

SUDBURY CONSERVATION COMMISSION
Minutes of the Meeting Held Monday, Feb. 26, 2018

Present: Tom Friedlander, Chairman; Dave Henkels; Vice-Chairman; Mark Sevier; Charles Russo; Richard Morse; Bruce Porter; Kasey Rogers; Debbie Dineen, Conservation Coordinator

Chairman Friedlander called the meeting to order at 6:45pm in the Town Hall, 322 Concord Rd.

WPA & Bylaw Request for Determination of Applicability: 21 July Rd., Wm. Curley

No applicant present

D. Dineen presented a plan for the tear down and reconstruction of a single-family house in the outer riparian area of Run Brook. Only the septic system is located riverfront area approximately 190' from Run Brook. There is another developed house lot and August Road located between the new septic system and the river. The septic system is replacing an outdated system currently on the lot.

On a motion by D. Henkels; 2nd B. Porter; the Commission voted unanimously in favor of a negative Determination.

WPA & Bylaw Notice of Intent: 54 Old Garrison Rd; Vanessa Rumble

Present: Vanessa Rumble and Aapo Jorgen

Ms. Rumble presented a plan for a small addition to an existing house. The addition will be located on existing lawn area within approximately 130' of a perennial stream and 100'+ to bordering vegetated wetland. An Order of Conditions was issued for this addition in 2012 but expired before the property owners could complete the work. The order the first one-inch of required roof runoff to infiltrated.

On a motion by D. Henkels; 2nd M. Sevier; the hearing was closed by unanimous vote.

On a motion by M. Sevier; 2nd D. Henkels; the Commission voted unanimously to issue the Order as discussed.

WPA & Bylaw: Abbreviated Notice of Resource Area Delineation: Eversource; MBTA ROW

Present: Denise Bartone, Eversource; Katie Kinsella, Dave Vieira, and Marc Bergeron of VHB. Inc. for Eversource; Dave Burke, Marti Nover, Ruth Geoffroy for the Conservation Commission as peer review consultants

Commissioner Kasey Rogers recused herself from participation as a Commissioner in the Eversource ANRAD and Notice of Intent as she is an abutter to the MBTA ROW.

Ms. Bartone stated the ANRAD was filed for confirmation of all jurisdictional resource areas along the MBTA ROW from the Sudbury Substation at 183 Boston Post Road to the Sudbury-Hudson line, including a small portion of wetland at the substation on Boston Post Rd.

J. Viera stated that wetland and upland resource areas were identified under the WPA and the local wetland bylaw. Resource areas are: bank, bordering vegetated wetland, land under waterbody, bordering land subject to flooding associated with Dudley Brook and Hop Brook, perennial streams, intermittent streams, adjacent upland resource area, vernal pools, and cold water fisheries associated with Hop Brook. Bordering vegetated wetland was identified using vegetation, soils and hydrology.

Dave Burke, Sudbury consultant, was in the process of reviewing the wetland delineation along the 4.3 miles of the MBTA ROW. Weather constraints, including below zero wind chills, snow, ice, and

heavy rain have all prevented the on-site work from being completed at this point. He estimates he has completed the review on about one-half the distance. He felt that, so far, the identification of bordering vegetated wetland has been good and thorough. He has an issue on the south side of the Landham Road crossing. He feels that the main area of identification issues is with the limits and extent of inland bank associated with Hop Brook at the confluence with Allowance Brook. The area contains many braided channels where he consistently observed water at the base of the slope with standing and flowing water up the base of the ROW. The Hop Brook channel is well under water at the areas identified by VHB as the mean annual high water. He added that there is likely another perennial stream at Rt. 20.

Marti Nover and Ruth Geoffroy of Nover-Armstrong focused on the FEMA elevations as well as bank issues. They noted that the FEMA floodplain elevations were taken from aerial topography. The FEMA information for the Union Avenue to Landham Road section of the ROW was not included in the ANRAD and was not submitted until the end of January. Differing methods of identifying the 100-year floodplain was used. VHB used a combination of the 1979 Hop Brook Study, the 2010 FEMA FIS Study, and the 2016 FEMA Study. The VHB plans base the identification of bordering land subject to flooding on these studies and on aerial photos rather than on site survey. R. Geoffroy felt there was enough of a discrepancy to require on the ground survey of the 100-year flood elevations. She noted that the definition of "bank" under WPA and the local bylaw differed. The local definition states "bank" includes the higher, rather than the lower, water elevation. Nover Armstrong's opinion is that from July through September of 2017 and Feb. 2018 (time of their initial site visits), the bank as shown on the VHB plans was underwater and has been for the past six months. As such, it appears that VHB's plans have delineated the mean annual low flow elevation. Nover Armstrong has observed that the low flow elevation has been routinely submerged for the past months and all vegetation in this area is obligate emergent wetland vegetation.

D. Dineen added that the Town has historically monitored the flood elevations of Hop Brook at set points along the river. This information will be provided to VHB. D. Henkels noted that bordering vegetated wetland and bank tend to be consistent in low gradient wetland systems.

R. Geoffroy stated that the plans need to have stationing added to allow for better review. VHB needs to reconcile bank elevations, elevations of the 100-year flood elevation should be determined and the use of elevations at a known benchmark, such as the girders, can help determine these elevations. On the ground surveys should be done rather than use of the aerial photos.

T. Friedlander stated that the wetlands along the ROW are a very, large complex system. The Commission is proceeding with the ANRAD as it would for any other large project n town.

D. Dineen had VHB confirm that the only the wetland within the ROW were flagged and all off-site wetlands were estimated. She cautioned the Commission to be careful not to approve any wetland outside this ROW as part of this ANRAD. She also received confirmation from VHB that no attempts were made to seek approval outside the ROW. She advised the Commission that no evidence has been submitted to confirm the streams that VHB identified at intermittent were dry from 4 -30 days, as required under the bylaw. Additionally, no information to confirm if these streams were a Type I or Type II intermittent stream under the bylaw was included in the ANRAD.]

D. Henkels and D. Burke questioned the vernal pool delineations. D. Burke noted that there are at least three vernal pools just offsite to the east of the substation.

Chairman Friedlander opened the hearing to public questions and comments.

Ray Philips, Whispering Pine Rd., asked if the total amount of wetland delineated were enough to assess the impacts of the Eversource Transmission line project. T. Friedlander stated that the purpose of the delineation was to allow the project design to proceed. Assessment of impacts would be part of a later Notice of Intent. Responding to a question, D. Dineen added that any changes to the wetland delineation through the ANRAD process or changes that are approved during any subsequent construction would be the basis for future wetland delineations.

Steve Tipps, Hudson resident, asked if private well delineation was part of the ANRAD. D. Dineen replied that the ANRAD is a wetland delineation only. However, a subsequent Notice of Intent must take protection of public and private water supplies and water quality into consideration. All wells must be identified for the NOI. She noted for Hudson residents that the ANRAD process might appear a bit different in Sudbury due to the additional resource areas and definitions in the local Sudbury wetlands bylaw.

Kate Strauss, Tall Pine Drive, questioned how intrusive the process is. T. Friedlander explained that the ANRAD is now before the Commission, not any part of the project itself.

Bill Schneller, 37 Jarman Rd., Asked what the timeframes are for finalizing the ANRAD. Mr. Vieira felt it would be at least one month before Mr. Burke completes the site review and VHB responds to comments.

Chairman Friedlander reviewed the appeal procedure that was available to all parties and the public should there be a disagreement with the Commission's findings.

With agreement of all parties, the Commission voted unanimously to continue the ANRAD hearing to April 16th. Motion by D. Henkels; 2nd M. Sevier.

WPA & Bylaw: Notice of Intent: Eversource Notice of Intent: Soil Borings on MBTA ROW

Present: Denise Bartone, Eversource; Katie Kinsella, Dave Vieira, and Marc Bergeron of VHB. Inc. for Eversource; Dave Burke, Marti Nover, Ruth Geoffroy for the Conservation Commission as peer review consultants

M. Bergeron of VHB presented plans for soil borings, soil samplings and other exploratory testing along the MBTA ROW from the Sudbury Substation at 183 Boston Post Road to the Sudbury-Hudson line. He noted that the scope of work is exploratory and considered a "minor activity" under the WPA with no permit required. Soil borings in 56 locations are subject to wetland permitting under the local bylaw. These will include 17 test holes, a maximum of 9 monitoring wells installed, 2 grab samples, 35 borings in the upland resource area, and 15 borings in riverfront area. Ten test holes will be located in the upland resource areas and 4 will be in the riverfront area. Six test holes will be in Estimated and/or Priority Habitat areas and 12 will be within 100' of vernal pools. Erosion control will be installed in the areas of the digging. There are 41 tree greater than 3" dbh that will be cut. Hand cutting will be done. They will try to preserve any habitat features encountered. The work should take approximately 45 days.

Responding to T. Friedlander, M. Bergeron stated that Eversource is not proposing any canopy restoration. He noted that it was mostly sub-canopy that will be removed. Paul McKinley, a Licensed Site Professional, will be on site to determine if there are issues with contamination during the digging. T. Friedlander suggested that the OOC require an Environmental Monitor on site for the Commission during the work.

D. Dineen stated that she did not agree that the project was automatically considered a "minor project per the DEP definition in as an activity that is temporary in nature, has negligible impacts, and is

necessary for planning and design purposes". She stated that the work may not be necessary as the Energy Facilities Siting Board has not granted approval for the use of the ROW, and, it has not been determined that the work will have negligible impacts. The applicant has presumed the minor activities exemption applies and therefore has not filed for all resource area alterations. The clearing of trees along areas of cold water fisheries can have detrimental impacts as can performing the work on a raised embankment adjacent to wetlands. Work is proposed during the spring migration and breeding season. M. Nover added that much of the work is being done within riverfront area and the exemption cited by VHB for "minor activities" does not apply to riverfront area work. Mr. Bergeron replied that VHB will reply to formal comments.

D. Dineen raised issues with the soil borings for wetland replication investigation. She felt approval to do so was premature as no alternatives analysis has been performed in accordance with the state and local wetland regulations, in addition to the fact the EFSB has not approved the site. With this being the case, she questioned why the Commission should even consider permitting alterations that might be unneeded and unnecessary disturbance to resource areas.

D. Dineen stated the work is proposed to begin in the May/June time frame. This is when migration and breeding of wildlife is most likely to occur. She questioned how this will be addressed. M. Bergeron replied that work will be conditioned by Natural Heritage and Endangered Species Program and a biologist will be on site daily to prevent mortality. T. Friedlander suggested the Order could be conditioned to specify time of year for the work. D. Dineen agreed but noted in response to VHB that the SCC is concerned with not just state-listed species but with all species under the bylaw so they do not become state-listed. She raised concern for any possible compromising of any soil layers that may currently exist in the area should the borings penetrate a protective layer. Mr. McKinley stated that a hydrogeologist will be reviewing materials to investigate the soil layers prior to any work. All excavated soil will be placed in drums for proper disposal. A drive and wash method will be used to collect the samples as it eliminates clogging by sand. Water levels will be recorded.

D. Henkels asked about dewatering and noted that the corridor is sandy loam. Mr. McKinley stated that all water will be captured and recycled for the boring process. Collapse will not occur as a casing is inserted into the drilled hole.

D. Dineen noted Mr. Bergeron distinguished between certified and confirmed vernal pools and the classification as outstanding resource water. Mr. Bergeron stated that no work will occur within any certified or otherwise for the purpose of this application. He will need to check with the state definition on whether or not non-certified vernal are considered ORWs.

D. Dineen noted that the NOI refers to 84 borings while the presentation discussed 56 borings. She asked for clarification that there are 84 borings total with 56 under jurisdiction. Mr. Bergeron will clarify this. She also asked for clarification where the "derrick" structure would be used. M. Bergeron stated the tripod equipment would be used at the base of the slope in the adjacent upland resource area but not in a bordering vegetated wetland.

D. Henkels questioned how they will prevent the spread of invasive plants. Mr. Bergeron stated they plan to leave cut vegetation on the side of the ROW but they could remove them if the Commission conditions the Order to require removal.

D. Dineen stated that the ROW is used heavily for passive recreation and is integrated into the regional trail system. Will the wells become a safety hazard and will the ROW be closed for the duration of the soil testing? Mr. Bergeron stated the wells will be very small and will be on the slope and not on the travel way part of the ROW. Ms. Bartone stated that they are concerned with safety but do not feel

that that the area needs to be closed completely during the work. Temporary closures of small sections will occur for a short time.

D. Dineen stated that no formal comments will be prepared from items discussed at the hearing. Eversource and VHB should be taking notes and can always review the tape at SudburyTV.com.

D. Henkels questioned if there will be any ambient air monitoring, especially as it may pertain to contaminants. C. Russo noted that it is likely arsenic will be found.

C. Russo questioned if access will be through the Assabet River National Wildlife Refuge. M. Bergeron replied that access will be from the public ways in Sudbury subject to receipt of a street opening permit from the town

M. Nover stated that it appears a wider path than proposed will be necessary than the width indicated on the plan. Support vehicles will be necessary. She suggested the existing and proposed cleared path should be shown on the plans. She added the trees that are now 3" in diameter will grow and their future value should be considered.

B. Porter stated that the work will present obstacles to the users of the public trails in the adjacent conservation areas. He asked and received clarification that the "project" for the borings is the installation of the 115KV transmission line. B. Porter added that the clearing for the exploratory borings should not be permitted until the overall project receives approval. He noted that there are other alternatives for locating this transmission line in less environmentally-sensitive areas. M. Bergeron concurred that Eversource has not yet received approval from the EFSB to proceed at this location, however Eversource wishes to proceed with advancing the project design at this time. D. Henkels and B. Porter both noted that there could be adverse impacts to the environment, including cold water fisheries for a project that might not happen.

D. Dineen questioned how much tree trimming would occur to gain height to bring in the drilling equipment. She also noted that the use of multiple access points might reduce the overall amount of tree clearing. R. Morse stated that there are a large number of very mature white pines along the MBTA ROW. If the project does not move forward, these trees will be cut for no reason and the impacts will be felt for many years. T. Friedlander asked if the trees to be removed can be marked in the field.

C. Russo noted that the NOI and ANRAD referenced sheets that were not included in the filing. He questioned if vibrations of the equipment would be a factor for wildlife such as ground nesting birds. He asked if there had been any studies on equipment vibration impacts to wildlife.

M. Sevier noted that there is not much incentive to work with the applicant to move this project along.

D. Burke noted that the last clearing of the ROW was around the 1960s. He stated that the clearing would result in fragmentation of habitat of a large area that includes the Assabet River NWR, State Forest and town conservation lands. He had lived in the immediate area for many years and has witnessed a host of wildlife using the corridor. If the project does not advance in this location, adverse disturbance will still have occurred with no purpose. He added that the equipment and clearing will result in the spread of invasive plants. He noted that the east end of the ROW for the project is heavily wooded and difficult to traverse on foot. The cut vegetation is proposed to be placed on the side of the ROW. This will further spread the invasive plants and make traversing the area even more difficult for animals who cross the ROW. Ruth Geoffroy questioned if fill would be needed in any areas for the equipment. P. McKinley, LSP, stated that fill would not be necessary but the equipment will be leveled using wood blocks when necessary. M. Bergeron added that the equipment is a maximum height of 20' and will not be stored in resource jurisdictional areas overnight.

Chairman Friedlander opened the discussion to public comment.

Jim Gish, Rolling Lane, questioned what the ROW will look like after the work is completed. Mr. Bergeron replied that there will be a corridor of cut vegetation, however trees will be left on portions of the ROW. The equipment runs on diesel fuel.

Laura Mattei, Sudbury Valley Trustees, noted that SVT is concerned that more trees will be cut than are represented in the NOI if all trees greater 3" are removed for a minimum 8' width. She expressed concern with the timing of the work this spring due to the hopes of having nesting whip-or-wills in the area.

Dan Carty, 15 Stonebrook Rd., received confirmation from VHB that the width of the clearing will be 8'.

Mark Croteau, 12 Colburn Circle, asked if the holes in the ROW will be filled. He questioned if additional holes will be dug beyond the 84 total holes proposed and how they will be filled and if they might cave in and present hazards to hikers. M. Bergeron stated most holes will be 20' deep with four holes being up to 100' deep. They will be filled with gravel that will be compacted.

Matt Murphy, 111 Horse Pond Rd, stated that Eversource has been a bad neighbor in Sudbury and we should not believe anything they say. Chairman Friedlander replied that the SCC will not get into a discussion of neighbors and that the SCC has worked successfully with VHB on large projects in the past. The SCC will look at facts and how that related to protection of wetland and upland interests.

Bill Schneller, 37 Jarman Rd., questioned how close the boring would come to the residences. He also questioned the discrepancy between the state-listed species findings by VHB in 2013 and Oxbow Associates 2014 different findings, so how can we trust VHB's findings now. He asked who would be operating the equipment. Mr. Bergeron did not know the distance of the holes to the closest residence but offered to provide that in as supplemental information. He added that Oxbox was a VHB subcontractor and it is not unusual to have different findings in different years for state-listed species. Licensed drillers will be operating the equipment.

Chairman Friedlander asked everyone to please be respectful of others. He will not allow maligning of anyone in this hearing.

James Brownell, Horse Pond Rd., stated he is an attorney and feels the SCC should deny the project. They should consider the need for the clearing at this time. Chairman Friedlander stated that the Commission's role is to apply the state and local wetland bylaws to the project. The popularity of the project does not factor into the Commission's decision. He noted there is an appeal procedure if it is felt that the Commission did not make the correct decision based on these regulations.

Ray Phillips, Whispering Pine Rd., stated that he appreciates both the SCC and VHB are professionals doing their job. He raised concern that the borings are in close proximity to known contamination sites. He added that if contamination is encountered and the Eversource transmission line project does not move forward, who would clean up the contamination. SCC members replied that clean-up is generally the responsibility of the property owner. Mr. McKinley noted that some reporting of certain quantities of contaminants must be reported to DEP under the MA Contingency Plan requirements.

Janie Dretler, 256 Goodman's Hill Rd., questioned when the holes will be back-filled. Mr. Bergeron responded that they will be backfilled the same day. She added that the statement by VHB that the land would be put back as it was is not accurate as a very large number of trees will be gone. M. Bergeron noted that a restoration plan could be required if the project does not move forward.

Mark Derscher (?), 40 Tall Pine Dr., questioned the age and reliability of the equipment to be used. He was concerned for leaking of fluids and equipment maintenance on site. Mr. McKinley stated he has employed the drilling subcontractor previously and has had good experiences with them being professional and contentious. He also asked if there was a concern for a piercing of a clay layer that could spread contamination. Mr. McKinley would have the contractor look at the hydrology prior to drilling.

Nick Perniece, 255 Peakham Rd., asked why the borings were at different depths. Mr. Bergeron explained that the different depths were for different purposes. Some are for soil samples, others are for vault installation areas, bridge crossing foundations, and duct bank work. There will be no removal of the railroad ties or rails. Vibrations and noise will occur but will be during normal working hours.

D. Dineen questioned if soil samples at all depths will be tested for contamination. Mr. McKinley replied that only the soil to be removed will be sampled.

Responding to Christine O'Neill from Hudson, Ms. Bartone stated that Eversource has permission from MBTA for the soil sampling work.

Diane Cincotta, 260 Willis Rd. asked if the town will sue for damages if something goes wrong. T. Friedlander replied that the decision to do so would rest with the Board of Selectmen. The SCC would have enforcement jurisdiction if it further impacted wetlands. C. Russo suggested the SCC could consider requiring the work be bonded.

M. Nover suggested a site visit prior to the hearing continuation and before they provide additional comments on the NOI. On a motion by D. Henkels; 2nd B. Porter; the Commission voted unanimously in favor of continuing the hearing to April 16 and scheduling a site visit prior to that date. All parties agreed to the continuation date and a site visit. It was previously noted that the SCC cannot invite the public onto MBTA property, even though it is used regularly by the public.

WPA & Bylaw Notice of Intent: 137 Mossman Rd.; D. Smith, applicant

New house construction

The applicant had requested a continuation to March 12, 2018 to review the extent of vernal pool area and revised bordering vegetated wetland delineation. The commission voted unanimously in favor of the continuation due to site and weather conditions. Motion by C. Russo; 2nd D. Henkels

168 Horse Pond Rd. Update:

T. Friedlander informed the Commission of the status of the unpaid tickets and violations based on the hearing in Superior Court. The Clerk Magistrate required \$300 of the \$2700 in fines to be paid and the fence relocated in accordance with the approved plan by June 2018. If the fence is not moved by this date, the full \$2700 in fines will be due and the violation will still be outstanding.

On a motion by K. Rogers; 2nd C. Russo, the Commission voted to adjourn the meeting. 9:50pm