

# CONSERVATION COMMISSION MINUTES

Date: February 1, 2018  
Time: 7:01pm  
Place: City Hall, Room 204



**Mayor**  
Ruthanne Fuller

**Director  
Planning &  
Development**  
Barney Heath

**Chief  
Environmental  
Planner**  
Jennifer Steel

**Assistant  
Environmental  
Planner**  
Claire Rundelli

**Conservation  
Commission  
Members**  
Dan Green  
Judy Hepburn  
Susan Lunin  
Norm Richardson  
Ira Wallach  
Jeff Zabel  
Ellen Katz

**Conservation  
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Alternates**  
Kathy Cade

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**With a quorum present**, the meeting opened with Susan Lunin, Vice Chair, presiding  
**Members Present:** Ellen Katz, Judy Hepburn, Jeff Zabel, Kathy Cade (Associate), Norm Richardson, Dan Green (7:19)  
**Staff Present:** Jennifer Steel  
**Members Absent:** Ira Wallach, Chair  
**Members of the Public:** See sign-in sheet

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## DECISIONS

### I. WETLANDS

#### 1. NOI (continued) – 56 Farwell Street – DEP File #239-793

- **Request:** Construct six single-family homes & driveways. Construct private road. Increase flood storage capacity. Implement restoration planting plan along river.
- **Owner:** Turtle Lane, LLC **Applicant:** Stephen Vona (Turtle Lane, LLC) **Rep.:** Joe Porter (VTP Associates) and Corey van Wyhe (MetroWest Engineering, Inc.)
- **Documents Presented:** draft peer review, colored plans outstanding requirements for an OOC to be issued
- **Jurisdiction:** Riverfront Area, Flood Zone, City Flood Ordinance, Bordering Vegetated Wetlands, stormwater standards
- **Presentation and Discussion:**
  - Update:
    - Jennifer Steel met with the applicant's team and Engineering staff on 1/9/18.
    - Applicant developed revised plans and narrative documents.
    - Peer Reviewer, Pat Garner, developed a first complete peer review memo (dated 1/24/18) based on his assessment of plans and documents submitted on 1/16/18.
  - Jennifer Steel ran through a consolidated list of issues and concerns that remain outstanding, summarizing the concerns/interests of the Commission and the demands of the relevant regulations. Joe Porter and Corey van Wyhe responded with where the team stands with regard to each item. It was agreed that this evening issues would be raised and updates given, but details would have to wait for a technical meeting of Conservation staff, Engineering staff, the peer reviewer and the applicant's team. *[A summary of the consensus is recorded in italics after each entry.]*
- 1. **Plan and Document Presentation Throughout** – Every document should have clear attribution, titles, and dates, and reside in complete plan sets. *[Acknowledged.]*
- 2. **Lot Definition.**
  - a. The NOI references the most recent (2016) quitclaim deed for “56 Farwell” (actually “50 Farwell – parcels 1 and 2” and “56 Farwell – parcel 3”) quitclaim deed noting a total of ~103,150 sf.
  - b. “Sheet 1 of 1 – Proposed Riverfront Sketch Plan” states that the lot is 102,726 sf

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- c. All submitted plan sheets show only "Parcels 1 and 2" (i.e., 56 Farwell St.) (totaling ~92,790 sf? 56 Farwell St. is referenced in a 2007 quitclaim deed as having ~92,790 sf)

The boundaries and area of the lot and the date the lot was recorded are central to the Conservation Commission review, so this contradictory information must be sorted out. *[The subject lot is 56 Farwell, with ~102,726 sf. All plans and narratives will be checked for internal consistency.]*

3. **Alternatives Analysis.** *10.58(4) Riverfront Regulations: Performance Standards. Where the presumption set forth in 310 CMR 10.58(3) is not overcome, the applicant shall prove by a preponderance of the evidence that there are no practicable and substantially equivalent economic alternatives to the proposed project with less adverse effects on the interests identified in M.G.L. c.131 § 40 and that the work, including proposed mitigation, will have no significant adverse impact on the riverfront area to protect the interests identified in M.G.L. c. 131 § 40.*

A robust alternatives analysis is critical. There is no description of design alternatives for the stormwater systems (location or design), no mention about the layout of the roadway or the lot configuration, grading, etc.... e.g., pulling the house lots and infiltration systems to be pulled further from the river and flood elevation, eliminating one lot: A bunch of waivers would have to be allowed, although the developer loses a lot he saves on having to build the road he proposed, this is less environmental impact. *[Understood. 6 houses are not guaranteed. Variances may be required for the option with the least adverse impacts. A more robust Alternatives Analysis will be submitted.]*

4. **RFA Calculations/NOI Narrative**

- a. The NOI narrative includes two tables, both of which appear to contradict plan data. *[~22,000 sf were "legally" degraded in 2011.]*
- b. Under a combination of 10.58(4) and 10.58(5) too much degraded area/insufficient restoration and mitigation have been proposed to meet these performance standards. It appears that 6,228 additional sf of degraded area is being proposed; therefore, 12,556 sf of mitigation must be provided. Currently, roughly 4,250 sf of mitigation is being proposed, with an additional 1,000 sf of enhancement. Performance standards must be met (and clearly documented). Conversion of lawn to woods qualifies as mitigation, but improvement of woods through invasive control and added plantings may not qualify as mitigation. Performance standards must be met (and clearly documented).
- c. The restored RFA must be permanently bounded (and visibly "fenced"?) to preclude alteration. *[The applicant team has already been planning an expanded restoration area, adding over 5000 sf of additional reforested area. They will submit a plan that clearly meets or exceeds the minimum performance standards.]*

5. **MWRA permission** has not yet been received. The placement of the road is, obviously, central to this project. From the Conservation Commission perspective, there are two significant issues with the road.

- a. Getting written assurance from MWRA that they will approve a road after the repair has been undertaken.
- b. Seeking input from MWRA on alternatives (that should be presented in a proper Alternatives Analysis) e.g., having the roadway follow the sewer alignment more completely thereby allowing the house lots and infiltration systems to be pulled further from the river and flood elevation.

In my opinion, these issues must be addressed before the Conservation Commission can properly analyze any proposal. *[MWRA tv'd the pipe and found a crack. MWRA must repair the pipe before construction activity can occur on or near the pipe. MWRA is considering what to do and when to do it.]*

6. **21E Determination.** Given that portions of the site have been used as a commercial vehicle storage area for years, the possibility of leaked oil and gas in those areas exists. The applicant should either furnish the Commission with a recent 21E determination, or have a qualified firm conduct one to ensure that the overall site is clean." *[PES has been hired and will submit a report.]*

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7. **Stormwater Standards.** This is not a redevelopment project under SW Standards so it must meet all standards fully. *[Understood by applicant.]*
8. **Insufficient Deep Hole Testing AND Insufficient Proof of Separation From SHGW.** Dates and names/qualifications should be provided. The fact that: (1) standing water was shown as being at or below river level in places and (2) there was no distinction between standing water and ESHGW raised questions. If testing is conducted outside of “high” season, the DEP Stormwater Handbook requires a SHGW adjustment identical to that required by Title 5. *[Joe Porter will schedule a date to locate and dig more test pits with Pat Garner present.]*
9. **Infiltration System Function During Flooding.** These systems may be subject to one to two feet of inundation for lengthy periods, and thus (1) become dysfunctional until soil saturation reverts to normal conditions and (2) may become compromised by prolonged saturation. Stormwater calculations analyzing post-development modulation are predicated on an underlying assumption that the infiltration systems will function at all times as designed. Whether that assumption is accurate during periods of intense flooding appears unlikely--and remains an issue, subject to submission of adequate technical data from the applicant. *[This will be addressed after the new test pit data is gathered and during a technical meeting.]*
10. **Flow Restriction & Scouring/Floodplain Ordinance.** Compensatory flood storage appears to be provided, but there remain concerns about “restriction of flow”, scour, and floodproofing. Piers (rather than walls) would eliminate these concerns. Applicant should examine the potential impacts from scouring on house/basement structures during major storm events, particularly during the 50 and 100-year storms. The velocity (feet per second) for the river should be provided for these events. Additionally, the applicant needs to address the City Floodplain Ordinance requirements of (C)(1), as the basements of houses on Lots 3, 4, 5 and 6 are below the Base Flood Elevation. (Basement of Lot 6 is ~2 feet below Base Flood Elevation so engineering must prove flood-proofing.) *[Steve Poole, engineer with Joe Porter, commented on the limited potential for scour and Joe Porter submitted sketch plans of riprap around foundation walls as protection against scour.]*
11. **Wildlife Habitat Function** is defined in 310 CMR 10.60(2)(e) Riverfront Area as “The topography, soil structure, plant community composition and structure, and hydrologic regime can provide the following important wildlife habitat functions:
  - a. Food, shelter, overwintering and breeding areas for wildlife, including turtle nesting areas, nesting sites for birds which typically reuse specific nesting sites, cavity trees, and isolated depressions that function as vernal pools.
  - b. Migratory areas along the riparian corridor including the movement of wildlife unimpeded by barriers within the riverfront area.

It will be up to the Commission, with the assistance of the peer reviewer, to determine whether the proposal meets the intention of the regulations to protect wildlife habitat function. *[Understood by applicant.]*

12. **Loss of Specimen Trees on Site/Habitat Function.** At least 17 specimen Northern red oaks (36-50” DBH) lie to the southeast of the existing residence (and 80-90 feet southwest and upgradient of the Charles River). All are within the Riverfront Area and in excellent condition. Efforts to save trees were not submitted and the application is silent regarding impacts to habitat. A calculation of total caliper inches to be removed and to be planted, and/or a calculation of aerial extent of existing canopy coverage and proposed canopy coverage should have been provided. *[Understood by applicant.]*
13. **Passageways for Wildlife (and humans).** Of the ~480’ development, there are only two passageways between the houses/retaining walls: one is 15’ wide and one is 20’ wide. Otherwise, wildlife and human access from the roadway side to the river is barred by contiguous houses or retaining walls. *[Acknowledged, but the degraded nature of the proposed upland was also noted.]*

14. **7.5' Pathway Easement.** The path itself appears to be mislabeled as a "15' Wide Pathway". Portions of the path may not be buildable as shown. Applicant should provide a buildable plan for the path that integrates with both site topography and proposed planting. *[This is being addressed in revised plans.]*
15. **Street lighting** may be required by the City and if so, should be shown on the plans. *[Acknowledged by applicant.]*
16. **Snow Storage.** Plans should indicate areas set aside for snow storage. I find no storage areas on the plans submitted. *[Acknowledged. It is anticipated that snow will be plowed to the side of the road.]*
17. **Contour Accuracy.** Additional spot grades should be furnished. Please see attached sketch indicating area of concern within which shots should be added. *[This will be discussed at the technical meeting.]*
18. **Seed Type for Site Stabilization.** Plans do not appear to specify seed mix to be used to minimize erosion. Seed mix in restoration areas along the river should be different than that specified for lawns. Plans should indicate type and quantities. *[Acknowledged by applicant.]*
19. **O&M plan.** The proposed plan puts a lot of burden on the homeowners but there is no documentation regarding a Homeowners Association. The O&M plan should be recorded at the Registry and needs to run with the land, so that when owners change they are aware of the maintenance requirements. According to the O&M, trench drains only need cleaning once a year; they should be cleaned a minimum of twice per year, once in the late fall and once in early spring. Regarding the Open Grass Swale, maintenance responsibility is unclear. The swale is designed to service the entire subdivision yet the property owner of lot 6 will get the brunt of debris and maintenance. This should be the responsibility of the HOA. It would make sense that the applicant develops a HOA and provide at least \$5,000 as seed money for cleaning and inspections. The HOA needs a reporting mechanism to provide written notification of inspections and maintenance record to the Conservation Commission. *[Acknowledged by applicant. The intention is to establish a Home Owners Association. This will be addressed at the technical meeting.]*
20. **Construction Management plan** will be needed e.g., phasing, stockpiling, concrete washout, dewatering, etc. *[Acknowledged by applicant.]*
21. A **SWPPP** will be needed. *[Acknowledged by applicant. It will be pulled from the original application and revised and expanded as needed.]*

- **Public Comment:** The Chair read a list of concerns that had been heard at previous meetings and received in writing. She asked that only new, wetland-protection-act-relevant comments and questions be raised. Paul Malloy read a statement of concerns including concerns about wildlife and the density of planned development. Joanne Polci questioned the statement of the developer that his development would "improve" the site. Josephine Bryant asked whether test pits would accurately reflect the proposed project's ability to accommodate stormwater runoff.
- **Consensus:** The applicant will schedule a technical meeting of Conservation staff, Engineering staff, the peer reviewer and the applicant's team as soon as possible.
- **Consensus:** Continue the hearing to March 15, 2018, to address the outcome of the technical meeting and revised materials.

## 2. COC Request – 250 Waltham St – DEP File #239-719

- **Owner:** Fessenden School **Applicant:** Mike Grossman (Fessenden) **Representative:** Stantec (Bob Corning, Josh Atkinson, and Seth Foster)
- **Documents Presented:** Draft COC, site photos
- **Project:** Reconstruct 3 fields with 2 artificial turf fields with underdrains and 1 natural grass field, install stormwater improvements and detention basins, enhance vegetative buffer between the fields and the perennial stream with numerous native trees and shrubs.
- **Presentation and Discussion:** Construction complied with approved plans, planting survived 88% for 2 years, as-built plans and letter from the engineer have been received.
- **Vote:** to issue a complete COC. [Motion: Judy Hepburn; Second: Ellen Katz; Vote: 6:0:0]

## 3. COC Request – 55 Wayne Road – DEP File #239-652

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- Owner: Mort Fogel Applicant: David Cowell (Hancock Associates) Representative: David Cowell (Hancock Associates)
- Documents Presented: Draft COC, site photos
- Project: The construction of an addition and deck in 200' RFA associated with Sawmill Brook.
- Presentation and Discussion: Construction complied with approved plans and the plans and letter from the engineer have been received. There are two perpetual conditions regarding fertilizer, herbicide, and pesticide use and the perpetual maintenance for the mitigation area.
- Vote: to issue a complete COC. [Motion: Dan Green; Second: Jeff Zabel; Vote: 6:0:0]

#### 4. COC Request – 10 Maynard St – DEP File #239-670

- Owner: Francesco Mercuri Applicant: Brian Callahan Co. Representative: Brian Callahan Co.
- Documents Presented: Draft COC, site photos
- Project: The demolition of a SFH and the construction of a new SFH within the 200' RFA associated with Cheesecake Brook.
- Presentation and Discussion: Construction complied with approved plans and the plans and letter from the engineer have been received. There are two perpetual conditions regarding the perpetual maintenance for the mitigation area and the permanent demarcation of the mitigation area.
- Vote: to issue a complete COC. [Motion: Norm Richardson; Second: Ellen Katz; Vote: 6:0:0]

#### 5. Discussion of Draft Vernal Pool Ordinance

- Project: Vernal Pool Ordinance working group has submitted a draft ordinance for the Commission's consideration.
- Documents Presented: draft ordinance and maps of CVP and PVPs draft ordinance, illustrations
- Presentation and Discussion:
  - Members of the working group discussed the research about biological functions that caused them to arrive at the suggested 100' and 650' associated zones. There was discussion about the extent of those areas, but recognition that the intent of the proposed ordinance is to protect existing natural areas and corridors, and that much of the area within 750' of most vernal pools is already significantly developed/altered and would, therefore, not qualify as protectable critical wildlife habitat.
  - There was discussion about clarifying the intent with a discussion of the overall intent, the broad scope of "ideal" protection, and Newton's focus on protecting the most important habitat areas.
  - It was noted that there are only 4 privately owned vernal pools with high value habitat in Newton.
  - The Commission asked questions about the process of review and approval of a new proposed ordinance. Jennifer Steel will inquire about the most appropriate process (i.e., which City Council subcommittee should review the text first).
  - There was interest in having someone with legal experience review the draft ordinance. A member of the Conservators who is a lawyer might be willing to review the draft text. Working group members will pursue that connection.
  - Beth Wilkinson, President of the Conservators, suggested that Conservators volunteers might be able to help certify some of the potential vernal pools in Newton.
  - Additional Conservators/Conservation Commission coordination was discussed, including land stewardship and CR monitoring.
- Consensus: The working group will continue to work on the draft.

## II. CONSERVATION AREAS – nothing to vote on

### III. ADMINISTRATIVE

#### 6. Discussion of Commission Roles.

- Background
  - All members' terms are current; Dan "expires" 1/2/19. Norm "expires" 7/10/19. Ira, Susan, Judy, Jeff, Ellen, and Kathy all "expire" on 5/31/20.
  - Rules and Regulations of the Conservation Commission (revised Oct 22, 2009): Article 5, Section 1 states that the following roles shall be elected annually: chair, vice-chair, clerk. This reflects practices of good governance, allows members to have a diversity of experiences, and allows members to "train" for other roles with the ConCom or with the City.

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- Volunteer liaisons with other Boards/Commissions (e.g., Commonwealth Golf, Farm, CPC ) should not feel obligated to serve indefinitely, so rotating positions or annual “re-upping” should be institutionalized.
- “Ad hoc working groups” should be routinely discussed (e.g., Schools, Deer Park, Vernal Pool Ordinance, etc.)
- Discussion and Consensus: The Commission came to consensus on the following, but chose to postpone a vote until the current Chair was present.
  - The positions of Chair and Vice-Chair roles are critical and should rotate regularly. The term for each position shall be three years. After a position has been held by one member for a three-year term, that member shall step down from that position for at least one three-year term. The Chair and Vice-Chair shall consult with Staff and interested members to determine the next Vice-Chair (and Chair if necessary). Under normal circumstances, the Vice-Chair shall become the Chair. Terms shall be initiated on (or about) July 1.
  - The position of Clerk is required by the Rules and Regulations.
  - Liaisons to other Commissions (NCGC, Farm, CPC) are required. These positions represent obligations over and above those of membership on the Conservation Commission. Commission members should volunteer based on personal interest and availability. The minimum commitment should be 2 years, but engagement could be indefinite. Annually, all members should be asked to help fill these positions as interest or need dictate.
- 7. Farm Commission.** Jeff Zabel offered to be the Commission’s Liaison to the Farm Commission, relieving Judy Hepburn of a duty she has fulfilled for 10 years!
- 8. Minutes of 1/11/18 to be approved.**
  - Documents Presented: draft minutes draft minutes
  - Vote: Approve the 1/11/18 minutes (with 2 typos corrected). [Motion: Norm Richardson; Second: Jeff Zabel; Vote: 6:0:0]

**IV. ISSUES AROUND TOWN – nothing to vote on**

**UPDATES**

**V. WETLANDS**

- Hammond Brook Culvert Project – the overflow pipe is being removed from the project. Jennifer Steel will issue Administrative Approval for this as a minor plan change.

**VI. CONSERVATION AREAS**

- MBTA did some tree trimming along the Green Line near Houghton Gardens 1/20 and 1/21/18, but no cutting outside the ROW.
- \$75,000 from Kessler Woods development for trail design and installation has been received and deposited.

**VII. ISSUES AROUND TOWN**

- Recreational Trails Grant Application – due to be submitted by 2/15/18
- 2017 Two Bridges Recreational Trails Grant– met with project managers to discuss how the project will impact the regional trail system and trail projects that are currently in the works.
- Needham St Area Visioning Group – 1/22/18 meeting on Environmental Health and Open Space and 1/29/18 meeting on Transportation went well.
- Webster Woods Executive Committee has been established and applications for the Advisory Committee are being accepted.
- MACC AEC Annual Conference is 3/3/18 and registration is now open.
- Mass. Land Conservation Conference is 3/24/18 in Worcester

**VIII. ADMINISTRATIVE MATTERS**

- Jennifer and Clair presented “Conservation Commission 101” to Planning Department staff. They will develop a presentation and document for the Commission.

**OTHER TOPICS NOT REASONABLY ANTICIPATED BY THE CHAIR 48 HOURS BEFORE THE MEETING**

**ADJOURN**

- Vote: Adjourn at 9:58. [Motion: Dan Green; Second: Jeff Zabel; Vote: 6:0:0]

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