



SUDBURY CONSERVATION COMMISSION AGENDA
Thursday, January 21, 2021

Present: Thomas Friedlander (Chair), Dave Henkels (Vice Chair), Richard Morse, Bruce Porter, Mark Sevier, Kasey Rogers, Ken Holtz, and Lori Capone (Conservation Coordinator)

Chair Friedlander opened the meeting under the MA Wetlands Protection Act and the Sudbury, via roll call vote, at 6:45 PM.

The Chair then recognized K. Rogers who recused herself as she is an abutter, and the Chair mentioned K. Holtz also would not be able to vote on this project, as he had not been a Commissioner at the time the hearings began.

Notice of Intent: Massachusetts Bay Transportation Authority Right-of Way, DEP File #301-1287:

Chair Friedlander opened the Notice of Intent hearing for the installation of a new 115kV underground electrical transmission line and the construction of a portion of the Mass Central Rail Trail, from the existing Sudbury Substation to the Hudson town line, along the inactive Massachusetts Bay Transportation Authority Right-of-Way, in Sudbury, MA, under the State Wetlands Protection Act and the Sudbury Wetlands Administrative Bylaw, last continued December 28, 2020.

Denise Bartone for Eversource introduced her team: Paul Jahnige from DCR; Marc Bergeron, Epsilon Associates; Katie Kinsella and Gene Crouch, VHB; Attorney Barry Fogel, Keegan Werlin; Paul McKinley, Weston and Sampson; Mike Hager and Dean Bebis for Eversource.

The Chair recognized the public comment letters received prior to this meeting and stated the hearing would focus on several different areas, starting with a discussion on the proposed trail surface. He recognized Mr. Paul Jahnige of DCR for his comments. Mr. Jahnige stated the project proposed an all asphalt trail. He said DCR had looked at alternatives for surfaces that would also conform to ADA requirements but determined that the best choice was asphalt. The Chair asked him to address the thermal impact on the trails by using asphalt surface on cold water fisheries, and vernal pools. Mr. Jahnige stated Mr. Bergeron would speak to those concerns. Mr. Bergeron, Epsilon Associates, said that there was no evidence that using this type of surface had a negative impact on the cold water fisheries or having thermal impact on vernal pools. He said, based on the Stormwater Impact findings, it showed that through the use of buffer strips, trees for shading on the path, the runoff from a storm or weather event would be negligible. Mr. Bergeron also explained that the trail was pitched to prevent impacts to vernal pools and is located as far as possible from these resource areas. Coordinator Capone asked about any discharges to Hop Brook, to which Mr. Bergeron stated that there were none due to the buffer strip that would be present.

The Chair asked the Coordinator for her comments. She stated that given the Applicant was planning on preserving as much of the canopy as possible, she did not believe the resource areas would be degraded as the result of the stormwater runoff. She said the alternative surface (stone dust) would require yearly maintenance and has the potential of causing erosion into sensitive areas. Mr. Bergeron and Ms. Kinsella

provided graphics demonstrating the use of the area in question. There was additional discussion about construction vehicles impacts on the area.

The Chair reminded the Commissioners that within jurisdiction, the Commission was responsible for deciding whether the asphalt surface that is jurisdictional, had sufficient protections in place to satisfy the parameters of the Wetland Protection Act and local Bylaw that would guide the Commission's decision. There was further vigorous discussion about gravel vs. asphalt and the potential effects of thermal impacts.

The Chair recognized Ray Phillips, 44 Whispering Pine Road, for comments. He stated that there was a study done on surfaces for rail trails, and that there are many negatives about asphalt and stone dust and their impacts on the environment. He stated asphalt was not the only surface available. He offered to submit a report on this issue that had many scientific offerings to help the Commission make an educated decision.

Paul Jahnige stated he was familiar with surfaces and their pros and cons. He said DCR focuses primarily on ADA accessibility and compliance concerns. He further stated that the project before the Commission was for an asphalt surface, and as such, they were tasked with making a decision based on that particular application. Any discussion about other surfaces was not germane to the request by the Applicant.

The Chair asked the Coordinator for her comments and whether she believed the Applicant had met the performance standards for this project. The Coordinator stated that with the additional information provided at this meeting, on impacts to the resource area, she did not see evidence of a negative impact on the wetlands that could result in a Commission denial.

The Chair asked for the Commissioner comments. D. Henkels said as far as pavement, he was inclined to give a negative vote at this point. R. Morse stated he was opposed to asphalt. M. Sevier stated the vote should be based only on scientific data relative to asphalt and the impacts within jurisdictional requirements. There was further discussion about the information and application being proposed.

Coordinator Capone provided a map that illustrated the project in its entirety, highlighting jurisdiction area. She felt that having multiple surfaces would not protect the resource areas, as each would require separate considerations and modifications to protect the resource. She said it was impractical to vary surfaces.

The Chair stated with this information, did the Commission have opinions on how to proceed. M. Sevier said it was important to not deny the project as a whole based on only this part of the conversation.

The Chair introduced the next topic of discussion which was EMF (electronic magnetic fields) and the potential impacts to wildlife. Mr. Bergeron stated there was no jurisdiction to regulate EMF's under the Wetlands Protection Act or the local Bylaw. He stated there was no evidence that EMF's had an adverse effect on wildlife and that this had been addressed at the Siting Board hearings. He stated there are no standards on which to base findings. Coordinator Capone stated it would be helpful to understand the distance EMFs emanate from the transmission line in relation to the distance the transmission line is to vernal pools. M. Bergeron had a schematics showing how quickly the EMF's dissipated from the transmission line and stated that the emissions are approximately at 0 about 20 feet from the transmission line. M. Sevier stated that the Commission had no expertise in this area, so he felt it important to rely on

those who have a greater understanding of these types of impacts. M. Bergeron stated they had provided the Town with information relative to the magnetic fields along the project corridor as a courtesy per the request of the Town Manager to identify impacts for people walking in this corridor. There are no performance standards for EMF's he said. Mr. Hager stated the Siting Board was the only agency with the ability to determine the issues related to EMF's on this project. The Siting Board stated the level was 28 milligauss, far below any level of adverse impacts. There was further discussion about exposures in the environment in general. Mr. Hager explained that the cables are 5-6ft. deep and are insulated inside a PVC conduit, which is encased in concrete. The Chair said EMF's are a concern from the public, but there are no guidelines or performance standards for them, and thus falls outside the Commission's jurisdiction. He recognized there is disagreement but the Commission must only be concerned with what is within their jurisdiction as it relates to the Wetlands Protection Act.

The next topic was about clay linings. The Chair stated the Director of the Water District, who had brought up concerns was not present and asked for an update from Eversource as to what the status of conversations between the two parties was. Mike Hager responded that he had spoken with Mr. Roy and Paul McKinley and they had discussed the concerns over a potential breaching of the lining for the Public Water supply when excavating was underway. He said they did not see this as an issue, as the layer in question was much deeper than the Water District had thought. After further discussion, both parties (Eversource and the Water District) drafted a specific condition that would address any type of breach should it occur. Coordinator Capone said she had confirmed Mr. Roy was comfortable with this resolution, as conditioned.

The Commission next discussed mitigation. Coordinator Capone updated the mitigation currently under review. She said under the Local Bylaw, the Adjacent Upland Resource Area (AURA) is a Resource Area. Applicants must first avoid any impact to those areas. In cases where avoidance is impossible, as in this application, the Commission looks to ensure the project has minimized impacts to the AURA. She said, once it has been minimized, then mitigation is negotiated. The Commission needs to determine what impacts are considered temporary versus limited disturbance and permanently disturbed, to assess appropriate mitigation. She described the difference between this and the Wetlands Protection Act, which only has temporary and permanent alterations. The trail is a permanent alteration which requires mitigation. The remainder of the clearing is temporary, under the Act, as those areas will be revegetated. Under the Bylaw there are different categories, which she listed. Under the Bylaw, the paved trail and the grass on either side is considered permanent. Paul Jahnige said the current rail bed is not vegetated and disagreed that the shoulders should be considered a permanent alteration.

Ms. Kinsella provided some tables of AURA impacts for illustration. Mr. Bergeron illustrated the calculation of how the disturbed area is determined. Mr. Bergeron felt the project more than satisfied the conditions under the mitigation requirements and disputed that 2:1 ratio for mitigation was required. There was further discussion about the measurement in the corridor and how numbers were arrived at. Coordinator Capone questioned the calculations being presented did not account for all impacts. Atty. Barry Fogel stated that the discrepancies emanated from the BETA peer review. Coordinator Capone disagreed with the suggestion the calculation had come from BETA and asserted the 2.2 acres of pavement had come from the applicant. She pointed out an additional temporary disturbance of AURA of 166,632 s.f. was not included in the calculations being presented. The Chair stated this was an important number to understand clearly. There followed discussion about mitigation obligations, impacts to resource areas, and how the calculations are determined. Mr. Jahnige concurred that the calculations being provided for

asphalt did not include ½ acre of pavement in an area where the applicants felt the existing conditions did not provide AURA functions and values. Mr. Bergeron further concurred that the temporary impacts were not included within the calculations presented tonight. The Chair said there needed to be discussion on the shoulder, and whether it is considered permanent or temporary.

After a five-minute break, the Chair continued the discussion on mitigation strategies and calculations, including areas to be regularly mowed versus annual, restoration of disturbed areas, additional shrub plantings, and invasive species removal both within and outside of the project limits. Mr. Bergeron stated that invasive species removal along the corridor would require an accounting of the amount of species for removal and priority areas. Coordinator Capone recommended that the Commission should consider the asphalt trail and mown shoulders as permanent disturbances and the annual mowed area as a limited disturbance which both require mitigation. She advised the Commission and the applicant that in 2006, when the Bylaw was revised, the reference for the section associated with AURA mitigation and replication was not cited correctly, but the intent and administration of the Bylaw has always been a minimum 2:1 mitigation for AURA impact. The Chair noted the Commission has discretion in setting the terms for mitigation. M. Sevier asked if the Applicant could provide the Commission with information they used to develop these numbers to substantiate the calculations. Mr. Bergeron stated the Commission had all the numbers, but would supply the Coordinator with additional mapping information if necessary.

There was discussion about the difference between the invasive species management plan and invasive removal monitoring. Mr. Jahnige stated DCR would be responsible for long term maintenance of the corridor which was highlighted in the Notice of Intent. He said he felt the Applicants had met the performance standard of both the WPA and Bylaw. He expressed some frustration about the length of the meetings. He acknowledged the work by the Commission, but sustained his frustration about the process.

The Chair reassured the Commission and Applicant that the conversations were in keeping with the importance of this decision to ensure it was the best project possible within the jurisdiction of the Commission. M. Sevier stated he felt comfortable with the mitigation plan as presented but remained skeptical about the invasive plan. R. Morse stated he felt the additional ½ acre of pavement should be mitigated for. B. Porter felt the same. D. Henkels stated he felt the invasive management plan presented challenges as well as monitoring of the area past the Certificate of Compliance. The Commission determined that 185,000 s.f. of mitigation should be provided.

The Chair introduced discussion about the Soil and Groundwater Management Plan (SGMP). There was disagreement regarding whether the Commission should have the right to approve the SGMP, or just provide comment. Coordinator Capone concurred with the comments by the Peer reviewer, and was comfortable with additional language stating that if there were no comments submitted in a timely manner, this would be considered an approval for the plan submitted. She said this primarily would be examined in a discussion for Special Conditions, not for purposes of this evening's discussion.

The Chair opened the meeting to Public Comment.

Charlie Russo, 30 Juniper Road, member of the Select Board, but speaking as a resident, suggested a Performance Bond could be a way to exercise some control over the results relative to the invasives for the long term.

Rebecca Cutting, 341 Maynard Road, stated she was appreciative of the process by the Commission. She agreed invasive removal was possibly not the best way to mitigate but felt there had been a sufficient case made to alleviate her concerns.

Laura Mattei, Sudbury Valley Trustees, felt she had gained some clarity after her comments had all been addressed.

Julie Franco Lieberman, 19 Rolling Lane, she did have some questions about the EMF, and stated she remained concerned both for humans and animals. She asked for peak time EMF exposures from the Applicant. She felt the average annual loading figures were not a good example to which M. Hagar stated the Siting Board had been very careful with establishing impacts on the public.

There was a questions on quantifying the subsurface cubic alteration and the Commissions responsibility to which the Coordinator stated that cubic alterations are calculated for floodplain impacts, but no other resource areas.

The Chair confirmed with the Applicant there was agreement on a continuation to January 28th to discuss Special Conditions. The Applicant agreed in the affirmative. Town Counsel George Pucci asked if the hearing was left open, were the Conditions going to be made available to the public and the Applicant both. The Chair stated this was acceptable.

With no further discussion, on motion by D. Henkels, second by M. Sevier, the Commission voted 5-0, via roll call vote, to continue the hearing to January 28, 2021. (K. Holtz and K. Rogers abstained)

On motion by B. Porter, seconded by M. Sevier, the Commission voted unanimously, via roll call vote, to adjourn at 9:51 PM.