

NATURAL RESOURCES COMMISSION
Meeting Minutes
June 2, 2021

Pursuant to the notice filed with the Town Clerk, a virtual public meeting of the Natural Resources Commission was held on Wednesday, June 2, 2021 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: Ed Nardi, Chair, Sarah Grimwood, Greg Higgins, Nick Pappas, and Gary Kleiman. Natural Resources Director Delia Kaye, Assistant Natural Resources Director Colleen Puzas, and Natural Resources Administrative Assistant Karen Bockoven were also present.

DIRECTOR'S UPDATE
TO BE OPENED AND CONTINUED WITHOUT DISCUSSION TO JUNE 16, 2021 <ul style="list-style-type: none"> • TOWN OF CONCORD, Bruce Freeman Rail Trail Phase 2C, NOI • HERCHEK, 13 Garland Road, NOI
TO BE CONTINUED WITHOUT DISCUSSION TO JUNE 16, 2021 <ul style="list-style-type: none"> • TOWN OF CONCORD, 90Y Plainfield Road, NOI • SHAW, 43 Old Bedford Road, NOI • MINER, 399 Lowell Road, Amended NOI • CONCORD CHILDREN' CENTER, 250 Old Bedford Road, NOI
TO BE CONTINUED WITHOUT DISCUSSION TO JULY 7, 2021 <ul style="list-style-type: none"> • GOMES, 1597 Monument Street, NOI
CONTINUANCES <ul style="list-style-type: none"> • MACH, 455 Bedford Street, NOI
NEW APPLICATIONS <ul style="list-style-type: none"> • WALLER, 558 Cambridge Turnpike, RDA • BENTLEY BUILDING CORP., 5A, 5B, and 31 Sunnyside Lane, and 43 Pond St., ANRAD
EXTENSION REQUESTS <ul style="list-style-type: none"> • NASHAWTUC COUNTRY CLUB, 1861 Sudbury Road
OTHER BUSINESS <ul style="list-style-type: none"> • 50-foot No Build Policy Discussion
ADMINISTRATIVE APPROVALS <ul style="list-style-type: none"> • XU, 128 Lee Drive, Tree Removal • PUTNAM, 111 Hayward Mill Road, Tree Removal • BECTON, 9 Musketaquid Road, Tree Removal • TOWN OF CONCORD, 90Y Plainfield Road, Tree Removal

Chair Nardi 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.

DIRECTOR'S UPDATE

- The RFP for Warner's Pond Permitting and Design is going out this week with bids due by June 30th. The goal is to have the permit process completed within a year.

- In response to the Governor's order of May 28, 2021 ending the state of emergency and requiring boards and committees to return to open meetings by June 16, the Town is working on developing a hybrid meeting model. The goal is to have a plan in place to allow the June 16th NRC meeting to proceed as a hybrid in-person/virtual meeting.
- Town offices are anticipated to open to the public on June 14th, with public office hours from 9:00 am to 3:00 pm from Monday to Thursday and closed on Fridays, and by appointment.
- The Punkatasset trails around Hutchins Pond are flooded; corrective action will be taken once the downstream Monument Street culvert replacement project requires less pumping of the impoundment.

TO BE OPENED AND CONTINUED TO JUNE 16, 2021

Notice of Intent, Town of Concord, Bruce Freeman Rail Trail Phase 2C, DEP File #137-1564

Chair Nardi opened the hearing seeking approval to construct a 0.5-mile, 10-foot wide paved asphalt multi-use trail with dense graded crushed stone shoulders, trail pavement markings and signage, stormwater and drainage improvements, earthwork, landscaping, and other items incidental to construction of the rail trail extending from Powder Mill Road to the Sudbury town line within Certified Vernal Pool Habitat and the 100-foot Buffer Zone to Bank and Bordering Vegetated Wetlands.

Director Kaye explained that the Concord Journal did not post the legal notice for the Bruce Freeman Rail Trail improvements project, so the hearing cannot be opened tonight, and will be heard at the June 16 meeting.

At the request of the Applicant, Commissioner Pappas moved to continue the hearing to June 16, 2021. Commissioner Higgins seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Grimwood, Aye, Higgins, Aye, Pappas, Aye, Kleiman, Aye, Nardi, Aye.

Notice of Intent, Herchek, 13 Garland Road, DEP File #137-1565

Chair Nardi opened the hearing seeking approval to remove an existing shed and construct a detached garage with associated paved driveway within the 100-foot Buffer Zone to Bordering Vegetated Wetlands.

At the request of the Applicant, Commissioner Pappas moved to continue the hearing to June 16, 2021. Commissioner Higgins seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Grimwood, Aye, Higgins, Aye, Pappas, Aye, Kleiman, Aye, Nardi, Aye.

TO BE CONTINUED TO JUNE 16, 2021

Notice of Intent, Town of Concord, 90Y Plainfield Road, DEP File #137-1559

Chair Nardi reopened the hearing seeking approval to improve the vehicular access and boat ramp, construct ADA compliant picnic areas and walkways, and install a new stormwater management system within the 100-foot Buffer Zone to Bank and Bordering Vegetated Wetlands.

At the request of the Applicant, Commissioner Pappas moved to continue the hearing to June 16, 2021. Commissioner Higgins seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Grimwood, Aye, Higgins, Aye, Pappas, Aye, Kleiman, Aye, Nardi, Aye.

Notice of Intent, Shaw, 43 Old Bedford Road, DEP File #137-1504

Chair Nardi reopened the hearing seeking approval to construct a garage within the 100-foot Buffer Zone to Bank and Bordering Vegetated Wetlands.

At the request of the Applicant, Commissioner Pappas moved to continue the hearing to June 16, 2021. Commissioner Higgins seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Grimwood, Aye, Higgins, Aye, Pappas, Aye, Kleiman, Aye, Nardi, Aye.

Amended Notice of Intent, Miner, 399 Lowell Road, DEP File #137-1546

Chair Nardi reopened the hearing seeking approval to remove trees and conduct invasive species removal and management within the 100-foot Buffer Zone to Bordering Vegetated Wetlands.

At the request of the Applicant, Commissioner Pappas moved to continue the hearing to June 16, 2021. Commissioner Higgins seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Grimwood, Aye, Higgins, Aye, Pappas, Aye, Kleiman, Aye, Nardi, Aye.

Notice of Intent, Concord Children's Center, 250 Old Bedford Road, DEP File #137-1562

Chair Nardi reopened the hearing seeking approval to construct a two-story building, parking lot, deck, fence, paved sidewalks, and hardscape within the 100-foot Buffer Zone to Bordering Vegetated Wetlands.

At the request of the Applicant, Commissioner Pappas moved to continue the hearing to June 16, 2021. Commissioner Higgins seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Grimwood, Aye, Higgins, Aye, Pappas, Aye, Kleiman, Aye, Nardi, Aye.

TO BE CONTINUED TO JULY 7, 2021

Notice of Intent, Gomes, 1597 Monument Street, DEP File #137-1558

The Applicant is seeking approval to construct new deck with a pool spa within the 100-foot Buffer Zone to Bordering Vegetated Wetlands.

At the request of the Applicant, Commissioner Pappas moved to continue the hearing to July 7, 2021. Commissioner Higgins seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Grimwood, Aye, Higgins, Aye, Pappas, Aye, Kleiman, Aye, Nardi, Aye.

CONTINUANCES

Notice of Intent, Mach, 455 Bedford Street, DEP File #137-1561

Chair Nardi reopened the hearing seeking approval to install a swimming pool, replace an existing patio and retaining wall, and conduct vegetation removal and management within the 100-foot Buffer Zone to Bordering Vegetated Wetlands.

List of plans and documents discussed at this meeting:

- Proposal for New Pool and Driveway Plan prepared by Kristan First Landscape Design dated May 20, 2021.

Kristan First of Kristan First Landscape Design attended tonight's meeting. She informed the Commission that she moved the the pool and patio outside the 50-foot NBZ as much as possible. As the NRC suggested, she measured the distances from the existing structures to the resource area. The distance from the corner of the garage is approximately 45 feet away. The distance from the stone wall is 40 feet away. The existing driveway edge is 33 feet. The existing retaining wall is 23 feet from the resource area. She used the furthest distance (45 feet) as her starting point. Ms. First said she tried to reduce the size of the driveway. She learned that there is a drain inlet on Bedford Street with a large curve and was told by the Town's Engineering Department that the curve cannot be touched, which limits how far the driveway can be moved. The driveway is currently partially over the septic leaching field. Ms. First discussed this with the Health Department and they said this type of septic system can have a driveway over it. She explained that the driveway will be 12 feet away from the pool, which has been reduced from 38 feet to 35 feet. The amount of impervious surface in the 50-foot NBZ has been reduced from 146 sf to 72 sf. The length of the existing retaining wall has also been reduced. Ms. First noted that the pool structure is 52 feet from the wetlands, the corner of patio is 45 feet from the wetlands, and the steps are 40 feet away. She explained that in order for them to be able to move forward with the project as currently proposed, the parking area needs to be closer to the wetlands for a car to turn around, since it is unsafe to back out onto Bedford Street.

Chair Nardi requested that the unapproved deck that was built by a previous homeowner be noted on the plan to capture for the record. Ms. First said she included in her calculations total existing structures which includes the patio. Commissioner Higgins suggesting noting on the plan the existing patio and label accordingly. Commissioner Kleiman requested that the closest point to the wetlands for the unpermitted patio should also be noted. Chair Nardi asked that the square footage for the stair treads in the 50-foot NBZ be calculated. Ms. First replied that she has included that. Director Kaye said all calculations should be itemized.

There were no public comments.

The Applicant agreed to continue the hearing to June 16, 2021 to allow additional information to be provided.

NEW APPLICATIONS

Request for Determination of Applicability, Waller, 558 Cambridge Turnpike, RDA File #21-10

Chair Nardi opened the meeting seeking approval to install a basement level patio, raised patio, shed, and landscape plantings within the 100-foot Buffer Zone to Bordering Vegetated Wetlands.

List of plans and documents discussed at this meeting:

- Request for Determination of Applicability Application;
- Proposed Site Plan prepared by Perley Engineering LLC dated April 30, 2021; and
- Landscape Plan prepared by Land Design Associates Inc. revised May 26, 2021.

Commissioner Higgins recused himself because he had been involved with the sale of this property.

Kyle Cormier of Oxbow Associates attended tonight's meeting. Mr. Cormier explained that the homeowner would like to construct a new patio and shed in the rear of house, and install native plantings sitewide. All structures will be outside the 50-foot NBZ. Plant beds will have mulch to prevent any invasives from spreading. All disturbed areas will be loamed and seeded. Mr. Cormier explained that originally they were proposing 66 lights, however, they are now proposing 49 lights. Only 22 lights are within the 100-foot BZ. No path lights are being proposed so wildlife is not disturbed. Mr. Cormier explained that the lighting will be low wattage LED bulbs. Director Kaye recommended wildlife-friendly lighting be included as a special condition.

Chair Nardi said all stockpiling needs to be outside the 100-foot NBZ.

There were no public comments.

Commissioner Pappas moved to issue a Negative Determination #3 with the following conditions: 1) A staked straw wattle shall be placed at the limits of disturbance; 2) Stockpiling shall occur outside the 100-foot Buffer Zone; 3) A pre-construction site visit shall be held with DNR staff and the Contractor to review the erosion controls and limits of work; 4) After the project has been completed, the Applicant shall submit a letter to the NRC stating that all work has been conducted in accordance with all conditions of this Determination of Applicability. Any changes from the RDA shall be described; 5) Outdoor lighting fixtures shall be installed with dark sky, wildlife-friendly amber bulbs. Commissioner Grimwood seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Grimwood, Aye, Higgins, Aye, Pappas, Aye, Kleiman, Aye, Nardi, Aye.

Abbreviated Notice of Resource Area Delineation, Bentley Building Corp., 5A, 5B, and 31 Sunnyside Lane, and 43 Pond Street, DEP File #137-1566

Chair Nardi opened the hearing seeking confirmation by the Natural Resources Commission of the Bordering Vegetated Wetlands delineation and Bordering Land Subject to Flooding elevation.

List of plans and documents discussed at this meeting:

- Abbreviated Notice of Resource Area Delineation Application; and
- Resource Area Delineation Plan prepared by Stamski and McNary, Inc. dated May 12, 2021.

Nathanial Cataldo of Stamski and McNary attended tonight's meeting. Mr. Cataldo said they are trying to confirm two resources areas (Bordering Vegetated Wetlands and Bordering Land Subject to Flooding). He explained that the BVW starts at the west side of 31 Sunnyside Lane and continues north to the side of 5A Sunnyside and east ending north of 43 Pond Street. The NRC did not have any questions or comments.

There were no public comments.

The Applicant agreed to continue the hearing to June 16, 2021 pending issuance of a DEP number.

EXTENSION REQUEST

Nashawtuc Country Club, 1861 Sudbury Road, DEP File #137-1442

The project renovation of tees and greens, modifications to existing bunkers, construction of new bunkers, and installation of a replacement irrigation system within Bordering Land Subject to Flooding, the 200-foot Riverfront Area to the Sudbury River and the 100-foot Buffer Zone to Bank and Bordering Vegetated Wetlands.

Michael Toohill of BSC Group and Superintendent Troy Noble of Nashawtuc Country Club attended tonight's meeting. Mr. Toohill explained that the Order of Conditions issued in 2018 will be expiring this September. Mr. Toohill said work stopped because of the pandemic. He said a lot of work has already been done, however, tees still need to be renovated. They plan on doing the remaining work soon but are requesting a two-year extension to be safe.

There were no public comments.

Commissioner Higgins moved to approve a two-year Extension Permit for the Order of Conditions DEP File #137-1442. Commissioner Pappas seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Grimwood, Aye, Higgins, Aye, Pappas, Aye, Kleiman, Aye, Nardi, Aye.

OTHER BUSINESS

50-foot No Build Policy Discussion

Chair Nardi asked the NRC to consider whether or not the 50-foot No Build Policy should be a regulation. Chair Nardi asked staff to check and see how many projects over the past several years have been presented to the Commission. He said the NRC may decide to keep as a policy.

Director Kaye said that some of the revisions include whether or not fences should be considered structures. She explained that a number of applications that are received are for fences. She believes that if a fence is raised six inches off the ground and 25 feet away from the wetlands there is no adverse effect to the wetlands. Director Kaye said it would be helpful to tie the 50-foot No Build Policy to issuance of building permits as much as possible. Commissioner Grimwood asked if a style of fence is ever a problem. Director Kaye replied usually not, as long as the fence is raised off the ground. Commissioner Pappas asked if concrete footings are allowed. Commissioner Higgins asked if there would be a fence height requirement. Chair Nardi said that would be a zoning issue. Director Kaye said there may be times that the 6-inch height from the ground cannot be met, e.g. a fence for a pool.

Director Kaye commented that structural walls that are 10 feet high may be problematic in the 50-foot NBZ, but a 3-foot high landscape wall would not be, especially if it is already in a disturbed area or on an existing lawn. She would like to have the policy be consistent with the building code, in this instance issuance of a building permit for 4-foot or higher structural walls. Commissioner Higgins suggested that the NRC require that walls not exceed a certain size. The NRC would not want a wall to go lot line to lot line. Chair Nardi said the NRC may want to say permission will be given on a case-by-case basis. Commissioner Grimwood said the Commission may want to include fences and patios. Commissioner Pappas said guidance should be provided to Applicants. Chair Nardi said lawns versus wooded areas should also be a consideration. Commissioner Pappas asked for clarification regarding the sentence "structures are further defined as" since he was not sure what that meant and how it relates to the previous sentence. Director Kaye said she would come up with some language that would provide guidance for stonewalls, fences, and patios and would explain why they would be handled case-by-case. Director Kaye suggested a house would be considered a principle structure, however, what if there is more than one structure. A retaining wall is not considered a principle structure. Chair Nardi said the point from where you are measuring could be defined as an occupiable structure. Director Kaye asked about driveway expansion. Commissioner Kleiman said it could depend if someone is reducing the amount of impervious

surface. Commissioner Higgins commented that grading is also a factor. Commissioner Director Kaye said the Commission may not want to get too prescriptive in order to have more flexibility.

Commission Higgins moved to amend the 50-foot No Build Policy as discussed this evening. Commissioner Pappas seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Grimwood, Aye, Higgins, Aye, Pappas, Aye, Kleiman, Aye, Nardi, Aye.

Administrative Approvals:

- **Xu, 128 Lee Drive, Tree Removal**
Director Kaye said there is a silver maple tree near the river that is leaning towards the house. The homeowner would like to remove. Approval was granted.
- **Putnam, 111 Hayward Mill Road, Tree Removal**
Director Kaye said the homeowner would like to remove a pine tree. Approval was granted.
- **Becton, 9 Musketaquid Road, Tree Removal**
Director Kaye said the homeowner would like to remove a river birch tree. The homeowner is willing to remove some yellow iris as mitigation. Approval was granted.
- **Town of Concord, 90Y Plainfield Road, Tree Removal**
Director Kaye said there are two oak trees at White Pond that are safety hazards that the Facilities Department has removed. They will plant two high bush blueberry and two summersweet as mitigation. Approval was granted.

Commissioner Kleiman moved to adjourn. Commissioner Higgins seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Grimwood, Aye, Higgins, Aye, Pappas, Aye, Kleiman, Aye, Nardi, Aye.

This meeting adjourned at 8:11 pm.

Respectfully submitted,

Karen Bockoven
Administrative Assistant