

TOWN OF NORWELL
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NORWELL CONSERVATION COMMISSION

345 Main Street / Norwell, MA

February 25, 2019 @ 7:00 PM - Room 112

Minutes

Present: Chair Marynel Wahl, Vice Chair Bob Woodill, Bob McMackin, Ron Mott, Roy Bjorlin, Ellen Markham, Conservation Agent Nancy Hemingway, and Recording Clerk C. Sullivan.

CALL TO ORDER

The meeting was called to order at 7:00 pm by Chair Marynel Wahl. The meeting was recorded.

AGENDA ACCEPTANCE

The Commission reviewed the proposed agenda and discussed changes and additions. This hearing was originally scheduled for February 12. However, a snow storm forced closure of the Town Hall resulting in the entire meeting agenda being continued to February 25.

Motion by Mr. Woodill to approve the agenda as posted. Seconded by Mr. Mott and unanimously voted.

Old Oaken Bucket Estates / SE52-1138 & NCC# 11(18) / Roadway Construction, SFH, Septic, Stormwater & Grading NOI / OoC

App: John Kopacz / Rep: Marta Nover, Nover-Armstrong

Hearing has been Closed: Commission to Discuss, Deliberate & Draft Order of Conditions
Please refer to the Audio for complete Commissioner deliberations, and the Agents packet of closing document information for complete notes to the Commission (includes Chessia's final report, Agent summary of issues, responses and recommendations, among other documents).

Applicant John Kopacz present, along with Greg Morse, Morse Engineering, and Marta Nover, Nover-Armstrong. Consulting engineer John Chessia also present. Commissioner Justin Ivas recused from voting, and was not present for the deliberation.

Prior to the start of deliberations, Mr. Woodill thanked Ms. Hemingway for her efforts over the course of this filing. Ms. Hemingway advised that the Public Hearing on the project was closed, no new information can be offered, and applicant and representatives could not comment on the deliberations (the Commission could ask for specific clarification, which they could provide).

Ms. Hemingway stated the options before the Commission were

- to approve the NOI, either as submitted, or,
- to approve with the project reduced in scope, or,
- to approve as modified with conditions, or,
- to deny on the grounds of insufficient information, or,

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- to deny because the project cannot meet the performance standards of the Massachusetts Wetlands Protection Act or the local bylaw.

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She suggested that the deliberations begin with comments from Commissioners, followed by a review of previously compiled documents setting forth issues raised by Mr. Chessia, as well as Commissioner questions with responses from Mr. Morse and Ms. Hemingway, from which findings and conditions could be made.

Opening Comments

Mr. Woodill commented that his primary issue was with the retention basin in Parcel H, which abuts the 50 ft buffer to the reservoir and requires grading work within the buffer, but he pointed out that the proposed mitigation could actually improve the functionality of this buffer from its currently degraded state. He also expressed concern about the basin overflowing in a major storm, and suggested that the Commission deliberate on these matters first, as he felt that all other project impacts could be conditioned.

Ms. Markham agreed that the proposed work in the 50 ft buffer stood out to her, and expressed concern about setting a precedent by allowing it. Markham also commented that HOA interest and activity tends to go down over time, and they may be unwilling to maintain the subdivision's stormwater fixtures if the farm is abandoned; a bond from the builder may be required to address this.

Mr. Bjorlin had the same concerns about the proposed work in the 50 ft buffer, and also with how the provisions of the HOA document to maintain the fixtures would be put into practice if the bogs were abandoned. Even with a surety from the applicants, he felt this would be a challenge.

Commissioner McMackin had similar concerns about maintenance of the stormwater fixtures in a future non-farmed scenario, as well as the ongoing relationship with the HOA that would be created. He also asked about groundwater recharging capacity on the site and questioned whether this could be tested in advance.

Mr. Mott expressed concern about the language in the HOA document, as well as the quality of the stormwater that would ultimately be going into the bog reservoir. He would prefer that the main basin be pulled entirely out of the 50 ft buffer so it wouldn't be a concern for future Commissions.

Chair Wahl acknowledged all concerns expressed and hoped they could be used to draft an Order of Conditions that stood the test of time.

Basin H

The Commission began its deliberation by looking at Basin H, which abuts the 50 ft buffer to the reservoir and has grading and outfall fixtures inside the buffer. Mr. Woodill asked Mr. Chessia whether the basin as designed would be able to handle major events, and whether the treatment fixtures would get overwhelmed by sediment. Chessia indicated that the basin as designed

should achieve the treatment levels required, but the basin doesn't provide any detention of consequence except in very small storms. Detention in larger events is achieved in the reservoir and bogs, and the basin is designed to direct stormwater there without overflowing. He felt that sediment issues could be avoided with proper maintenance.

Ms. Hemingway suggested that the Commission consider a condition that TSS removal be maintained at 80%, and that annual water quality monitoring reports be submitted by the entity in control of the basin. Ms. Wahl suggested that this HOA obligation be added to homeowners' titles to increase awareness. Mr. McMackin noted that he has to submit similar reports for his own property out of town, and felt that compliance with this provision could be managed.

The Commission then discussed whether the "basin," for the purposes of interpreting the regulations, consisted of just the basin or the entire structure, including the basin, riprap, berm, outfalls, and all associated components. Mr. Chessia stated that the regulations and case law were not clear on this point but noted in his summary of issues to the Commission that, in his opinion, the definition of "infiltration basin" would "include all aspects of the basin, including the berm and outlet works." All agreed, except for Commissioner McMackin, that *the basin consists of the entire structure, including associated components*, and a finding was made to that effect.

The Commission then discussed whether to require that the basin and all associated components be shifted entirely outside of the 50 ft buffer. Ms. Hemingway noted that the Commission had the ability to approve the majority of the project with conditions as to certain components. In response to a query from Mr. Woodill, Ms. Hemingway added that in Section 7-4 of the Commissioner comments to applicant, the Commission had asked applicant to provide an alternative site plan showing the basin and outfall pulled out of the 50 ft buffer, but applicant had declined to provide one.

Chair Wahl pointed out that the buffer zone by the proposed basin is currently significantly impacted by the existing farming operation, and feels the proposed mitigation will improve the buffer's appearance and function.

As part of the deliberation on this matter, to narrow down the issues of concern, Ms. Hemingway polled the Commissioners on whether allowing the basin as proposed, with the associated mitigation, would improve conditions in the 50 ft buffer. All agreed that it would except for Mr. Bjorlin, who pointed out that the buffer would have to be improved under any OoC the Commission would issue.

Ms. Hemingway also polled the Commissioners on whether a shift of the basin and associated components outside the 50 ft buffer would change the impacts to the buffer zone; all agreed that it would except for Mr. McMackin.

After further discussion concerning the differences between the state and local bylaw, the Commissioners agreed to a special condition *allowing the riprap associated with Basin H to*

remain in the 50 ft buffer but requiring that all other components of the basin be shifted out of the buffer.

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Basin J

The Commission then discussed the proposed location of Basin J, with Ms. Hemingway noting that just the outlet to this basin, including riprap, was in the 50 ft buffer. Commissioner consensus after a brief discussion was that *Basin J could be approved as designed.*

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Roadway construction in 50 ft buffer to isolated wetland

Commissioner consensus after a brief discussion was that this activity *could be permitted as proposed.*

Drain outlets near lots 21 and 22

Mr. Chessia suggested that either calculations be provided to show no erosion of soil or vegetation below these outlets, or that the design be modified to create a stable, vegetated area between the outlet and the reservoir. After discussion, the Commission agreed to a special condition that *the gravel path near lots 21 and 22 become part of the 50 ft grassland management area.*

Subdrain outlet 25 ft from wetland, discharging to 25% slope

The Commission agreed to a special condition requiring that *the area below the subdrain outlet be vegetated and a plan to either stabilize it or to show that it would be stable is to be submitted.*

Definition of detention and alteration of resource

Mr. Chessia commented he believed DEP has a policy restricting the alteration of wetlands for stormwater detention, and that the Commission would have to determine whether the wetlands, in this case the bog reservoirs, are being used in this manner. Ms. Hemingway requested that the Commission deliberate as to (1) whether stormwater was being detained in the reservoirs under the proposal, and (2) whether the project would result in a significant alteration of the reservoir.

Mr. Woodill expressed the view that water in the reservoir was temporarily detained for agricultural purposes, and this was a common and established agricultural practice; Commissioners Markham and Mott concurred, with Mott noting that Jacobs Pond was created and is being maintained in a similar manner. Commissioners Bjorlin and McMackin felt that what the project proposed did amount to detention, but McMackin agreed that water was already being detained as part of the bog operation. Consensus was that *the project proposed the detention of stormwater in the bog reservoirs, but such detention was already occurring on the property as part of the bog operation.*

As to potential alteration of the reservoir, Mr. Mott pointed out that the reservoir is already being used to harvest cranberries, and felt the use of salt and fertilizers in the subdivision could be limited through special conditions and HOA restrictions to minimize impacts on the reservoir.

Mr. Woodill added that the reservoir is currently surrounded by dirt, and the mitigation plantings proposed will improve filtration of the stormwater. Mr. McMackin pointed out that the addition

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of impermeable surfaces in the subdivision would potentially increase the runoff rates into the reservoir. Mr. Bjorlin commented the alterations could potentially be more significant if the bogs were abandoned at some point.

After further discussion, a majority of Commissioners concurred that *the project as proposed would not result in a significant alteration of the resource area (reservoir) considering the current lawfully existing use*, Mr. Bjorlin dissenting.

Chessia recommendations

The Commission then discussed recommendations from Mr. Chessia as to special conditions. With respect to Stormwater Performance Standard 1, Chessia recommended conditions to *address possible slope erosion risk in the non-farmed scenario, and require a monitoring and remediation plan*. The Commissioners agreed to these conditions.

With respect to Standard 2, Chessia noted that changes had been made to the calculations since the February 5 Commission, and he recommended that applicant be required to provide the calculations submitted to the Planning Board. He also recommended a condition requiring that *the impervious area on the lots be no more than 15%*, and noted that the Planning Board was likely to impose a similar condition; the Commissioners concurred with both recommendations.

The Commission then discussed recommendations with respect to decommissioning the bogs if needed in the future. Mr. Chessia commented that in his opinion removing one boards at the outlet, as proposed, would turn the bog into a pond rather than a wetland as there would still be several boards remaining, essentially retaining water. The wooden board, would not be stable long term as it would decay. Alternatives were discussed. A suggestion by Mr. McMackin that the HOA be required to fund an engineering study if decommissioning of the bogs was contemplated was not adopted due to concerns about cost and enforceability.

After further discussion, the Commission agreed to conditions that *applicant provide a bond to provide sufficient funds to engineer the bog to naturalize in the event that farming cease; and that the remaining boards in the outlet structure remain in place pending the completion of such engineering*.

Mr. Chessia additionally noted that lots 9, 10, 24, and 25 are proposed to have roof drywell systems, and recommended a condition *allowing the necessary soil testing for the adoption of such systems to be done later at the applicant's risk*; the Commission agreed. Mr. Morse briefly commented that perc tests had been conducted on all the subject lots, and had been witnessed by the Board of Health.

Other recommendations adopted by the Commission as conditions included the following:

- *the Commission be copied on data submitted to the Planning Board noted as updated by Chessia but not submitted to Conservation;*
- *a SWPPP be submitted two months prior to the start of work;*
- *a revised site plan be submitted showing the temporary basins remaining in place until all upgradient work, including single-family homes, is completed;*

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- *the HOA document, SWPPP, and Operations & Maintenance Plan must be approved by the Commission in a public meeting.*

Agent recommended findings

The Commission then reviewed additional findings and conditions recommended by Ms. Hemingway, adopting the following:

- *that the proposed temporary basins and replication and mitigation plans be a part of Phase I, and be constructed and approved prior to any other work on site (the rough cut road may be cut in simultaneously to allow access;*
- *that all the bogs be considered part of the overall project;*
- *that Satsuit Pond existed at the time of adoption of the WPA and is a jurisdictional pond;*
- *that the homes and work associated with the SFH lots as shown on sheets 14-24 of the 34 sheet plan set are not reviewed or approved as part of this OoC, and are there for reference and guidance;*
- *that the 50 ft buffer as it currently exists is degraded from farm use, such that the shift to a conservation grassland management area is a significant improvement;*
- *that bank impacts be addressed in mitigation;*
- *that a 50 ft grassland management buffer be required along the outer edge (based on the toe of the outer slope supporting the basin) of Basin H to be upgradient of any resource area;*
- *that pre and post volume and velocity detail be provided for each culvert point;*
- *that no portion of Phase II or further be released or allowed to commence until the [temporary] basins are shown to function;*
- *that peer review monitoring of the function of the basins [be required] throughout the project;*
- *that release by the Commission of the lots with the temporary sediment basins be required to be obtained prior to transfer of stormwater to the permanent basins;*
- *that lots 14, 15, and 17 may or may not be buildable;*
- *that lot release be limited to no more than three to four at a time, so as to minimize disturbed soils and potential for erosion and sedimentation at any one time;*
- *that an administrative sign-off in relation to stormwater compliance under the bylaw be required for the lots not requiring an NOI or RDA.*

Mr. Chessia also commented that the direction of stormwater mostly to one large basin may not be considered consistent with LID development techniques, but noted that adoption of these techniques was not required at this time under the regulations.

The Commission also agreed to Ms. Hemingway's recommendation to add the following agent comment to the Statement of Reason:

All the homes and most of the grading are outside the 50 foot, most of the road and half the lots are entirely outside the buffer. A 50 foot buffer has been provided along the edge of the bogs and the replication plan, while not containing the evidence that the soils are appropriate does appear to be a good plan that can be field directed and verified with the right peer

review monitor. It makes sense to enhance the buffer and mitigate in the RRA/buffer. There are many positive components to this submittal. That being acknowledged there are several issues related to the proposal to utilize a subdivision to generate water for an agricultural exempt downgradient use. The concept is great out of the box thinking. These crazy storms are dumping significant volumes of water and causing flooding. Finding a way to beneficially redirect this is a great idea. However the creative thinking does not come without regulatory difficulties.

Motion by Mr. Bjorlin to approve the NoI under the Massachusetts WPA with a long-form OoC and conditions as noted in discussion and written by the Conservation Agent as to "Land off Winter Street, Cross Street, and Old Oaken Bucket Road / NCC 12(18) & DEP 52-1138: Infrastructure, Replication, Mitigation, Roadway, Stormwater, Grading for 26 lot subdivision - no SFH lots permitted at this time." Seconded by Mr. Mott and unanimously voted.

Motion by Mr. Bjorlin to approve the NoI under the local bylaw with a long-form OoC and conditions as noted in discussion and written by the Conservation Agent as to "Land off Winter Street, Cross Street, and Old Oaken Bucket Road / NCC 12(18) & DEP 52-1138: Infrastructure, Replication, Mitigation, Roadway, Stormwater, Grading for 26 lot subdivision - no SFH lots permitted at this time." Seconded by Mr. Woodill and unanimously voted.

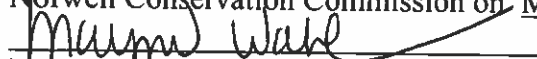
After the vote, Mr. Bjorlin noted for the record that Mr. Kopacz had signed an extension to the deadline for the release of the Order of Conditions to Friday, March 1.

<i>Next Meeting</i>	<i>March 5, 2019</i>
<i>NEW filing applications due date/deadline</i>	<i>February 19, 2019 @ noon</i>
<i>Legal Notice publication date-Patriot Ledger</i>	<i>February 25, 2019</i>
<i>Revised Information submittal deadline</i>	<i>February 26, 2019 @ noon</i>
<i>Peer Review Info Deadline, CoC Requests, Minor Modification & LP Requests</i>	<i>February 26, 2019 @ noon</i>
<i>Public Information Written Comments</i>	<i>No deadline</i>

ADJOURNMENT

There being no further business, a motion was made by Mr. Woodill to adjourn at 10:04 PM. Seconded by Mr. Bjorlin and unanimously voted.

I hereby certify that the above minutes were presented and approved by a majority vote by the Norwell Conservation Commission on March 19, 2019


 Marynel Wahl, Chairperson

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