



SUDBURY CONSERVATION COMMISSION
Meeting Minutes of December 14, 2020

Present by roll call vote: Tom Friedlander, Chairman; Dave Henkels, Vice Chairman; Bruce Porter; Ken Holtz, Richard Morse, Kasey Rogers, Mark Sevier (6:52 PM); and Lori Capone, Conservation Coordinator

Chair Friedlander called the meeting to order under the Wetlands Protection Act and the Sudbury Wetlands Administration Bylaw at 6:45 PM.

Conservation Restriction

The Chair recognized Christa Collins, Director of Land Protection for Sudbury Valley Trustees (SVT), who provided the background on the Libby and Dickson Parcels (Parcels H11-0401 and H11-0305), purchased by the Town with Community Preservation Funds in 2005 and 2003, respectively. These parcels were recently conveyed at Town Meeting from the Board of Selectmen to the Conservation Commission and the last step is to place the lands under a Conservation Restriction that will be held by SVT.

On motion by R. Morse, seconded by K. Rogers, the Commission voted unanimously, by roll call vote, to convey the Conservation Restriction on these parcels to SVT.

Certificate of Compliance:

Beckett - 86 Kato Drive: DEP #301-1018:

The Chair recognized Coordinator Capone who explained that the Commission discussed this project at the last meeting, which was for the construction of a single family house. The last outstanding item was confirmation of the installation of boundary markers for the Conservation Restriction, which has been completed. The Coordinator recommended the Commission vote to issue a Certificate of Compliance.

On motion by D. Henkels, seconded by B. Porter, the Commission voted unanimously, via roll call vote, to issue a Certificate of Compliance.

Huck – 50 Woodmere Drive: DEP File #301-1293:

The Coordinator stated this Order was for the restoration of the yard space, with mitigation plantings between lawn and resource area. All work had been completed and the site was stable. The Coordinator recommended the Commission issue a Certificate of Compliance.

On motion by D. Henkels, seconded by R. Morse, the Commission voted unanimously, via roll call vote, to issue a Certificate of Compliance

Omana – 25 Briant Drive: DEP #301-1301:

Coordinator Capone recommended issuance of a Certificate of Compliance for this Order which was for the construction of a deck.

On motion by B. Porter, seconded by D. Henkels, the Commission voted unanimously, via roll call vote, to issue a Certificate of Compliance.

Issue Order of Conditions:

Notice of Intent: 199 Goodman Hill Road, DEP #301-1316:

The Coordinator stated that this project has finally received a DEP number. The Coordinator reviewed the Special Conditions, which require all restoration plantings to be installed by June 2021. The Coordinator added she would meet with the Homeowner to review erosion controls in the spring.

On motion by R. Morse, second by D. Henkels, the Commission voted unanimously, via roll call vote, to issue the Order of Conditions.

Minutes:

On motion by D. Henkels, seconded by K. Rogers, the Commission voted unanimously, by roll call vote, to approve the minutes of November 2, 2020.

On motion by B. Porter, seconded by K. Rogers, the Commission voted unanimously, by roll call vote, to approve the minutes of November 16, 2020.

New Wetland Applications:

Notice of Intent: 72 Colonial Road, DEP #301-1318:

Chair Friedlander opened the Notice of Intent hearing for the construction of a garage, replacement of the septic system, and reconfiguration of the driveway, within the 100-foot buffer zone to Bordering Vegetated Wetlands pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administration Bylaw.

The Applicant, John Halporn, was recognized for his presentation. Mr. Halporn shared some photos and a site plan of proposed work. He asked for permission to construct a two-car garage in the buffer zone, and would offer mitigation with the removal of the existing asphalt driveway which will result in an overall reduction in impervious surfaces site-wide. He showed the area of the failed leach field, currently 30 feet from wetlands, which will be reinstalled outside the buffer zone.

The Coordinator said this site was developed prior to the local Bylaw and strategies have been implemented to offset the construction of a garage. Removal of the existing driveway will eliminate stormwater from the road currently discharging into the wetland, in addition to removing potential contamination from the failed septic system. The work area is elevated from the wetland and will not require any dewatering during installation of the slab and drywells will be installed to infiltrate roof runoff from the proposed garage. Work will result in an improvement to the resource area. The Coordinator did request that the erosion controls be repositioned to contain work associated with converting the earthen driveway to gravel and asked if the applicant had filed the septic plan to the Board of Health for review.

Mr. Halporn stated he was in the process of applying for the septic permit. D. Henkels asked about the location of the berm in relation to the wetlands. The Applicant stated it would be at the top of the driveway. The Chair asked if there was any issue waiting until the Board of Health had reviewed the septic plan, to which Mr. Halporn replied he had no problem. M. Sevier asked if the Town had planned to act on the runoff. Mr. Halporn stated he did not believe so. M. Sevier asked if the Applicant could infiltrate the runoff better as part of mitigation. There was discussion about infiltration of the runoff. The Coordinator stated she would like to visit the site with the DPW, to see if there was anything that the Town could do. She also suggested the Applicant contact the Board of Health with his septic plan, and communicate to Conservation if there

should be changes to the plan as the result of that application. The Coordinator also suggested the Commission conduct of site visit to review the site.

Greg Topham, owner of Parcel G08-0033 and current resident of 21 Tucker St. Pepperell, MA, appreciated the incorporation of drywells but expressed concern with drainage and potential erosion of the gravel driveway.

With no further comments, on motion by D. Henkels, seconded by R. Morse, the Commission voted unanimously, via roll call vote, to continue the hearing to January 11, 2021.

Abbreviated Notice of Resource Area Delineation: 105 Boston Post Road, DEP #301-1320:

Chair Friedlander opened the Abbreviated Notice of Resource Area Delineation hearing to approve the wetland delineation, pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administration Bylaw.

The Chair recognized Fred King, DGT Associates, who presented the plan on behalf of the applicant. Mr. King presented the site plan and described the wetland resource areas on site. The Coordinator stated this was a very straightforward site, and had no concerns with the proposed delineation.

With no further discussion, on motion by R. Morse, seconded by K. Rogers, the Commission voted unanimously, by roll call vote, to close the hearing. On motion by K. Holtz, seconded by M. Sevier, the Commission voted unanimously, via roll call vote, to issue an Order of Resource Area Delineation approving the wetlands delineation.

Abbreviated Notice of Resource Area Delineation: 141 Boston Post Road, DEP #301-1319:

Chair Friedlander opened the Abbreviated Notice of Resource Area Delineation hearing to approve the wetland delineation, pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administration Bylaw.

The Chair recognized Fred King, DGT Associates, who presented the plan on behalf of the applicant. Mr. King presented the site plan and described the wetland resource areas on site. He said the delineation has expanded since the prior delineation. He discussed the wetlands replication area south of the stormwater basin and an additional replication area in the rear of the site. Mr. King also showed the area that is protected by a Conservation Restriction. Coordinator Capone concurred with this delineation as flagged in the field and recommended approval.

On motion by D. Henkels, seconded by B. Porter, the hearing was closed via unanimous roll call vote. On motion by D. Henkels, seconded by B. Porter, the Commission voted unanimously, by roll call vote, to issue an Order of Resource Area Delineation approving the wetland delineation.

Request for Determination of Applicability: 12 Maynard Road, RDA #20-22:

Chair Friedlander welcomed Ben Maiden to present his Request to install a fence within the 100-foot Buffer Zone and 200-foot Riverfront Area, pursuant to the Sudbury Wetlands Administration Bylaw.

Mr. Maiden explained that the new owners would like to fence in the yard. The location of one fence post has changed since the original submittal which had to be moved to meet with the requirements of the

Historical District Commission. The Coordinator stated this project was exempt from the WPA because the fencing was greater than 50 feet from resource areas in a landscaped area and offers spacing for wildlife movement, but it did require approval under the local Bylaw. She recommended the Commission issue a Negative Determination.

K. Rogers moved to issue a Negative Determination of Applicability approving the fence, seconded by D. Henkels. A unanimous roll call vote to issue was in the affirmative.

Continued Wetland Applications:

Notice of Intent: End of Saxony Drive, Parcel H07-0600, DEP #301-1317:

Chair Friedlander opened the Notice of Intent hearing for the Sudbury Water District to remove a beaver dam within Hop Brook pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administration Bylaw, continued from November 30, 2020.

The Chair opened the hearing by stating several Commissioners had gone to visit the site. Vin Roy, Executive Director, Sudbury Water District, said he had contacted DEP with a request to declare the site a risk to the public water supply. DEP had gone to the site, and identified the presence of beaver which in the representative's opinion, posed a threat to Sudbury's Public Water supply. MADEP supported the Water Districts solution which was to eliminate the beaver in accordance with regulations, however the Conservation Commission must grant permission for any methods that would manipulate the beaver dam. The Coordinator stated she had drafted an Order of Conditions, and wanted to discuss installation of a beaver deceiver in the spring, to keep the water levels at a manageable level. There was discussion about how the dam would be breached, to trigger beaver activity to help facilitate trapping. The concern by Water District authorities, was the timing. An Emergency Certification was discussed, and whether issuing that would be appropriate to alleviate the immediate public health threat. The Board of Health had issued an Emergency Permit to allow the trapping of beaver and muskrat.

D. Henkels moved to issue the Emergency Certification to allow a small breach of the beaver dam. Seconded by K. Holtz. The Commission so voted unanimously, by roll call vote.

The Coordinator discussed working with Beaver Solutions to develop a plan for a beaver deceiver in the spring. Mr. Roy stated he was fine with waiting for the Order of Conditions in order to gather more information and reporting from the trapper.

A motion was made to continue the hearing to January 11, 2021 by D. Henkels, seconded by R. Morse. Roll call vote was unanimous in the affirmative.

There was a five minute recess.

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 from December 10, 2020.

K. Rogers recused herself at this point as she is an abutter to the property.

The Chair recognized Marta Nover and Laura Krause of Beta Group, peer reviewer for the Town. Ms. Nover stated that based on their review, the Applicant had responded to many of the requests made by Beta including providing a cross-section of the crane mats using actual contours, increasing the number of proposed plantings, and providing Time of Year Restriction figures. Other concerns could be addressed through special conditions, however Ms. Nover advised the Commission that the burden of proof is on the applicant to show how they are meeting the regulations as opposed to heavily conditioning a project.

Laura Krause reviewed the major outstanding concerns raised in the peer review letter including stormwater management, temporary vs. permanent impacts, mitigation and restoration being provided, wetlands replication, and the Wildlife Habitat Evaluation. She detailed the specific points throughout the report.

The Chair recognized Denise Bartone for her comments. She introduced her team present including Paul Jahnige from DCR, Marc Bergeron (Epsilon) who would take the lead for this discussion and response to Beta, Katie Kinsella (VHB), Mike Hagar (Eversource) and Barry Fogel of Keegan Werlin, Counsel to Eversource.

Mr. Bergeron responded to the points in Beta's letter. He went through the report and highlighted each area mentioned by Ms. Krause. He maintained that site would have the ability to provide wildlife habitat functions, despite proposed clearing. He disagreed with Beta's assessment that adequate mitigation and replication was not being provided. Katie Kinsella (VHB) explained that improvements made to stormwater management have resulted in additional flood storage being provided, which is now at a 1.5:1 ratio. VHB was concerned that implementing additional stormwater management features would result in additional impacts to the riverfront area and buffer zone/adjacent upland resource area. Mr. Bergeron continued to comment on the points brought up by Beta. He questioned whether applicability of Coldwater Fisheries existed in tributaries to Hop Brook, in relation to the Bylaw, and felt the project adequately mitigated for impacts to wetland resource areas and wildlife habitat. He suggested the project in the aggregate should be the focus rather than smaller areas. He opined this is the more informed approach for the project to be evaluated.

The Chair stated the Commission would rely on the Coordinator to sift through all of the various reports, synthesize it, and report to the Commission with her findings.

The Chair then asked Commissioners for any questions. D. Henkels asked about temporary vs. permanent impacts. Mr. Bergeron said these terms are not defined in the Act or the Bylaw and interpreted permanent impacts as the permanent loss of functions, which would only relate to the paved surface. All other impacts he felt were temporary. Mr. Henkels asked how confident the applicant was that the proposed seeding and plantings would survive and replace functions lost from proposed clearing. Mr. Bergeron stated that their plan had been carefully focused on successful plantings and canopy that had the highest expectation of success in the areas of the project. Mr. Bergeron also stated they were planning on responding to the comments from Beta.

A question was raised about mitigation requirements under the Bylaw with respect to 2:1 ratio. The Coordinator stated that the Commission had always required a minimum of 2:1, mitigation, but required

mitigation was at the discretion of the Commission. Mr. Henkels asked about vernal pools and maintaining undisturbed vegetation adjacent thereto. The Coordinator said it would be very difficult to maintain no disturbance adjacent to vernal pools as they are located directly adjacent to the rail bed, but the mitigation intended to offer additional vegetation in those areas. There was further discussion on impacts to vernal pools. Mr. Bergeron stated there was a detailed addendum in the October 15 report discussing the impacts to vernal pools and encouraged Mr. Henkels to review that. He stated there was no fragmentation in the vernal pools areas. Time of year was important, and they had considered that in their planning.

The Chair then asked if there had been any further discussion about the clay layer brought up by the Director of the Sudbury Water District, Vin Roy. Mr. Hagar responded that he had communicated with Mr. Roy and there would be a meeting between them shortly. He said that Paul McKinley, LSP from Weston and Sampson had some answers to share. Mr. McKinley introduced himself and said that the confining layer was very thick. He felt that would preclude any need for a clay layer, as the confining layer was more than adequate protection.

The Chair recognized Alison Field-Juma from OARS (Organization of Assabet, Sudbury and Concord Rivers) for her comments. She said they had done quite a bit of work in Sudbury on the Coldwater Fisheries, and in Hop Brook they have a temperature monitoring station. She said they pay attention to this particular issue, noting that the system is already stressed and close to the mortality threshold. She had five points she wanted to highlight: impacts to stream crossings from clearing and thermal pollution from stormwater; impacts from invasive species management during and following construction; appropriateness of placing the burden of the Phragmites mitigation on the Town and SVT rather than the Applicant; ensuring all mitigation is completed under Phase I, encouraging as much canopy to remain as possible; and, requested monitoring the stormwater infrastructures in place within the Operation and Maintenance plan.

The Chair then recognized Rebecca Cutting, 381 Maynard Road, for her comments, which had been provided in writing. She said that one of the most important points made was about temporary vs. permanent impacts. She felt any habitat lost or moved is permanent. She expressed concern with canopy loss to coldwater fisheries, that adequate plantings were provided at the two bridges, accurate quantification of impacts from crane mats, and the \$300,000 being provided for mitigation. She asked Mr. McKinley to clarify his comments on the confining clay layer to which he responded that based on borings logs, they did not believe the project would go through the confining layer.

The Chair then recognized Ray Phillips, 40 Whispering Pine Road. He stated he had sent a comment letter that requested added protections to protect the water supply based on comments raised by his LSP. He questioned the appropriateness of asphalt for the trail surface, use of herbicides, and encouraged the Commission to continue to hold the Applicant accountable to all provisions of Wetlands Bylaw.

The Chair recognized Paul Jahnige for comments about the trail surface. He said, all accessible bike paths are impervious. He said they had considered other surfaces that would comply with ADA requirements but their choice was to use asphalt as they felt that it provided the highest benefit for shared path use.

The Chair asked for a summary from the Coordinator as to what she felt the important points of the discussion were. She said the list of items that had been discussed tonight remain open. She advised the Commission that a determination was needed on what the Commission considered temporary vs permanent alterations of the resource area, so that the adequate mitigation can be determined. She stated

the ratio of mitigation was at the discretion of the Commission, noting that decisions have been issued by the Commission that required more than 2:1 mitigation based on project impacts. She focused on this as an important consideration for the Commission to deliberate on. She said the area of asphalt being introduced into jurisdictional areas was about two acres. The mitigation plantings, as proposed by the Applicant, would then equal about ½:1, without phragmites removal, just to offset paved surfaces. She felt the Phragmites removal would bring the ratio up to roughly 1:1. In regards to the \$300,000, the Coordinator advised that off-site mitigation should be considered when there was no opportunity to mitigate impacts on site. There is additional invasives species management that could be conducted outside the limit of work but within the right-of-way. Typically, mitigation is achieved by restoring altered landscapes to the natural state, with some invasive management, but are not generally otherwise managed or mown as this project proposes. She went on to discuss the use of herbicides on invasives, particularly Japanese Knotweed, should be only spot injections not aerial spray. She encouraged a minimum a 2:1 ratio for mitigation of altered resource areas. She said, in regards to the disagreement between the applicant and the peer reviewer on the wildlife habitat report, the Commission did not have the ability to seek further peer review of this report. She advocated for the Applicant to provide a clear account of the restoration of functions and values to the resource areas to ensure those are not lost. She asked for verifiable evidence that this would be the result.

The Coordinator said as far as the Stormwater Management, the Planning Board was continuing to review that. She asked the applicant to provide the height of clearance needed for the crane to traverse the corridor.

B. Porter asked about mitigation requirements under the Act versus the Bylaw. The Coordinator stated the State Act requires 1:1 replication for wetland alterations. The Bylaw, has a minimum requirement of 2:1, inclusive of Adjacent Upland Resource Area, but the requirement ratio of mitigation is at the discretion of the Commission. He asked if the mowed area would bring the ratio up to the 2:1, to which the Coordinator stated restoration required under the Act to meet Limited Project provision is not mitigation since it is required.

Atty. Fogel advised the Commission that mitigation requirements should be evaluated based on impacts to the adjacent resource area functions. He discussed Section 7.2 which discusses the disturbance designations for Adjacent Upland Resource Area: no disturbance, temporary disturbance, limited disturbance, and permanent disturbance. Atty. Fogel felt the project meets the mitigation performance standards under the Bylaw.

Chair Friedlander asked Counsel for his interpretation. Town Counsel Pucci, said he could provide clarification on the regulations to the Commission if needed but encouraged the Commission to observe the guidance provided by the Coordinator.

D. Henkels asked about the cost to remove the phragmites. Ms. Bartone stated they had inquired with a consultant to give them an estimate as to the cost to remove the phragmites, which was quoted as \$150,000 – 200,000. Mr. Henkels asked if it was a one-time application. Ms. Bartone responded that it was an estimate for a two to five year program. There was further discussion about the cost of the mitigation funds, and their use. Ms. Mattei of SVT commented on the mitigation request. She stated they were looking for results based mitigation, conducted by the applicants, rather than money towards mitigation. There was discussion on how the funds could be managed as well as how it could be expended. It was

agreed that monies being offered for additional mitigation needed further clarification and clear intent. R. Morse expressed concern with this form of mitigation. Atty. Fogel stated that the mitigation money was in addition to meeting the mitigation requirements under the Bylaw which he believe have been complied with.

R. Morse questioned the impacts of paving the trail surface on resource areas and asked Eversource if a paved road was needed for their operation. Mr. Hagar responded that a paved surface was not needed for the transmission line. The Coordinator stated impacts would to most significant to Cold Water Fisheries with the potential introduction of thermal pollution effects from stormwater runoff. She noted that many portions of the Mass Central Rail Trail were not paved. Mr. Janigue then stated in the case of Sudbury, there would not be a measurable water temperature elevation, and had no concern about that. B. Porter stated from his experience as a user of rail trails, all trails needed maintenance, and that pavement was more desirable for stability.

Ms. Nover advised the Commission that heavily conditioning the Order was not advisable, and that Beta did not agree the Performance Standards had substantially been met.

The Chair then suggested the hearing be continued to January, after the Planning Board has made a decision on the stormwater management. After some discussion, it was agreed that a dedicated meeting would be announced at the December 28th Conservation Commission meeting.

On motion by R. Morse, seconded by D. Henkels, the Commission voted unanimously, via roll call vote, to continue the hearing to December 28, 2020. K. Holtz abstained.

The Chair thanked everyone for attending, and wished all a Happy Holiday season. On Motion to adjourn by M. Sevier, seconded by B. Porter, the meeting was adjourned at 10:11 PM by unanimous roll call vote.