

Natick Conservation Commission
January 20, 2022

The Meeting was called to order at 7:00 by Chairman, Matthew Gardner. Members present: Doug Shepard, MK Schneeweis, Chris Stillman, Jeff Richards, Mike Downey (7:10pm). Members absent: George Bain.

Public Hearings

Notice of Intent and Major SWP continuation – 233-870 – 89 Union Street

Christopher Cantin received the draft Order of Conditions and Major Stormwater Conditions from Claire this afternoon. Matt Gardner asked if he would like the Commission to hold off on voting until he has time to review. Christopher stated it is okay with him to vote this evening.

Claire walked through the draft Order of Conditions special conditions. Regarding the Eisenmenger Trail, the applicant may have to remove to replace the fence depending on how the final meeting with the Planning Board goes.

Claire requested one copy of the stamped approved plans for the record.

Claire reviewed the Stormwater Permit conditions. Mostly the general conditions. Applicant would be required to come back for any extensions.

Chris is in agreement with the conditions. No further comments.

Matt Gardner asked for a motion to issue the Order of Conditions under the Natick Wetlands bylaw, Doug Shepard moved, MK Schneeweis seconded, all in favor 5-0

Mr. Gardner asked for a roll call vote:

Jeff Richards, yes
MK Schneeweis, yes
Doug Shepard, yes
Chris Stillman, yes
Matt Gardner, yes

Mr. Gardner asked for a motion to issue the Order of Conditions under the stormwater erosion control bylaw, MK Schneeweis moved, Doug Shepard seconded, all in favor, 5-0.

Mr. Gardner asked for a roll call vote:

Jeff Richards, yes
MK Schneeweis, yes
Doug Shepard, yes
Chris Stillman, yes
Matt Gardner, yes

Mike Downey arrived at 7:10 pm

Notice of Intent continuation – 32 Union Street

Applicant requested continuation to February 17th

Mr. Gardner asked for a motion to continue to February 17th, Mike Downey moved, Jeff Richards seconded, all in favor 6-0.

Mr. Gardner asked for a roll call vote:

Mike Downey, yes
Jeff Richards, yes
MK Schneeweis, yes
Chris Stillman, yes
Doug Shepard, yes
Matt Gardner, yes

Order of Conditions Extension – 1 Manor Ave. – DEP #233-814

Mr. Gardner asked for a motion to extend the Order of Conditions to January 20, 2024, MK Schneeweis moved, Jeff Richards seconded, all in favor 6-0.

Mr. Gardner asked for a roll call vote:

Jeff Richards, yes
MK Schneeweis, yes
Doug Shepard, yes
Chris Stillman, yes
Mike Downey, yes
Matt Gardner, yes

Major Stormwater Permit – Windy Lo

Violation and Enforcement – 305, 309, 311 Eliot Street

Claire Rundelli gave update on the project. Applicant completed soil testing, but materials associated with that were recently submitted and have not been reviewed. Testing was witnessed by the Board of Health. Claire visited the site on Tuesday. 318 Eliot Street is concerned with vernal pool. There is an open Enforcement Order for drainage on site. Ben Stevens did submit report as required.

The construction on lot 4 has begun. A building permit was issued, but not the Stormwater Permit from Conservation Commission. Claire discussed with Ben, who was not happy with enforcement order and cease and desist order which required work stop, and erosion controls be reinstalled along the perimeters and around stockpiles. Ben claimed that the existing Land Disturbance Permit gives him approval to start on the house, but Claire noted that the project plans have changed and an amendment would have needed for that to be valid. Ben is allowed to work on the inside of structure, as there is no land disturbance associated with that work. The erosion control needs to be in place by Friday, January 28th. Matt agreed work can continue inside the house.

Claire will drive by in the morning to check the site. She does not feel comfortable issuing permit presently. Matt reviewed Claire's observations from recent site visits.

1. Sediment laden water travelling toward vernal pool area from the site.
2. Claire reviewed overflow pipe and standard pipe.

Water has bypassed the detention basin and pooled in berm. Matt Gardner asked so system did not work and sediment-laden water went toward vernal pool? He stated this is another instance where the stormwater leaving the site in an uncontrolled manner. We keep coming back to this point because things are not working as designed. We need to take some steps, again, to make remedies. He acknowledged that all parties are aggravated.

Claire reviewed the Enforcement Orders conditions.

1. Erosion control is around Lot 4 house.
2. Condition 5 Claire would like to discuss in detail
3. Claire discussed with DEP agent who agreed as well.
4. Ben and DPW will work together.
5. #6 Claire wants to ensure town system is working properly.

Matt stated all non-erosion control related activities shall cease until further notice. There is nothing else in our jurisdiction can happen, until this is met.

Any non-compliance with any of these conditions will result in existing Land Disturbance permit be revoked.

Matt suggests we speak to Town Counsel about the existing performance bond on site. We need this buttoned up. Ben stated that this instance was a mistake. The water leaving the site and pooling on the road pooling was a result of multiple layers of wood chip berms that froze. The water that was freezing on the road was not silty.

Matt Gardner stated this cannot happen again. We have to manage this constant issue of water leaving the site.

Ben feels his basin is doing what it is supposed to do. This only happened because of the warm to cold situation. It is not silt laden water leaving the site. Earlier on, yes, but there is now no evidence of silt. He showed his samples of water. He can only control his site, and he feels that the dirty water came off the driveway at 318 Eliot Street.

Matt stated the site continues to have issues with stormwater running off in an uncontrolled manner. He only interest is that the water is controlled on site. It's a complicated project, crazy weather, but the owner is responsible. We have to zero in and make sure it cannot happen again. It is not out of the realm of possibility the water flows onto the road, freezes and someone driving along skids into a tree. This is all we are going to focus on until it is fixed.

Mike Downey stated due of length of project, a couple key things are on or off target. The original design did not have the proper erosion control and now the same with this house. Why wasn't the

berm included in the temporary erosion control plan completed as part of the sequence with the construction of the house? The other issue is the lack of reporting to the Commission. Claire stated storms have occurred and Ben has submitted reports with photos.

Mike Downey brought up the vernal pool with potential breeding habitat. When do we get to a point to retaking? Whatever impact in that habitat 8-9 months ago, someone has to weigh in if there is a taking and who is responsible. We have not issued fines or shut down the project. This has been going on for a while, maybe two years. Every time something happens, we miss the context. We are always focused on the immediate problem. There will always be weather fluctuations, and he does not feel this is an excuse.

Matt Gardner would suggest the we take the time to solve this issue in the long term. We try to work with people, but we have to draw a line. The public safety is a new component that needs to be addressed. For now, all other permits are put on an immediate pause. Until we get this fixed, the Commission is not interested in taking up any other issues.

Claire continued to edit the actions as the Commission discusses. Matt would like to defer to the professionals on types of erosion controls.

Ben stated the basins were rebuilt in August. He does not have stockpiles on site and will be happy to walk the site with Claire. He is frustrated because this has nothing to do with his property. It is not a siltation or runoff problem. Ben has no issues with Oxbow submitting monthly reports. It is a relatively stable site, and we know the flow patterns and where the water is channeling. We could install more erosion control, but that is not the issue at hand. We rebuilt the basin and it is doing what it is supposed to do. Ben will be happy to bring in any other professional the Commission wants. There is currently a \$75,000 bond on the site.

Ben feels there is now a different mentality from Tow staff. Before Claire arrived, Jim White said to take pictures. There is a little disconnect, there is not a requirement for a Stormwater Permit before getting a building permit. Claire feels there is a lot of missteps, and noted that the bylaw clearly states that no land disturbing activities can occur until a Stormwater Permit is issued if one is needed.

Matt Gardner stated no municipality is perfect and there are often turnovers, and Ben's job is to comply with the law. We have tried to be accommodating and collaborative. We get it, it's a complicated site, but we are upping the ante. Stormwater regulations are not being complied.

Mike Downey feels Ben makes a great point. Municipality inspecting is difficult and turnover makes it harder, but we can at least meet at a place where we can make positive inroads. Again, a detail sequencing and inspected by a third party, so the full burden does not fall on our departments. We need to impose a step-by-step process.

Mike feels this will speak to the longer picture of this project. Mike asked what if the next step is a third party inspects the site and comes to the next meet with a report on site and mitigation. A longer term reports of plans. Would that address the issue? We are tabling to the next project as we clearly need some inspection process. Our capacity is limited to meet some inspection piece.

Matt agreed. A person to say what is installed and on site before a storm. No failure points can reduce risks. We have done everything possible to mitigate these risks.

Chris Stillman asked if Ben went through an engineering assessment as to why it failed, or did he assume it was the woodchips failing? Ben goes to the site all the time and has advice from his engineer. He feels silt goes right through silt socks, so stump grindings seem to be better to catch the sediment. It was working. We should have thought about the warm temperatures turning cold. The chips froze and the water tried to find its way around them and that ended with the water was going where it wasn't supposed to go. Chris stated the water clarity is not an accurate representation of water quality. He asked that turbidity testing be a part of the third party monitoring.

Matt wants the short-term safety issues immediately addressed. Keep Oxbow for an additional assessment of larger impacts.

Claire read the remaining conditions and the Commission made edits.

Mike Downey wants to give identity to the vernal pool. It is a breeding habitat? Would like that to be recognized by the Town.

We have received one NOI and one MSWP for retention basin east of Windy Lo site. We need to open and continue. We will open at next meeting.

Claire will reach out to Ben for an available time for site visits. Ben asked if he can meet next with Claire and Brian Butler, his engineer from Oxbow. He does not see this as an engineering problem, but will be happy to pay for a third party.

Matt Gardner agreed and respects Brian Bulter's input. We can decide later if comfortable with Brian being the SWIPP. Claire will report back to Commission after a site visit with the group.

Mr. Gardner asked for a motion to issue the Amended Enforcement Order condition, Mike Downey moved, Chris Stillman seconded, all in favor 6-0.

Mr. Gardner asked for a roll call vote:

Mike Downey, yes
Chris Stillman, yes
Doug Shepard, yes
MK Schneeweis, yes
Jeff Richards, yes
Matt Gardner, yes

Mr. Gardner asked for a motion to continue to February 3rd, Doug Shepard moved, MK Schneeweis seconded, all in favor 6-0.

Mr. Gardner asked for a roll call vote:

Jeff Richards, yes
MK Schneeweis, yes
Doug Shepard, yes
Chris Stillman, yes
Mike Downey, yes
Matt Gardner, yes

Cluster Project Review – 0 Pleasant Street Cluster

The proposed project is to construct 12 duplex housing units, a total of 6 structures.

Claire received report from Desheng Wang. She went over the summary. Claire reviewed letter to Planning Board from Bill McDowell, Town Engineer, and one from an abutter. Chris D'Antonio opposed the letter and stated that Bill McDowell is not equipped to discuss wetlands. Matt stated it's Bill's opinion. Chris opposed Bill's opinion, as it's not his expertise. Matt disagreed as Bill has much experience working in conjunction with wetland permitting authorities and Matt respects the opinion of colleagues.

Chris would like Dr. Wang's letter read. Dr. Wang discussed his letter regarding the approvability of the project under the local wetlands bylaw and the WPA. The work is within the law in his professional opinion. The project is permissible under the Natick Wetland's Bylaw and the Wetlands Protection Act.

Matt stated there are varying opinions whether inclusionary or traditional subdivisions are feasible for development. The Commission is reviewing this project under the various values outlined in the cluster bylaw. Do we have the information and data to determine that the cluster is superior to either traditional subdivision type proposed?

Matt Gardner stated that he is struggling. He doesn't know if the traditional subdivision is even possible. Matt's opinion is that describing this lot as able to be subdivided into 5-6 parcels is a tough sell. His question would be if the 12-unit cluster be better than a 3-unit traditional subdivision. Matt would prefer 3 single-family houses on the lot then 12-units, but it is up to the Planning Board to make that determination.

The cluster proposal is not a given. The applicant has to convince the Commission this is the right project. It doesn't sit right with Matt. This is a seven-member board and everyone will have a vote.

Doug Shepard agreed that we are not sure if six houses could be built. We can't determine until the Planning Board makes their decision. Matt stated if the 6 were buildable, maybe would be that the cluster is the superior proposal.

MK asked for the bylaw portion what our charge is. She agrees with Doug. We can be less specific, but we have to say one of those options is superior.

Matt feels the list of values Claire provided was helpful. Would the cluster, as proposed, be better than the base case? Would it preserve open space more than a 3- or 6-house development? Would this be better than two base cases. Claire showed the cluster and 6-unit inclusionary plans.

Chris Stillman feels the lower the density the better, and that we don't have enough detail to make a truly informed decision. He feels the cluster is the better choice than 6 houses. MK Schneeweis likes having the area protected under the cluster. Matt agrees a cluster would be preferable than a 6-unit site, but he's not convinced if the 6-unit is permissible.

Chris Stillman is skeptical 6-lots can be permitted as well. Chris D'Antino asked what is it on your end that is skeptical. The applicant delineated it and the vernal pool, and feels with the restrictions the project is feasible. A lot of design and fill issues that make Chris question if it can be built. Dr. Wang provided the details by the town and state bylaw. He spelled it out in his letter.

Claire stated the 6-lot plans do not show design plans. Could you build the project? We have no idea. We are being asked to give an opinion, but there are no details if it could be built. Matt is not convinced. So many unknowns. This level of detail does not provide it. The roadway is not questionable. Is the proposed 6-lot demonstrably better? We don't know. Matt stated the intent of the cluster bylaw is to provide open space on lots where it may have otherwise been lost.

Chris D'Antonio feels he goes above and beyond conservation requirements. He showed a chart comparing the cluster and inclusionary subdivision. Claire noted that the chart is slightly misleading, as it shows no open space being preserved under the traditional/inclusionary subdivision; however, the wetland areas will always remain "open" and total almost 3.5 acres.

Matt stated the Commission's charge is to write an opinion letter to the Planning Board. We have to be accurate represent the opinion of the Commission. Chris has every right to dispute the letter. Chris feels the language about a 3-lot in the letter is misleading. He is not here to propose a 3-lot subdivision.

Claire Rundelli reviewed the letter. Matt read sentence by sentence. Commissioners noted that the letter should be focused on the Commission's purview.

Jeff Richards asked if there is a pathway allowing the applicant to get the inclusionary subdivision permitted. That would give him the confidence to write this letter. He would like more clarity from the Planning Board on what they would like from the Commission. He feels the current language is a bit too specific for the lack detail we have at this time. Claire continued to edit as the Commissioners wordsmith the letter.

Mike Downey stated we have been asked to provide thoughts on these types of conceptual designs in the past in the context of "thank you for that information" rather than "yes/no". He feels it is impossible based on what is in the bylaw to provide a strict clarity on one being better than the other. Jeff feels concerned that we are being backed into a corner of "cluster or clear cutting."

Matt would say the Commission cannot state that the proposed cluster is better for the following reasons:

1. Wetland bylaw
2. Go through cluster values

3. It is dimensionally better and Matt feels, no. We don't know the answer and We don't have the details.

The Commission ran through the cluster bylaw again. MK requested that the vernal pool protection be noted as part of the open space benefit of the cluster proposal, along with the carbon sequestration point brought up at previous meetings. Jeff stated that the cluster would disturb less area as the inclusionary would have 6 foundations dug out, 6 infiltrations areas dug, large change in topography to support road and driveways, so how do you measure the impact of not doing something? Chris agreed that the impact of the cluster is much more compact than the subdivision.

Matt Gardner asked is a cluster appropriate on this lot? It is a tool, not an entitlement. It's shoehorned into an area that is mostly wetland. Jeff said the town seems to give more preferred treatment to clusters, but it does not mean every lot is right for it.

Matt read the revised comments. At the end, Matt would say the opinion is rather than see 3 single family houses on that site. Doug Shepard stated it is not our jurisdiction. Are we going to add a conclusion or let the Planning Board make their own? Commission determined to not put opinion into the letter, and allow the Planning Board to draw their own conclusions based on our review of the facts.

Sona Schuermann, 16 Overbrook Drive, Dover, attended the Open Space Advisory Board. She interpreted what Terri Evans said at that meeting that the Planning Board is expecting the following from the Commission's memo.

1. Can the inclusionary subdivision be built without waivers?
2. Is cluster plan superior on that basis?

Ms. Schermann feels using this bylaw is a loophole.

Hank Bynan clarified that the proposals have to be viable. H feels that if the opinion of the Commission is that there is not enough information to determine if the inclusionary is viable, it means that the discussion of the benefits of the cluster is irrelevant. He feels that the language appears to endorse the cluster when the Commission is still not sure if inclusionary is viable.

Kim Annesi, Esq. would like a 3 house lot subdivision included in the letter. Would a cluster be better than that? She would like the Commission to review all potential methods of site development.

Matt Gardner stated that the Commission is being asked to give an opinion and so if there is some weight carried by those opinions, which is within our right. Mike Downey, we have not been put in the position to give an opinion, but that the facts presented are being represented in this letter. We do not have enough information. Doug Shepard feels we do not have the power or authority to suggest to the Planning Board how many houses should be on a lot.

Mr. Gardner asked for a motion to issue this letter to the Planning Board, Chris Stillman moved, Jeff Richards seconded, all in favor 6-0.

Mr. Gardner asked for a roll call vote:

Jeff Richards, yes
MK Schneeweis, yes
Doug Shepard, yes
Chris Stillman, yes
Mike Downey, yes
Matt Gardner, yes

General Business

Beavers – Claire stated all materials are in google drive for February 3rd meeting.

Chris Stillman – Dam Advisory Committee

Mr. Gardner asked for a motion to appoint Chris Stillman to Charles River Advisory Committee, Jeff Richards moved, Mike Downey seconded, all in favor 6-0.

Mr. Gardner asked for a roll call vote:

Jeff Richards, yes
MK Schneeweis, yes
Doug Shepard, yes
Chris Stillman, yes
Mike Downey, yes
Matt Gardner, yes

Minutes

October 20th
November 10th
November 18th

Mr. Gardner asked for a motion to continue review of these minutes to February 3rd, Jeff Richards moved, Doug Shepard seconded, all in favor 6-0.

Mr. Gardner asked for a roll call vote:

Jeff Richards, yes
MK Schneeweis, yes
Doug Shepard, yes
Chris Stillman, yes
Mike Downey, yes
Matt Gardner, yes

Adjourn at 11:01pm.