



## City of Cambridge Conservation Commission

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### Public Meeting – Monday, May 16, 2022 at 7:00 PM Zoom MEETING MINUTES

The following meeting minutes were taken by Tracy Dwyer and are respectfully submitted.

Present Commission Members: Jennifer Letourneau (Director), Purvi Patel (Chair), David Lyons (Vice Chair), Elysse Magnotto-Cleary, Kathryn Hess, Erum Sattar

Absent Commission Members: Michelle Lane, Kaki Martin

Attendees: Tracy Dwyer, DPW; Jim Wilcox, DPW; Fred Hewett

David Lyons opened the meeting. David stated that tonight's meeting is strictly administrative matters. Purvi deferred to David to run the meeting.

#### **7:00 – Administrative Topics**

Meeting Minutes – April 25, 2022

Open Discussion – Conservation Commission Room for Improvement

Conservation Commission Updates

The meeting minutes were approved. Erum Sattar signed the "Mullin Rule" affidavit to vote on the meeting minutes.

In Favor – 4, Absent – 2, Opposed – 0, Abstained – 1

David Lyons prepared an agenda/topics to discuss at this meeting. Please see last page.

David stated these topics were collected over his four years serving on the commission and observations he's made over time of some processes the commission does or does not do. He stated he's seen work of other commission's and he's appeared before commissions in other towns and also thinking about the hybrid meetings and procedures for the future. He stated that they should think about new member orientation as well a more active role. David thought it might be a good idea to come up with guidelines on what would warrant a site visit. He said other commissions have worked closely with a staff member like someone in Jennifer's position when there are more sensitive issues on projects.

David mentioned that Cambridge does not have a Wetland's Ordinance and thought that it might make sense for the commission to have these standards that would be partially implemented from the commission. David stated they could discuss whether it makes sense to go to city council to advocate for an ordinance.

Jennifer stated that she agrees completely with have this conversation and appreciates David putting this together. Jennifer said that the commission does not have a lot of turn over and it would be great to put together an orientation document for new members.

Jennifer stated that when she took the position with the city in 2003 there was a draft bylaw at that time and had been circulated up through the law department but the sticking point was a discussion specific to if you have your own bylaw then the city has to represent itself if it's a matter of the bylaw being disputed with the proponents and it doesn't go through the same DEP approval process and review through an adjudicatory hearing, it would take a separate track that the city would be fully responsible for. Jennifer stated that was one of the parts that they never fully flushed through, or the city really did not want to move forward on. Jennifer stated there is a draft in the files that could be used if the commission would like to look at it.

David stated that most other cities and towns in the greater Boston area have their own wetland's bylaws or ordinances that expand on the Wetlands Protection Act. David stated that they are tightening the performance standards in certain resource areas or expanding the resource areas as well as protecting other environmental values. David stated that when local governments undertake this, they are adding a whole new regulatory layer and a whole new permitting process where it would be heard at the same time but would give the commission more leverage on applications but in some cases the permits do differ, and you can impose tougher requirements. If the applicant appeals that decision, then it typically is going to go through a different appeal and a lot of governments will play a role in it and would be an appeal to a court not to DEP. David stated it is a way of increasing the commissions oversight.

Purvi stated she is appreciative of these recommendations. She stated that MACC could be of help. She stated that she sees a lot of discussions about Notice of Intents and Orders of Conditions, and she said out of the three hundred and fifty-one (351) communities in Massachusetts she would like to know how many have bylaws and how different they are. She said it would be nice to see the different bylaws and see what would be applicable to Cambridge. Purvi asked Jennifer if she had information about MACC's role.

Jennifer stated that the MACC has a handbook that has a full section on the Wetland Protection Act and a section about bylaws and talks about what bylaws are and how they can be included and relevant to different areas. Jennifer stated that on MACC's website that have a full database on every community in Massachusetts that has either adopted an ordinance or bylaw. Jennifer stated that from 2000-2015 MACC was encouraging communities to adopt a bylaw, so communities had a greater review authority and an increase in protection mechanisms. Jennifer stated she would share the database with the commission members. She said that from 2000-2010 they were asking all communities if they had a bylaw or ordinance and collected copies to create a database.

David stated that he had a model bylaw, and he would send it to Jennifer to distribute to the commission.

Elysse stated she thinks this meeting is helpful and timely as they will be entering back into in person meetings soon. Elysse offered to put together a new member resource, like a Google folder. She would like to add a link to the MACC website and their membership, a link to the Wetland Protection Act and resources for current and new members.

Kathryn stated when she came on board that everyone was very welcoming, but it was blank slate, no on-boarding or training was done. She said it took a year for the MACC membership to kick in. She stated that what Elysse would pull together would be very helpful. She said a few years into this she still gets confused about the differences between a Notice of Intent. She said a glossary of terms would be helpful as she is not familiar with some of the terminology.

Elysse stated she can start working on this right a way and send around a living document that everyone can add to.

Kathryn asked if the city would allow them to have an internal website or Google site. Jennifer stated she was not sure about that but ask the city's IT.

David stated that it might be good to send it to Jennifer for distribution to the commission. Elysse stated she could send the document to Jennifer in accordance with the Open meeting law.

Erum said on boarding materials would be helpful instead of learning on the job. She stated she would learn a lot from this conversation.

David went through his topics of discussion he put together.

1. Processes and standards of determining complete application, continuances, hearings, decisions, etc

He wanted to make sure the commission is update and on board with their processes because of some push back they got from DEP on a timeline in December. David wanted to make sure the commission is making the approvals timely so decisions can be sent out. David thought it would be a good idea from time to time that Jennifer share some of the decisions with the commission. David stated he would like to also discuss.

2. Delegating members to specific applications for site visits, plan review, decision drafting, etc.

David stated that some commissions will put members on as the point person for specific applications and commissions who don't have dedicated staff like Cambridge does. He stated although the city has great staff, he thought it might be helpful in some cases.

Purvi thought it was helpful when Jennifer provided guidance when something is substantive, what is procedural or administrative in terms of completeness for documents. Purvi stated if they have not submitted all the documentation and completed all the paperwork, and the commission has the ability to continue the hearing. Purvi stated she understands that it's challenging for the applicants, but it makes the commissions job easier and makes Jennifers job easier in terms of the follow up.

Jim Wilcox stated he would like to talk about the technical reviews he does for the plans. He stated that he does those close to the hearing dates so the commission members as well as the public are talking about the plans that were submitted and not giving the applicants the opportunity to submit revised documents between the time of the original submittal to the hearing date. Jim stated he knows it does not leave a lot of time for the commission members to

review the technical comments and he can submit them earlier if needed. He stated that was his intent was not to wind up with a revised submittal before the hearing.

David stated the timeline works for him. He wanted to know if the applicants would like the review memo sooner.

Jim stated yes applicants want the review memo quicker so they can revise the documents and submit them.

Kathryn stated its helpful to know now why Jim submits the review to them so close to the hearing date and she does not have a problem with it.

Jim stated applicants would like to submit a revised application ahead of time so they can get their order of conditions approved on the first night of the hearing and not have it continued. Jim stated he thinks the commissioners and as well as the public should be looking at the original submission at the hearing.

David asked if the applicants ever talk to Jim and Jennifer before they apply and get feedback.

Jim stated that is common. Jim stated that 75% of the notice of intents they have a pre-submission meeting with an engineer.

David stated he thinks that is sufficient if they have that opportunity to meet with staff ahead of time.

Jim stated in some cases it's more than one meeting.

Jennifer agreed with Jim and stated that they get a lot of repeat companies and repeat applicant teams submitting applications. Jennifer stated they have a series of meetings with Jim and herself and others to review plans and make sure deadlines aren't missed. Jennifer stated to submit to the commission they need to have 50% or greater design plans. She stated a lot of times after they submit their application to the commission, they continue working on the plans so at the time of the meeting their plans have progressed. Jennifer stated there is a long time between the submission and the hearing it's three (3) weeks because they need time to review for completeness and a legal ad needs to be posted five (5) business days in the local paper. She stated that the Cambridge Chronicle comes out on Thursdays, so it needs to go in the paper two Thursdays before the hearing to make the timing work with their meeting schedule. Jennifer stated a lot of applicants have continued to work on their design plan and want to show the commission what they have on record but the commission needs to go off what they submitted because that is what DEP has received and is looking at so that is what the commission needs to look at as well.

Jim also wanted talk about site visits, he stated that if the commission was available for more site visits that would be great. He stated that Jennifer is always out looking at sites but if members have time during the day to do a site visit, he stated between Jennifer and other engineers they could accommodate the commission. Jim stated he thinks the site visits are help to the commission to see the project during construction and thought it would be helpful while reviewing future submissions.

Jennifer stated when they were looking at the boathouse submittals and the point was raised when they were talking about silt curtains vs. coffer dams, she thought seeing what they look like installed and functioning is important. Jennifer stated with Purvi's work she has probable seen them up and running but thought it would be help for others. Jennifer stated she would try to let the commission know when there are interesting points of construction going on with projects so they could attend site visits. Jennifer also stated with the most recent site visit for the Charles River VMP and the slide show she put together for the commission she could put together a boiler plate slide show, so if a commission member does a site visit and takes pictures, she can

just put them into the power point slide show with some language and present it to the commission.

David agreed it would be helpful. David stated he thought the commission was doing a good job with the first two points and they are making the applications better throughout the process, with the submittal meetings with Jim and Jennifer all the way through to the decision. He stated if that that process is pushing projects in the right direction and making them better, he thinks the process is working well.

Erum stated she was happy to know that there was an opportunity to go on a regular site visit. He stated her herself it would be helpful to walk the sites and learn.

David moved onto four and five.

3. New member orientation. This was talked about previously.
4. Reviewing permittee compliance with decisions.
5. Process for receiving and reviewing reports permittees must file with the Commission under the terms of Orders of Conditions

David wants to make sure the permittees comply. He stated he thinks that there have not been any non-compliers, or they would have heard about it, but wanted to talk about enforcement action if needed. David stated in some cases commissions must enforce compliance and does not know if this commission ever had to do that or had a permittee into line. David stated that on a lot of their permits they are supposed to get reports or other documents and he was not sure the commission was receiving those he has not seen any. David asked if we are receiving those it would be good to see those.

Purvi stated that DEP has a database where they show notices of intent they have received, decisions and or the status. She asked Jennifer if she has something like that a database to track. She also agrees with what David stated it would be helpful to look to see what infractions or notices of non-compliance have been issued. Purvi stated she was not trying to make more work for Jennifer but wanted to know if she had a log for herself.

Jennifer stated she does, when she came on board nineteen (19) years ago, she went through the files and put in the ones she physically had copies of. She has an excel spreadsheet for her records. She stated to the point David made in her entire history of working for the Conservation Commission they have only issued one enforcement action and it was against the DCR in 2015 for not revising and extending their VMP for the Charles River and it had expired. They continued to do the cutting for the Head of the Charles for several years. The commission agreed in 2016 accept a forthcoming VMP and allow the enforcement order to expire, to make the agreement if they got it to the commission, they would not pursue it any further and that never happened. Jennifer stated that was Kaki's point she was making at the last meeting; they keep telling the commission that they would get them a VMP. Jennifer stated the success in Cambridge is a collaborative staff in the city with oversight especially at DPW with the overlap of permits issued for orders of conditions and construction. Jennifer stated making sure the projects get inspected is really what keeps everything in compliance. Jennifer stated she makes her way through areas of Cambridge and circling back through weekly checking on projects. Jennifer explained to the commission when storms happen in the city Jim gets notifications specifically about CSO's within the city and there are staff that go out and see the effects of that event.

David stated he does not think the commission needs to be doubling up on work of other city staff.

Jennifer stated she does think seeing critical parts of a construction project for decision making is important for the commission.

David stated that he would work on a document regarding these points so the commission can build on this discussion and where it makes sense for the commission to get involved.

Jennifer asked if they could discuss 8 on David's agenda about hybrid meetings. Jennifer stated she shared a link to the state's website to the commission prior to the meeting in regard to the deadline for the legislature which ends July 15 for remote meetings. Jennifer checked in with Kathy Watkins the City Engineer and she stated as of now there is no option for hybrid meetings yet for the city. Jennifer stated if the legislature does expire then it reverts to just an open meeting in person without a hybrid option. Jennifer stated that was her understanding of it because the option as it is right now hybrid and or fully virtual whatever works for the municipality and it does not appear as though there is a hybrid option for Cambridge so the commission would go back in person. She stated the June meeting will be virtual and the July meeting will be in person.

David stated he hopes they extend the remote meeting authorization. David stated this feed into number 7. Process for commenting on applications for other city commissions.

David stated this would be whether the commission would like to make other comments to other actors, other actors in the city, or the legislature, maybe to give the commission more authority over continuing with remote meetings.

David stated regarding number 9.

Cataloguing of wetlands and other jurisdictional areas in the city. David asked if we have a catalog of resource areas in the city

Jennifer stated in 2003 it was 90% done the BSC Group did it. Jennifer stated there is a document of all the wetlands within Cambridge and the polygons are those that are in the GIS layer that is available through the city's website. Jennifer stated it's been close to twenty years so it would be interesting to revisit that and would be interesting to see with some of the new flyovers to make sure that the city has them all linked. Jennifer said she can work on it internally to see if there are any data gaps and report back to the commission.

David stated in number 6 when the city has Kleinfelder, or other company do a review of an application that the city can have the applicant pay for the review. He stated that the commission would have to adopt the right regulations, but they could have applicants pay for the reviews, if that was something the city would want.

Jim stated that they have not charged applicants for reviews and the reason that we don't is because we do charge applicants for other reviews and field observations and other aspects of their projects that are outside the Wetlands Protection Act, these are much more costly than the cost of a review from Kleinfelder or other companies. Jim stated there is a drainage project happening on Broadway right now and is directly related to sewer mitigation for a development being done by Boston Properties and the field engineer that is overseeing that work for the city is being paid by Boston Properties so that is much more costly to pay a field engineering everyday then a review for ConCom.

David asked if anyone from the commissioners had comments or thoughts of whether a local ordinance makes sense.

Kathryn stated looking back at past applications like the Alewife triangle area, she said there was also a discussion about them building this big vault under the building to capture stormwater. She felt that they, the commission was not allowed to promote some other creative types of solutions. She understands that the commission does not have the authority to push to applicant to do more and to consider more possibilities of greater climate change.

Purvi agreed they should have a bylaw but remembers a conversation with Jennifer about it and Jennifer's comment was that the city has such stringent regulations. Purvi stated that the city does have stringent regulations, but they could investigate any aspects that they can interact with the city and if the commission should have a bylaw or ordinance. She stated she would like to see how they work on rolling this out and what types of conversations that need to have and who they would need to include. She said there is the DEP circuit writer, the staff a MAC and city staff. Purvi asked Jennifer would it be a process that the commission comes up with a draft and put it out for comment.

Jennifer stated yes, Jennifer stated its looking at the interest of the act and what is being protected and looking at which acts are being thoroughly protected and then looking at the ones that aren't proactively being protected to the maximum extent the commission can. Jennifer stated that is the most important to ask, as she does not have an answer to it. She stated that Jim could speak to the stormwater control permits and any construction permits that are issued within the wetland's protection act jurisdiction areas. She stated that the city's design standard is at a much higher standard then the Wetland Protection Act standard or what a lot of bylaws would promote.

Jim stated as related to the notice of intents that come in especially the ones that are within the FEMA floodplain, he said those require a stormwater management report that must be submitted. Jim stated when he reviews these, he is making sure they are not only using the city's standards but also DEP's standards related to stormwater management. Jim stated that one of the differences is DEP requires for the notice of intent that applicants use the Noah Atlas 14 rainfall projections, but the city has its own rainfall projections for the year 2070 that the city requires applicants to use. He stated also that the city standard is that sites need to do stormwater mitigation, which might include infiltration, detention, or some type of storage for the difference between the 25-year storm and the 2-year storm and that requirement is above and beyond the state's requirements. He added that the city also has a phosphorus removal requirement for stormwater management above and beyond what the state requires. He stated when reviewing the stormwater management reports that come in, they are not only making sure they meet the Wetlands Protection Act standards but also the city's standards. Jim stated regarding Kathryn's comment, that as far as compensatory storage and the large tanks under the buildings, he said that DEP requirements are stringent, and it all needs to hydraulically connect to the water body and also be at the correct elevation where the compensation is required. He said Cambridge is very dense and to meet all these requirements often the best place is under the building with a grey solution rather than a green solution. Jim also stated that all infrastructure built in the city is to be built to the 2070 storm, so any occupied spaces and any critical infrastructure for the building needs to be above the 2070 10-year flood level and that is a requirement by Public Works as part of the building permit review, as well as a flood protection plan in place up to the 2070 100-year storm. He said that recently DPW had inspected the flood protection that was installed for 50 Cambridgepark Drive project which was a Tiger Dam System and they watched them deploy the system which is stored in the building in case they need it. Jim stated it might be helpful for the commission to have the City Engineer come to a meeting and talk about how the

city is working on resiliency and how it's being done through zoning instead of a wetland's bylaws.

Purvi asked Jim to talk about the 2070 numbers, she added she knows that Cambridge and Boston have some of the best stormwater requirements in the state. She said the Noah Atlas 14 is antiquated and they push people to use Connell data. She asked what the city uses for calculating the 2070 values.

Jim stated the city uses Kleinfelder to do the resiliency planning, regional partners such as the City of Boston, MBTA, MassDOT, EPA, DEP, MWRA that they have come up with the 2070 projections and that have been changing and the city has done an update to the city's flood viewer which is on the city's website. The city has also used the Cornell data.

David stated that now hearing from Jennifer and Jim about these requirements that maybe a wetlands bylaw maybe duplicative and might not be necessary on some of these issues. He still wonders if there is still a role for a wetland's bylaw in flood plain development, if there were any gaps the commission could fill with a bylaw and then on our riverfront areas. If there was more the commission could do with the Alewife Brook and the Charles River from a habitat and environment perspective as well as for flood storage.

Jim stated that he and Jennifer would work on a date that Kathy the City Engineer could attend a meeting to talk about whether there was a need for a wetland bylaw.

Jennifer stated there are innovative ideas being thought about to potentially use in the future. She added that the Charles River Conservancy submitted a proposal for ARPA funding through the city to be funded for a research study in using floating wetlands as a riverfront mitigation measure for any project. If a boathouse project came through and they were increasing their floats they could potentially add a floating wetland that would have some ecological benefits for the area. Jennifer stated that her and Kevin Beuttell the City's Landscape Architect talked through the mitigation idea with Laura Jasinski. She said the Wetlands Protection Act may not have sanction over but maybe the Conservation Commission could.

Jennifer wanted to take minute to review. She would send out to the commission a link to the MACC database and a link to the flood viewer that Jim talked about. She will add this under administrative topics month to month so if there is any follow-up the commission can talk about it. She stated she would work with Jim and Tracy on finding a time when Kathy could attend a meeting.

Elysse would work on a new member orientation document.

David will work on items four and five and bylaw potential.

### **8:12 – Meeting Adjourned**

In Favor – 4, Absent – 3, Opposed – 0, Abstained – 0