

Jeanne Guthrie

From: Michael Lesser
Sent: Friday, September 19, 2025 1:32 PM
To: Jeanne Guthrie; Zach McBride; Bob Murchison
Cc: Courtney Ek; Joyce Hastings
Subject: CONCOM REPLY#2 to Re: Fenix Partners Reply to CONCOM REPLY TO: Context and precedent for Waiver of Sherborn Wetland Regulations

All, The text in **RED** below are the Commission's reply to Fenix Partner's Sep 16 email on the Conservation Commission request to the ZBA for a restoration planting plan condition.

Given that it is a Friday and that I did not want to delay this communication, I've taken the liberty of also replying directly to the applicant. (You can let me know if I should not do so in the future.)

Regards, Michael
Michael Lesser, Co-Chair, Sherborn Conservation Commission

From: Jeanne Guthrie <jeanne.guthrie@sherbornma.org>
Sent: Tuesday, September 16, 2025 9:50 AM
To: Michael Lesser <Michael.Lesser@sherbornma.org>; Courtney Ek <Courtney.Ek@sherbornma.org>; Joyce Hastings <Joyce.Hastings@sherbornma.org>
Subject: FW: Fenix Partners Reply to CONCOM REPLY TO: Context and precedent for Waiver of Sherborn Wetland Regulations
FYI
Jeanne Guthrie
Select Board's Office
Town of Sherborn
19 Washington St
Sherborn MA 01770

From: Bob Murchison <bob.murchison@me.com>
Sent: Tuesday, September 16, 2025 9:25 AM
To: Jeanne Guthrie <jeanne.guthrie@sherbornma.org>
Cc: Zach McBride <zach.mcbride@sherbornma.org>; 'Zachary McBride' <zfdmcbride@gmail.com>; 'Paul Haverty' <paul@bbhslaw.net>
Subject: Fenix Partners Reply to CONCOM REPLY TO: Context and precedent for Waiver of Sherborn Wetland Regulations

Sherborn ZBA, / ConCom Responses:

See below my thoughts on the Conservation Commission proposal to ask the ZBA to impose a mitigation plan of 200 shrubs on this small four home project:

- ZBA has set a precedent with Coolidge Crossing to allow the mitigation plan to be imposed under the NOI process with the Sherborn Conservation Commission under the MA Wetland Protection Act. See my email at the bottom of this string.

ConCom Response: Town Counsel has repeatedly advised Conservation that each project must be considered independently (partly as there are differences between projects), and the actions taken on one do not establish precedent for others. This advice is likely appropriate for the ZBA as well.

- Coincidentally, the Conservation Commission NOI hearing for Coolidge Crossing began a week ago. That project is three large apartment buildings of 135 units built right up against the 50' buffer zone. A mitigation plan has been proposed of 168 plants. Washington Street Homes is four small homes and is being asked by the Conservation Commission to provide 200 plants. The scale of mitigation being requested here appears way out of proportion relative to Coolidge Crossing which is 34X Washington Street Homes.

ConCom Response: The Notice of Intent for Coolidge Crossing was filed with the Conservation Commission at the end of August 2025, and the review process has only just begun. A proposed mitigation and planting plan has not yet been presented. The Commission will apply the same mitigation requirements that have been consistently applied to recent applications.

Coolidge Crossing was previously brought before the Commission in 2021 by a different applicant but was withdrawn before the review process was completed or a permit was issued. At that time, the Commission discussed a range of significant potential mitigation measures, including a monitored invasive species management program, a wildlife tunnel, and substantial plantings of native trees and shrubs. However, no mitigation plan was ever finalized.

- I do not oppose some amount of plant mitigation, but the requested plan is a significant overreach to ask the ZBA to impose.

ConCom Response: The Commission clearly does not view the ZBA's request for a planting plan as an overreach. The ZBA represents local interests, which include the protection of wetlands.

- An official Vernal Pool is a protected resource under the Wetland Protection Act and would be regulated under it. The Sherborn local wetland by-law does not anywhere use the term Vernal Pool and is not regulated differently than other resource areas.

ConCom Response: While this wetland is likely a vernal pool, it is not certified and is not protected as such under the Wetlands Protection Act (WPA). It may, however, be protected by the WPA as 'land subject to flooding'. The Sherborn local wetland by-law does protect this area as an isolated wetland. The Commission's recognition of it as a vernal pool reflects its habitat value and underscores the importance of protecting this resource.

- The Con Com in their argument below claims “a local health issue” of “groundwater quality protection”. This term has no regulatory meaning. It is akin to saying we need to “protect the environment”.

ConCom Response: Groundwater quality protection does have a regulatory basis as it is part of the local wetland by-law and regulations. As the excerpts and highlights below demonstrate, these provisions are deliberate and specific, rather than a broad general reference to “protecting the environment”.

Excerpt from Sherborn GENERAL WETLANDS BY-LAW:

Section 1: Application

The purpose of this By-Law is to protect the wetlands of the Town of Sherborn by controlling activities deemed to have a significant effect upon wetland values, including, but not limited to, the following: public or private water supply, ground water, flood control, erosion control, storm damage, water pollution, and wildlife habitat (collectively, the “interests protected by this By-Law”).

Excerpt from Sherborn Wetlands Protection Regulations, Section 1.2 Purpose and Protected Interests:

The Sherborn By-Law establishes a public review and decision-making process by which activities affecting protected resource areas are to be regulated, in order to contribute to the protection of the following interests:

1. quality and quantity of public and private water supplies
2. quality and quantity of ground water supplies as well as recharge and storage areas
3. prevention of pollution
4. wildlife habitat and wildlife
5. wetland ecosystem health, including protecting wetland plant habitat
6. flood control
7. storm damage prevention
8. prevention of erosion and sedimentation.

Groundwater is the predominant source of drinking water in the Town of Sherborn; therefore, protection of Interests related to water quality and quantity including, but without limitation, Interests 1, 2 and 3, and the ability of jurisdictional areas defined in section 4 of these Regulations to function to protect and contribute to those Interests, is essential.

Bob

From: Jeanne Guthrie <jeanne.guthrie@sherbornma.org>

Sent: Thursday, September 11, 2025 9:01 AM

To: Bob Murchison (bob.murchison@me.com) <bob.murchison@me.com>

Subject: FW: CONCOM REPLY TO: Context and precedent for Waiver of Sherborn Wetland Regulations

Jeanne Guthrie
 Select Board's Office
 Town of Sherborn
 19 Washington St
 Sherborn MA 01770