource areas that have been discovered which is an allowance to consider the new information. That is still why to Emily's point it keeps creeping closer to the project area, so let's once and for all allow the commission to have that review. The scope is identified and limited to the Notice of Intent as submitted and advise the commission as necessary on the project in the order of conditions. The applicant and the commission have seen the resource area line change from both ZBA and applicant's reviewer. The commission is still waiting for confirmation from the consultant regarding cost, so that the commission may properly request this contract due to the vote of the commission. Limiting to the NOI is reasonable as that is the jurisdiction of the commission under the wetland protection act. Chair Brian stated that is the finding last time, the third-party reviewer for what has been submitted currently with this filing. There are maps, that question the intermittent/perennial stream. This is documented by abutters the characteristics of the stream that continued during the drought. The Chair stated it is difficult to condition without a third-party reviewer to take a look and offer insights specific to notice of intent. Emily stated the wetland delineation was brought up in the first three letters during the comprehensive permitting process and was not addressed until the third or fourth letter:

o 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.

o 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.

(Letter 1 Horsley Witten to Bolton Zoning Board of Appeals 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.

(Letter 2 Horsley Witten to Bolton Zoning Board of Appeals 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.

(Letter 3 Horsley Witten to Bolton Zoning Board of Appeals January 15th 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 address 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.

(Letter 4 Horsley Witten to Bolton Zoning Board of Appeals February 14th 2019 Page 2 of 8)

Emily stated the question regarding the stream was an unanswered issued that was brought up continuously in the comprehensive permit process. This is not coming out of nowhere as it is still an outstanding issue. The wetland delineation was a question then and has not been addressed still which was highlighted in the prior process and review letters. Whether the delineation was approved six years ago, things change and the commission needs a third-party delineation seeing as there was not a delineation to look at. Conservation Administrator stated that the newly incorporated portion of wetlands found by the applicant's representative who had increased the area of BVW, this is new information present that the applicant feels is accurate. The commission would like to confirm and ensure that all resource areas are accurate and information. The Horsley Witten review during ZBA process confirmed this was still an outstanding item.

A comment from the public highlighted the perennial vs. intermittent stream question.

Another comment from the public inquired about the liability regarding structures, flooding, and septic related breakout. Conservation Administrator stated she would leave it to the Chair if he wishes council to address that but believes it would relate to previously discussed common law. David McKay stated it is the same principles mentioned before. David highlighted that his obligation and representation is of the town. If the public is concerned about liability, they should be advised by their own council.

A comment from the public inquired about the potential for an intermittent stream between the two properties. The conservation administrator stated that this would be included within the peer review however not delineating another private property beyond the subject parcel as it must relate to the proposed project. Robin Picariello stated that the property line has never been surveyed or staked out. Conservation Administrator stated relevant to the wetland protection act the review of resource areas within this area.

Emily once again highlighted her concern about 3:1 slope within 5' of 25' buffer to BVW. It was discussed with the septic but not around the units. The entire site is being elevated by 6' then runoff is washing straight into the wetlands on all sides of the property. She highlighted the grade increase of 6' dropping down 3:1 slope 30' from the wetlands. The entire site is being mounded, then runoff is dumping into the wetlands. She is inquiring about what may be done to control the runoff with plantings. Chair Brian highlights that it would be difficult to mitigate with plantings as individuals need to access the rear of their home. The concern is runoff and the mounding is due to the flood zone. Chair Brian states the peer review would allow this clarification to take place regarding potential impacts to resource area from the septic area, around units, and driveway. Emily stated there were pre- and post-construction calculations in comprehensive permitting process. Emily is very concerned about the 30' from wetlands 6' increase and 3:1 slope.

Chair Brian summarized that the commission has not heard back about final peer review cost, he inquired if the applicant would be amendable to continue until the next public meeting.

Attorney Costa stated he appreciates the comments of the commission, and heard multiple references throughout and the belief that the commission needs a peer review. He appreciates that but also would like to refer back to correspondence that was submitted December 24th 2020 as that is the belief of his client. That this project has been peer reviewed before and have an existing OOC, albeit for a single-family home but one that is still in effect for the property that delineates the wetland boundary. Their position is that they are not willing to submit or pay for further peer review, particularly where the proposal is for the peer review is to be done by a different firm. They have already submitted to a peer review by Horsley Witten, their client did additional work to engage Ecotec. From the applicant's position they are not prepared to submit to a peer review nor pay for a peer review therefore they are not prepared to grant a continuance of the public hearing. Chair Brian stated he understands that is their position. It is his understanding that this is a new notice of intent that has been filed, requesting third party work just to review the current notice of intent inclusive of information submitted with it. He does not seem the harm in that. The facts on the ground do not meet with facts being put down on paper at points in time. As a new Notice of Intent the commission is well within their rights to request a experts to review He is not a wetland scientist, he needs these reviews specifically on major projects. This project is all within the buffer zone, the whole concept is to keep projects outside bufferzone; avoid minimize, mitigate. This is all in buffer zone, he would like an expert to take a look and let him know if there are questions and things he hasn't spotted. That may adversely impact the town and neighbors, he appreciates the applicant's position. However, as a non-expert he needs this information to accurately complete the notice of intent or set up an order of conditions. He appreciates that although the client does not want to, it does not mean the commission does not need it to be done. He is prepared to move forward with the request for the peer review of this specific notice of intent. He inquires again if the applicant is able to continue the public hearing. Attorney Costa stated he respects and appreciates his position, as his past practice is representing boards, he appreciates the concerns but the authorizing from his client is to engage in a hopefully a productive conversation. Together with Seth they addressed and responded to many of the concerns. They expressed interested in submitting to conditions discussed this evening in an effort to work cooperatively with the commission. He simply does not have authorization to grant further continuation beyond tonight.

Emily stated she would like to circle back to a statement that was made by the applicants' representatives previously regarding the number of peer reviews. She reviewed every page of every peer review. There were "four peer reviews" as claimed because there were revisions as the design progressed. There were also multiple items brought up that took multiple letters to be addressed. The argument is unreasonable as multiple peer review letters had been commenting items that were never addressed. The peer review of the wetland delineation now, is that there was also a question repeatedly in peer review letters by Horsley Witten then when addressed there was no verification. There was never an ANRAD or RDA submitted after the letters from Horsley Witten. The commission needs verification, given the history of the delineation changing as new plans came out. The history of the peer reviews had nothing to do with the conservation commission regarding the "number of reviews". The conservation commission needs to make a decision on this project, with the responsibility to uphold the wetland regulations and until they have confirmation of wetland delineation on site from a third party, they cannot do that. David McKay stated after reviewing the peer reviews what the commissioner has stated is accurate. He also pointed out to the commission in addition to the peer reviews there was subsequent follow up with the ZBA including a letter from the applicant's council on March 14th which indicated (after Ecotec was brought in on the project but not provided the delineation of the site) it was stated to ZBA:

"at that time, we will not only be providing the written report but as we have stated numerous times at the public hearings, we will be filing an ANRAD and Notice of Intent with the Bolton Conservation Commission in conformance with all Massachusetts laws and regulations"

He stated the expectation was certainly there that an ANRAD would be filed and in fact that was the representation of the applicant's council at that time.

Chair Brian inquired that the applicant's representative was not willing or empowered to continue. Attorney Costa confirmed.

David McKay stated the commission is required under the WPA regulations to hold a public hearing within 21 days of receipt. Certain provisions allow the continuation of the public hearing; 1) without consent of applicant to a day announced at hearing within 21 days in receipt of the notice of intent. The existing continuance brings the commission to this evening. 2) with the consent of the applicant to a meeting date announced at the hearing. 3) with the consent of the applicant within 21 days after the submission of specified information or action. 310CMR10.05(5). Within 21 days of the close of the public hearing the commission shall issue a decision.

The Conservation Administrator summarized that it seems that based on those requirements the commission must close even though they do not seem to have enough information to issue an accurate decision, to at least close then rereview information that has been already submitted. Would this be accurate seeing as the current situation where the applicant and representatives are not authorized nor willing to continue the public hearing process. David McKay again highlighted the commission has 21 days from the close of the public hearing to make determination. The commission is able to close the public hearing then submit for the peer review and if not getting a favorable response then the commission can make its decision still within 21 days of public hearing which would start this evening. Conservation Administrator stated it is up to the commission, it seems the applicant does not wish to be authorized by their applicant to reconsider this request by the commission at this time. Before the commission make a decision to close or not, she asked if the representatives would not like to take this time to request from their applicant authorization to continue in order to comply with the request to provide supplemental information through the peer review.

Attorney Costa confirmed that there is no new authorization and where they still stand.

Chair Brian reiterated that closing this evening will cause them to be unable to consider any new information or public comments. He once again opened to public comment.

Joe Picariello inquired if the original NHESP conditions were still applicable. Conservation Administrator stated that the NHESP conditions and letter would be incorporated into any order of conditions. The project was required to be resubmitted as a new project. However, the existing open order on the property that specifically addresses that letter still holds on that existing projects. The new project is specified in the

	<p>NHESP letter and conditions. Seth stated it is project specific and any project change which resulted in the new letter issued. The other letter still applies to the existing open order. Joe further inquired about the resource area between properties and inquired about if the property was to be surveyed as part of the delineation. The Conservation Administrator stated their preview is related to the resource areas. Seth stated they are not required to stake out the property line. If there was a concern where work with encroach on adjacent properties then it would be reasonable to mark. In this circumstance the proposed limit of work is 100' from any property lines. Joe inquired if the intermittent stream between the two properties is classified as an intermittent stream would it then have the 200' riverfront area considered for disturbance. Conservation Administrator stated an intermittent stream does not have a 200' riverfront area.</p> <p>Chair Brian made a motion to close the public hearing for the project located at Assessor's Map and Parcel 8.B Lots 32 & 33 (formerly 8.B-32). Emily seconded, all unanimously agree. Roll call: BB, EW, WP.</p>
6.	<p>Chair Brian made a motion to close the public meeting of the Conservation Commission Tuesday, January 5th 2021. Jeff seconded; all unanimously approve. Roll Call Vote on motion: BB, EW, WP, unanimous, YAY</p>