



TOWN OF ARLINGTON

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ARLINGTON CONSERVATION COMMISSION

Arlington Conservation Commission
Minutes
October 18, 2018

Mr. Stevens called the meeting to order at 7:32 p.m. in the Main Auditorium on the first floor of the Town Hall. Present were Commission Members Nathaniel Stevens, David White, Charles Tirone, Curt Connors, Pam Heidell, Susan Chapnick, and Mike Nonni; Town Counsel Doug Heim; and Conservation Agent Emily Sullivan. Not present was Associate Commissioner Cathy Garnett. Also present were Adrienne Landry, Lally Stowell, Heijung Kim, Roger Rosen, Wynelle Evans, Patricia Worden, John Worden, Elsie Fiore, Carl Fiore, Peter Fiore, Judith Russo Stickter, Katharine Webster, Jill McArthur, Michael Ruderman, Jim Goldberg, Ali Tretler, Rachel Watsky, Rina Miller, Linda Guttman, Alicia Russell, Jennifer Mansfield, William Stakup, Mary Trudeau, Scott Seaver, Bill Copithorne, Wendy Richter, Laura Leibenspugn, Mara Vatz, Chris Ellinger, Don Seltzer, Lauren Kopans, David Kopans, Jennifer Roderick, Jon Gersh, Victoria Ford, Richard Schneider, Abetta Tibbetts, Christine Lell, Beverly Caderetta, Will Goldsmith, Peggy Fenner, Marion Carroll, Colin Blair, Dan Klebanov, Tom Wilhelm, Pamela Powell, Julie McBride, Sharon Green, George Bell, Allysa Palmer, Peter Musial, Abbi Matheson, Ellen Ladroix, Richard Ladroix, Ben Ferber, Clarissa Rowe, Jo Presth, David Desjardins, Jeannette Cummings, Susan Stamps, Tracey Petryshen, Steve Moore, Elizabeth Pyle, Christine Cronin-Tocci, Matthew Watsky, Sarah Bjorkman, Susanne Swartwout, Kim Carney-Wong, Sharon Lipton, Liza Fredma, Diane Krause, Vincenzo Cotroneo, Fiona Howard, Petar Dimitrova, Maryanna Foskett, and Dolan Schumler.

Administrative

10/04/2018 Minutes

Edits to the draft minutes were discussed, D. White motioned to approve the Minutes as edited, C. Connors seconded, all were in favor, motion approved.

Yard waste dumping and tree cutting along Sickle Brook

D. White reported that there was evidence of yard dumping, tree cutting, and encroachment within Arlington-owned land along Sickle Brook in Lexington. In that area Sickle Brook is enclosed in high stone walls that open up into more natural banks as it approaches Bow Street Lexington. N. Stevens suggested that E. Sullivan draft a letter asking the Select Board to write letter to abutters about not dumping and encroaching on town land. S. Chapnick suggested delineating the area with better signage. C. Tirone expressed support in writing to the Select Board and Town Manager about the issue, and copying the Lexington Conservation Agent on it,

because wetland resource areas are on the property. The letter should alert stakeholders of dumping and yard encroachment, and suggest the installation of a no dumping sign and better delineated boundary within the resource area. Some of these actions will require the permission of the Lexington Conservation Commission to resolve.

14 Reed Street Planting Plan Review

S. Chapnick thought the planting plan was more complicated than necessary. C. Tirone confirmed that the resident was well within her rights to trim the trees and landscape the property as she did in July 2018. S. Chapnick requested that the enforcement order be officially resolved. E. Sullivan will send Letter of Compliance to resident. S. Chapnick recommended that E. Sullivan draft a letter to all Reed Street residents reminding them of the resource area abutting the street and how that impacts property work.

Thorndike Off Leash Recreation Area (OLRA)

E. Sullivan summarized that the Recreation Department is interested in resurfacing or patching the pathway in the Thorndike OLRA. N. Stevens expressed that patching the pathway does not require an NOI or RDA, but that repaving the entire path may require a filing. C. Connors and S. Chapnick recommended using the same porous paving material being used in the Spy Pond Erosion Control and Bank Stabilization Project. The Commission asked E. Sullivan to find out how much area (square footage) of pathway was proposed to be repaved/replaced and to also contact the DPW for their input.

Stormwater Forum and Stormwater Support Program

E. Sullivan summarized the Stormwater Forum held on Tuesday, 10/9/2018. E. Sullivan informed the Commission that Arlington was selected to be part of a Stormwater Support Program facilitated by the U.S. Environmental Protection Agency, Massachusetts Department of Environmental Protection, Consensus Building Institute, UNH Stormwater Center, and Eastern Research Group.

Spy Pond Sand Bar Sediment Sampling

S. Chapnick updated the Commission on the sand bar sampling plan, which will take place on October 24 and 25, 2018.

Community Preservation Committee

C. Tirone summarized that 12 applications were filed for Community Preservation Act funding.

Reservoir Master Plan

D. White summarized the two phases of the Master Plan. Phase 1 is moving forward now which includes the pump house work and a pilot trail improvement project, Funding options are being investigated for phase 2. E. Sullivan walked the project site with the Department of Recreation and the Lexington Conservation Agent to determine permitting procedure for phase 1.

Spy Pond Erosion Control and Slope Stabilization project

E. Sullivan summarized her meeting with Hatch and Chester, the project contractor, and said that permitting was delayed due to finalization of the construction bid documents. The bid documents will be ready by early December, a month behind schedule. Jon Marshall, the Recreation Department Director, has asked Hatch and Chester to produce more detailed engineering plans for the gradient changes of the proposed pathway resurfacing to ensure ADA compliance.

Mystic Riverfront Restoration Project

S. Chapnick updated the Commission on the status of the project. The project working group is coordinating a community planting event for Spring 2019 and is requesting the grant to be extended from December 2018 to May 2019 to accommodate the community event. E. Sullivan will draft a letter to MassDEP with this request.

McClennen Park Detention Basins

S. Chapnick summarized that the detention basin will be sampled in Fall 2018 to assess the impact of iron flocculation. S. Chapnick requested that the Waterbodies Working Group meet in the next week to discuss the sampling plan. The sampling work will cost more than the \$10,000 allocated budget. P. Heidell asked if the sampling consultant had any recommendations for scaling back the cost of the sampling. S. Chapnick will confer with the consultant on altering the sampling and analysis plan.

Notice of Intent (continued from 9/20/2018)- 46 Spy Pond Parkway, Attorney Jim Juliano

The applicant requested a continuance to the 11/1/2018 meeting. C. Connors moved to continue the hearing to the 11/1/2018 Conservation Commission meeting at 7:45pm, C. Tirone seconded, all in favor, motion approved.

Notice of Non-Compliance- 12 Clyde Terrace Planting Plan, Gregory Hochmuth

The applicant requested a continuance to the 11/1/2018 meeting. C. Tirone moved to continue the hearing to the 11/1/2018 Conservation Commission meeting at 8:00pm, D. White seconded, all in favor, motion approved.

Notice of Intent (continued from 10/4/2018): Lots 1/A & 2/B, 47 Spy Pond Lane, Scott Seaver

N. Stevens announced that, since many were present who had an interest in Spy Pond, that the Spy Pond Committee letter requesting an approach to address Spy Pond water quality concerns will be discussed at the 11/15/2018 Conservation Commission meeting. Anyone interested in reading the Spy Pond Committee letter should contact E. Sullivan or the Spy Pond Committee directly.

N. Stevens reviewed the commission meeting and public hearing procedures that would be followed during this hearing on these Notices of Intent (NOIs). N. Stevens reminded the Commission and audience that this proposal is only being reviewed under the Arlington Town Bylaw and the 2015 Arlington Wetlands Regulations, not the State Wetlands Protection Act,

because the Applicant did not apply under the Act since he has already received State Superseding Order of Conditions for his original project (which the commission denied under both the State Wetlands Protection Act and Town Bylaw). N. Stevens also reminded the Commission and audience that the Conservation Commission only has jurisdiction to review the proposal under conservation considerations, not public health, zoning, or other considerations. In the interest of making sure all comments could be heard, N. Stevens asked public comments to be limited to 4 minutes per person, with minimal repeating of the same concerns or comments.

N. Stevens addressed a misconception in many email/written comments that there had been some sort of secret settlement agreement between the Commission and the applicant. The agreement was not secret; the settlement agreement is a public document that pauses the law suit while the applicant files applications for revised projects that he believes the Commission will be more receptive to; the agreement does not guarantee approval. N. Stevens confirmed that the applicant approached the Commission about a settlement.

N. Stevens recognized that there is a public misconception that the 2015 Arlington Wetlands Regulations includes a no build zone. N. Stevens clarified that the Regulations only include a restrictive 100-foot buffer, called the Adjacent Upland Resource Areas (AURA). C. Connors clarified that this proposal will be reviewed under the 2015 Arlington Wetlands Regulations, not the 2018 Arlington Wetlands Regulations.

M. Watsky, the applicant's attorney, began to present the two NOIs. The Commission interrupted the presentation for a short break so that public audience members could come up and take pictures of the Lot 1 (A) and Lot 2 (B) proposed plans if they could not see the plans from their seats.

After the 5 – 7 minute break, M. Watsky resumed his presentation, elaborating on the timeline of the various NOIs since 2016 and the permit received from MassDEP under the State Wetlands Protection Act for the first proposal (that the Commission denied). M. Watsky described the current state of the lot, including a house, long driveway, and permanently degraded condition that reaches to the shoreline. M. Watsky elaborated on the changes in the current NOIs to the previously denied NOIs. The currently proposed house on Lot 1 is set back 68 feet from the shore, compared to the 49.9 feet it was set back in the previous proposal. The currently proposed house on Lot 2 is set back 91 feet from the shore, compared to the 68 feet it was set back in the previous proposal.

M. Trudeau, the applicant's wetland consultant, presented the wetland enhancements included in the current proposals. M. Trudeau reminded the Commission that the buffer zone and Adjacent Upland Resource Area (AURA) in Lot 1 is calculated off of the top of bank. However, the buffer zone and AURA in Lot 2 is calculated off of the location of hydric soils (which marks the edge of bordering vegetated wetland (BVW)), not just the bank location.

M. Trudeau described the re-vegetation plan for 0-25 foot buffer area on both Lot 1 and Lot 2, which is being proposed as a no mow zone, that will be too thick to walk through. The proposed 25-foot enhanced wetland area will be delineated and protected by a non-mortar field stone wall that is 2 feet high. The wall will provide some wildlife habitat and prevent foot-traffic through the naturalized area. M. Trudeau described the proposed path (16 feet total width, including 8 feet of width along the edge of Lot 1 and 8 feet of width along the Lot 2 edge). The proposal includes moving the current dock to the boundary line of proposed Lot 1 and Lot 2, so that each lot will have equal access to the dock via the shared 16-foot-wide pathway.

M. Trudeau described the difficulty of building only one home on the lot due to the sewer line and sewer easement bisecting the property. M. Trudeau discussed the significant cost of moving the sewer line as being approximately \$100,000.

C. Connors requested more information on the existing impervious surface of the current site and particularly within the AURA, compared to impervious surface in the AURA of the proposal.

C. Tirone questioned why this existing one lot was subdivided into two lots. M. Trudeau stated that the Arlington Zoning Bylaw permits this lot to be divided into two lots. M. Trudeau elaborated that this Zoning Bylaw, and not the sewer line, is the reason why the applicant is proposing two lots. C. Tirone inquired about the feasibility of building two homes outside of the 100-foot buffer/AURA on Lot 1 and Lot 2. M. Watsky stated that if the homes were outside of the 100-foot buffer zones then the Conservation Commission would not have jurisdiction to review the proposal, so there would be none of the mitigation being proposed such as the 25 foot buffer zone plantings and stormwater infiltration chambers. C. Tirone elaborated that the Conservation Commission would still have jurisdiction over the landscape and planting plan of a proposal outside the buffer zones. M. Watsky reminded the Commission that its job is to regulate proposed projects within the buffer zones, not push all development outside of the buffer.

S. Chapnick requested elaboration on impervious surface calculations of the current site and the proposed sites, as well as the proposed homes' proximity to the resource area. She and N. Stevens noted the submitted plans were hard to read.

P. Heidell inquired about whether or not the applicant has contacted the MassWildlife Natural Heritage and Endangered Species Program (NHESP) to review the mitigation planting with respect to MESA, since the NHESP's prior review did not include the mitigation planting zone which is within mapped Priority Habitat. S. Seaver assured P. Heidell that he will reach out to NHESP.

N. Stevens reiterated the request that the applicant reach out to MassWildlife's Natural Heritage and Endangered Species Program since the feasibility of the proposed vegetated buffer area is a central component of the project. M. Trudeau confirmed that she will reach out.

Public Comments

Attorney Elizabeth Pyle, representing several abutters, summarized her 10/4/2018 correspondence and response to the proposal. E. Pyle opined that the settlement agreement does not uphold the 2015 Arlington Wetlands Regulations. E. Pyle expressed that the applicant has not hit the threshold for the burden of proof that there are no reasonable alternatives. E. Pyle stated that the Commission needs to consider its previous findings of reasonable alternatives from the 2016 denials. E. Pyle argued that only the Lot 2 house, not the Lot 1 house, is justifiable and feasible under the 2015 Arlington Wetlands Regulations. She maintained that an alternatives analysis should consider alternatives with less encroachment within the AURA.

D. Klebanov provided the Commission with a map and table of comparable property square footage for review. D. Klebanov stated his opinion that the current site driveway is not impervious because it is cracked.

C. Rowe, President of the Arlington Land Trust, expressed concern over how this proposal will impact Elizabeth Island considering climate change implications.

N. Stevens clarified that the ruling of this proposal will not be precedent for future development. The Commission treats each case as a unique case as the facts are never the same in each instance.

D. Heim, Arlington's Town Counsel, confirmed that settlement agreements contain standard language about precedent in each litigation, preventing precedent. D. Heim clarified that future applications and proposals will be reviewed under the 2018 Arlington Wetlands Regulations, not the 2015 Arlington Wetlands Regulations which this case will be reviewed under.

L. Liednesbruger expressed concern over precedent and an increase in property taxes due to development.

K. Webster expressed concern of the condition and odor of Spy Pond. K. Webster expressed that any proposed dock should be free to and accessible by the public.

J. Worden expressed concern over the amount of pressure Arlington is facing from developers to develop. J. Warden compared the pressure the Conservation Commission is facing to the pressure the Historic District Commission is facing.

J. Preston expressed concern over climate change and whether this proposal is considering climate change impacts.

A. Kaan noted how public interest has remained high over the course of this proposal. A. Kaan expressed frustration that this proposal is still active after two denials.

J. Rodesticker expressed concern with water table height in the proposal area and requested that the Commission not protect private profit.

D. R (name not heard) expressed concern over the higher gradient slope of the proposed site compared to neighboring properties and expressed that this prolonged process has resulted in a dilapidated property.

D. Goldsmith criticized the lack of presentation technology at this hearing making it hard to see the proposed plans.

K. Carney expressed concern over possible deceit from the applicant.

P. Powell expressed concern with the proposal.

P. Musial received a quote to move the sewer and claimed the cost was only \$93,000.

A. Russell expressed frustration with the applicant bringing suit to the Commission.

C. Lull expressed concern with the proposal, because she felt it does not address Arlington's housing needs.

J. Gersh expressed concern with the proposal.

R. Rosen expressed that he felt disrespected by the applicant for proposing the proposal.

N. Stevens reminded the audience the 2015 Arlington Wetlands Regulations are blind to the type or use of the structure being proposed in a jurisdictional area.

In response to an audience question, S. Seaver confirmed that he has not purchased the property, but that it is under a purchase and sale agreement.

The Commission requested the following additional information from the applicant:

- (1) The applicant reach out to the MassWildlife to ensure that there are no endangered species within the 100-foot buffer zone and that they are OK with the proposed mitigation planting.
- (2) A cost estimate to relocate the sewer line that bisects the entire lot along the proposed boundary of Lot A and Lot B.
- (3) Clearer plans so that the Commission can determine existing and proposed amounts of impervious surface within the AURA.
- (4) An alternative analysis determining the feasibility of building the Lots 1 and 2 structures outside of the 100-foot buffer zone and also other alternatives that entail less encroachment within the AURA.

Mr. Connors suggested that the Commission review its previous two denials regarding any previous findings related to the sewer line.

Mr. Connors also requested that opponents of the project provide specific information (as opposed to general concerns) regarding any impacts they allege the project will cause to Spy Pond, particularly taking into account (i) the large existing paved area on Lot 1, (ii) the oversized stormwater infiltration chamber and (iii) the proposed 25' planting area.

At the applicant's request, S. Chapnick moved to continue the hearing to the 11/1/2018 meeting at 8:15pm, D. White seconded, all in favor, motion passed.

Meeting adjourned at 10:22pm.

Respectfully submitted,
Emily Sullivan