



Norton Conservation Commission

70 East Main Street

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<https://www.nortonma.org/conservation-commission>

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NORTON TOWN CLERK
2021 MAY 32 PM 2:32
20-01 CC

Monday, May 10, 2021

6:30 pm

Remote Participation Only

The Public Remote Participation Procedure is found at the end of this Agenda

Chairperson to read about Public Meetings:

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 limitation on the number of people that may gather in one place, this meeting of the **Norton Conservation Commission** will be conducted via remote participation to the greatest extent possible. Specific information and the general guidelines for remote participation by members of the public and/or parties with a right and/or requirement to attend this meeting can be found at the end of this agenda.

Members of the public attending this public hearing/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 raising their hand virtually or pressing *6 if participating by phone.

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. In the event that we are unable to do so, despite best efforts, we will post on the **Norton Cable website** (<https://www.nortonmediacenter.org/>) an audio or video recording, transcript, or other comprehensive record of proceedings as soon as possible after the meeting.

Minutes

6:30pm Open meeting

The meeting was called to order at 6:30pm.

Attendance: Julian Kadish, Lisa Carrozza, Gene Blood, Ron O'Reilly, Dan Pearson, Daniel Doyle, Jr., Conservation Secretary Melissa Quirk, Conservation Director Jennifer Carlino

Absent: Kerry Malloy Snyder

Kadish read the names of the participating ConCom members.

WETLAND HEARINGS AND POSSIBLE COMMISSION DELIBERATIONS

Wetland hearings will be taken in order.

Discussion: request to construct tree house at Edith Read Conservation Area, Aidan Gilbert

Since there were no representatives for this project, it was agreed to take no action on this discussion until the next meeting.

A. Abbreviated Notice of Resource Area Delineation (250-1073) Al Endriunas, 154 Pine Street, 0 Pine Street, 0 Wood Road, 126 Pine Street and 128 Pine Street (Map 24, Parcels 7, 9, 13, 108, 109). (continued from 3/22/2021, 4/12/2021, 4/26/2021) The proposed plan is to verify wetland resource areas. Files can be viewed here <https://tinyurl.com/PineStANRAD>.

Document List – 154 Pine Street, 0 Pine Street, 0 Wood Road, 126 Pine Street, 128 Pine Street

- 1. WPA Form 4A – Abbreviated Notice of Resource Area Delineation received 3/8/2021*
- 2. Plans entitled, “Wetland Delineation Plan Pine Street”, prepared by Borderland Engineering, Inc., signed and stamped by Gregory Bunavicz, dated 3/1/2021*
- 3. Plans entitled, “Wetland Delineation Plan Pine Street”, prepared by Borderland Engineering, Inc., signed and stamped by Gregory Bunavicz, dated 3/1/2021, rev 4/16/2021*
- 4. Supporting Computations for Determination of ILSF prepared by Borderland Engineering Inc., signed and stamped by Gregory Bunavicz, dated 4/16/2021*
- 5. LEC letter dated 4/20/2021 re supplemental information to the ANRAD*
- 6. LEC letter dated 4/20/2021 re Vernal Pool Assessment Summary*
- 7. Plans entitled, “Wetland Delineation Plan Pine Street”, prepared by Borderland Engineering, Inc., signed and stamped by Gregory Bunavicz, dated 3/1/2021, rev 4/29/2021*
- 8. Supporting Computations for Determination of ILSF prepared by Borderland Engineering Inc., signed and stamped by Gregory Bunavicz, dated 4/16/2021, rev 5/3/2021 (1-year and 100-year calculations)*

Claire Hoogetboom of LEC Environmental Consultants Inc. attended the hearing on behalf of the applicant. She stated they provided revised plans to include the approximate vernal pool boundary for the M-series isolated wetland and to reinstate the Natural Heritage potential vernal pool labels. They also provided additional supporting evidence for the determination of the lateral extent of ILSF associated with the I-series wetland. Hoogetboom reviewed the revised ILSF calculations that were provided with a summary of how those numbers were determined.

Carlino noted that two vernal pool surveys were submitted. With that information, the applicant has overcome the presumption that vernal pools do not exist on the site.

Motion was made to close the public hearing for DEP #250-1073 by Doyle, seconded by Carrozza. Motion passes.

A roll call vote was taken:

<i>Blood– Aye</i>	<i>Pearson – Aye</i>
<i>O'Reilly - Aye</i>	<i>Doyle - Aye</i>
<i>Carrozza – Aye</i>	<i>Kadish - Aye</i>

Motion was made to issue the ORAD for DEP #250-1073, as discussed, by Carrozza, seconded by O'Reilly. Motion passes.

A roll call vote was taken:

<i>Blood– Aye</i>	<i>Pearson – Aye</i>
<i>O'Reilly - Aye</i>	<i>Doyle - Aye</i>
<i>Carrozza – Aye</i>	<i>Kadish - Aye</i>

- B. Request for Determination of Applicability (DET #1109) Massachusetts Coastal Railroad, Massachusetts Coastal Railroad Right-of-Way.** (continued from 4/12/2021, 4/26/2021) The proposed plan is to confirm wetland boundaries and approve vegetation management activities along the Ma Coastal Railroad Right of Way. Files can be viewed here <https://tinyurl.com/MaCstlRR>

Carlino stated the applicant requested a continuance today. The site inspection is not scheduled yet. She can forward any comments or questions the ConCom has to the applicant. Carrozza asked if the wetlands are flagged. Carlino stated they are not. Carrozza questioned how we can confirm a wetland boundary delineation without flags. Doyle asked if we can request they flag the wetlands. Carlino will pass that information to the applicant. In an effort to cut down on the base mapping, Carrozza suggested they could use aerials combined with the flagging. They will be able to use these plans every 5 years when come in.

The applicant requested a continuance to 5/24/2021. Motion was made to continue the public hearing for DET #1109 to May 24, 2021 by Carrozza, seconded by Doyle. Motion passes.

A roll call vote was taken:

<i>Blood– Aye</i>	<i>Pearson – Aye</i>
<i>O'Reilly - Aye</i>	<i>Doyle - Aye</i>
<i>Carrozza – Aye</i>	<i>Kadish – Aye</i>

- C. Notice of Intent (#250-1070) Widak/Sher Corp. LTD, 0 Rear Eddy Street (Map 32, Parcel 31).** (continued from 1/25/2021, 2/8/2021, 3/8/2021, 3/22/2021, 4/12/2021) The proposed project is to construct a common driveway with associated stormwater management, septic system, utilities, retaining walls and grading for 4 duplex units within 100 feet of bordering vegetated wetland. Files can be viewed here <https://tinyurl.com/rearEDDYSherCorp>

Tim McGuire of Goddard Consulting, Craig Cygawnoski of RIM Engineering and Margaret Bacon of Civil Site Engineering attended the hearing on behalf of the applicant.

McGuire reviewed the plan changes to show the Riverfront Area on site, as requested. All of the work within Riverfront Area adds up to a little over 1,000 sf, well under the allowable limit. There is 72 sf of work occurring in the inner riparian zone and 949 sf occurring in the outer riparian zone. The work within the inner riparian zone is just for room to work to install the guardrail. He noted he received a comment from an abutter regarding Riverfront Area this afternoon, which he will address at the next hearing. A revised check was delivered for the revised Riverfront Area. McGuire noted only one of the proposed duplexes falls within Buffer Zone. At the last hearing, he was asked how floodplain on site was determined. He used the most recent FEMA map per the regulations. The average wetland line on site is at elevation 63. At the floodplain shown along the wetland elevation, there are no proposed impacts to wetlands. Most of the work is well over 100 feet from the site. At the closest point, work occurs 26 feet from the site, still maintaining the Town's 25-foot policy. The top of the spillway is at elevation 61.7. McGuire noted he has a signed statement from a life-long abutter to the south, Mr. Pickett. He showed their survey team the highest point he has ever seen the pond, which was determined to be elevation 62.5. The regulations do state that depicting the floodplain as they are is rebuttable, as evidenced by a professional engineer. However, they believe this is a reasonable estimation. They are still working on the stormwater comments from Chessia.

Carlino requested McGuire provide the information he found at the Registry of Deeds showing the property bounds he is using. Also, provide the citation showing that if it's more than 200 feet of culvert, Riverfront does not apply. Mr. Pickett's signed letter must also be submitted. Carlino received a letter today from an attorney representing an abutter. McGuire can respond at the next hearing

Matthew Costa, of Gay & Gay, P.C., is representing the abutter Debra White of the Winslow Farm Animal Awareness Corp. He sent a letter today outlining his client's concerns. At times when the water is low in Meadowbrook Pond, his client has observed it resembling a brook. They are questioning if this should be classified as a river. He quotes the regulation from his letter stating, "a water body identified as a lake, pond or reservoir on the current USGS map or more recent map provided by the Department, is a lake or pond, unless the issuing authority determines that the water body has primarily riverine characteristics." Their position is that although this is called Meadowbrook Pond, it is just a broad section of Meadowbrook. DEP regulations state that: "Riverine characteristics may include, but are not limited to, unidirectional flow that can be visually observed or measured in the field." He submitted a photo, but also looked at the historical imagery on Google Earth. The satellite images show what his client was bringing to their attention. He shares the images. Some ponds do get dry during the summer months. However, DEP states we must look for evidence of unidirectional flow that can be visually observed. He states there is clear evidence of a flow of water. At certain times of year, it is only a brook.

Carlino asks Costa to sign and date the photo submitted from his client and to provide hard copies of the Google Earth photos.

McGuire responded they have evidence of the ConCom treating the area as a pond in other projects in abutting properties. He also questioned if some of the Google images depicting low water were in the summer. They may have had blooms giving the indication of low water from the aerial view. However, the presumption is overcome based on evidence of flow. He provided a video of the area taken today facing south, where he threw a stick and a banana peel in the water. There was no flow indicated. He also noted the area is currently in a level 2 drought status, presumably low water conditions. Kadish questioned the purpose of the video. How does that show flow is not occurring, just because he did not see it during this video? McGuire stated flow is generally tested with what is called the orange peel test. He used a banana peel. The peel is tossed in the water because it floats. Then you wait to see if it flows down the stream. Kadish stated the issue is we must define if this falls within Riverfront regulations or not. McGuire is saying it does. Kadish says it does not because most of the time it is a pond-like structure. All pond-like structures have flow that may not necessarily be demonstrated with an orange peel. Doyle questioned if the same banana peel were thrown in the water in August or early September and it did float, would it then be Riverfront or a pond? McGuire stated the banana peel test was his attempt to measure the unidirectional flow as defined in the regulations. The only Riverfront Area is the open-water portion of the spillway. Carrozza noted on the USGS map, it's a river flowing into the pond and out of the pond. One would assume the river would be conveyed throughout the pond. McGuire argued that once the spillway is over-topped, the water flows into the spillway. The flow begins downstream from the pond. He is confident this area is not demonstrating riverine characteristics. Carlino asked if the water was flowing through the dam. McGuire stated it was. Kadish stated we face this issue with every pond-like or reservoir-like structure in Town. What percentage of time is it more pond-like vs riverine-like? From his perspective, if it gets riverine-like one month out of the year, it's probably considered a pond. Carrozza asked if there are any historic aeriels to show what it was like before the dam was put in. A dam is usually to impound flowing water. Does he know the how old the dam is? McGuire will check. Kadish clarified with Costa that he believes the characteristics of the inner and outer riparian regulations must apply here. McGuire reminded the ConCom they have historically viewed this as a pond. Carlino asked him to provide the file numbers. She stated the Riverfront section is complicated. Once both sides submit their documentation, the ConCom can go through the regulations step by step. Costa stated another issue is if the ConCom determines this is a pond, at what point does the pond become a river? They believe there is strong evidence there is flow on the westerly side at least part of the year. The question is how far to the west does the pond extend, and where does the river begin and end? It makes a substantial impact on where that 200-foot Riverfront will apply.

Sherry Widak from Sher-Corp read a history of Meadowbrook Pond from the Town's website. How can you contradict what you've already written about the pond? How can it be anything but a pond? We should look at what it has been historically named as and what it is. A pond. Carrozza stated we are looking at two different things. We are looking at the history of the pond in the context of the bigger picture, and now we are looking at applying the Wetlands Protection Act.

Carrozza questioned the flood zone elevation. There was a steep drop on the icehouse side. Is that topo reflected on the existing conditions plan? The flood zone needs to make sense in the context of the bank. Does the flood zone over-top the bank or is it within the confines of the bank? The flood zone needs to be a constant elevation. McGuire will look into that. Carrozza noted at the site visit, they questioned why the driveway entrance swings so far towards the water. Why is it not reversed with the stormwater system? Cygawnoski stated it was designed to be super elevated so that the edge of the driveway closest to the pond would flow towards the swale that Margaret Bacon designed in response to John Chessia's comments. Carrozza suggested to Carlino that they speak with Chessia about it. Carlino stated it may be addressed in the Stormwater changes. Bacon responded one reason the basin is there is because there was a natural existing depression there. It seemed logical to use what is there to minimize grading.

The applicant requested a continuance to 6/14/2021. Motion was made to continue the public hearing for DEP #250-1070 to June 14, 2021 by Doyle, seconded by Carrozza. Motion passes.

A roll call vote was taken:

Blood- Aye	Pearson - Aye
O'Reilly - Aye	Doyle - Aye
Carrozza - Aye	Kadish - Aye

SIGN AND ISSUE ORDER OF CONDITIONS/ORDER OF RESOURCE AREA DELINEATION

D. Notice of Intent (#250-1057) Ruscito Brothers LLC, 253 Mansfield Avenue (Map 3, Parcel 722). (continued from 7/27/2020, 9/14/2020, 10/19/2020, 11/23/2020, 1/25/2021, 2/22/2021, 3/8/2021, 3/22/2021, 4/12/2021) The proposed project is to convert a commercial building to a 40B multi-story, multi-unit residential apartment building, stormwater management, parking and utilities within 100 feet of bordering vegetated wetland. Files can be viewed here <https://tinyurl.com/253-mansfield>

Motion was made to issue the Order of Conditions for DEP #250-1057, as discussed, by Carrozza, seconded by Doyle. Motion passes.

A roll call vote was taken:

Blood- Aye	Pearson - Aye
O'Reilly - Aye	Doyle - Aye
Carrozza - Aye	Kadish - Aye

- E. **Notice of Intent (#250-1075) Massachusetts Department of Transportation, Three Mile River Bridge MP 6.84 (Map 33, Parcel 11).** (continued from 4/12/2021) The proposed project is to widen the existing track embankment/ballast and replace the existing bridge within 100 feet of bordering vegetated wetland and within 200 feet of the Three Mile River. Files can be viewed here <https://tinyurl.com/DOT3MileBridge>

Motion was made to issue the Order of Conditions for DEP #250-1075, by Pearson, seconded by Blood. Motion passes.

A roll call vote was taken:

<i>Blood– Aye</i>	<i>Pearson – Aye</i>
<i>O'Reilly - Aye</i>	<i>Doyle - Abstain</i>
<i>Carrozza – Abstain</i>	<i>Kadish – Aye</i>

REQUEST FOR PARTIAL/FULL CERTIFICATE OF COMPLIANCE

- **Full Certificate of Compliance DEP#250-1026, Condyne Engineering Group, 15 Leonard Street A.K.A. Lot 4. (Map 11, Parcel 33 and portions of lots 32 and 35).** The proposed plans are to construct one 125,000 sf warehouse building, parking, grading, utilities and stormwater management within 100 feet of wetlands.

Motion was made to issue a Full Certificate of Compliance for DEP #250-1026 by Doyle, seconded by Pearson. Motion passes.

A roll call vote was taken:

<i>Blood– Aye</i>	<i>Pearson – Aye</i>
<i>O'Reilly - Aye</i>	<i>Doyle - Aye</i>
<i>Carrozza – Abstain</i>	<i>Kadish - Aye</i>

- **Full Certificate of Compliance DEP#250-0943 Town of Norton, Off Plain Street (Map 19, Parcels 2 & 3).** The proposed plan is to construct a new water treatment plant with associated water piping within 100-year floodplain, Riverfront and within 100 feet of wetlands.

Carlino stated she does not have proof that the No Disturbance signs were posted. It was agreed to table this until the signs are installed.

REVIEW DRAFT MINUTES

4/12/2021 - Motion was made to accept the meeting minutes for 4/12/2021 by Blood, seconded by O'Reilly. Motion passes.

A roll call vote was taken:

Blood- Aye	Pearson - Aye
O'Reilly - Aye	Doyle - Aye
Carrozza - Abstain	Kadish - Abstain

4/26/2021 - Motion was made to accept the meeting minutes for 4/26/2021 by Carrozza, seconded by Doyle. Motion passes.

A roll call vote was taken:

Blood- Aye	Pearson - Aye
O'Reilly - Aye	Doyle - Aye
Carrozza - Aye	Kadish - Aye

NEW BUSINESS

Potential new policy on BLSF?

Carlino explained the floodplain that is near the railroad and the Three Mile River off of Taunton Avenue is only a Zone A. When DOT did their bridge work, they calculated the floodplain elevation and gave that information in their report. In order to make it clear to everyone in that area for future projects, it's good to make it a policy so they know which elevation they should be using.

Motion was made to accept this as a ConCom policy, as amended, by Carrozza, seconded by Doyle. Motion passes.

A roll call vote was taken:

Blood- Aye	Pearson - Aye
O'Reilly - Aye	Doyle - Aye
Carrozza - Aye	Kadish - Aye

OLD BUSINESS

Site Inspections -
Violations

NEW: Enforcement Order- 250-1037 Plain Street solar, NextGrid

Freeman St, 3 addresses, potential wetland violations
S Worcester, m 27 pcl 193
122 W Hodges St.

184 W Main St.
77 Charlotte

Reservoir Update -
Chartley Pond Update -
Barrowsville Dam
Report from Staff
Waterbodies Committee update-
Grants
Town Meetings

BILL SUMMARY

Summary list of bills signed – April 26, 2021 – May 10, 2021

Jennifer Carlino	\$334.32	001-171-570-5308 – Maintenance of Conservation Areas
	Edith Read – cameras/concrete	
Verizon	\$36.49	242-171-100-5700 – Wetland Protection Fund
	cell phone	
David Cavannah	\$2,000.00	364-171-100-5700 – Edith Read Revolving Fund
	Mother Nature tree carving	
Amazon	\$34.99	364-171-100-5700 – Edith Read Revolving Fund
	Edith Read – Projector Mount	

RATIFY LAST MEETING'S OPEN SESSION (TOPICS NOT REASONABLY ANTICIPATED 48 HOURS IN ADVANCE)

OPEN SESSION (TOPICS NOT REASONABLY ANTICIPATED 48 HOURS IN ADVANCE)

The meeting closed at 8:15PM.

Respectfully submitted by: Melissa Quirk Melissa Quirk

Minutes approved by the Commission on 5/24/2021.


Conservation Commission Signature:


Julian Kadish, Conservation Commission Chairman

5/31/21
Date

PUBLIC REMOTE PARTICIPATION PROCEDURE

For this meeting, members of the public who wish to participate in the meeting may do so in the following manner:

1. To participate in the meeting, we recommend downloading the zoom app  before the meeting. (This may not be necessary because you can click the link below but we have found that this makes logging in to the meeting easier.)
2. Join the Zoom Meeting at 6:30pm. Using your computer or smart phone go the Zoom app and click "join a meeting" or click on:

<https://us02web.zoom.us/j/87236407624?pwd=a2FSeDY5VnJMKzd4YWNPam1YR2w4Zz09>

When prompted, enter the **Meeting ID: 872 3640 7624, Password: 287547.**

- The site can be a little tricky so if it doesn't work the first time, try again. Try copying and pasting the link into a google chrome browser if internet explorer or another browser doesn't work for you.
 - Using "connecting to video and audio through the computer" has been the easiest method. So make sure your computer's video/audio is on.
 - If you cannot hear, you may need to phone in by calling 1-646-558-8656, same meeting ID and password as above. If it asks for a participant id you can just hit #. Please put your phone on mute until the Chairman asks for your comments.
 - Everyone will be placed on mute at the beginning of the meeting as you sign in but you should be able to hear. We will unmute you when we reach the public question and answer portion of our meeting.
3. If, for some reason, neither option is working for you, you can email the Conservation Commission at conservation@nortonmaus.com to ask your questions. We will read your email address, name and comments into the public record.

4. The standard procedure for a public hearing is a presentation by the applicant's representative, questions and comments by the Conservation Commission and Director, then opening questions and comments to the abutters. Please be patient and wait for your turn to participate.
5. If there are no additional questions by the Conservation Commission or Director, the hearing would typically close; however, to ensure adequate opportunity for public participation, those specific hearings will be continued until the next meeting. This will be announced. You will have until the next meeting to provide your comments and questions before the Commission closes the hearing and makes a decision.