

Bolton Conservation Commission Meeting Minutes



Date:	Tuesday, January 19 th 2021
Time/Location	7:00 p.m. Zoom (remote participation)
Commissioners Present:	Chair Brian Berube, Emily Winner, William Payne, Jeffrey Bryan (Conservation Administrator, Rebecca Longvall)
Guests:	Jim Gerghaty, Richard Davis, Seth Donohoe of Dillis and Roy, Bob Pace, David McKay, Robin and Joe Picariello, Bob Martel, Keith Silver, Anastasia Downey, Doug Deschenes
Next Meeting:	Thursday, January 21st 2021 7:00pm, Zoom Remote Participation

1. **Notice of Intent – "The Woods at Farm Road" intersection of Farm and Berlin Road Map 3.C Parcel 72** – *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.

Conservation Administrator provided brief summary of the site visit carried out by members of the commission prior to the meeting then provided an update regarding information received as a letter which documented items highlighted on site including the erosion control to be used, extent of work, and seed mix to be used. The letter also encompassed items discussed at the past public hearing on January 5th 2021. Seth Donohoe highlighted that the applicant had agreed to three items which as the Conservation Administrator highlighted included the agreed changes in writing via the letter. The changes were as follows: silt fence at the limit of work be swapped from haybale to silt fence or compost sock, on the 3:1 slopes south of unit 1 and around septic area are to be seeded with a conservation and wildlife seed mix intended for the area to provide variety and transition between developed and natural areas of the site, native plants only to be within the rain garden/part of landscaping relating non-native species that had been previously approved by peer review as part of ZBA Comprehensive Permit Process.

Jeff inquired about the two single family units verses the four depicted. Conservation Administrator highlighted at the last meeting the Chair also highlighted this. The applicant's representative has explained in the past the structures within the 100' buffer was included within the project description but acknowledged that yes there are structures outside of the 100' buffer proposed on site as well shown on the plans.

Emily stated she is in agreement with keeping the meadow area vs lawn area. She also suggested memorializing the area to be maintained vs the area that will be meadow with a split rail fence or boulders. She stated the area should be maintained up to the well to allow for access, however she would prefer the meadow be contiguous as close to the homes as possible. Doug Deschenes stated a proposed demarcation of the area on the plans. Seth clarified that this actually was not shown as of yet, however the limit of work shown on the plans before the commission would coincide with the "yard" area, it would go from just behind the well area, to the lot corner where there is a lot corner as the area is essentially occupied by the septic slope. The applicant can certainly demarcate the property line so there is no worry of future encroachment, however to put markers in that area may seem redundant. Conservation administrator annotated the plan during the meeting to display the area for memorialization of the extent of lawn. Emily inquired about the signage. Seth stated that it is a 4x4 a couple feet above grade with the option to mount typical Bolton signage of resource area beyond this point or limit of work. Seth also noted that it is likely boulders will be excavated from the site therefore they may be utilized on site for this work. Chair Brian displayed an option of the metal/tin sign that is used to mark the town owned conservation property boundaries. Emily stated the signs would make the limit of work more obvious but acknowledges boulders or a split rail fence are more aesthetically pleasing. Chair Brian stated any one of those three would be deemed appropriate and leave up to the applicant to decide which of the three options to use on site. Conservation Administrator highlighted the property line and the abutting property owned by the Bolton Conservation Trust has the majority of the meadow. Emily highlighted it is still important to memorialize this area. Bill inquired this marking is the limit of lawn, the small strip. Conservation Administrator stated the septic area is also included in this. Jeff inquired if the applicant would plan wildflowers on the septic. Seth stated the top will be lawn for maintenance purposes, and the wildlife mix along the slopes. Conservation Administrator highlighted that other areas in town have the same wildlife mix over the top which creates a meadow area. It was brought up at the last meeting to do the same at this location, she wanted to clarify that the applicant is not open to this. Seth stated the system is a condominium system with an advanced nitrogen treatment system which at minimum requires an annual inspection and would be ideal if the area therefore remains ideal for ease of seeing what is going on within this area. Conservation Administrator reiterated, the maintenance of a

meadow wouldn't line up with inspections and would not warrant full accessibility. Seth stated it necessitates regular mowing for accessibility for inspections. Emily also highlighted the prohibition of herbicides, pesticides, and fertilizer that would be incorporated into the HOA documents. Conservation Administrator highlights that this can also be a condition in perpetuity and memorialized through the HOA documents. The commission could also review the HOA documents to confirm that the condition is included in the HOA documents. Attorney Deschenes stated that these will be incorporated into the HOA documents, specifically within the maintenance program within the condominium documents. He also stated he will provide them to the commission or its agents to review, however he is assuring the commission they will include the condition in the documents.

Chair Brian reviewed the conditions discussed and agreed upon to include within the order: the use of straw wattles or compost socks instead of haybales, the planting mix for septic slopes, switch to native species within the rain garden, the memorialization of the meadow area, and conditions in perpetuity as discussed. Attorney Deschenes provided a comment and a question. The comment is related to the language of "supporting infrastructure" the drainage structure within the roadway will be repaired as part of the comprehensive permit. This incorporates the repair or replacement of this drainage infrastructure. Attorney Deschenes wanted to be sure that this is included within the document and Order of Condition as it is within the Right of Way of Berlin Road and within 100' of the wetland resource area. His question was related to a draft condition, stating the site supervisor must be a land surveyor or engineer. He inquired if the commission would allow for a stated licensed professional contractor. The applicant sees that it would be a shame to be providing the reports where the site contactor will be on site every day. Conservation Administrator stated she will add specific language to be sure the drainage is highlighted within the public right of way not within the proposed project area at this time. She will be explicitly including that within the document. She inquired if on the revised plans is there a way to extend the erosion control to incorporate this work area within the right of way. Attorney Deschenes summarizes the existing erosion control on site and highlights that the existing erosion controls may work. He sees that the language within the order allows for the commission or its agent to require an extension but believes that is why the erosion controls are along the roadway on the plans. Conservation Administrator stated the spec of erosion control should be changed to straw wattle or compost sock. Additionally, include the structure within the right of way on the plans adding any extension of erosion control to incorporate that work. The meadow area extent should be included as a note on the plans as well. She has no issue with swapping the land surveyor with wetland scientist or engineer. She stated the commission may allow the request from the applicant for the licensed site contractor to be included on the mentioned list as well. She did highlight that the purpose of the professionals currently listed is relative to the commission's jurisdiction. To have someone, who is explicitly there for the wetlands protection, engineer or wetland scientist. Emily inquired about the location of this language within the draft document to review the language. She inquired if this applies to the duration of the job and frequency of time on the job. Conservation Administrator reads

"When required by the Commission, the Site Supervisor shall be a registered professional engineer, or land surveyor who shall be present throughout construction of the entire project or provide oversight of the project on a weekly basis and shall provide progress reports to the Commission as detailed in Section 3".

Emily clarifies this is not requiring their presence full time 5 days a week, this is doing weekly check-ins, reports of storm drainage, wetlands and that this is pretty standard therefore not an unreasonable request. Emily stated you would have an engineer or wetland scientist providing the weekly reviews of wetlands and stormwater systems. Chair Brian confirms and inquires to the Conservation Administrator if there has been an exemption in the past on this matter. She highlights that it is when the commission requires it, the language is there in ambiguity purposefully. She stated that there is language there to allow the commission that tool. Jeff clarified, not someone 40 hours a week. Rather someone there to inspect and it should be a

wetland professional carry out that work. Chair Brian highlights the commission may be hesitate to change the language. Bill stated he appreciates that it is another party reviewing. Conservation Administrator states that the language is ambiguous purposefully that it may be acted upon at any time from the commission or the applicant realizing they may need more oversight related to the commission's jurisdiction. Bob stated he was wanting to ensure that during a drought there would not be a need to have Seth one site. Chair Brian clarified that the ambiguous language is three options: either there is not requirement for oversight, someone is there fully time, or if we need someone the commission has the right to send someone out there. Chair Brian stated he is not looking to change the language. Bob inquired can this be ensured that this is the meaning of this language. Attorney Deschenes clarified that the review of the language where the commission is not necessarily requiring someone to be one site every day, or an extensive report every week rather leaving it open for the commission to request, then they are comfortable adding a wetland scientist to the options as well. Conservation Administrator stated she needs to add items from this evening's discussion into the decision, the applicant will be incorporating the items discussed into a final revision of the plans and suggested the hearing be continued until either the Thursday meeting or the February 2nd meeting. Attorney Deschenes inquired if the commission could close the public hearing. Conservation Administrator highlighted that the commission would not be able to consider the revised plans if closed this evening. However, she noted that she does not want to speak for the applicant's representatives time regarding the submittal of the revised plans. Attorney Deschenes inquired to his client Bob if their representative could commit to finalizing the plans in two days. Bob stated he can, but he is unsure of their representative. Chair Brian suggested the continuation until Thursday's meeting then if it is not received then it will be continued again to February 2nd 2021 public meeting. Bob reiterated, and Attorney Deschenes stated that they would appreciate that. Chair Brian inquired if they would be amendable to continuing to January 21st 2021. Attorney Deschenes confirmed.

Chair Brian made a motion to continue the public hearing regarding Woods at Farm Road until Thursday, January 21st 2021 at 7:00pm for the proposed project to be located at Map 3.C Parcel 72. Jeff seconded; all unanimously agree.

Roll call vote to continue: BB, EW, WP, unanimous, YAY

2. **Continued Notice of Intent – Century Mill Road Map 3D Parcel 75** – proposed construction of three single family homes and widen and pave an existing gravel driveway

Conservation Administrator provided an update regarding the receipt of calculations of the two depressional areas specific to the applicant providing information on proving whether or not these areas meet the definitions of isolated land subject to flooding. The submittal also included a revised colored plan as required under the local wetland bylaw showing the areas considered within these calculations. Scott Hayes is present to talk about the submittals. The Conservation Administrator highlighted they did receive a quote from BSC group and suggested the commission should vote on the peer review this evening. Matthew Watsky introduced himself as the applicant's council. Matthew provided a summary of the plan; with the idea that the commission has a drainage analysis that Scott has previously presented November 22nd 2020, December 10, 2020 both lead to the conclusion that both areas are not jurisdictional under the concom rules as neither of the areas have a depth at or greater than 6inches. Scott provided this plan that they will review with the commission, to concede jurisdiction rather than go through the peer review process which they think would result in the same conclusion that there is not jurisdiction and the areas could just be filled. They focused upon what the commission's primary concerns seemed to be which was that the filling of these depressional areas would result in some excess volume of water being displaced from the site and flowing somewhere. With that as a concern, this plan is showing mitigation for that. The two houses being proposed within the areas they have calculated are not ILSF under either the state or local bylaw rules. The mitigation for it are the two areas shown in orange in the middle of the site. These areas are proposed to be excavated to create the additional volume for flood storage within the BLSF. Matthew stated the idea of this was for the applicant to address the commission's concern about having flood waters that would be otherwise held within the isolated areas, even though they're not jurisdictional go ahead and mitigate for that and see if we can find a way to move forward without having the peer review.

Scott Hayes then provided a breakdown of his calculations and submitted documents. Scott looked at depression A, on Lot 2, the elongated depression, the area was observed directly. This area was found to be a large flat area with small areas that may be isolated. The bottom is flat, therefore when inundated with water there is not a significant depth as it spreads across the area. When run through the 100-year storm model, it did not really produce any results of significant standing water. In order for these areas to be jurisdictional the wetlands protection act thru which it is clear they are not as they would each need to fill a foot and a half from the bottom elevation. This is inconceivable to occur from rainfall or groundwater based on the test data they have and applying stormwater models to it. With respect to the bylaw, applying 7" of rain and evaluating for an average depth of 6" over 1,000 sq. ft., it is a little more difficult to evaluate. For the purposes of analysis, he looked at these areas in the adjacent floodway, FEMA based flood elevation in adjacent floodway (BLSF) not associated with area and applied elevation 310. After elevation 310 is applied to these depressions and calculate the volumes that were losing by site activities, we end up with 0 loss of elevation below elevation 310 depression A lot 2. In depression B associated with Lot 2 there is a small portion of depression B lost by the corner of the dwelling. In depression B on Lot 4 a substantial area not a substantial depth, the elevation within these areas is about 309.7 or 309.8 for a bottom elevation, they are looking at an elevation peaking at 310 so they're relatively large areas with not substantial depth. For the purposes of addressing potential impacts with respect to the bylaw definition, they eliminated any activity within depression A or any alteration below 310 within depression A. Depression B they calculated the volume below elevation 310 that is proposed to be filled as part of the development on these lots and replicated in excess of that volume on lot 4 and 3 within the orange areas to be graded below elevation of 310 to create volume in excess of the areas proposed to be filled. They took that approach notwithstanding that those areas are applicable subject to the bylaw anyway. Scott again stated that was the approach of this plan in an attempt to resolve those isolated areas to move forward.

Chair Brian inquired to the Commission if there were any initial thoughts or questions. Bill inquired based on the data the commission had seen earlier, the bylaw of needing 1,000 sq ft and average of 6" he believes depression B in the bottom left-hand corner, we were very close to that. At that point the elevation is 309.6 or

309.5, where the applicant's representative was talking about an average of 309.7 or 309.75 that may be correct in the upper right-hand corner of depression B but that lower left-hand corner of depression B had ponding almost at 1,000 sq ft and probably at the depth necessary 6" already that was visible from a rainfall that wasn't even a 5-year rainfall heavy storm. He doesn't believe we need ponding over the full 26,000 sq ft of depression B rather just the 1,000 sq ft which the commission saw, and believe there were photos of that. Scott Hayes stated there is no question where the depth exceeds 6" but they were not substantial areas so the average depth would not be consistently at that depth. Matthew highlighted that both under the bylaw and wetland protection regs you have to have an average depth of 6" and according to Scott's calculations, that depression B average depth would be .35' which is 3.6" which would be about half the average depth that would trigger jurisdiction. Bill clarified that he does not believe all of depression B would need to contain water, you need 1,000 sq. ft. Depression B is 26,500 sq. ft. you need a small fraction of that. Matthew stated that the way the bylaw definition was written, you require an applicant to determine the full extent of the area covered by the puddle, then its only jurisdictional if the average depth of that puddle is 6" or greater. He stated you don't assert jurisdiction over a small portion of the puddle that's deeper than 6" then not assert jurisdiction over the rest of it. He stated you determine whether the entire area is jurisdictional or not. Chair Brian inquired if this met the Conservation Administrator's understanding as well. She stated one point of clarification Scott Hayes if the engineer for this proposed project. She stated it sounds as though the commission appreciates the amount of work that was put into these calculations and put into trying to offset or an attempt to offset by utilizing the areas highlighted on the plans. The last meeting the commission requested a peer review, at least one member this evening still has a question or its very close, and would like clarification of the two depressional areas. She is not going to provide that clarification as that is the purpose of the peer review. This is still on the table the commission has the quote, and the consultant who they would use, and the commission is still able if they have questions about the calculations presented this evening that have been graciously provided by the applicant and their representatives, it is still on the table to have a peer review. To confirm exactly what we are talking about this evening by a third party, who is not working for the applicant, to ensure that things are confirmed and the commission is comfortable with it. Chair Brian inquires if any other commission members have thoughts. Emily stated she agrees with comments made by the Conservation Administrator. She also inquired if any of this information, since initial DEP comments, gone back to DEP. Matthew inquired to Scott if the calculations were provided to DEP. Scott Hayes stated they were submitted to Goddard Consulting but is unsure if they had then submitted them to DEP. Conservation Administrator stated a reminder, that when plans or supplemental information is submitted to the Conservation Commission it should also be submitted by the applicant to DEP. Matthew stated he will follow up with Goddard Consulting to see what they did, he stated that he could understand if they were not as the areas were not jurisdictional areas to DEP but he will check on it. Emily inquired if there were initial comments seeing as their initial comments were in regard to these depressional areas, now that there are new calculations and a new layout along with flood storage, she is curious if they have any further comments. Emily stated she would like to know if the updated plans and calculations were sent to DEP, did DEP have comments and if so, what were they. The commission would certainly take their comments into consideration. Conservation Administrator summarized that the commission is still looking to request the peer review which they can formally vote on this evening, request the applicant to provide them with confirmation that they have submitted the supplemental documentation and recently revised plans to DEP and if in fact there are any comments specific to the revised plans.

Chair Brian opened the hearing for public comment: Jim Geraghty of 21 Century Mill Road inquired about the 200' buffer on the plans, why does this semicircle not extend down the brook. Conservation Administrator stated that within the ORAD this area is defined as a pond. Jim questioned the definition of the pond, as it is Danforth Brook, that is always moving and is therefore part of the stream. He feels this area does not meet the legal definition of the pond. Scott Hayes stated this was addressed in great detail in the ORAD that was filed and was evaluated at that time. Chair Brian stated he still has questions about the ANRAD and validity of it and noted he was unsure if they had yet heard from council. Richard Davis of

Hudson Road inquired who Matthew Watsky is. Matthew stated he is an attorney representing the applicant. Richard stated the dates that were mentioned by Scott were November and December 10th. We had a lot of rain before Christmas and photographs were sent to the conservation office. The photos were of the ponding which was significantly more than it was on December 10th by orders of magnitude. He inquired if the Conservation Administrator had those photos and if he could look at those. Conservation Administrator stated she unfortunately did not have them readily available unfortunately but confirmed that she and the commission had seen them. Richard stated another point of comment specific to Scott's statement about the depression having a flat bottom. Richard noted that it is not a surprise because earth moving equipment was there doing quite a bit of work, he is unaware if the soils there are exclusively native soils or not, but he would think that the perc ability of the soil could have been impacted due to the grading and work that went on within these areas. He noted the photos submitted previously and that it is an important consideration about what is going on.

Chair Brian inquired not hearing further public comment. Chair Brian polled the commission regarding the hiring of the peer reviewer BSC Group. All unanimously agree to hire the peer reviewer. Conservation Administrator stated it would be beneficial to state in accordance with MGL CH 44 S53G and the exact amount which is quoted as \$5,900.00 for a peer review scope that is specific to the NOI submitted for the construction of three single family homes with existing gravel driveway, specific to the depressional areas noted as A and B on this plan.

Chair Brian made a motion to have a third-party review under MGL Ch 44 S 53G in the amount of approximately \$5,900.00, by BSC Group, with their specific scope of work specific to the NOI and depressional areas that have been in discussion. Jeff seconded, roll call vote to continue: BB, JB, EW, WP, unanimous, YAY.

The applicant's representative Matthew agreed to a continuation until the commissions next public meeting on January February 2^{nd} 2021.

Chair Brian made a motion to continue the public hearing until Tuesday, February 2nd 2021 at 7:00pm for the proposed project to be located at Map 3D Parcel 75. Jeff seconded; all unanimously agree. Roll call vote to continue: BB, JB, EW, WP, unanimous, YAY

Matthew inquired if BSC Group had indicated when it expected to turn around its findings after being notified that they have been chosen. Conservation Administrator stated she can confirm that. She also noted that the commission also requested other information from the applicant which could be presented at the next meeting.

3. ANRAD – 460 Main Street Map Parcel

Conservation Administrator provided a summary of the site visit. The applicant's representative Mark Arnold with Goddard Consulting. He summarized that the commission did walk the flagging. Chair Brian confirmed that it seemed that the flagging met the contours and the soil samples confirmed the line that was marked. Emily agreed with Brian's comments however she did see a small area to the middle eastern side of the parcel on the GIS map that she saw after conducting the site visit. She noted it shows a small fragment of a stream, and wanted to bring it up as it could be a mistake but was unsure if anyone had observed this. Mark inquired if this was off of USGS maps on OLIVER. Emily stated yes, and that it functioned with the streams. Martha Remington stated she has been there 41 years, and stated Emily is correct that there is a small stream on the west boundary of 460 main. This stream drains from a pond in the back of the Kane property toward the boy scout camp, she stated she has an aerial photograph of this. The gas station used to be half an acre and now it is combined with the house lot between to increase to three acres. Martha stated the stream is not necessarily intermittent. Conservation Administrator clarified the area that is being referenced, she stated this is shown on the plans. She clarified the commission members on site did walk up to the ponding area however it is off the Kane property. Conservation Administrator stated she was not seeing what Emily was referring to. Emily displayed the area she was referring to and confirmed it was on the town website GIS. There is clearly a line that functions with the stream layer displaying. Emily stated she followed the wetlands on the plan not the opposite side of the property. The Conservation Administrator stated she cannot confirm what the line is on the layer data. Chair Brian noted the commission has a meeting on Thursday to try to conduct a site visit to confirm that there is or is not something there. Conservation Administrator stated she has availability tomorrow. Mark stated there shouldn't be an issue, Nicole confirmed and she would be able to meet Conservation Administrator on site to be confirmed via email first thing in the morning. Chair Brian stated aside from that line did the commission have any questions about how that was delineated. The applicant's representative Mark Arnold authorized the continuation. Conservation Administrator requested the applicant's representative submit in writing the request to continue. Nicole confirmed she would do so.

Chair Brian made a motion to continue the public hearing until Thursday, January 21st 2021 at 7:15pm for the proposed project located at 460 Main Street. Emily seconded; all unanimously agree. Roll call vote to continue: BB, EW, JB, WP, unanimous, YAY

4. Minutes – Chair Brian made a motion to accept the minutes as drafted from the January 5th 2021 public meetings of the conservation commission. Emily seconded; all unanimously agree. Roll call vote on motion to continue: BB, JB, EW, WP, unanimous, YAY

5. | Conservation Area Updates:

Self-Guided Tour using QR codes has been installed on the Houghton Farm Conservation Area

Drafts of Operation and Maintenance plans for Conservation properties have been created and waiting comment from the commission.

Violations of vandalism on trails – please be respectful of volunteer's time in maintaining the trails including signage much of these are installed with donated time

Deliberation – 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 stated he reviewed the draft decision and had no major concerns or questions. The draft included information regarding comments commission member Emily had made specific to the unanswered items from Horsley and Witten letters. Emily also did not have any further comments to add or change items within the letter. Conservation Administrator stated a reminder that for those present, the public hearing was closed during the last meeting therefore further comment may not be considered or received by the commission but the commission appreciates their attendance for viewing purposes. Chair Brian stated the draft decision they are looking at is a denial primarily based around the commission not being provided with the information they need regarding the NOI that is now before them. Commission members Bill and Jeff did not have further comments. Jeff inquired about a quote included and use of language. The language is actually a quote therefore not necessary to change. Conservation Administrator inquired whether the chair is required to read out the draft decision during the public hearing. David stated no, typically the commission would determine what the outcome of their deliberations are and the outcome would come from that. The issues were fairly straight forward in this instance; therefore, the draft decision was created and the commission is able to proceed from there. David stated that the language inquire of "older" respective to the boundary, to see if it may be better articulated and confirmed that it was a quote from a letter. David stated he suspects they are referencing to an older OOC. Conservation Administrator stated the draft was made in light of the conversations, and the attempt by the commission on multiple occasions to request a peer review from the applicant. The applicant was not willing to do so, therefore it seemed appropriate to draft the decision in this manner, as the commission seemed to be lacking the information they

needed and were requesting of the applicant, to issue potentially, or rather incorporate that into their decision. Chair Brian inquired if the decision was something that could be posted publicly. He stated that the neighbors may want a chance to read it even though the commission cannot accept public comment. Conservation

Administrator stated that once the document is issued then it is public information at that point being an issued document. At that time, she can post it to the current projects page available on the town website for public viewing. Chair Brian stated he would allow for time to finalize the document before the commission votes on the

regulations. Highlighting the commission has the ability to review and finalize then issue and vote at Thursdays meeting. The Conservation Administrator respectfully requested of the commission that signatures be carried out as soon as possible in order for the document to be issued as soon as possible. David confirmed that the signatures

document. David confirms the commission has until Tuesday of next week to meet requirements by the

are not required to be notarized on this document.

Chair Brian made a motion to continue deliberation for the project located at Assessor's Map and Parcel 8.B Lots 32 & 33 (formerly 8.B-32) until Thursday, January 21st 2021. Emily seconded, all unanimously agree. Roll call: BB, EW, JB, WP.

6. Chair Brian made a motion to close the public meeting of the Conservation Commission Tuesday, January 19th 2021. Jeff seconded; all unanimously approve. Roll Call Vote on motion: BB, EW, JB, WP, unanimous, YAY