

**SUDBURY CONSERVATION COMMISSION**  
**Minutes of the Meeting Held Monday, March 7, 2016**

Present: Tom Friedlander, Chairman; Beth Armstrong, Vice-Chairman; Mark Sevier; Bruce porter; Dave Henkels; Rob Elkind; Charlie Russo (arrived 6:50pm); D. Dineen, coordinator

**Minutes**

On a motion by B. Porter; 2<sup>nd</sup> D. Henkels; the Commission voted unanimously in favor of approving the minutes of Feb. 22, 2016. R. Elkind abstaining.

**WPA & Bylaw Notice of Intent: Fencing at Pantry Brook on the Lowell Secondary Rail Line; MA DOT, applicant**

The Commission was notified by MA DOT on 3/2/16 of their withdrawal of the NOI and advisory that fencing will be installed without local wetlands approval. Consultation with Town counsel revealed that MA DOT could claim that addressing liability issues on their property could constitute part of their “essential function” and as such, could circumvent the required state and local wetland permitting.

Commissioners questioned how much of an emergency the fencing is and if they could have requested an Emergency Certification for the project. D. Dineen noted that the Emergency Certification is not required if they are exempt from filing. Town Counsel felt that the Commission could legally challenge MA DOT as to whether or not the work was 1) and emergency and 2) if was part of their essential function, however she felt it could be a weak challenge.

D. Dineen suggested requesting MA DOT at least raise the fence enough to allow for the passage of smaller animals that might not cross the water. M. Sevier noted that the fence and the bridge are not exclusive of each other.

**WPA & Bylaw Notice of Intent: (cont.) 17 Lincoln Lane**

Present: Robert Hanig, homeowner applicant; Meera Alanoly, engineer with MetroWest Engineering representing the applicant

Ms. Alanoly presented information to the Commission indicating that the propane tank displaces 58 cu. ft. of floodplain storage capacity. That results in a .00003inch deviation in rise in the Sudbury river floodplain. A strand of hair is thicker than the elevation rise in the floodplain with the loss of this de minimous amount of floodplain. To further demonstrate that that the loss, even on a cumulative level, she further calculated that if all houses along the Lincoln lane stretch of the Sudbury River placed the same size tank on their property in the floodplain, the cumulative displacement would be 466 cu. ft. of flood storage lost, with a .0002’ rise in the river. She presented a plan showing 2”1 floodplain compensatory storage.

B. Porter stated that he felt uncomfortable allowing even a small loss in flood storage as it could become a problem over time. D. Henkels felt the analysis was very good and noted that the tank had been in place since 2009 with no apparent disruption to the flood storage capacity of the area. C. Russo and R. Elkind concurred.

D. Dineen noted that the woodshed was also located in the flood plain. She did not see that as a major issue as trees fall within the floodplain regularly. C. Russo added that the shed was slightly raised on blocks as well.

On a motion by M. Sevier; 2<sup>nd</sup> R. Elkind; the Commission voted unanimously in favor of closing the hearing.

On a motion by C. Russo; 2<sup>nd</sup> D. Henkels, the Commission voted unanimously in favor is issuing the Order as discussed. (R. Elkind abstaining)

**WPA & Bylaw Abbreviated Notice of Resource Area Delineation: (cont.) 0 Willis Rd.**

Present: Dan Wells of Goddard Consulting for the applicant

The Commission was in receipt of a final report from its wetland peer reviewer, Dave Burke. Mr. Burke reported that he had returned to the site to confirm the revised plan was in accordance with his amended wetland flagging. He stated that all looked in order.

D. Dineen noted that the Commission had not yet directly discussed the issue of intermittent vs. perennial for the stream type. She added that the applicant had submitted the documentation to show that the stream was dry the 4 or 5 consecutive days per the requirements in the wetland bylaw regulation regulations. Where the state had not declared a drought last summer or fall, the Commission must rely on the documented evidence. She has seen the stream on 2 occasions, although these were greater than 10 years ago. She believes the stream turns perennial after it flows under Willis Road to the east and intersects what is likely to be a higher groundwater table at a 6'+ lower elevation on the east side of Willis Road.

Abutter Irina Adubunchek, at 159 Willis Rd. noted that the stream is currently flowing. M. Sevier replied that it only had to be dry the 4 (or 5) consecutive days during a period of time when the state has not declared a formal drought. No formal drought was declared by the state during the time the evidence was submitted. C. Russo questioned if the Commission could challenge the state's failure to declare a drought. D. Dineen explained that it could be done, however she has looked at the readily available evidence and records show that although rainfall was below normal, it was not exceedingly below normal. The burden to prove drought would be on the Commission and the only information available would be the same data collected and used by the state. B. Porter stated that he feels the stream could be perennial. He collects rainfall data and his information results in drought conditions.

Chairman Friedlander stated that the Commission must go by the criteria in the regulations. Using that criteria, the applicant has submitted the necessary evidence to show the stream as intermittent under the state and local regulations. No contrary evidence was submitted.

On a motion by R. Elkind; 2<sup>nd</sup> B. Armstrong; the Commission voted in favor of issuing and ORAD accepting the wetland delineation plan with a revision date of 2/23/2016. B. Porter and D. Henkels opposed.

**WPA & Bylaw Notice of Intent: 168 Horse Pond Rd., correction of violations**

Rich Kirby, the wetland specialist for the applicant, requested a **continuation to 3/21 at 8:30pm as he had a conflict with a meeting in another town tonight. Commissioners voted unanimously in favor of the continuation as requested. Motion M. Sevier; 2nd; R. Elkind.**

**WPA & Bylaw Abbreviated Notice of Resource Area Delineation: (cont.): 999 Concord Rd.**

A request for continuation for 30 days was received from Dan Wells of Goddard Consulting. The revised plan was submitted just past the February 25 deadline which did not allow time for site inspections, particularly the wetland delineation peer review site work before tonight's meeting.

On a motion by D. Henkels; 2nd C. Russo the Commission voted unanimously in favor of the 30 day continuation to April 4.

**Discussion: Sudbury/Hudson Eversource Transmission Line Project:**

Chairman Friedlander began by stating that the discussion is not a public hearing. There is nothing in front of the Commission that needs to be acted on from a permitting perspective tonight. There are currently no permit requests before the Commission at this time.

The purpose of the discussion on the agenda tonight is to allow staff to update the Commission on the Eversource proposal to determine if the Commission may want to speak at the March 16 Eversource meeting in Sudbury. This is a discussion among Commission members and staff.

At the request of the Chairman, the Coordinator presented an overview of the Eversource material presented to the Selectmen on Feb. 2, 2016. She stated that the Commission should be involved in two ways. One as the regulatory authority under the Wetlands Protection Act and the wetland bylaw. The second as a direct abutter to the proposed transmission line with approximately 3,825 linear feet of abutting property line. The regulatory authority is somewhat limited. The project qualifies a Limited Project under 10.53 and therefore will not need to meet the strict adherence to the WPA. The project appears to need local wetland bylaw permit and the performance standards under the bylaw will be more restrictive. The proposed facility must cross over or go under Hop Brook and its extensive associated wetland, floodplain, and NHESP priority habitat area.

Although an alternatives analysis will be required, the review of alternatives/constraints of WPA alternatives analysis is tied to cost. Comments to be considered should include the disruption and alteration of the natural resources in the area that will occur due to maintenance. These will include tree removal outside the 82.5' MBTA-owned land and might result in eminent domain takings of conservation land. This will trigger Article 97 of the MA Constitution. Also, Eversource uses foliar spraying of herbicides for vegetation control. How might this use effect public land and the environment?

Disruption and enjoyment during and after construction on the Hop Brook conservation land should be considered as part of the alternatives Eversource considered. Other issues include access, staging areas, emergency access and turn-around areas, etc. that are likely to fall outside the 82.5'.

C. Russo noted that the concerns are similar to 40B project concerns where the town appears limited in applying the local environmental protections. He mentioned the situation in Salem and Chelsea with the East Eagle line. He felt that the sooner Eversource is aware of the Commission's issues, the better. B. Porter noted that the other alternatives mentioned in Eversource's presentation, such as the use of Hudson Road, appeared to be dismissed without clear reasoning as to why, what the criteria used by Eversource in rejecting alternative routes was, and that cost estimates are incomplete. D. Henkels stated that the Commissioners should make an attempt to attend the Eversource meeting as a group to voice these concerns.

**WPA & Bylaw Notice of Intent: SVT Memorial Forest Violations and resolutions**

Present: Lisa Vernegaard; Dan Stimson; Laura Mattei; of SVT; Pat Gardner; representative for SVT

Ms. Vernegaard Introduced members of SVT and stated that although the NOI indicates SVT will not be redesigning the bridge over the Cranberry Brook stream, they are now amending their NOI to remove this component. SVT is addressing the wetland alteration issue not by the redesign of the bridge at this time but by restoration and a temporary ban on horseback riding on the affected trails and the required leashing of dogs, near the stream

crossings. Horseback riding is now formally banned on SVT's easement over the General Federation of Women's Clubs land. Although the GFWC has never permitted this activity, SVT has not, until now, been enforcing this ban.

SVT brought in Pat Garner, wetland specialist, late last week to assist in the restoration plans. Vegetation plugs and seeds will be used to restore the areas where vegetation has been destroyed by the uses. Block and boulder barriers will be used on the pipeline to discourage AVT use. All areas will be brought back to former grade where impacted.

T. Friedlander questioned what will limit use be horses, dogs, etc. in the future. SVT hopes signage will be effective. In response to a question from R. Elkind, P. Garner stated the possibility of cameras is also being considered. B. Porter noted that ATV use has been historic on the pipeline and he believes they will continue to invade the area. L. Vernegaard noted that there is a distinction between illegal uses such as the ATVs and incorrect uses. T. Friedlander noted that there is an impact to horseback riders from the closing of the trails and access points. L. Vernegaard responded that the horseback riders still have extensive trails available to them. She added that SVT's goal is to prevent, educate, and mitigate the natural resource impacts. C. Russo noted a concern that GFWC has closed the major access trail to the horses but there NOI does not include a plan to redesign the bridge to make it horse and wetland-friendly for the future so that GFWC might consider reopening the access trail. R. Elkind added that the Dutton Road stable has offered to design and construct a new bridge. D. Stimson replied that an appropriate structure is more serious construction.

D. Dineen questioned if the restoration work included work in a floodplain or floodway. P. Garner replied that they will only be bringing in enough fil to restore previously existing grades. D. Dineen expressed concern that with the AVT trail easement closed to horses, the only Sudbury access to the Memorial Forest is now through the Hop Brook conservation land. This will result is more impact to the town trails. She added that SVT is calling for the parties to work cooperatively, however it appears that they have not considered the results of their actions on their neighbors.

D. Dineen stated that the restoration plan did not include any work at the bridge over the tributary to Cranberry Brook. There is extensive sedimentation into this intermittent stream. She stated that stabilization of the area adjacent to the bridge is important as is restoring the stream channel.

K. Roopenian stated that the horseback riders from the Dutton Road stable are good stewards of the land. They access some of the more remote sections of the property more often and can, and do, report illegal activities. They are the best eyes and ears out there to help police the area.

All parties agreed to continue the hearing until March 21 to allow Mr. Garner to provide his plan for restoration of the degraded areas.

D. Dineen thanked the Bissons and their Dutton Road stables for all the land stewardship assistance in keeping the Hop Brook conservation land trails and safe.

**Certificates of Compliance:**

0 Washington Drive

DEP File #301-623, #301-1093, and #301-1117

A site inspection was held March 4. As a result of this inspection and the draft list of outstanding issues developed with the assistance of Town Counsel, the attorney for the applicant requested a continuation to March 21.

301-924 Lot 2 Cail Farm Rd., Fico

On a motion by B. Armstrong; 2<sup>nd</sup> M. Sevier; the Commission voted unanimously in favor of issuing the Certificate of Compliance. The fence has been installed and the recording information for the Order has been received.

In other business:

The Coordinator reminded the Commissioners of the following upcoming meetings:

MEPA Consultation Session: Raytheon Site Redevelopment March 8 2pm

DEP Site Inspection Peter's Way: March 10 11am

T. Friedlander and D. Henkels reported that they attend the MA Association of Conservation Commissioners annual conference at Holy Cross College last Saturday. They attended various informative workshops.

On a motion by R. Elkind; 2<sup>nd</sup> M. Sevier; the meeting was adjourned at 8:30pm.