

**NATURAL RESOURCES COMMISSION**  
**Meeting Minutes**  
**May 13, 2020**

Pursuant to the notice filed with the Town Clerk, a virtual public meeting of the Natural Resources Commission was held on May 13, 2020 at 7:00 p.m, in accordance with the Commonwealth of Massachusetts Executive Order of March 12, 2020 Suspending Certain Provisions of the Open Meeting Law. The following Commissioners were present: Greg Higgins, Chair, Lynn Huggins, Ed Nardi, Nick Pappas, and Judy Zaunbrecher. Natural Resources Director Delia Kaye, Assistant Natural Resources Director Colleen Puzas, and Natural Resources Administrative Assistant Karen Bockoven were also present.

<b>CONTINUANCES</b> <ul style="list-style-type: none"><li>• <b>CONCORD COUNTRY CLUB</b>, 246 Old Road to Nine Acre Corner, NOI</li><li>• <b>CONCORD COUNTRY CLUB</b>, 246 Old Road to Nine Acre Corner, NOI</li></ul>
<b>CLOSE and ISSUE</b> <ul style="list-style-type: none"><li>• <b>BUSHNELL</b>, 1599 Lowell Road</li><li>• <b>ADLER &amp; STERLING</b>, 185 Elsinore Street</li></ul>
<b>CERTIFICATES OF COMPLIANCE</b> <ul style="list-style-type: none"><li>• <b>McCLURE</b>, 21 Riverside Avenue</li></ul>
<b>ADMINISTRATIVE APPROVALS</b> <ul style="list-style-type: none"><li>• <b>JOHNSTONE</b>, 233 Prairie Street, Tree Removal</li><li>• <b>LAX</b>, 261 Park Lane, Patio Replacement</li><li>• <b>PATTERSON</b>, 109 Seymour Street, Tree Removal</li></ul>
<b>OTHER BUSINESS</b> <ul style="list-style-type: none"><li>• <b>GAMBINO</b>, 336 Lexington Road, Review Order of Conditions</li><li>• 1651-1657 Main Street, PRD Recommendation to the ZBA</li></ul>

Chair Higgins called the meeting to order at 7:00 p.m. He stated that the NRC meeting was being audio-recorded and requested that anyone from the public recording the meeting so inform the Commission.

**CONTINUANCES**

**Notice of Intent Application, Gregory Cincotta, Concord Country Club, 246 Old Road to Nine Acre Corner, DEP File #137-1517**

Chair Higgins opened the hearing seeking after-the-fact removal of trees and earthwork disturbance associated with the construction of an irrigation pond within the 200-foot Riverfront Area of Jennie Dugan Brook.

List of plans and documents discussed at this meeting:

- Notice of Intent Application;
- Irrigation Pond Plan prepared by Stamski and McNary, Inc. revised March 18, 2020;
- Letter from McGregor & Legere dated March 9, 2020; and
- Letter from Bernd and Rebecca Comjean dated May 12, 2020.

Commissioner Huggins recused herself because she is a member of the Concord Country Club.

Due to the abrupt termination of the last meeting, Chair Higgins requested that the applicant explain the project in its entirety. Gregory Cincotta, Concord Country Club General Manager, Superintendent Peter Rappoccio, and David Crossman of B&C Associates attended tonight's meeting. Mr. Crossman explained that the Concord Country Club received a violation letter for unauthorized work for tree and earth work removal within the 200-foot Riverfront of Jennie Dugan Brook. Mr. Crossman said this Notice of Intent application is to restore the Riverfront area. They will restore fill and replant areas where vegetation was removed. Mr. Crossman said a planting schematic plan for proposed plantings has been submitted. It will be denser than what was there previously.

Chair Higgins asked how this error occurred in the first place. Mr. Crossman said that at the outset of the project, the contractor had taped off where they thought was outside the Riverfront Area. A few neighbors contacted staff about the work. Director Kaye went to the site and requested the country club to stop all work until work could be properly located in relation to wetland resource areas. Mr. Crossman said he delineated the edge of the wetlands and Riverfront Area. Stamski and McNary then surveyed his flags and it was then determined that work was conducted within the Riverfront Area. A restoration plan was generated based on that information.

Commissioner Zaunbrecher stated that the country club has filed before and asked why they did not realize how close they were to the wetlands. Mr. Crossman said he believes the contractor thought they were outside the resource area based on an inaccurate taping of the area. Gregory Cincotta, General Manager, Concord Country Club, replied that they did reach out to the contractor prior to the work and they felt they were outside the resource area.

Chair Higgins was surprised that no one inquired with the Town given the extensive amount of work being done. Mr. Cincotta said they thought they were 20-30 feet away from the resource area. Mr. Cincotta said that it was not meant as any disrespect to the Town. He explained that they met with Director Kaye about a year ago and discussed putting an irrigation pond in another location. They then decided to look into alternative locations. Director Kaye explained that when she met with Mr. Cincotta last year, she informed him that the country club would have to submit an application for any work within the NRC's jurisdiction. Mr. Cincotta said it was their mistake and they should have confirmed. Commissioner Pappas found it very disappointing that an organization like the Concord Country Club would treat a project of this magnitude without seeking the appropriate approvals first.

Mr. Crossman explained that approximately 4 acres of trees were cleared to install the irrigation pond, which will have an overflow to the west and a pump house to the northwest. The irrigation pond will be lined and fairly deep. The irrigation pond is needed to irrigate the fairways.

Chair Higgins asked if the proposed plan was done previously or prepared because of the violation notice. Mr. Cincotta replied it was a previous plan but modified based on the violation and the order to stop work. They are meeting with the Zoning Board of Appeals tomorrow evening for approval for earth removal in the Groundwater Conservancy District. Chair Higgins asked if the Applicant could quantify impacts to the water table and brook, whether any studies were done, and whether an alternatives analysis was prepared. Mr. Cincotta said they have done test pits and the bottom of the pond is above the water table. The current irrigation system has been there for over 50 years. The new system will be more efficient. It will draw the same amount of water or less, and pump into a holding pond. Mr. Cincotta said they are required to monitor withdrawals on an annual basis and

provide that information to the state. Chair Higgins asked if was the Applicant's intention to fill the pond at relatively the same pace. Mr. Cincotta said their intention is not to draw down.

Peter Rappoccio said that they currently pump from two wells into the irrigation system. The wells are monitored by MassDEP state registration which allows them to pump 25 million gallons over a period of 214 days. They pump on average 120,000 gallons per day, per year. The new holding pond will take water from the wells and transfer to the pond. The demand for water from the wells will not be as great because they will be able to draw from a storage basin. If the pond is full or if there is a drought, they can shut the wells off and use the water from the pond. All of their water usage will be monitored at the new pump house. The old wells are inefficient and individual irrigation heads have better control. The pumps will run less frequently, using less electricity. Less maintenance will be needed for the wells.

Commissioner Zaunbrecher asked if any study been done to determine the environmental impact of water withdrawal on the surrounding wetlands. Mr. Rappoccio replied that he believes it is just for the wells. They do constantly monitor the water level in the wells. They try to water only when absolutely necessary. Commissioner Zaunbraecher said it sounds like there was not a study done on the impact of capturing the surface water that could potentially enter the wetlands. Mr. Cincotta said other sections of the golf course do flow into the brook in multiple locations. Commissioner Zaunbrecher said she is trying to understand if a study was done for this particular location. Mr. Cincotta replied that a study was not done.

Commissioner Pappas commented that it was disappointing not to see any analysis about potential impacts from water not going directly into wetlands through groundwater as is flows today. That would create a significant difference.

Chair Higgins stated that the NRC received a letter dated May 12, 2020 from an abutter who had concerns about work out there now. He suggested that the country club address the neighbor's concerns. Chair Higgins said another letter was received from an attorney on behalf of the abutter dated May 9, 2020. Neither letter was favorable to the Applicant.

Bernd Comjean, 99 Williams Road, asked about the impact on the watershed. The Concord Country Club took steps a number of years ago to get certification from Audubon International. It is a voluntary certification program. It is Mr. Comjean's understanding that Audubon helps identify areas of conservation. Water conservation is one of Audubon's priorities. Mr. Comjean asked if they were consulted for this project given the scope of work and potential impact. Mr. Rappoccio replied that Audubon International was out last July and did a re-certification site visit. The NRC was provided that information in December. Mr. Rappoccio said that the project was discussed as something for the future. The project at that time was discussed conceptually.

Seeing no further public comment, Commissioner Zaunbrecher moved to close the hearing and issue an Order of Conditions for DEP File #137-1517 with Findings A and B, Standard Conditions 1-19, and Special Conditions 20-53 including restoration to be completed by June 1, 2020 and prior existing filings to be closed within six months of issuance of this order. Commissioner Pappas seconded. **VOTE 4-0** by Roll Call Vote: Chair Higgins, Aye, Nardi, Aye, Pappas, Aye, Zaunbrecher, Aye.

### **Special Permit Recommendation to the ZBA.**

Commissioner Zaunbrecher moved to recommend the ZBA direct the Applicant to evaluate additional locations and irrigation system designs including the current design to determine if a less environmentally degrading approach exists for sustainable irrigation at the golf course and that this evaluation include not only usage from the wells but what happens with groundwater flowing into the resource areas. Following this evaluation, the NRC recommends that the ZBA engage a third-party reviewer to evaluate the proposed system and potential impacts on nearby public water supplies, wetlands, and streams, including under scenarios of adverse weather conditions such as summer droughts. Commissioner Nardi seconded. **VOTE 4-0** by Roll Call Vote: Chair Higgins, Aye, Nardi, Aye, Pappas, Aye, Zaunbrecher, Aye.

**Notice of Intent Application, Gregory Cincotta, Concord Country Club, 246 Old Road to Nine Acre Corner, DEP File #137-1520**

Chair Higgins opened the hearing seeking removal of landscaping debris and restoration planting within the 200-foot Riverfront Area of Jennie Dugan Brook and the 100-foot Buffer Zone to Bank and Bordering Vegetated Wetlands.

List of plans and documents discussed at this meeting:

Notice of Intent Application; and

Topographic Plan of Land prepared by Stamski and McNary, Inc. revised April 17, 2020.

Commissioner Huggins recused herself because she is a member of the Concord Country Club.

David Crossman of B&C associates attended tonight's meeting. This filing is a response to violation letter. When Director Kaye and Assistant Director Puzas were reviewing the wetland and Riverfront delineation for the country club's previous project, they observed an area where stockpiling of debris was occurring. Mr. Crossman said they have proposed restoration planting area within the 25-foot NDZ and 50-foot NBZ. Chair Higgins asked if their proposal was to remove the landscaping debris. Mr. Crossman agreed. They will also revegetate from the 50-foot NBZ to the existing tree line. Mr. Crossman said he discussed with Director Kaye the remaining 50-foot area between the two debris piles. They are proposing some additional plantings to provide a visual barrier. Chair Higgins requested Feno markers. Mr. Crossman agreed. Commissioner Zaunbrecher asked if a waiver for work within the 25-NBZ is needed. Director Kaye confirmed a waiver is needed. Mr. Crossman said they will use a small backhoe for the restoration work because the ground is hard packed. There may be some stumps as well. In addition, there are some telephone poles and other old materials, as well as brush and lawn clippings.

Director Kaye said erosion controls need to be noted on the plan. A pre-construction site visit will have to be scheduled. Only surficial materials should be removed.

Mr. Cincotta asked if the restoration of the pond area and the restoration for this filing needs to be completed by June 1<sup>st</sup> of this year. He is concerned that June 1<sup>st</sup> is only two weeks away. Could the NRC give the Applicant more time given the pandemic and trying to get workers? Chair Higgins explained because there was a violation, the Commission would like to get restoration work done as soon as possible. Director Kaye said that from the standpoint of plantings if not done by June 1<sup>st</sup> they might not grow well. The timeframe could be extended to June 7<sup>th</sup> or June 15<sup>th</sup>. Mr. Cincotta said they will do their best to quickly get a contractor and materials. Mr. Crossman suggested removing the debris and getting the area cleaned up in June and possibly planting after Labor Day. There is no irrigation in the area where planting is occurring. They are worried about drought

conditions and the cost for plants. Chair Higgins agreed that he would not want the Applicant to spend money on plants that may not survive.

Bernd Comjean, 99 Williams Road, asked how would this apply to the previous plan for all the restoration of the soil that was removed off site. The soil needs to be returned. Mr. Comjean said he can see from his kitchen window clearly the area that they have been storing brush. It has been accumulating. Mr. Comjean has been neighbors with the country club for 15 years. The country club in the past has always informed them if they were doing work. He understands that the Town is working with the country club to get the best end result. What happens if the country club does not do required work for the previous project by the requested time? Chair Higgins responded that if the Order of Conditions is not complied with then the Applicant will be in violation and further steps would be taken. Chair Higgins clarified that this filing is for an after-the-fact issue and does not have anything to do with the irrigation pond. Director Kaye asked the Commission to confirm that the restoration work for the irrigation pond was to be completed by June 1<sup>st</sup>. The NRC agreed.

Commissioner Zaunbrecher asked if the plantings are not done until after Labor Day should the NRC wait for a 25-foot NBZ waiver and update the special conditions to include installing Feno stakes. Director Kaye explained that the permit could be issued with contingencies that the Feno stakes and waiver need to be submitted tomorrow so the permit can be issued on Friday. Mr. Crossman agreed. Chair Higgins stated for the record that plantings need to be done by October 1<sup>st</sup>.

Commissioner Zaunbrecher moved to close the hearing and issue an Order of Conditions for DEP File #137-1520 pending receipt of a revised plan to demarcate 50-foot NDZ and 25-foot NDZ waiver with Findings A, B, C, and D, Standard Conditions 1-19, and Special Conditions 20-48. Commissioner Pappas seconded. **VOTED 4-0** by Roll Call Vote: Chair Higgins, Aye, Nardi, Aye, Pappas, Aye.

### **CLOSE AND ISSUE PERMITS**

#### **Bushnell, 1599 Lowell Road, DEP File #137-1519**

Chair Higgins reopened the hearing seeking approval to remove existing buildings and fencing, and conduct grading associated with a proposed leaching field within the 100-foot Buffer Zone to Bordering Vegetated Wetlands.

Commissioner Zaunbrecher moved to close the hearing and issue an Order of Conditions for DEP File #137-1519 with Findings A, B, and C, Standard Conditions 1-19, and Special Conditions 20-51. Commissioner Pappas seconded. **VOTED 4-0** by Roll Call Vote: Chair Higgins, Aye, Nardi, Aye, Pappas, Aye. Commissioner Huggins abstained.

#### **Adler & Elizabeth Sterling, 185 Elsinore Street, DEP File #137-1521**

Chair Higgins reopened the hearing seeking approval to construct a new porch and mudroom, replace an existing driveway, and remove an existing dog fence and deck within the 200-foot Riverfront Area to the Assabet River and the 100-foot Buffer Zone to Bank and Bordering Vegetated Wetlands.

Commissioner Zaunbrecher moved to close the hearing and issue an Order of Conditions for DEP File #137-1521 with Findings A, B, C, and D, Standard Conditions 1-19, and Special

Conditions 20-55. Commissioner Pappas seconded. **UNANIMOUSLY VOTED** by Roll Call Vote: Chair Higgins, Aye, Huggins, Aye, Nardi, Aye, Pappas, Aye, Zaunbrecher, Aye.

### **CERTIFICATES OF COMPLIANCE**

#### **McClure, 21 Riverside Avenue, DEP File #137-1047**

Commissioner Zaunbrecher moved to issue a Certificate of Compliance for DEP File #137-1047. Commissioner Huggins seconded. **UNANIMOUSLY VOTED** by Roll Call Vote: Chair Higgins, Aye, Huggins, Aye, Nardi, Aye, Pappas, Aye, Zaunbrecher, Aye.

#### **Administrative Approvals:**

- **Johnstone, 233 Prairie Street, Tree Removal**

Director Kaye said the homeowner would like to remove three large mature hemlocks in the outer Buffer Zone. They are a distance from the house but they are concerned if the trees fell they would cause some damage. The homeowner will replant with native trees.

Commissioner Zaunbrecher moved to issue an Administrative Approval for 233 Prairie Street for tree removal. Commissioner Nardi seconded. **UNANIMOUSLY VOTED** by Roll Call Vote: Chair Higgins, Aye, Huggins, Aye, Nardi, Aye, Pappas, Aye, Zaunbrecher, Aye.

- **Lax, 261 Park Lane, Patio Replacement**

Director Kaye explained that the homeowner has two brick/flagstone patios. One partially within the 25-foot NDZ and the other within the 50-foot NBZ, as well as the 200-foot Riverfront Area and the 100-year floodplain. The homeowner would like to replace the flagstones by hand.

Commissioner Zaunbrecher moved to issue an Administrative Approval for 261 Park Lane for patio replacement. Commissioner Huggins seconded. **UNANIMOUSLY VOTED** by Roll Call Vote: Chair Higgins, Aye, Huggins, Aye, Nardi, Aye, Pappas, Aye, Zaunbrecher, Aye.

- **Patterson, 109 Seymour Street, Tree Removal**

Director Kaye said there is an oak tree hanging over the house within 100 feet of White Pond. The contractor will climb the tree to cut and remove. The stump will remain.

Commissioner Zaunbrecher moved to issue an Administrative Approval for 109 Seymour Street for tree removal. Commissioner Huggins seconded. **UNANIMOUSLY VOTED** by Roll Call Vote: Chair Higgins, Aye, Huggins, Aye, Nardi, Aye, Pappas, Aye, Zaunbrecher, Aye.

### **OTHER BUSINESS**

#### **Gambino, 336 Lexington Road, Review Order of Conditions**

Chair Higgins reminded the Commission that per Mr. Gambino's request, the previously issued Order of Conditions will be discussed because Mr. Gambino would like the NRC to reconsider some of the conditions.

Peter Gambino of 336 Lexington Road attended tonight's meeting. Mr. Gambino said the construction of the pool is by right. All the hardscape proposed will be outside the 50-foot NBZ. Only a portion of the fence (20 s.f.) will be within the 50-foot NBZ. After reviewing the special conditions after the NRC voted on his Order, Mr. Gambino was surprised by some of the required conditions. Special Condition #43 stated that no underground sprinkler system shall be installed within the 100-foot Buffer Zone. Mr. Gambino explained that there is an existing sprinkler system all around the house that would have to be removed. Previously the entire field was mowed twice a year. Mr. Gambino only mowed once last year. He does not want this condition recorded and part of his deed.

Mr. Gambino also requested that the as-built plan condition be removed. Chair Higgins believes Mr. Gambino will have to do an as-built plan for the pool. Mr. Gambino replied that he was informed by the Building Department that he may only have to submit simple plot plan.

Mr. Gambino said Condition #42 formerly Condition #43 refers to sprinkler systems. He would like condition removed. He explained that there is an existing sprinkler system on his property. They will not be removing it. They only need to modify the valve box near the shallow end of the pool. The sprinkler heads in lawn are not changing. Chair Higgins said the plan did not show any sprinkler heads and they are considered a structure. He suggested that a surveyor shoot a line when they survey pool to show where existing sprinkler heads are near the resource area. Director Kaye felt the original language condition should remain. She explained that it is not difficult to as-built the sprinkler heads. Mr. Gambino agreed and stated that he would have surveyor shoot line for 50-foot NBZ in the back and side of house to determine location of sprinkler heads.

Chair Higgins noted for the record that Mr. Gambino will be providing extensive restoration for this project.

Commissioner Huggins explained that proposing work within the 50-foot NBZ triggers a full site review by the NRC. It is standard for the Commission to request a once a year mow for a resource area. Commissioner Huggins is reluctant to remove that language. The NRC agreed.

There were no public comments.

Commissioner Zaunbrecher Judy moved to approve the Order of Conditions for DEP File #137-1515, as amended. Commissioner Huggins seconded. **UNANIMOUSLY VOTED** by Roll Call Vote: Chair Higgins, Aye, Huggins, Aye, Nardi, Aye, Pappas, Aye, Zaunbrecher, Aye.

### **1651-1657 Main Street, PRD Recommendation to the ZBA**

Chair Higgins recused himself. He stated that he had had previous discussions regarding real estate with the Petitioner. Commissioner Huggins was asked to chair the remainder of the meeting and Chair Higgins left the meeting.

Dan Gainsboro of NOW Communities attended tonight's meeting. Mr. Gainsboro said they are looking at creating a new community on three individual parcels that total under 4 ¾ acres, similar to the adjacent Riverwalk community. Six homes will be built on the upper court and eight on the lower court. The pavement and parking will be limited. They will be sharing a driveway with Riverwalk which they will slightly modify to straddle the property line, which will improve emergency vehicle access. They would like to incorporate public access into the new sidewalk. Mr.

Gainsboro is working with Town Planner Elizabeth Hughes to create “traffic calming” and a place for the public to park during the day for the trails. The plan is to extend the network of trails at the river access. They have had conversations with Westvale Meadows about possibly extending the trail network onto their property as well. All construction is proposed outside resource areas. Mr. Gainsboro stated that the Conservation Restriction (CR) will be transferred to the NRC.

Commissioner Zaunbrecher asked if the trail network would be able to connect to Cousins. Mr. Gainsboro replied that the residents of Prairie Street have expressed an interest. Director Kaye said there are two private parcels in between Cousins and Riverwalk and easements would be needed. The Westvale Meadow CR was written to allow a trail from the public parking spaces along the Assabet River to Westvale Meadow eastern property line with the intention of future trail connections. Director Kaye said it was nice to see that more trails are being created.

Nancy Nelson of 1695 Lowell Road said she was interested in following this project because of the landscape implications to the river. She is also a member of the Historical Commission. Mr. Gainsboro said that someone told him that the oldest oak tree in Concord was on the back end of this property. Ms. Nelson was aware. She will contact Mr. Gainsboro to discuss further.

Commissioner Zaunbrecher moved to recommend approval of 1651-1657 Main Street PRD to the ZBA with the following conditions: 1) Agreement from the developer to establish a river trail in coordination with the Natural Resources Director, along the southern property boundary, to connect to the east and west property boundaries; 2) To place a Conservation Restriction on the 2.99-acre common space for conservation purposes, to be held by the Natural Resources Commission; and 3) To bound the limits of the Conservation Restriction in a manner acceptable to the Natural Resources Director. Commissioner Nardi seconded. **VOTED 4-0** by Roll Call Vote: Huggins, Aye, Nardi, Aye, Pappas, Aye, Zaunbrecher, Aye.

Commissioner Pappas moved to adjourn. Commissioner Nardi seconded. All so voted. This meeting adjourned at 8:52 pm. **UNANIMOUSLY VOTED** by Roll Call Vote: Acting Chair Huggins, Aye, Nardi, Aye, Pappas, Aye, Zaunbrecher, Aye.

Respectfully submitted,

Karen Bockoven  
Administrative Assistant