

Arlington Conservation Commission

Executive Session Minutes

May 4, 2017

~~Mr. Doug Heim, Arlington Town Counsel, Attorney Matt Watskey, litigant Scott Seaver and his wetland consultant Mary Trudeau joined Commission members present in the second floor conference room of the Town Hall Annex.~~

~~At approximately 8:45 p.m., Connors/Tirone proposed the motion that this meeting be an moved that the Commission meet in executive session to discuss pending litigation. (closed session).~~

There followed a roll call vote: Nathaniel Stevens – yea, Janine White – yea, Mike Nonni – yea, Charles Tirone – yea, Susan Chapnick – yea, David White - yea and Curt Connors – yea. Motion passed unanimously.

Also present was non-voting Associate member Cathy Garnett and acting Conservation Administrator Eileen Coleman, Town Counsel Doug Heim, Plaintiff Scott Seaver and his attorney, Matt Watsky, and his wetland consultant Mary Trudeau.

Executive Session – Active Litigation: Seaver Construction Co. v. Arlington Conservation Commission, Middlesex Sup. Ct. Civ. A. No. 1681CV03021

Mr. Heim explained that during the April 06, 2017, executive session, the Conservation Commission sketched out and voted on an agreement in principles that could settle the litigation. The intention of tonight's meeting is to go over details, especially changes to plantings, so the project can be re-noticed and re-opened and new votes taken on final agreements.

Mr. Heim referred to the modifications previously proposed to address Arlington Conservation Commission's concerns and how they are to be addressed:

1. Moving the property building back one foot – This doesn't work with the zoning setbacks required by the Town, as the Applicant thought might work, but the Applicants are-is moving the house back 1 foot by reducing its sizechanging the footprint of the house to provide 1 foot.
2. Remediation of wetland behind property – It is not valuable to remove only part of the phragmites. The Applicants have agreed to remove trash on the abutting wetland.
3. Modifications to plantings – The plans previously marked up have been mislaid so the Applicants propose to mark up a plan tonight.
4. Change deck in favor of pervious patio – The Building Code still requires stairs and a landing off the family room.
5. Provide property boundary – It has yet to be decided what that will be.

Attorney Watsky confirmed that a hand-marked plan will be sufficient for tonight. It will be formally drawn for the Public hearings the Commission will have to formally consider and vote upon a revised project.

The items discussed and the conditions agreed upon are as follows:

Property distance from wetland:

Condition:

- The footprint of the house shall be redesigned (shrunk) so as to move the house 1 additional foot away from the wetland.

Plantings: Ms. Trudeau and Mr. Nonni, who has been reviewing the proposal, discussed appropriate species and concluded that

The Dura Heat tree will be replaced by Eastern Redbud

Two white pines could be replaced by red cedar (*Juniperis virginiana*)

Provide additional mitigation using inkberry (*Ilex glabra*).

Ms. Trudeau marked up the Landscaping Plan dated July 19, 2017, by hand. Ms. Coleman scanned a copy and sent it to Ms. Trudeau to update the electronic copy.

Conditions include:

- Plantings will be installed according to the Landscaping Plan handmarked on May 4, 2017, and provided electronically with the reapplication package.
- Survivability report shall be provided after one year
- Plants shall be warranted for 2-3 years

Property boundaries:

- The Applicants shall provide 4 rebar markers bearing the words "habitat area," one at either end of the property line and two in between.
- The contractor shall inform the first house buyer of the conditions imposed by the Conservation Commission.

Continuing condition:

- The no-disturb area shall be protected in perpetuity.

Wetlands remediation: Ms. Trudeau assured the commission that the Applicant is happy to clean up the wetland.

Condition:

- Trash within 25 feet of the Town line shall be removed.
- Plugs (of grasses/sedge/wildflower) from New England Wildflower shall be applied to areas disturbed ~~areas~~ on Town land where trash is removed.
- The bottom of the fence at the north property line shall be at least 6" off the ground.

A Letter will be ~~required-requested~~ from Town Manager's office giving ~~administrative~~ consent to allow the Applicant to planting and cleanup on Town land within 25 feet of ~~town-shared~~ property line.

Arlington Conservation Commission will provide a No Dumping sign on the Norway maple behind the fence.

Pervious patio:

- The patio shall be built using pervious pavers.
- The stair and landing shall be constructed within the patio area.
- Specifications for the pavers shall be provided to the Conservation Commission.
- Weepholes shall be included in proposed retaining walls on either side of house.

Erosion control:

- An entrenched silt fence shall be installed with a 12" filter sock on the upgradient side of the property line.

In order for the reapplication to be heard at the June 1, 2017, meeting, the Applicant must submit a new Notice of Intent by May 18, 2017. The Notice of Intent shall be filed under the Bylaw only since there is a Superseding Order of Conditions under the Act from DEP approving the project; no

| [filing fee will be required for the new Notice of Intent.](#)

The Applicant will notify DEP after he receives a permit from the Arlington Conservation Commission.

| [Town Counsel will work with Attorney Watsky on the draft settlement agreement.](#)

DWhite/Connors motioned that the Arlington Conservation Commission agrees in principle that the plan discussed tonight will go forward as a new Notice of Intent per the Arlington Bylaw and that the terms are acceptable to both the Applicant and Arlington Conservation Commission; also that Town Counsel is authorized to sign off on the settlement agreement on behalf of the Arlington Conservation Commission with the consent of the Chair Nathaniel Stevens and one other [Commission member](#). Roll call vote ensued: Nathaniel Stevens – yea, Mike Nonni – yea, Susan Chapnick – yea, David White – yea, Chuck Tirone – yea, Curt Connors - yea and Janine White – yea. Motion passed unanimously.

Tirone/DWhite motioned to go back into regular session. Roll call vote ensued: Nathaniel Stevens – yea, Mike Nonni – yea, Susan Chapnick – yea, David White – yea, Chuck Tirone – yea, Curt Connors - yea and Janine White – yea. Motion passed unanimously.

Meeting adjourned at 9:50pm.

Respectfully submitted,

Eileen Coleman, Temporary Conservation Administrator