

Stoneham Conservation Commission
Findings
for:

Commons at Weiss Farm

Applicant: Weiss Farm Apartments, LLC

DEP File No: 297-0371

Introduction

The Weiss Farm site is approximately 25.7 acres in size, and is located on the north side of Franklin Street. As shown on the plans (see list below), this project consists of the following major components which will be constructed on approximately 10.2 acres of the property.

- A. Demolition of two existing wood-framed barns
- B. Leveling an approximately 30-foot tall drumlin with mature woodlands and exposed ledge outcrops.
- C. Constructing three five-story apartment buildings providing approximately 249 units of housing. One of the apartment buildings will provide below-grade parking.
- D. Constructing five three-unit townhouse buildings, providing approximately 15 units of housing.
- E. Constructing one seven-car free-standing garage building.
- F. Constructing a clubhouse with outdoor pool.
- G. Constructing on-site parking for approximately 438 cars.
- H. Constructing a footpath and bridge to provide pedestrian access to approximately 3 acres of uplands on the site.
- I. Construction of stormwater management features, such as catchbasins, area drains, roof drainage connections, pretreatment devices, a water quality basin and four underground infiltration structures.

The proposed center development area is bounded on three sides by an approximately 10-foot to 15-foot wide man-made drainage channel reportedly excavated by the Army Corps of Engineers in the 1950's. The channel is tributary to an existing stormwater pump station located on the southeast side of the site adjacent to Franklin Street which lifts the water from the drainage channel to a culvert under Franklin Street. The culvert under Franklin Street discharges to the ground surface on the south side of Franklin Street.

Approximately 12 acres of wetlands on the site, including the man-made channel, are subject to protection under the Massachusetts Wetlands Protection Act (WPA). The jurisdictional wetlands are located on the southeast, north and northwest sides of the site and are an Inland Bank and Bordering Vegetated Wetland (BVW). These wetland resource areas are described in the Order of Resource Area Delineation (ORAD) issued by the Stoneham Conservation Commission

(SCC) on February 15, 2012. Land under water exists within the drainage channel, and bordering land subject to flooding occurs in low areas on-site. Some of the proposed work will occur within the 100-ft buffer zone to wetland resource areas.

The Applicant has engaged the professional engineering services of H. W. Moore Associates, Inc. of Boston and environmental consultant AECOM of Chelmsford to prepare the Notice of Intent, project plans and supporting information provided to the SCC. The Applicant was represented by Steven Cicatelli, Esq. and Peter Mahoney, Esq. of Corcoran Management, Richard Gallogly, Esq. of Rackemann, Sawyer & Brewster.

The SCC opened the public hearing for the project on January 6, 2015. Additional public hearings were held on February 5, March 19, April 9, May 7, June 4, and July 9, 2015. A site walk was held on April 25, 2015. The SCC was familiar with the property and its wetland resources through its previous review of WPA filings for work on the property and at nearby locations, and consideration of WPA enforcement issues at the site.

The Applicant generally responded to SCC inquiries in a timely and responsive manner, and considerable improvements to the Project Plans were made by the Applicant through this process. However, as outlined below, certain information the SCC requested and was expecting to receive was not provided by the Applicant. At the July 9th public hearing, the Applicant abruptly requested that the SCC close the public hearing. The abrupt nature of this request is demonstrated by the Applicant's letter to the Commission, dated July 9, 2015, which was handed to the SCC at that very meeting and promised to provide certain missing additional information at a future date. Through counsel, the SCC noted the above and asked the Applicant if it wished to reconsider the request to close the hearing. The Applicant did not so desire; the SCC closed the hearing as the Applicant requested.

The Applicant's election to close the public hearing without providing the additional requested information requested resulted in Project Plans that cannot, in their submitted form, comply with the WPA performance standards. As outlined below, the Applicant's documents are not compliant with DEP Stormwater Management Guidelines. In addition, the Applicant's plans are incomplete in certain respects (discussed below), preventing the SCC from fully assessing the project impacts from the Applicant's proposal.

Faced with incomplete information from the Applicant and non-compliant Project Plans, the SCC is unable to condition the project in a manner that would meet all requirements of the WPA and its associated regulations and so votes to deny issuing an Order of Conditions for the reasons described herein.

Documents

The Commission's decision considered the following documents (also referred to as the "Project Plans") provided to the SCC by the Applicant.

- A. Notice of Intent for The Commons at Weiss Farm prepared by AECOM Environment

dated December 8, 2014;

- B. Storm Runoff Analysis and Operation and Maintenance Plan for The Commons at Weiss Farm prepared by H.W. Moore Associates, Inc. last revised March 6, 2015;
- C. Conservation Commission Notice of Intent Submission Site Plans for The Commons at Weiss Farm prepared by H.W. Moore Associates, Inc.:

Sheet	Title	Last Revised
Cover		4/30/15
C-1	Existing Conditions	6/20/14
C-2	Site Layout & Materials Plan	4/30/15
C-3	Site Grading & Drainage Plan	4/30/15
C-4	Site Utility Plan	4/30/15
C-5	Site Details Plan	4/30/15
C-6	Site Details Plan	4/30/15
C-7	Site Details Plan	4/30/15
C-8	Site Details Plan	4/30/15
C-9	Site Signage Plan	4/30/15
C-10	Site Erosion Control Plan	4/30/15
L-1	Landscape Plan	6/20/14

- D. Letter from H. W. Moore Associates, Inc. dated May 1, 2015; 4 pgs and 29 pages of attachments.
- E. “Stormwater Pump Station and Weir Dam Improvements Stoneham, MA.” Prepared by: H. W. Moore Associates, Inc. Boston, MA. April 28, 2015, revised June 8, 2015.
- F. “Weiss Farm Watershed Study Stoneham, MA” Prepared by: H. W. Moore Associates, Inc. Boston, MA. May 6, 2015, revised June 10, 2015.
- G. DEP Administrative Consent Order and Notice of Noncompliance to Weiss Farm, Inc. File no ACO-NE-10-6W002. 10 pgs and 10 pgs of attachments.
- H. Letter dated June 11, 2015 from Cicatelli & Cicatelli. 2 pgs.
- I. Letter dated July 7, 2015 from Griffin Engineering (Peer Review Consultant) 3 pgs.
- J. Letter dated July 9, 2015 from H. W. Moore Associates, Inc. 2 pgs and 8 pgs of attachments.

Findings:

- 1. The SCC finds that areas subject to regulation under the Wetland Protection Act exist at the site, including the following wetland resources: Land Under Water, Bordering Land

Subject to Flooding, Inland Bank, Bordering Vegetated Wetlands.

2. The SCC finds that the site at the time of its review does not include Priority Habitats of Rare Species or Estimated Habitat of Rare Wildlife Applicant as documented by the Massachusetts Natural Heritage and Endangered Species Program.
3. The SCC finds that the Bank, Bordering Land Subject to Flooding, Bordering Vegetated Wetlands and Land Under Water Bodies at the site are significant to public and private water supplies, ground water supplies, flood control, storm damage prevention, prevention of pollution, and to the protection of fisheries and wildlife habitat.
4. The SCC found that the 2010 DEP Wetland Division Consent Order regarding the property has not been complied with in various ways, causing essentially continuous violations of the Consent Order and Wetlands Protection Act, and significant damage to adjacent properties and downgradient drainage systems. The SCC found that the Applicant failed to adequately demonstrate that its proposed work would remediate these violations and non-compliance, or that its proposed work would reliably prevent such conditions from recurring.
5. On July 8, 2015 the Applicant resubmitted, in response to a request by a SCC peer review consultant Griffin Engineering Group, LLC calculations purporting to demonstrate that the proposed on-site drainage system meet the requirements of DEP Stormwater Management Guideline No. 3 (regarding minimum recharge volume). The July 8, 2015 calculations were in error and were not consistent with the design drawings. The SCC finds that the stormwater management system design provided by the Applicant's Engineer does not meet minimum recharge standards.
6. At the July 9, 2015 public hearing, the Applicant's Engineer provided a letter responding to peer review consultant Griffin Engineering Group, LLC July 7, 2015 comments. The Applicant's July 9, 2015 letter states that additional information would be provided prior to the next hearing to address outstanding concerns pertaining to the landscaping plan. At the same July 9, 2015 hearing, the Applicant requested that the SCC close the hearing, which it did. The SCC's request for additional information pertaining to the landscaping plan has not been addressed by the Applicant.
7. The Applicant's topographic plans describe, in the vicinity of wetland flags AF 28 through AF 31.3, large piles of stockpiled soils or materials associated with the ongoing Weiss Farm operations. The large piles are located directly adjacent to wetland resources. The Applicant's proposed grading plan is incomplete in this area. There is no attempt to blend existing contours into proposed contours, so that it is impossible for the SCC to understand the proposed drainage conditions that will exist in this area, or how the proposed work will look upon completion. The SCC raised this concern to the Applicant in April 2015. The Applicant's July 9, 2015, letter to the Commission notes that resolution of this issue is still pending. At the July 9, 2015, hearing, the SCC

requested that the Applicant continue the hearing so that a number of issues, including this proposed grading plan deficiency, could be addressed. The Applicant refused and asked that the hearing be closed. The SCC at the time the hearing was closed had plans from the Applicant that did not adequately describe the proposed work adjacent to the aforementioned wetland flags; the SCC was unable to fully assess the project impacts.

8. On July 9, 2015, the SCC requested that the Applicant continue the hearing to its July 22, 2015, meeting so that 1) additional information could be received demonstrating that the project met all DEP Stormwater Management Standards; 2) the Stoneham Public Works Director could be consulted regarding information submitted by the Applicant on July 8, 2015, addressing the feasibility of drain pipe maintenance work adjacent to the site, and the ability to undertake same; so that 3) information submitted by the Applicant on July 8 and 9, 2015, could be reviewed by the SCC and its peer review consultants. The Applicant refused this request.
9. The Applicant's "Stormwater Pump Station and Weir Dam Improvements Stoneham MA" report describes resetting concrete blocks that have settled and become displaced in the existing weir dam within the existing stream on the east side of the site. The Applicant's goal in proposing this work was to divert stream flows away from the failed pump station along Franklin Street to the historic Meetinghouse Brook west of the site. The SCC expressed concerns that altering this hydrology may cause flooding of properties to the west of the site. At the July 9, 2015 hearing the Applicant provided topographic information for a limited portion of the off-site properties of concern to the SCC. The July 9, 2015 topographic plan (Existing Conditions with Abutters; prepared by H. W. Moore Associates, Inc. dated June 19, 2015) confirms that off-site properties would be affected by this diversion of flow. The SCC was concerned that the Applicant's proposed diversion of flow could alter hydrologic conditions affecting wetland resources on the subject site and at off-site properties and asked at the July 9, 2015 hearing that this be further addressed. The Applicant, as noted above, refused to provide this information and instead asked that the hearing be closed.
10. The SCC was concerned that the Applicant's proposed resetting of concrete blocks in the weir structure would not reliably control water in the future. The existing weir is of overall poor design and its construction has clearly failed. The proposed improvements described in the Applicant's "Stormwater Pump Station and Weir Dam Improvements Stoneham MA" narrative appeared insufficient to reliably prevent such failure from recurring in the future.
11. The SCC finds that the Applicant's proposed work to repair existing on-site drainage deficiencies at the Stormwater Pump Station was incomplete and insufficient to demonstrate reliable future operation. The SCC requested plans and specifications for the pump station repairs. The Applicant provided only a brief narrative describing, at a preliminary level, a limited program of pump station improvements. The brief narrative did not provide reasonable assurance to the SCC that all of the pump station deficiencies would be satisfactorily addressed, nor that the pump station, with only the Applicant's

limited improvements, would reliably control stormwater at the site in the future.

12. Following on-site observations, consideration of information presented at public hearings and in documents provided by the Applicant, the SCC found that existing on-site drainage deficiencies cause flooding of lands at and adjacent to the site and that the Applicant's proposed work will worsen the extent and duration of flooding at and adjacent to the site.
13. The SCC has observed on numerous occasions failure of the on-site drainage system to convey water downstream causing flooding of the subject and adjacent properties. The flooding is due to failure to properly operate and maintain the existing drainage system. For example, during the Commission's April 25, 2015, site walk, the pump station was operating but only about 1 gallon per minute of flow was being conveyed across Franklin Street due to such deficiencies. This compares to the rated pump discharge capacity of over 400 gallons per minute. The Applicant's "Weiss Farm Watershed Study" recommends several on-site and off-site improvements as being necessary to address the problem. However, the Applicant has not provided specific plans to accomplish any of the off-site improvements. Without the off-site improvements, the on-site drainage improvements will not be effective.
14. The Applicant's proposed work will create approximately 5.5 acres of new impervious surfaces at the site. Runoff from the new impervious surfaces will flow rapidly through a proposed drainage network to several infiltration structures which will be constructed within parking lots and roadways at the approximately 10-acre development area. The infiltration structures will be constructed a few feet above the seasonal high groundwater table, at the perimeter of the work area, very close (approximately 50' to 100') to the bordering vegetated wetlands and stream channels on the north, east and west sides of the development. Soil borings at the infiltration structures fairly consistently describe glacial outwash, a highly permeable formation and groundwater tables at the infiltration structures that are essentially at the same elevation as the nearby streams and the impounded water at the failed pump station. The proposed project will quickly convert rainfall into impounded water at the southeast corner of the site.

The site hydrogeology operates like a bathtub, except that at this site the bathtub must be emptied by pumping. Water that is not quickly pumped across Franklin Street pools on-site. Because the Applicant has not provided satisfactory plans to address the existing drainage deficiencies, it was clear to the SCC that the additional stormwater runoff caused by the project and its rapid conveyance to the southeast corner of the site will exacerbate the continuously flooded conditions that affect the site and adjacent properties.

The Applicant stated during the July 9, 2015 hearing that the SCC's consideration of the increased volume of runoff and its potential to exacerbate flooding was not permitted by the DEP Stormwater Management Standards. The SCC disagrees. Stormwater Management Standard No. 2 requires Applicants to "...evaluate the impact from peak

discharges from the 100-year, 24-hour storm. If this evaluation shows that increased off-site flooding will result from peak discharges from the 100-year 24-hour storms, BMPs must also be provided to attenuate these discharges.” In this case, to meet this standard the Applicant could reduce impervious surfaces at the site so that off-site flooding would not increase or create sufficient volumes of lined impoundments that would retain flood waters on their property.

Moreover, the SCC must consider the potential impacts of the project and its drainage system on the site and adjacent properties. Prevention of storm damage is a basic interest of the Wetlands Protection Act. Because the Applicant’s proposal will clearly increase the extent of storm damage, the SCC cannot approve it.

The Applicant’s suggestion - or worse, expectation - that the SCC ignore off-site flooding from the proposed project’s increased runoff volumes and rapid stormwater conveyance is obviously unreasonable. The very unusual hydrologic condition at this site – pumping is necessary to empty the site – demands special consideration by the SCC. The SCC requested that the Applicant provide additional information to address this off-site flooding concern at its July 9, 2015 hearing. The Applicant declined to provide the information.

15. The SCC asked the Applicant to provide basic information describing the existing stormwater pump station, such as pump operating levels and pump performance. The Applicant did not provide this information, explaining that it was impossible to access the pump station equipment due to the continuously flooded condition at the pump station. Failure to provide this information made it impossible for the SCC to understand how the Applicant’s proposed limited repairs to the pump station would operate if undertaken, and to determine if the proposed repairs would be effective in preventing the ongoing flooding problems.
16. The existing Stormwater Pump Station does not operate properly due to a variety of deficiencies. The SCC observed that pump station access was impossible due to continuously flooded conditions; only during the summer months is it possible to access the mechanical equipment. The Applicant’s “Stormwater Pump Station and Weir Dam Improvements Stoneham, MA” report recommends a number of pump station repairs, pump station improvements and operational and maintenance improvements. The SCC asked the Applicant to provide specific plans describing such repairs and improvements so that it could evaluate the potential impact of same on wetland resources, understand the scope and timing of such work and evaluate the future reliability of the pump station. The Applicant failed to provide such specific plans.
17. The Applicant recommends in its “Weiss Farm Watershed Study Stoneham MA” several off-site drainage improvements, including cleaning the approximately 450-foot long drainage pipe along Sunset Road, an approximately 500-foot long drainage channel connecting said pipe with Franklin Street, and over 1,000-feet of the Meetinghouse Brook drainage channel west of the site. The SCC favors all of these recommendations towards

restoring normal drainage conditions at the site. The Applicant stated at the July 9, 2015 hearing that it would contribute up to \$20,000 towards these projects if they were carried out by the Town of Stoneham. The SCC was concerned that the town might not be able to carry out these projects in a timely manner and that the proposed contribution would be quite insufficient in comparison to the cost and complexities of the projects. The SCC requested additional information from the Applicant and time to develop accurate cost estimates and so that the Stoneham DPW director could be consulted regarding the ability of the Town to undertake the work. The Applicant declined to provide this information and time and asked that the hearing be closed. Consequently, there was no viable plan in front of the SCC to undertake the recommended drainage improvements.

18. DEP issued a Consent Order to the landowner (Weiss Farm, Inc.) in 2010 due to its failure to comply with provisions of DEP's 2006 Consent Order; discharge of untreated stormwater runoff into wetland resource areas; unpermitted alterations of wetland resource areas; and other issues of noncompliance. The SCC consulted with DEP and was advised that the 2010 Consent Order is still in effect. The SCC observed site conditions demonstrating that requirements of the 2010 Consent Order are not being followed, such as the requirement "to address the accumulated stormwater to maintain a condition that down not allow flooding of the pump access road or further degrade wetland resource areas"; to "maintain siltation and erosion controls at all drain points on the Site"; and to prepare a drainage study. The SCC concluded that the failure of the landowner to comply with the 2006 and 2010 Consent Order requirements has made pump station operation and maintenance impossible; increased downstream siltation; and significantly worsened downstream drainage.

The SCC could not approve the Applicant's project at the date the hearing was closed, because the Applicant separated itself from the need to carry out the downstream drainage remediation. Without pump station improvements and downstream drainage remediation, wetland resources and properties at and near the site will continue to be harmed. Approval of the current application without these improvements would also seemingly reward the current landowner for failure to comply with the Consent Orders.

Conclusion

Therefore, based on the above findings, the SCC denies the proposed project pursuant to the Massachusetts Wetlands Protection Act (MGL Chapter 131 Section 40) and accompanying regulations (310 CMR 10). The SCC finds that after careful consideration of the information provided, historic and current site conditions, and the proposed project, that it is unable to set conditions to adequately protect the nearby wetland resources and interests of the WPA. The Applicant's refusal to provide the additional information requested by the SCC on the significant matters discussed above makes it impossible for the SCC to conclude that all WPA performance standards will be met and that the Applicant has satisfied its burden of proof of same