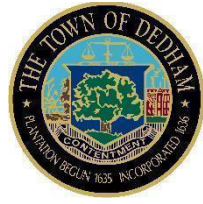


Tim Puopolo, Chair
Erik DeAvila, Vice Chair
Stephanie Radner, Clerk
Nathan Gauthier, Associate
Leigh Hafrey, Associate
Elena Taurasi, Associate



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TOWN OF DEDHAM

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CONSERVATION COMMISSION

Minutes of August 8, 2024

In response to the COVID-19 pandemic and given the current prohibitions on gatherings imposed by Governor Baker's March 23, 2020 "Order Assuring Continued Operation of Essential Services in the Commonwealth, Closing Workplaces, and Prohibiting Gatherings of More than 10 People," this public hearing was conducted virtually, as allowed by Governor Baker's March 12, 2020 "Order Suspending Certain Provisions of the Open Meeting Law," G.L. c. 30A, §20.

The following Commissioners were present:

Tim Puopolo, Chair
Erik DeAvila, Vice Chair
Stephanie Radner, Clerk
Nathan Gauthier, Associate
Leigh Hafrey, Associate
Elena Taurasi, Associate

The following Staff were present:

Meredith LaBelle, Conservation Agent

The following Applicants and/or Representatives were present:

Jason Mammone, Applicant for 180 Bussey Street
Megan Kearns, Representative for 180 Bussey Street
Joshua Millonig, Representative for 180 Bussey Street
Gregory Morse, Representative for 18 Powers Street
Thomas Liddy, Representative for 39 Lamoine Street

Chair Puopolo called the meeting to order at 7:08 pm in accordance with the Wetlands Protection Act, M.G.L. Chapter 131, Section 40 and the Dedham Wetlands Bylaw.

AGENDA:

1. Public Comment

Commissioner Puopolo opened the floor for any conservation questions or general comments from members of the public.

Sarah Basu, of 6 Liana Lane, asked about the 39 Lamoine Street project, and Commissioner Puopolo clarified that there will be a public comment period for 39 Lamoine Street once the Commission reaches that agenda item.

Kathryn Dunlop, of 1 Intervale Road, asked about where she could find information about applying for a position with the Conservation Commission. Agent LaBelle responded and explained vacancies should be posted to the website soon, and thanked Ms. Dunlop for her interest.

2. Open Space and Recreation Sub-Committee Update

Jim Maher, Chair of the Open Space and Recreation Sub-Committee, introduced himself and updated the Commission that he will be putting forth an article at Fall Town Meeting that will propose revisions to the town bylaw that specifies which properties in town are open from dawn to dusk. Mr. Maher explained that the bylaw is currently written to include primarily Parks & Recreation properties, but he is hoping to revise the bylaw to include the Trenton Road Playground and the Town Green. Mr. Maher added that he wanted to check with the Conservation Commission to see if there are any properties under their jurisdiction that they would like to be added to this bylaw revision.

Commissioner Radner stated that it would be helpful to have all of the properties under the jurisdiction of the Conservation Commission listed under this bylaw, and asked if it would be possible to include all of them. Mr. Maher answered he wasn't sure if they could do a blanket statement in the bylaw, but he would check with the Assistant Town Manager and the Chair of the Bylaw Committee. He also suggested prioritizing specific properties where there are enforcement issues with after-hours visitors. Commissioner DeAvila agreed with Commissioner Radner that any land under the jurisdiction of the Conservation Commission should be included in this bylaw, and any Conservation properties that end up on this bylaw with the Dawn to Dusk designation should be noted on the GIS map. Mr. Maher added that he did not yet need a finalized list of properties, and the Commissioners could let Agent LaBelle know which properties to add to the bylaw in the coming weeks, and she could convey this information to him.

Commissioner Puopolo opened the floor for comments from the public. He received no responses.

3. Open Space and Recreation Sub-Committee Appointments

Commissioner Radner motioned to appoint Erik DeAvila and Elena Taurasi as the Conservation Commission members of the Open Space and Recreation Sub-Committee. Commissioner Hafrey seconded the motion. Commissioner Puopolo led a roll call vote. All Commissioners present voted "aye" and the **motion passed by a 6-0 vote.**

Commissioner DeAvila motioned to appoint Jim Maher as one of the two at-large members of the Open Space and Recreation Sub-Committee. Commissioner Puopolo seconded the motion. Commissioner Puopolo led a roll call vote. All Commissioners present voted "aye" and the **motion passed by a 6-0 vote.**

4. Continued Applications

4.1. 180 Bussey Street (Condon Park) – DEP 141-0633 – Splash Pad Construction

Jason Mammone, Director of Engineering for the Town of Dedham, provided an overview of the project. He explained that the proposed work involves the installation of a splash pad at Condon Park, which the Town Manager's office identified as a great location for a cooling station since the park is located within an Environmental Justice community.

Josh Millonig, landscape architect with Weston & Sampson provided details on the proposed project. He explained that the splash pad will be ADA accessible with concrete sidewalks, and the splash pad will be a re-circulating system with an underground water tank. Mr. Millonig added that there will be a small pump shed installed to the east of the splash pad area, and the splash pad itself will contain ground-spray elements that drain to a central drain which travels back into the underground tank when the splash pad is running. He explained that when the splash pad is not running, any excess water that enters the tank will be routed into the stormwater management system and eventually a catch basin on Bussey Street, and area drains will be installed to the lawn area east of the proposed sidewalk to capture runoff. Mr.

Millonig added that sediment and erosion controls that will be installed during work to protect Mother Brook.

Megan Kearns, wetland scientist with Weston & Sampson, added that the entirety of the project is located within the 200' Riverfront Area to Motherbrook and explained that the project meets the Wetlands Protection Act Riverfront performance standards and is entirely outside of Dedham's Undisturbed Buffer Area. She added that no work will occur in the flood zone.

Commissioner Puopolo asked about how the project will improve the Riverfront Area. Ms. Kearns answered that the project will be an improvement to the Riverfront Area by improving the stormwater infiltration onsite. Commissioner DeAvila asked about where the sanitized water goes when the system is flushed, and asked if there are concerns about water backing up in the manholes at the site. Mr. Millonig answered that the re-circulating system does not have a backwash, and instead the system utilizes a cartridge filter. He added that during winterization, the tank water will be dechlorinated and ultimately end up in the stormwater treatment system. He also added that a back-up is unlikely based on the elevations of the catch basins. Commissioner Radner asked if any plantings are proposed, and Mr. Millonig stated only the splash pad is proposed at this time. Commissioner Radner asked if any of the area could be reseeded with native grasses, and Mr. Millonig responded that they did not consider tall grasses or trees because this would be a mowed area and they want to avoid leaf litter on the splash pad. Commissioner DeAvila added that there is a nearby project that has asked to plant trees at Condon Park as part of their mitigation, so this could be a good opportunity to add some canopy to Condon Park. He also asked who will maintain the splash pad, and Mr. Mammone answered that Parks & Recreation would maintain the splash pad and DPW would manage the stormwater management system.

Commissioner Puopolo opened the floor for comments from the public.

Nicole Harris, of 60 Winsted Avenue, asked if any potable water is proposed at the park and commented that shaded areas would be a great asset to the design. Mr. Millonig responded that there were no plans to add potable water or a shade structure to this design.

Sarah Basu, of 6 Liana Lane, suggested a carport may be helpful for a shade structure, and added that she liked the drainage design of the proposed project.

Commissioner Gauthier motioned to close the public hearing and issue the Order of Conditions as drafted for DEP 141-0633. Commissioner DeAvila seconded the motion. Commissioner Puopolo led a roll call vote. All Commissioners present voted "aye" and the **motion passed by a 6-0 vote.**

5. New Applications

5.1. 18 Powers Street – DEP 141-0636- Retaining Wall, Patio, and Grading

Commissioner Puopolo provided background that this Notice of Intent was filed in response to a Notice of Violation issued in back in April 2024. Greg Morse, engineer with Morse Engineering Inc, provided an overview of the project. Mr. Morse presented an "existing conditions" plan which depicted what the single-family home looked like in 2020 before the violation occurred. The plan showed a single-family dwelling, deck, pool, and existing tree line. Mr. Morse then presented the "proposed conditions" plan which depicts the conditions present on the property today. He explained that the swimming pool and deck were removed in 2019 and replaced with a paver patio. He also added that a portion of the backyard was leveled off with fill, which involved removing vegetation, and an approximately 20 foot tall pre-cast concrete block retaining wall was installed.

He added that both plans depicted the limit of Bordering Vegetated Wetlands and Mean Annual High Water Line associated with East Brook (and their associated buffer zones) which were delineated by Brad Holmes of Environmental Consultants and Restoration. Mr. Morse added that the entirety of the work occurred within the 200' Riverfront Area, and no work occurred within the floodplain. He also stated that

there are no vernal pools on the site, no estimated or priority habitats, no areas of critical environmental concern.

Mr. Morse explained that they plan to submit a mitigation planting area in the rear of the yard, which will be prepared by a wetland scientist. He added that the Conservation Agent submitted comments on the application on July 25th, which they are working on responding to.

Commissioner Puopolo asked for an estimation of how many trees were removed as part of the project, and Mr. Morse did not have an exact number but stated he could quantify the land disturbance area. Commissioner Puopolo reminded Mr. Morse of Dedham's 2:1 tree policy. Commissioner Puopolo commented that a portion of the retaining wall extended onto the abutters property, and asked if the applicant can provide documentation that the abutter permits this encroachment. Mr. Morse stated they did not have that documentation but would work on obtaining it. Commissioner Gauthier asked for clarification on whether the work encroached on both abutting properties on either side, and Mr. Morse confirmed that the north side of the retaining wall is located within the right-of-way, and the wall ends right at the lot line to the south but rip-rap extends into the abutting property. Commissioner Puopolo added that the Commission will need to see a robust alternatives analysis and added that this work will require a waiver request for the Undisturbed Buffer Area, and Mr. Morse responded that he will be following up with a written justification about why a waiver is being requested.

Commissioner Taurasi asked for clarity on the timeline between the pool and deck being removed and the patio and retaining wall being constructed. Mr. Morse clarified that the previous homeowner removed the pool and deck in 2019, and then the current owner purchased the home in October 2020 and performed the un-permitted work.

Commissioner DeAvila stated that the provided site plans are general construction plans for the retaining wall, and the Commission would like to see site-specific plans. Mr. Morse responded that the retaining wall plans are stamped by the engineer. Agent LaBelle added that the plans may be stamped by an engineer, but these are for the design of the wall itself, and not specific to the site conditions. She stated that they will need an engineer to sign off on the wall's construction in relation to the site and soil conditions at the property, which will likely involve a geotechnical study. Mr. Morse stated they will provide this with their revised applications. Commissioner DeAvila added that he has concerns about the stability of the rip-rap section of the wall. He added that on the site visit, the homeowner had mentioned that the tree company buried the tree stumps behind the wall, which concerned him because the tree stumps will eventually rot out. Commissioner DeAvila also asked if a stormwater permit is needed. Mr. Morse confirmed that the added impervious from the patio would not trigger a stormwater permit.

Commissioner Puopolo also stated that since the project has disturbed over 5,000 square feet of Riverfront Area, the Commission could ask the applicant to provide a Wildlife Habitat Study, but the Commission could wait to see the revisions before entertaining that. He also summarized the outstanding items the Commission would want to see in the revisions, including compensatory resource creation. Commissioner DeAvila reiterated his concerns about the fill, and suggested test pits/borings could help determine what was dumped. Agent LaBelle added that she had requested documentation about the origin of the fill, so the Commission could always wait until that documentation is provided to see if further exploration is needed as to what the fill consists of.

Commissioner Radner asked for clarification about the added impervious surface, and Mr. Morse stated he would get updated numbers about the total change in impervious surfaces. Commissioner Radner added that if the abutter did indeed approve work to happen on their lot, this should be reflected on their plot plan and referenced in the permit so there is no confusion later on.

Commissioner Radner stated that this application is a step in the right direction. Commissioner Puopolo agreed. Commissioner Gauthier stated that the applicant will need to go through item and item that the applicable standards are either being met or a waiver request as to why its not being met.

Commissioner Puopolo opened the floor for comments from the public. He received no responses.

Commissioner Radner motioned to continue the public hearing for DEP 141-0636 until the meeting of September 5th. Commissioner DeAvila seconded the motion. Commissioner Puopolo led a roll call vote. All Commissioners present voted “aye” and the **motion passed by a 6-0 vote.**

5.2. 39 Lamoine Street – RDA 2024-14 – Vernal Pool Determination

Commissioner Puopolo stated that there is an active Order of Resource Area Delineation (ORAD) for 39 Lamoine Street that confirms the isolated wetland boundary located on the property, however the ORAD permit did not weigh in on whether the isolated wetland was a vernal pool or not. He added the applicant has filed a Request for Determination of Applicability with the Commission to determine if the isolated wetland is a vernal pool. Commissioner Puopolo clarified that a Negative Determination will mean the wetland is an isolated wetland but not a vernal pool, and a Positive Determination would indicate that there is not enough data to support that the isolated wetland is not a vernal pool.

Tom Liddy, Professional Wetland Scientist with Lucas Environmental, summarized that they are formally requesting the Commission make a determination about whether or not the isolated wetland at 39 Lamoine Street functions as a vernal pool. He provided some context that there was a violation issued at the site in 2019 for unpermitted excavation of soils around the wetland. The trench was repaired and a berm was created following the violation, and subsequently an Abbreviated Notice of Resource Area Delineation (ANRAD) was filed with the Commission in 2020 to determine the boundary of the isolated wetland. Mr. Liddy added that the Commission had this ANRAD peer reviewed by an outside consultant, and an ORAD permit was issued shortly thereafter. He explained that the ORAD ruled that the wetland was a locally-regulated isolated wetland, but the Commission did not rule on whether the isolated wetland was a vernal pool since the violation had recently occurred. Mr. Liddy explained that since then, he has been monitoring the wetland during the breeding season multiple times per year. He summarized that they have not observed any obligate vernal pool species and it would not be certifiable under the Natural Heritage & Endangered Species Program (NHESP) standards. He also added that Commissioner Radner and the former Conservation Agent accompanied him on many of these site visits to observe the wetland. Mr. Liddy concluded that based on the data collected over the last five years, it is professional opinion that this wetland does not function as a Vernal Pool.

Commissioner Puopolo asked for some details on the observations, and how Mr. Liddy determined when to cease with observations for the year. Mr. Liddy answered that the wetland dried up relatively quick during dry years since it is quite rocky underneath the soils and there is no connection to groundwater. Commissioner Radner expressed disappointment that no one from the Commission or the department was contacted during the two visits in spring 2024. Mr. Liddy responded that he hadn't thought to reach out to the Commission during the spring site visit, and it was not an intentional omission. Commissioner DeAvila asked about the final result of the Enforcement, and Mr. Liddy answered this was resolved in 2020. Commissioner Radner added that the berm was stabilized in 2020 to the satisfaction of the Agent and the Commission at the time, and Agent LaBelle confirmed that this was her understanding as well looking back at meeting minutes and part of the solution to the violation was to have the ANRAD application filed, which was subsequently peer reviewed. Commissioner DeAvila asked for some clarification about the timeline, and the Commissioners concluded that the first year of monitoring should probably not be counted towards the full monitoring period, and that the wetland was fully monitored for four uninterrupted breeding seasons.

Commissioner Puopolo opened the floor for comments from the public. He clarified that there is no work proposed at the property at this time, and also clarified that the wetland itself has been confirmed by the ORAD, and the Commission is focusing on whether this wetland is a vernal pool.

During Public Comment, the Commission heard from the following abutters: Sarah Basu (6 Liana Lane), Nicole Harris (60 Winstead Ave), Katheryn Dunlop (1 Intervale Road), Michelle Ryan (Intervale Road), Eniola Oluwole, Charles Jinest (27 Winstead Ave), Tom Quinn (52 Southgate), Marlene Del Rosario (45 Blueberry Hill), George Panagopolous (34 Winstead Ave), Kaitlyn Turrel (18 Intervale), Mike McShea (Corner of East St & Norwich), Scott Dunlop (1 Intervale Road), Rachel McBride (47 Preston St), Mark Czerlinsky (29 Lamoine Street)

Comments Included:

- Suggestion that another year of observation may be helpful, especially since the Conservation Commission was not invited to the 2024 site visit which was a very wet year. Many abutters expressed that five years is not enough time to observe the wetland.
- Debate on whether the restoration following the 2020 violation was completed to the satisfaction of the Conservation Commission, and suggestion to further investigate this. The Commissioners looked back on meeting minutes and clarified that this was resolved, and Agent LaBelle added that the Commission would not have issued the permit and the extension to the permit if there were outstanding issues with the violation.
- Suggestion that the monitoring report should be even more detailed, since the monitor only came out a few times a year at certain times of the day.
- Many abutters expressed that they hear frogs at all times of the year. Commissioner Radner answered that she has received many audio files of what the abutters suspect are frog sounds, and these sounds are actually crickets and cicadas which she has confirmed with insect experts. Commissioner Puopolo added that for NHESP approval, there must be evidence that obligate species *breed* in the wetland not just reside in the wetland.
- Comment that the habitat surrounding the wetland is extremely important for wildlife, and whether the EPA for DEP has been contacted about this project (to which it was answered by Agent LaBelle that the isolated wetland is actually outside of the DEP's jurisdiction since it does not border another resource area)
- Comments that there have been other disturbances on this land, including ATV use.
- Many abutters had noticed that the vernal pool had been draining in the spring. Mr. Liddy answered that the depression commonly overtops during wet years and has noticed this many times over the years. He clarified that the overtopping doesn't necessarily mean that its draining.
- Questions about how the Commission approaches issues where a prior violation is involved with a current situation. Mr. Liddy added that its possible that this was never a vernal pool and added that vernal pools require a large undisturbed habitat around the pool to sustain a breeding population. He added that the land is currently surrounded by development which could have altered the habitat in prior years. Mr. Liddy further added that with vernal pool species, even if there are dry years, the species know to return to the pool during wet years, and they have not observed that in the last five years.
- Questions about who was responsible for funding the monitoring work completed by Lucas Environmental, to which the Commission clarified that the applicant is responsible for the permitting costs associated with the project as well as paying for the peer review that was completed in 2020. Commissioner Radner added that Mr. Liddy is a certified wetland scientist. Mr. Liddy added that he has been in this field for 23 years and signs this report under the pains and perjuries that the data is accurate.
- Comment that a wood frog was found on an abutting property in 2021.
- Comment that breeding activity could be occurring near Little Wigwam Pond, which is 1600 feet away and a distance a wood frog could travel. Additionally, bylaws and regulations should be updated to increase protections for these habitats.
- Comments about how the future development of this land will affect the neighborhood and wildlife.
- Questions about certified vs. uncertified vernal pools, to which Agent LaBelle and Commissioner Radner clarified the differences between the two. Certified Vernal Pools have been certified with NHESP and have documented breeding activity of obligate species. Potential Vernal Pools are locations that were flagged in an aerial land survey that appear to have vernal pool

characteristics like confined basins containing water part of the year, but these areas are not necessarily certifiable, and the proper data must be collected to certify these pools.

- Questions about ledge surrounding the vernal pool and potential blasting, and whether the Conservation Commission has any jurisdiction over this activity. Commissioner Puopolo answered that the Commission will do as much as it possibly can to protect the isolated wetland within the scope of the Commission's bylaw when a project is proposed but added that blasting will likely be outside of the Commission's jurisdiction.

Commissioner Gauthier explained that while violations do leave a bad taste in one's mouth, he believes the violation has been addressed. He added that this is a potentially sensitive resource area, and he understands the neighbor's concerns, but this is a straightforward decision given that there is four years of data saying that this not a vernal pool and per the bylaw the Commission should issue a negative determination. Commissioner DeAvila stated he is not ready to make a determination, especially given the timeline of the violation, and would like to see two more breeding seasons of data collection with the Conservation Department present for these site visits. Commissioner Radner stated she wishes this habitat could bounce back but there has been a significant amount of development in Dedham that has most likely impacted this area far before the violation occurred. She added that she would like to see one more viable vernal pool breeding season before making a decision.

Commissioner Gauthier motioned to close the public hearing and issue the Negative Determination of Applicability for RDA 2024-13. Commissioner Hafrey seconded the motion. Commissioner Puopolo led a roll call vote. Commissioners Gauthier, Hafrey, Taurasi, and Puopolo voted "aye" and Commissioners Radner and DeAvila voted "nay" and the **motion passed by a 4-2 vote.**

6. Emergency Permit Ratification

6.1. Keolis/ MBTA Dam Removal, Mile 11-5 MBTA Franklin Line (42.228850, -71.169771)

Commissioner Gauthier motioned to ratify the Emergency Permit issued for the beaver dam removal at Mile 11-5 of the MBTA line. Commissioner DeAvila seconded the motion. Commissioner Puopolo led a roll call vote. All Commissioners present voted "aye" and the **motion passed by a 6-0 vote.**

7. Minutes

The Commissioners discussed the minutes from the previous meeting.

Commissioner DeAvila made a motion to approve the minutes for the 25th meeting as drafted.

Commissioner Radner seconded the motion. Commissioner led a roll call vote. All Commissioners present voted "aye" and the **motion passed by a 6-0 vote.**

8. Bylaw and Regulations Discussion

Agent LaBelle updated the Commissioners that she will present the final edits from KP law at their next meeting on August 22nd.

9. Biodiversity Day Updates

Commissioner Radner updated the Commission that the sub-committee met and made great progress on planning the Biodiversity Day Event which will be held at the Dolan Center on Sunday September 15th. The iNaturalist event will be open for 24 hours, but the official event will be from 9 a.m. to 3 p.m. The group hopes to get one or two set presentations, such as the Caterpillar Lab.

10. Agent's Report

Agent LaBelle updated the Commission that the Fall Town Meeting warrant closes on September 6th.

Agent LaBelle also updated the Commission that a press release has been put out to let residents know about the new Conservation signage.

The meeting was adjourned at approximately 10:56 pm.