

IN BOARD OF SUDBURY SELECTMEN
TUESDAY, MAY 3, 2016

Present: Chairman Susan N. Iuliano, Vice-Chairman Charles C. Woodard, Selectman Robert C. Haarde, Selectman Leonard A. Simon, Selectman Patricia A. Brown, Town Manager Melissa Rodrigues and Town Planning Consultant Michelle Ciccolo.

The statutory requirements as to notice having been complied with, the meeting was convened at 6:30 PM at L-SRHS, 390 Lincoln Road, Conference Room A.

Article 42: Bruce Freeman Rail Trail 75% Design - Sudbury Town Bylaws Compliance

Michelle Ciccolo, Town Consultant to present

Ms. Ciccolo stated that she has had discussions with Arthur Frost from MassDOT regarding the rail trail design process. Mr. Frost has worked on numerous trails and informed Ms. Ciccolo that, in his experience, when a town is able to comply with local bylaws, they do so. If deemed necessary, towns conduct wetland replication. The key to the design process is to obtain 25% Design approval from MassDOT while remaining in the “driver’s seat” as to how the project will be designed.

Chairman Iuliano asked whether VHB, a consulting firm doing engineering work for Sudbury on the rail trail, should go before the Conservation Commission.

Ms. Ciccolo replied that the Town has a contract to go through the design process, and, as part of that contract, VHB will file an ENRAD, which essentially delineates the wetlands. After that, feedback from the Conservation Commission is obtained and the trail is laid out as it is determined how best to handle sections of the path with wetlands impact. The process is not “black and white,” there will be “give and take” to determine what is best for Sudbury, and it will be necessary to take each issue “item by item.”

Ms. Ciccolo explained that when railroads were built, there was leveling which created wetlands on both sides of the rail tracks in many situations. You may have heard it said that the wetlands bylaw is so restrictive if followed explicitly that it would be impossible to build a trail without some wetlands replication. The reality is, replication would still be necessary even with less restrictive bylaws. She advised that if the Town doesn’t appropriate the funds and move forward, no solution can be reached.

Selectman Haarde asked if there are cases where MassDOT has worked with communities to comply.

Ms. Ciccolo responded that they will comply to the extent they feel able to do so, but there will be challenges as the local bylaw has a large degree of latitude. There will be discussion and agreement regarding where wetlands are located, and the design process will proceed with meetings between the Conservation Commission and MassDOT.

Selectman Brown asked what is entailed to fine tune the design from 25% to 75% Design.

Ms. Ciccolo replied that the Town’s RFP included wetland declination. To obtain 25% Design approval, the Town will need a concept plan. Once the plan has been submitted, MassDOT will hold a public hearing and take input. From there, extensive internal review of project will be conducted. The plans are submitted for review by a number of state departments, including ADA, traffic, environmental, structures and bridge division. After vetting is completed, MassDOT will notify the Town when 25% Design approval is obtained and the project may move forward. Summaries and comments will be provided to the project engineer (VHB), and incorporated into the plan. At that point, MPO will evaluate the project for

competitiveness in areas including cost effectiveness, users served and connectivity, and help the Town understand where the project will likely rank on state funding list.

Selectmen Haarde said there are two businesses -Eversource and Sudbury Station- who wish to build in Sudbury and we want them to comply with our bylaws. How do we make sure we don't set a precedent with regards to bylaw compliance?

Ms. Ciccolo opined that there is no danger of setting a precedent for either of these cases. She explained that in a 40B project such as Sudbury Station, the developer is not required to comply with local bylaws. She stated that the Town should follow local bylaws when it is the sole proponent for a project, but this is difference for state or regional projects.

Selectman Iuliano asked to clarify her understanding that it is allowable for the Town to pay for variations that are deemed necessary and move the project forward.

Ms. Ciccolo affirmed, explaining that the Town is "in the driver's seat" during the design process.

Selectman Haarde said the he believes the Town needs to make clear that it wishes to work with the State to adhere to our bylaws so that it can later make that argument to private actors proposing projects in Sudbury.

Selectmen Simon said that he believes the main goal is that projects within the town do try to comply with bylaws to the extent possible.

Select Brown stated that when she reads the contract, she doesn't see any requirement for following local bylaws and asked whether such language should be included.

Ms. Ciccolo said she spoke with VHB consultant Tracey who has a clear understanding of the bylaw and has been asked to be consistent with it to the extent possible. She explained that in cases of municipalities where no bylaws are in place, a local process would not include a delineation, thus the plan is on track to collaboration with Conservation Commission.

Selectman Brown stated that she has received complaints from residents is that they believe the Conservation Commission has not weighed in on the project.

Ms. Ciccolo said that this is partially a staff management issue. The contract typically references the RFP, and it is up to staff to make certain that board members receive appropriate information.

Selectman Haarde asked to include language within the contract that bylaws should be considered.

Vice-Chairman Woodard stated that the final contract would come before the Board before it is signed and there would be an opportunity to have this conversation at that time.

Selectman Haarde asked whether there should be any concern that VHB represents both Sudbury and Eversource.

Ms. Ciccolo replied that they are a large firm with numerous clients and will strictly protect information on both sides.

Selectman Brown started to leave because she is recused from the Eversource project.

Selectman Haarde withdrew his question.

Selectman Brown stated there is a lot of concern regarding the rail trail project following bylaws, and she thanked Michelle for her hard work. Selectman Haarde also shared his thanks.

Selectman Brown questioned the prudence of discussion partial design before the 25% design component is completed.

Ms. Ciccolo said that staff will determine the tasks critical to finishing the 25% Design and expand upon the RFP to move to the next stage of the process.

Selectman Brown that it may be worthwhile waiting until the 25% Design is completed and to see project rating from MPO before proceeding with the partial design.

Ms. Ciccolo said that the rating would not happens until late spring, and it would be unfortunate to wait a whole year to move forward. We should be keeping in communication to let them know that we are proceeding. Advocacy needs to happen to keep them apprised. MassDOT is very supportive of rail trails, and they will build it in Sudbury, the hurdle is getting through the design process. She explained that this is an important trail to them as they are building other sections of it.

Selectman Brown moved to vote whether the partial 75% Design for the Bruce Freeman Rail Trail in Article 42 should be designed to comply with Sudbury Town Bylaws.

Selectman Haarde seconded the motion.

Selectman Simon said that making bylaw compliance a requirement is contrary to the Town Meeting warrant article, especially in light of Ms. Ciccolo's explanation of how MassDOT works with towns.

Selectman Haarde said adding this language signals to MassDOT that we have to conform to our bylaws. He stated that the bylaws are there to be complied with and the Board needs to take that position on this.

Vice-Chairman Woodard pointed out that the Board has not taken this position to date. He stated that he is not at all comfortable with any course of action that would create a barrier to funding the project. Making such a demand could jeopardize the funding, and that would be both a mistake and contrary to what the voters asked for. However, he explained that he is in favor of compliance with the bylaws to the extent possible.

Chairman Iuliano stated that she believes it is best to follow the process as it was described earlier and that making an absolute statement regarding the bylaws is inconsistent with that process. She concluded that all of the Board members have the same goal, which is to comply with the bylaws as much as possible.

The motion was defeated with Selectman Haarde and Selectman Brown voting in favor and Chairman Iuliano, Selectman Simon and Vice-Chairman Woodard voting in opposition.

DEFEATED: To vote whether the partial 75% Design for the Bruce Freeman Rail Trail in Article 42 should be designed to comply with Sudbury Town Bylaws.

Selectmen Brown moved to enter Executive Session.

Attest: _____
Melissa Murphy-Rodrigues
Town Manager-Clerk