



TOWN of WILMINGTON

DEPARTMENT OF PLANNING & CONSERVATION

121 GLEN ROAD, WILMINGTON, MA 01887 www.wilmingtonma.gov (978) 658-8238

CONSERVATION COMMISSION MINUTES

June 25, 2020

Donald Pearson called the meeting to order at 7:10 pm and stated the following:

"Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L.c. 30A, §18, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place. **No in-person attendance of members of the public will be permitted**, but every effort will be made to ensure that the public can adequately access the proceedings in real time, via technological means. Members of the public who would like to listen to this meeting while in progress may also do so via telephone by dialing 1-646-558-8656 and enter meeting ID 815-6368-8711 then press # and press # again at the next voice prompt. Members of the public attending this meeting virtually will be allowed to make comments if they wish to do so, during the portion of the hearing designated for public comment, by following the steps previously noted then press *9 on their telephone keypad. This will notify the meeting host that the caller wishes to speak. All callers using this feature will be placed in queue in the order they entered the prompt. In the event that despite our best efforts, we are not able to provide for real-time access, we will post a record of this meeting on the Town's website as soon as we are able."

The following members were in attendance: Donald Pearson, Theron Bradley, Laura deWahl, Vincent Licciardi, and Thomas Ollila. Alexander Rittershaus and Michael McInnis were absent. Valerie Gingrich, Director of Planning and Conservation and Catherine Pepe, Senior Clerk of Planning & Conservation were also present.

CONTINUED PUBLIC HEARING - ABBREVIATED NOTICE OF RESOURCE AREA DELINEATION

378-384 Middlesex Avenue and 200 Jefferson Road – Map 89 Parcels 7, 8, 8A, 9, 10, 13A & 13B – DEP File #344-1463

Documents: Letter from Suzanne Sullivan & Martha Stevenson, Headwaters Stream Team, dated June 2, 2020
 Letter from Keith Hannon from BSC Group, dated June 13, 2020
 Letter from Keith Hannon from BSC Group, dated June 15, 2020
 "Partial Existing Conditions Plan of Land in Wilmington, MA", 2 pages, dated June 19, 2020
 Letter from Joseph Peznola & David Cowell, Hancock Associates, dated June 24, 2020
 "Sketch Plan – Progress 2020-03-23", dated March 23, 2020
 "ANRAD" Plan, 3 pages, dated September 5, 2002

Present in Interest: David Cowell, Hancock Associates
 Joseph Peznola, Hancock Associates
 Dan Endyke, Princeton Properties

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 TOWN OF WILMINGTON, MA

Andrew Chabin, Princeton Development, LLC
Keith Hannon, BSC Group (peer reviewer)
Jeff Brown, Princeton Development, LLC
Alex Weisheit, KP Law (Town Counsel)

J. Peznola reviewed Hancock Associates' responses to BSC Group's letter of June 15, 2020 as follows:

Comment #1 – Hancock Associates agrees with BSC Group comments that the A series and B series wetland flags seem to be in order.

Comment #2 – J. Peznola state that both Hancock Associates and BSC Group agree that the A and B series flags delineate the Bordering Vegetated Wetlands (BVW), the Bordering Land Subject to Flooding is elevation 82 and the riverfront through the flag Z34. J. Peznola advised that the applicant and BSC Group agree that the Commission only act on the delineations that Hancock Associates did. (flags A100 through A122, A200 through A224 and B100 through B119 as the other flags were from an old plan drawn by a different company.

V. Gingrich asked if the disturbance to the Riverfront Area will be calculated on the area flagged by Hancock Associates or on the entire site. D. Cowell advised that they will use the areas they flagged. J. Peznola advised that the total Riverfront Area be calculated and the potential disturbance will be calculated in the Notice of Intent and that acceptance of the Z series flags are important to this calculation. Impacts to the Riverfront will be proposed and additional field work will be done for the Notice of Intent.

Comment #3 – J. Peznola stated that Hancock Associates and BSC Group are in agreement on the Bordering Vegetated Wetlands (BVW) delineation.

Comment #4 – J. Peznola reviewed the history of the Abbreviated Notice of Resource Area Delineation (ANRAD) that was filed in 2002. That ANRAD included most of the same property but did not include the commercial retail lots that are included in this ANRAD. The Conservation Commission issued an Order of Resource Area Delineation (ORAD) that was silent on the Riverfront Area. A group appealed that decision to the Department of Environmental Protection (DEP) and DEP eventually issued a Superceding Order of Resource Area Delineation (SORAD) that brought the delineation line along the channel proper. The SORAD was then appealed to an Adjudicatory Hearing at DEP's Office of Dispute Resolution where a Memorandum of Understanding (MOU) between the applicant's attorney, a private concerned group, and the Wilmington Conservation Commission was presented to the hearing officer. The FORAD was issued based on the MOU and a Settlement Plan (Abbreviated Notice of Resource Area Delineation Settlement Plan Jefferson Road, Wilmington, Mass, dated February 6, 2004). The key point of the MOU was that the Riverfront would be delineated by the Mean Annual High Water (MAHW), utilizing elevations that were based on water staining on the Middlesex Avenue culvert crossing and the railroad crossing upstream. A surveyor would take those elevations, put them in the ground, trace the MAHW, and generate a plan, now called the "Settlement Plan". The developer then chose not to proceed further. J. Peznola explained that the owner of the property (who is still the owner of the property) never signed the original ANRAD and was not involved in any of those proceedings. There were no site walks done after that plan was drawn up. J. Peznola also advised that following a recent site walk with Hancock Associates and the same private group that was involved in the appeal, they used the MAHW indicators for the Z line.

K. Hannon asked for clarification regarding the Z line flags. It is his understanding that the Z line flags were hung based on the surveyed MAHW settlement line and not on MAHW field indicators. J. Peznola advised that Hancock Associates went out to the field, located the muck line, and the

Riverfront 200 feet of resource area but they did not feel the need to take shots on every little undulation. J. Peznola confirmed that the line is evidence based. K. Hannon stated that this is a large parcel of land and that the little undulations in the line do add up in how the area is calculated.

Comment #5 – J. Peznola acknowledged K. Hannon's statement about not following all the undulations and that flags Z12A and Z12B were added. K. Hannon advised that on such a large parcel of land, not following the undulations could significantly effect the calculations.

Comment #6 – J. Peznola advised that flags Z6, Z11, and Z16 were added to the revised plan and that flag Z27 near flag Z23 was removed in the field. Flags Z20, Z21, and Z22 are important in that the intermittent stream flows from the south side of Jefferson Road, through the culvert towards Lubber Brook. Evidence has been presented that the stream is intermittent, but there is a question regarding where the intermittent stream ends and Lubbers Brook begins. When the Z line was delineated, Hancock Associates could not see where the transition occurs from the intermittent stream to Lubbers Brook. J. Peznola explained that when Hancock Associates received the surveyed information, they overlaid the "Settlement Plan" with their survey shots and the "Settlement Plan" recognized the intersection of the intermittent stream and the perennial stream. So Hancock Associates placed the jump over point between Z18 – Z23 because it's up-gradient of the "Settlement Plan" and between flags 6 and 9 of the "Settlement Plan".

K. Hannon advised that BSC agreed with that approach.

D. Pearson asked how the area around flags Z18 - Z23 were delineated in the SORAD. J. Peznola advised that the SORAD plan shows the wetlands associated with the intermittent stream.

Comment #7 – J. Peznola advised that Hancock Associates stopped delineating at flag Z31 as it was another "jumping over point" and it was beginning to get remote from their development area. The muck line moved south towards the railroad and got into an expansive wetland area. Z31 is at a bend in Lubbers Brook. There is a transitional line along the river that the woody brush mixes in with some aquatic vegetation. There is still some standing water in that area even though we are in a drought. There is a tree by Z31 that has a pronounced water staining line about 18" above where the standing water is now. J. Peznola thinks K. Hannon wants Hancock Associates to keep following that line. The Settlement Plan was determined by elevations and J. Peznola does not know how they did that as it goes into a 10,000-11,000 square foot pond. J. Peznola stated the settlement line, based on elevations, does not match up to the line based on evidence. Hancock Associates added flags Z32, Z33, and Z34 that run along a clear separation between an aquatic regime, standing water, aquatic vegetation, and a fringe woody line before you get into a wetland expanse. Therefore they conclude it is Bordering Vegetated Wetlands. They feel the area may be an area that was filled when the railroad went through. Hancock Associates feels that if there was more fluvial action in that area, it would look different.

K. Hannon advised that the Wetlands Protection Act, section 10.58 Riverfront Area, does attempt to distinguish the need to use the MAHW line for low gradient streams with poorly defined or non-existent banks. When you do not have clear bank lines you have to define MAHW using the bankfull indicators and that is what is going on in this section of Lubbers Brook. K. Hannon advised that it is important to use bankfull indicators in this area, which is the process he used for his delineation towards the west and the train track. K. Hannon advised that this approach is in the Wetlands Protection Act. J. Peznola stated that they are trying to protect a river and reviewed the difference between a River and a Wetland, referring to the 1997 Rivers Protection Advisory Committee and bankfull discharge vs. bankfull indicator. What it tries to determine is the difference between a river and a wetland. Bankfull discharge "corresponds to the elevation or stage in a river that actively creates, modifies, and maintains the river's channel. In the context of these regulations, the river's channel can be described broadly as a cross sectional area that contains the river's annual high flows which typically occur during the spring. During this bankfull discharge, the

water is moving sediment, forming and removing bars, forming and changing beds in meanders, and generally doing work that results in morphologic change to the river system. Morphologic change to the river system can be observed in the field. Bankfull indicators include changes in vegetation usually changes in vegetation communities, stain lines, top of point bars, changes in slope, changes in bank material, and bank undercuts."

D. Pearson asked if the change in vegetation was used to place flags Z32, Z33, and Z34. J. Peznola confirmed that yes, change in vegetation was used to place those flags. D. Cowell commented that fluvial process is key. D. Cowell explained that fluvial process is the geologic formation of rivers and streams with linear movement of water over the land which scours it, picks up sediment and moves it down gradient. When you have these low lying areas, you have several wetland resource areas overlaying each other. In this circumstance you have a perennial stream, bank associated with the stream, MAHW associated with the stream, BVW associated with the stream, floodplain, and open ponded areas. The MAHW field indicator used to indicate MAHW is a water mark or a stain. The MAHW mark stain on the tree trunk at flag Z31 is very pronounced and is where the system changes. D. Cowell attests that the current delineation is accurate.

J. Peznola stated that Hancock Associates assented to the conservative approach to the line that would be the most upgradient as possible, resulting in the gray area that has raised so many questions.

D. Pearson asked if the conversation Hancock Associates had with the S. Sullivan and M. Stevenson of HST was recent. J. Peznola advised that it was this past spring (2020) during a site walk with Suzanne Sullivan and Martha Stevenson of HST and Kurt Young.

Comment #8 – J. Peznola commented that this is a moot point now as the ponded area is more than 10,000 square feet and that it will not have a Riverfront Area associated with it.

Comment #9 – J. Peznola stated that there is no culvert under the train tracks and that they did not find an intermittent stream channel in the BVW between Lubbers Brook and the pond. D. Cowell confirmed that he traversed the area in question and did not find a stream channel.

Comment #10 – J. Peznola advised that Hancock Associates agrees with BSC that the Inland Bank associated with Lubbers Brook and the intermittent stream that flows under Jefferson Road should not be a part of this ANRAD.

Comment #11 – J. Peznola advised that Hancock Associates agrees with BSC that the Bordering Land Subject to Flooding (BLSF) elevation is depicted properly at 82 feet in the ANRAD.

Comment #12 – J. Peznola advised that Hancock Associates agrees with BSC that the Land Under Water (LUW) are depicted properly in the ANRAD.

Comment #13 – J. Peznola advised that Hancock Associates agrees with BSC that the 100-foot BVW and the 50' no disturb is shown correctly in the ANRAD.

J. Peznola reviewed the recommendations made by BSC:

- The re-evaluation of the MAWH flags – Hancock Associates added flags Z6, Z11, Z16, Z12A and Z12B.
- Hancock Associates added flags Z32, Z33, and Z34 even though they disagreed with BSC.

- Hancock Associates agreed that the open water body is greater than 10,000 square feet and should not have a Riverfront Area associated with it.
- Hancock Associates does not agree with BSC that the FORAD was based on "extensive debate" as neither Kurt Young (the wetlands specialist who delineated the 2002 ANRAD) nor D. Cowell were present in 2004 during the debate regarding the wetlands thus no wetland specialists representing the applicant's view took part in the debate.
- Parcels 7 and 8A were removed from the ANRAD application as they are not part of the application. The abutter's list did not include parcels 7 and 8A.

D. Pearson asked if a written response has been submitted to the Headwater Stream Team's letter dated June 2, 2020. J. Peznola advised that it has not, but if HST still had questions after reviewing all the material that has been submitted since then, they would respond.

D. Pearson then opened the meeting to public comment.

S. Sullivan stated that during the FORAD process, there were areas in the Settlement Plan that HST agreed the previous developer would not pay to have engineers go out to flag certain areas to save the developer money. Also during the FORAD process, the parties agreed that the developer would not have any elevations done where the grassy area meets the brook over by the bridge abutment and then further down where the line jumps across. That didn't mean there weren't any MAHW indicators at either place, it means that the parties agreed to a settlement. HST expects that the area where the grass meets the brook to have the proper MAHW flags put in and where the line jumps across where the intermittent stream meets the brook to be properly defined. During the site visit with Hancock Associates, HST took pictures of the flags that were in place. HST felt they were consistent with where MAHW would be as flow was observed in the intermittent stream and the brook. HST would like the area properly delineated as they do not feel that there are any physical constraints that would prevent the MAHW from going beyond the line of flags Z18 – Z22. During the site visit, HST and Hancock Associates agreed to follow the muck line, but HST feels Hancock Associates abandoned the muck line over by flag Z31. There are a lot of bankfull indicators in the area of flag Z31 that indicate that MAHW goes far beyond flags Z31 – Z34. HST also took video of flow past the Z31 flag. It discharges directly, there is no defined bank at all in that area, and the bend there hits a piece of land that juts out and sends the discharge out to the railroad tracks. S. Sullivan stated that the FORAD line is not being respected because it leaves a critical area of MAHW undefined. That undefined area will clearly impact the project they propose for that property. The resource areas should be defined, not have the project define the resource area.

D. Pearson asked S. Sullivan if HST's concerns are with the area between flags Z18 - Z23 and the area beyond flag Z31. S. Sullivan confirmed that those are the main areas of concern for HST. S. Sullivan reviewed DEP's methodology to determine MAHW using a bridge abutment in difficult areas. The staining on the bridge abutment as methodology was used during the settlement process.

J. Peznola asked S. Sullivan to confirm that she observed flow in the area of the intermittent stream while following the muck line at the intermittent stream and the muck line after flag Z31 as well as in Lubbers Brook. He also asked if she could discern where there was clearly flow in Lubbers Brook and flow in the intermittent stream. Also, that S. Sullivan ascertained that the flow in Lubbers Brook was higher up in the area between Z18 – Z23. S. Sullivan advised yes. J. Peznola asked S. Sullivan if the flow was discernable up to flag Z22. S. Sullivan advised yes. J. Peznola asked if there was flow on one side of flag Z22 that was Lubbers Brook and flow on the other side of flag Z22 that was the intermittent stream. S. Sullivan advised yes. J. Peznola advised that Hancock

Associates is looking for the MAHW associated with Lubbers Brook and not just going by elevation associated with the MAHW, but that there is a lot involved. S. Sullivan stated that she understood the science involved in MAHW and disagrees with how Hancock Associates determined it.

J. Peznola then went on to address flag Z31 and S. Sullivan's statement that she observed flow that she could associate with Lubbers Brook 50' from flag Z31. He asked S. Sullivan to describe what she saw relative to flow around that flag. S. Sullivan advised that she gave an estimate in her letter as she does not have field equipment to do an actual measurement. She believes it to be 50' – 75' from flag Z31 on the bank on the landward side that she observed flow. J. Peznola asked if S. Sullivan is adding flow to the evidence of MAHW that could be associated with Lubbers Brook to the discussion. BSC is following the muck line similar to the Settlement Plan, which is more than 200' from flag Z31. J. Peznola feels he and S. Sullivan are closer to trying to understand what needs protection than BSC and the applicant. J. Peznola feels it's more important to focus on the fluvial flow than the muck line in order to protect the resource area. He advised that there is a large expanse of wetlands that runs up to the railroad. The Settlement Plan elevation went around that expanse of wetlands. He then asked the Conservation Commission to decide on the ANRAD with the added changes.

M. Stevenson from HST expressed concern that J. Peznola has asked the Conservation Commission for a decision.

D. Pearson asked if D. Cowell has responded in writing to the HST letter of June 2, 2020. He then suggested that the meeting be continued to clarify what is happening between flags Z18 and Z23 and what is going on beyond flag Z31.

D. Cowell reviewed the field indicators of hydrology. Diagnostically, MAHW staining is the diagnostic way to determine MAHW. D. Cowell suggested using drift lines as they are diagnostic of fluvial flow and this is probably a good time of year (during a drought) to view them. J. Peznola agreed with D. Cowell's suggestion of looking at the flow of the river and drift lines.

J. Peznola asked to continue the meeting to the next Conservation Commission meeting.

D. Pearson asked D. Cowell if another site visit would be helpful and could it be done in the next week. D. Cowell advised that he could make another site visit before the next meeting. D. Pearson asked if the HST could attend the proposed site visit.

V. Gingrich advised that all correspondence to date has been put in Dropbox for the Commission members to review. Also that the HST letter has links in it that will allow you to review the photographs and see a video as previously referred to by S. Sullivan. D. Pearson advised that the letters from HST are dated May 20, 2020 and June 2, 2020.

S. Sullivan advised that HST is available to go on a site visit.

V. Gingrich advised that the site visit would have to be posted and would need a minimum of two (2) business days prior to the site visit. Also that attendees maintain social distancing while in the field.

J. Peznola agreed to a site visit if all attendees are going to look at the facts. D. Pearson agreed with J. Peznola. A. Chaban asked if the Commission could set a site visit date of Tuesday, June 30, 2020.

V. Gingrich advised that it would be ok to post the site visit for Tuesday, June 30, 2020 and that social distancing must be maintained. All parties agreed to 5:30 pm.

Upon motion duly made and seconded, it was unanimously

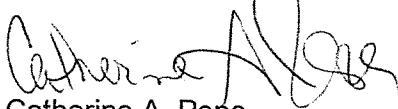
VOTED BY: Vincent Licciardi, Theron Bradley, Thomas Ollila, and Donald Person voted continue the Public Hearing for 378-384 Middlesex Avenue & 200 Jefferson Road – Map 89 Parcels 7, 8, 8A, 9, 10, 13A & 13B – DEP File #344-1463 to the July 1, 2020 Conservation Commission meeting.

Next meeting – July 1, 2020

There being no additional business to come before the Conservation Commission, it was

VOTED BY: Vincent Licciardi, Theron Bradley, Thomas Ollila, and Donald Person to adjourn the meeting at 9:53 pm.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Catherine A. Pepe", written in a cursive style.

Catherine A. Pepe
Senior Clerk

