

SUDBURY CONSERVATION COMMISSION
Minutes of the Meeting Held Monday, January 28, 2019

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

Absent: Charlie Russo (partial remote participation)

Comment and Statement Limitations:

Commissioners agreed to allow follow-up comments & statements shall be limited to a maximum of three minutes per speaker. Presenters will be allowed ten minutes for their presentation.

Bruce Freeman Rail Trail Discussion

Present: Michel Turgeon, Jacobs Engineering; Susan MacArthur, MADOT
Beth Suedmeyer, Sudbury Planning Dept.

The purpose of the meeting was to discuss the exploratory work for the soil borings for rail trail design to see if the criteria is met for an exemption under the WPA. M. Turgeon stated that the bordering land Subject to Flooding in (BLST) is coincident with the 100-year floodplain. D. Dineen noted that Eversource soil borings NOI on the MBTA rail line were found not to be coincident with the 100-year floodplain by VHB, Inc., along another section of Hop Brook.

T. Friedlander stated that the wetland resource areas along the BFRT include vernal pools, BLSF, riverfront area, and other wetland and upland resources that should be determined in order for the SCC to be able to make a determination on “negligible impacts”, which is the test for an exemption. D. Henkels noted that the ORAD issued in 2016 did not include all resource areas and those that were approved are under the ORAD which expires in Nov. 2019. The BFRT in Sudbury is 4.4 miles long. Eight test pits and nine borings are proposed within jurisdictional resource. Some of these resource areas are presumed as the SCC has not received a complete ANRAD. The dynamics of the topography and other features are not different from other rail beds other than the fact that the local wetlands bylaw may not be recognized for this project. He suggested that the SCC extend the current ORAD and the applicant provide the missing resource area delineation. This would result in a 3-year ORAD with all resource areas approved. He noted that an amendment to the existing ORAD might be considered. T. Friedlander stated that Town Counsel has opined that an ORAD cannot be amended.

M. Sevier questioned if the Eversource soil borings work was found to be minimal impact to wetlands. D. Dineen replied that it was, however the resource areas were all delineated over an 8-month process and the soil boring work was developed knowing the location of these jurisdictional areas. She added that the NOI for the Eversource soil borings was minimal only after an OOC was issued with seven pages of conditions controlling the work and an on-site Environmental Monitor, working under contract to the SCC, was present for all activity in jurisdictional wetland areas.

M. Turgeon responded to a question by D. Dineen stating that the Base Flood Elevation is the BFE shown in the FEMA Flood Profile Study. D. Dineen suggested that the material that is submitted for the next discussion should include the vertical clearing of the equipment with equipment dimensions; parking areas for the equipment trailer; if tie removal and cribbing will be necessary; how much vegetation will be cleared and how will it be disposed of; will the equipment be able to turn around; will there be drilling within any roadways requiring a street opening permit; will a butter outreach be done;

and any reportable conditions should have a list of who will be informed and this list should include the SCC..

M. Turgeon restated that the WPA 10.02 and 10.58 considers soil testing as a minor activity. That doesn't mean SCC jurisdiction goes away, it just means a wetlands filing is not necessary. Conditions that the SCC would like to impose to ensure negligible impact can be added into the town's contract with the soil exploration company. T. Friedlander stated that Town Counsel will need to weigh in on the mechanism for ensuring negligible impact. He noted that a mechanism does exist and it is a Notice of Intent and resulting Order of Conditions. D. Dineen added that not following the NOI process will effectively cut out the public process involved in permitting. Sue MacArthur stated that the public doesn't need to be involved if the work is exempt. She added that the town is the applicant on the existing ORAD so the Town can ask for extensions of the ORAD or the ORAD can be expanded at that time. T. Friedlander restated Counsel's opinion that the ORAD cannot be amended. Extension permits will be a decision made by the SCC.

K. Rogers questioned why the access routes shown on the plans look like they are going through vernal pools. B. Suedmeyer stated that is due to the scope of the plans. A larger scale will show the vernal pools are avoided.

M. Turgeon stated that mean annual high water, which defines the riverfront area, was found to be top of bank. All activities will take place above top of bank. D. Dineen noted that is not just the soil borings but the equipment movement along the rail bed that could be a concern for impacts.

R. Morse stated that it does not matter who the applicant is for this project. As a Commissioner, he must treat all applicants the same and review the projects in accordance with the criteria in the performance standards of the regulations. He noted that Eversource was put through a laborious process to be sure that the soil borings did not have any adverse impact on the wetland or upland values and functions. He said that due to the familiarity with the rail bed issues, the Commission may be able to expedite the process somewhat for the BFRT, however he believes they should go through the same process steps. The Commission agreed that the timeframes matter here as it did in the Eversource process, however a wetland delineation of all resource areas where activity will take place for the borings should be included in an ORAD. Town Counsel has stated that an ORAD cannot be amended but it can be extended by the SCC. The SCC is the body who determines if the impacts are negligible. R. Morse noted that work should be done with frozen ground to minimize any impacts.

M. Sevier motioned: Does the Commission feel it has enough information to determine negligible impact with the information in the current ORAD. D. Henkels felt that more information is needed, specifically that the SCC needs to know if an ORAD amendment is possible. T. Friedlander stated Counsel has stated that an ORAD cannot be amended, and even if an amendment were to be allowed, would it matter for the purpose of the borings scope of work. He restated the current question before the Commission as simply if the SCC members believe the information in the current ORAD is sufficient for the purpose of the soil borings. K. Rogers questioned if Eversource had a complete ORAD. D. Dineen responded that yes, they did. S. Suedmeyer stated that all streams will be considered perennial. R. Morse 2nd the motion. The vote was unanimous in favor. C. Russo, by remote participation, seemed to have left the discussion prior to this vote.

K. Rogers recommended the SCC walk the area of the rail bed where the borings are proposed and where equipment access along the track will occur. The SCC continued the discussion until the next meeting. T. Friedlander stated that the next meeting will determine if the work and associated activities for the soil borings is considered "negligible impact". Len Simon questioned why that could not be

determined at this meeting. T. Friedlander responded that the SCC has not received any written scope of work or details on methods or equipment. The decision cannot be made without those materials.

WPA & Bylaw Request for Determination of Applicability: 14 Virginia Ridge Rd., shed

Jason Viehland, applicant; present

Mr. Viehland presented a plan for the construction of a small shed at the edge of his existing lawn. It will be located within the outer riparian 200' riverfront area.

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

WPA & Bylaw Notice of Intent: Stearn's Mill Pond Dam Reconstruction; Dutton Rd. (next to #555

Dutton); Sudbury Dept. of Public Works, applicant;

Present: David Caouette, Lauren Gluck of Pare Corp.

Ms. Gluck stated that the Notice of Intent for this project was filed as a limited project under 310 CMR 10.53(3)(i) for the reconstruction of Stearn's Mill Dam. The dam has been classified by the MADCR Office of Dam Safety as a significant hazard and work on the dam is required by MADCR. Work involves correcting existing deficiencies including uncontrolled seepage through the embankment, spillway and low level structure; inoperable low level outlet; recurring sinkholes; and structural damage to the spillway abutments. Water will always be flowing during the entire reconstruction project.

Wetlands on the site include Land Under Water, Bordering Land Subject to Flooding; Bordering Vegetated Wetland, Adjacent Upland Resource Area under the local wetlands bylaw, buffer zone under WPA, and Isolated Land Subject to Flooding, Bank, and Riverfront area. Vegetated wetland areas will be disturbed temporarily during construction. The area will be restored with a native wetland seed mix.

B. Porter questioned if a flooding contingency plan has been developed. If the coffer dam should fail, the contingency is to have on hand sand bags and stone to slow the velocity of flow and filter particulates from the water. D. Henkels noted that Hop Brook is a cold water fisheries resource. He was concerned that turbidity might occur. No new channels will be created and the coffer dam should address the settling of fine materials to prevent turbidity. Any diversions of water not shown on the plan must be approved by the SCC.

Existing concrete will be saw cut and jackhammered for removal. There will be no change in the dimensions of the dam except for the downstream apron, but the apron will be kept within the existing channel.

Responding to Richard Morse, the bench and sign will be replaced following completion of work. Work will begin in July 2019. There will be not net change in structure footprints overall and there will be no permanent fill in bordering land subject to flooding.

On a motion by B. Porter; D. Henkels 2nd; the Commission determined that enough information had been presented to close the hearing. Unanimous in favor.

A draft OOC will be brought to the Commission at the next meeting. Copies will be provided ahead of time to the applicant and consultants.

WPA & Bylaw Notice of Intent: 83 Boston Post Rd., Herb Chambers 83 Boston Post Rd. LLC, applicant

Present: Atty. Josh Fox; Gabe Crocker of CHA Associates

The project involves the reconstruction and minor enlargement of the existing car dealership. Drainage and impervious surface modifications and expansion is included in the proposed work. Work

in Sudbury is limited to pavement expansion within 100' of bordering vegetated wetland and minor grading and other minor alterations

The site straddles the Sudbury/Wayland border with most of the building in Sudbury and most of the wetland in Wayland. 7.5 acres of wetland in Wayland is within a perpetuity conservation restriction. Only 4,008 sq. ft. of work will take place within Sudbury wetland jurisdiction. A new landscape plan will add 150 new native plants within wetland jurisdiction on the side slope to the wetland. Repaving, new curbing and widening of the southwest corner of the paved area will facilitate turning vehicles, including safer fire truck access. An existing water quality swale is located south of the pavement. A total of 212 sq. ft. of impervious surface is being added. The stormwater system is being upgraded and will now capture all sheet flow from the site.

The landscape plan was submitted at the hearing.

On a motion by B. Porter; 2nd K. Rogers; the Commission voted unanimously in favor of closing the hearing.

On a motion by D. Henkels; 2nd R. Morse; the Commission voted unanimously to issue with the minor special conditions discussed.

Bylaw Notice of Intent: Sudbury Pines; 632 & 642 Boston Post Rd.; Roberta Henderson, Trustee, applicant

Present: Kevin O'Leary, Jillson co.

Mr. O'Leary presented a plan for the Sudbury Pines Extended Care Facility, Inc. The State Attorney General has mandated Wastewater Treatment Plant construction due to the failure of several large leaching systems on the site. The site is designed for 21,000 gpd sewage.

The project site contains isolated vegetated wetland, Isolated land Subject to Flooding, and 25' adjacent upland resource from ILSTF. There was found to be no connection of bordering land subject to flooding over Horse Pond Road. The elevation of ILSTF is 169.5'. The Isolated Vegetated Wetland (IVW) contains a confirmed vernal pool. 3,600 sq. ft. of Adjacent Upland Resource Area (AURA) and 1,600 sq. ft. of the 25' AURA to ILSTF will be disturbed with new grading. An infiltration trench just outside of jurisdiction will pick up and infiltrate sheet flow from a portion of the site. An infiltration basin will be located to the north outside of wetland jurisdiction. The old septic system will be decommissioned.

Raymond Fraize of 648 Horse Pond Road questioned why water from Sudbury Pines puddles on his property. Mr. O'Leary stated that the Fraize property was taken into account in the watershed analysis. As this did not involve any wetland jurisdictional areas, the Chairman suggested Mr. Fraize and Mr. O'Leary discuss this issue outside of the wetlands hearing.

On a motion by D. Henkels; 2nd R. Morse; the commission voted unanimously in favor of closing the hearing.

On a motion by B. Porter; 2nd M. Sevier; the Commission voted unanimously in favor of issuing the OOC. They will request a copy of the current O & M Plan in the order.

WPA & Bylaw Notice of Intent: 74-80 Maynard Rd.; soil testing; John Derderian, Bonnie Brook RT, applicant; soil testing for septic system locations for new subdivision where crossing of AURA is required

On a motion by D. Henkels; 2nd M. Sevier; the Commission continued the hearing to Feb. 11, 2019 at the request of the applicant.

[Request for Determination Amendment: addition of 2 soil borings for DPW Fuel Island](#)

The Town Engineer has been informed by consultant that 2 additional areas of soil exploration are necessary in the area of the proposed relocated fuel storage island at DPW at 275 Old Lancaster Rd.

On a motion by K. Rogers; 2nd R. Morse; the Commission approved the two additional soil borings as an add-on to the existing Determination.

Violation Follow-ups:

267 Landham Rd., Gaston Safar

D. Dineen reported that the plan of the new parcel has been received. Town Counsel is in the process of developing a Deed for signatures. On a motion by D. Henkels; 2nd B. Porter; the Commission voted unanimously to stop ticketing.

39 Griscom Rd.; S. Garanin

Mr. Garanin has hired Goddard Consulting to prepare the NOI. The Commission will need proof of contract and estimated submission date for NOI for vegetation clearing in riverfront and bvw .

31 Beckwith St.; R. Boermeester

The violation is clearing directly adjacent to Guzzle Brook, lawn expansion and dock construction. No response to the NOV has been received. The Commission will require the filing of the NOI by 2/11/19 or ticketing will begin.

Sudbury Water District: No emergency protocol has been received. It was due to be reviewed at tonight's meeting. The Commission will require the Protocol by the 2/11/19 meeting along with a work plan for silt removal. Once, received, the SCC will determine if an NOI will be required.

Featherland Park wetland fill –Sudbury Park & Recreation

Major fill has been placed in bordering vegetated wetland by Park & Recreation. It looks like some of the fill is old, however new fill is evident. Dan Nason, DPW Director, has contracted with DeRosa Environmental to perform investigatory work on the extent of fill and file and NOI for restoration. The Commission will revisit the issue in 4 weeks to review the results of the investigatory work.

On a motion by D. henkels; 2nd R. Morse; the Commission voted unanimously in favor of issuing and EO and NOV.

Sudbury Station Adjudicatory Decision

The appeal by a resident group of the DEP adjudicatory decision upheld DEP's decision that Extension Permits are not appealable.

On a motion by D. Henkels; 2nd M. Sevier; the Commission voted unanimously in favor of adjourning the meeting. 10:03pm