



CONSERVATION COMMISSION MEETING MINUTES

Thursday, June 20, 2024 6:30 PM

Second Floor Meeting Room, Town Hall, 1 Avenue A, Turners Falls and via Zoom

PRESENT: Mark Fairbrother (Chair), Anthony Reiber, Margaux Reckard, Al Averill
ABSENT: Justin Fermann, Sean Werle, Toby Carter, Donna Francis
ALSO PRESENT: Maureen Pollock (Staff Liaison, Planner/Conservation Agent), Chris Larose (Eversource), Virginia Martell (BSC Group), James Arcoleo, Diane McClellan, Matt Burne, and members of the public.

Meeting minutes from May 9, 2024 were tabled.

PUBLIC MEETING

Request for Certificate of Compliance, filed by William & Alison Brule, in reference to work regulated under the approved Order of Conditions (DEP #229-0261/NOI #2022-01), for construction of a single-family home within the 100-foot Buffer Zone, located at 108 West Chestnut Hill Road (Parcel #52-0-071) Site Visit: 4:00PM on Tuesday, June 18

The Agent attended the site visit and described the conditions: the ground is stabilized, the sedimentation barrier is in place and applicant has met the order of conditions.

MOTION by A. Reiber to issue a Certificate of Compliance, filed by William & Alison Brule, in reference to work regulated under the approved Order of Conditions (DEP #229-0261/NOI #2022-01), for construction of a single-family home within the 100-foot Buffer Zone, located at 108 West Chestnut Hill Road (Parcel #52-0-071). Seconded by M. Reckard. VOTE: Mark Fairbrother (AYE), Anthony Reiber (AYE), Margaux Reckard, (AYE), Al Averill (AYE). MOTION PASSES 6:38pm. (4-0)

PUBLIC HEARING:

Notice of Intent (DEP #229-0265/NOI #2024-01) filed by NSTAR Electric Company d/b/a Eversource Energy for the 21C6 Distribution Line Reconductor Project. Jurisdictional activities include installation of 2 new distribution poles, grading for installation of a temporary matted work pad and removal of 13 trees in the 200-foot Riverfront Area and/or 100-foot Buffer Zone along Migratory Way and within the 21C6 ROW between Migratory Way and the Connecticut River. Site Visit: 4:00PM on Monday, June 17.

Fairbrother, Reckard and the Conservation Agent attended the site visit.

Chris Larose (Eversource) and Virginia Martell (BSC Group) discuss the project.

Eversource is upgrading distribution lines which entails replacing the existing poles and installing heavier wires. Additional mid span poles are required for the heavier wires. Trees will need to be removed. Martell shows a map and discusses the location of the proposed removals.

A new section of overhead line (21 c./21 c. 6) will be installed near the research center. Five trees will

need to be removed for pole installation and overhead line.

A second new section of overhead line that runs on Migratory Way (221 c. 1, 21 c. 6) will require the construction of an access point and removal of 13 trees. The steep slope prevents the wetlands from being crossed. A wider area is needed for vehicle access. A work pad will be constructed for safety but grading is not required.

One new pole will be installed within the 200-foot riverfront area and 100-foot buffer zone.

A pole needs to be replaced at the end of the distribution line (where it crosses into Greenfield). The area needs to be graded for temporary timber batting for a level area for the workers. The area is shrubby; the contours will be stabilized, and vegetation restored.

Martell says that this scope of work has the least impact on the environment and wildlife. They do not anticipate issues with revegetation.

M. Reckard iterates the steep slope and the need to remove the 13 trees to gain access.

A. Reiber asks about the protocol for stabilizing the steep slope. Martell responds they will not be removing trees down the bank. Eversource will install silt fencing to prevent erosion. They are willing to demarcate the limits.

The Agent asks about the scope of work near Migratory Way. Five maple trees will be removed. Martell says they do not intend to replace the maple trees. Chris Larose agrees that they do not want to plant trees under the lines which will require future maintenance.

Reckard comments that the trees are ornamental. Fairbrother does not think they need to be replaced. Reckard agrees that it is not necessary.

A. Reiber asks to see an image of the steep slope. Martell shows photos and references the location on the map. The image shows the drop. The stumps and root systems will be left in place, and it is expected to revegetate quickly.

Eversource will work with the contractors to keep the walking trails open and uninterrupted while work is being completed.

MOTION by A. Averill to approve the Order of Conditions (DEP #229-0265/NOI #2024-01) filed by NSTAR Electric Company d/b/a Eversource Energy for the 21C6 Distribution Line Reconductor Project. Jurisdictional activities include installation of 2 new distribution poles, grading for installation of a temporary matted work pad and removal of 13 trees in the 200-foot Riverfront Area and/or 100-foot Buffer Zone along Migratory Way and within the 21C6 ROW between Migratory Way and the Connecticut River. Seconded by M. Reckard. VOTE: Mark Fairbrother (AYE), Anthony Reiber (AYE), Margaux Reckard, (AYE), Al Averill (AYE). MOTION PASSES 7:01pm. (4-0)

NEW BUSINESS:

Possible Violations: Falls Farm – Old Sunderland Road (Parcels #50-0-18), property owner: James Arcoleo; Old Sunderland Road (Parcel #50-0-05, property owner: Falls Farm LLC; Site Visit: 9:00AM on Wednesday, June 12 Unpermitted activities include, but not limited to: unpermitted earth moving, sand stockpiling and pushing the edge of sand stockpiles within Bordering Vegetated Wetlands, Bank, and Land Under Water and associated 100-foot Buffer Zones. substantial erosion occurring within wetland resource(s) including Bordering Vegetated Wetlands, Bank, and Land Under Water and

associated 100-foot Buffer Zones due to unpermitted activities listed above; unpermitted tree clearing within Bordering Vegetated Wetlands, Bank, and Land Under Water and associated 100-foot Buffer Zones; unpermitted construction of irrigation piping lines, underground service for well; and well within 100-foot Buffer Zone to Bordering Vegetated Wetlands, Bank, and Land Under Water.

The Agent shows maps which demonstrate what has happened to two Montague properties over time. Additional parcels are owned in abutting Sunderland.

The maps show the location of Connecticut River, wetland resources, and streams which originate on the subject property and discharge in the river. Other streams originate in the Sunderland properties and discharge in the river. 2013-2014 Mass GIS aerial maps show town lines (Sunderland and Montague), agricultural fields and buildings. The 2019 maps show the agricultural fields in the exact location. The 2021 GIS maps show land cover changes to the aerial imagery; agricultural fields have been expanded. New agricultural areas show dark surfaces/depressions which could be wetlands. 2023 aerial imagery shows increasing deforestation in addition to a constructed well, power to the well, piping, and service to the well. The Agent noted the constructed well and pipes in the new agricultural fields within 100 feet of wetland resource area was not reviewed/approved by the Conservation Commission, as the applicant didn't submit an application. The Sunderland properties also show expanded agricultural fields.

Representative of Falls Farm LLC, Diane McLellan, was present at the site visit. Images are discussed. Large piles of sand are shown in the image. Sediment from the stockpile of sand is eroding down the drive and into the intermittent stream. An additional image shows tree clearing from between 10 to 100 feet of a visible intermittent stream. The Agent shows other images which show heavy erosion over the land, into culverts and into streams. Flash rainstorms could result in sediment flowing into the public right of way (over Old Sunderland Road) resulting in a public safety issue with repair work needed by the DPW. The Agent shows additional images of tree clearing and significant disturbances to the land and soil within the buffer zone.

Mark Fairbrother discusses the barn image regarding the two resource areas. He notes flow marks around the barn from heavy rain which leads to the resource areas. Other images show the flow marks and direction of sediment.

Property owner, James Arcoleo discusses the images. He states that some of the land was cleared a few years ago by Eversource and the big sand pile had no connection with the resource area. The "problem area" has been mitigated with a silt fence and erosion is now secured.

*Video stream from the Town Hall is lost. The Commissioners contact the Agent. The Agent is able to reconnect with the on-line participants with the in-person attendees.

James Arcoleo continues describing the conditions on his property. He iterates that he has installed barriers, and the area has been replanted since the first site visit. Arcoleo requests a repeat site visit. According to the Arcoleo, "the red areas and the yellow areas are all sand; it's very hard to grow stuff there." He has brought in cow manure. Arcoleo is attempting to grow an orchard. It is his belief that "over the years all the decent soil over time has washed down to the road." The trees he planted died. He believes the places in the aerial imagery that the Agent identified as wetlands are not wetlands and the darker color shown in the aerial map is related to the addition of manure. The Agent points out that the "problem area" described by Arcoleo is identified as new agricultural fields as documented via aerial imagery, provided by MassGIS from the following years: 2013-2014, 2019, 2021, and 2023.

The Chair continues the presentation of the conditions revealed during the site visit which all show the

flow of sediment to Meadow Road. Arcoleo says he does not own that (Meadow Road) property. The Chair informs him that sediment flows off his property and into the Connecticut River, just beyond the fork. The Chair continues to inform Arcoleo about the source, direction and safety issues associated with the sediment flowing from his property. On Meadow Road looking north, a culvert is plugged with sediment. Heavy rain will increase the erosion. Arcoleo tries to communicate the parts of his land which he did not disturb, suggesting that some of the conditions are historic.

The Agent discusses one area not previously discussed; the intermittent stream that starts in Sunderland. She discovered clear cutting which goes into the wetlands. The agent is unclear if that land is in Sunderland or Montague. The Agent goes back to the GIS maps and shows the progression of deforestation from 2013-2023. She asks the applicant about his goal. She also asks where will the clearing stop?

Arcoleo says the front section will be orchards. "It will be regrown with trees...we will not be doing any clearing near any wetlands forever." The Agent reiterates that conservation law requires him to file a permit for work within 100 feet of a wetlands. She suggests that the property should be delineated by a professional wetland scientist, noting that only 20% of all wetlands are recorded on mapping tools. Arcoleo says he has a professional wetlands survey. The Agent requests that Arcoleo formally submit his documentation to the Conservation Commission for review/approval. Before the Commission approves any proposed restoration work, the Commission should review/approve all wetland delineations on the subject parcels.

The Chair opens the floor for limited public comments.

Before a permit pathway for unpermitted activities and restoration is discussed, a professional wetland scientist delineates the wetlands which would include test pits.

Mark Fraser is alarmed by the photos. He wants to know if MassDEP has been alerted. Fairbrother responds "yes" the Conservation Commission has had discussions with MassDEP. The Agent continues that she has weekly meetings with Mark Stinson of the MassDEP Wetlands Division regarding this matter.

The property owner indicates that he will have the wetlands flagged and give that information to the Commission. The outcome of the next site visit will be discussed in open meeting.

Mary (Old Sunderland Road), member of the public, asks who she can talk to about the wells and the possibility of water being diverted from neighboring wells. Have scientists tested the wells? Fairbrother responds that she can contact the DEP. Mary asks who she can speak with about the event venue being planned in Montague.

Steve Dowling (Sunderland resident) asks if Dr. Arcoleo is intending to build an event space, and does it involve rezoning? Understanding the intent of the applicant would be helpful to addressing the neighbors' anxieties. He recognizes that it is complicated because there are two towns; he plans to trust but verify between the Towns.

Dowling and Arcoleo discuss process and responsibility regarding permitting.

Ariel Elan, member of the public, cautions that unless there is a real public forum with "combined department consideration" the outcome might not be good.

A member of the audience speaks about permitting that Falls Farms has received in Sunderland. He does

not think that the property owners “just started cutting things down.”

Nancy Pick from the Sunderland Conservation Commission comments that they have recently issued an enforcement order for the erosion and describes their interaction as “cooperative but after the fact.”

A member of the audience discusses the difference between the professional nature of the Eversource presentation vs. the “after the fact” approach by the Arcoleo. He does not think there was ever an attempt to follow the rules until after the fact. He thanks the Agent and Conservation Commission for their efforts in addressing this matter.

M. Reckard has a question about the pile of sand blowing. Others from the public ask what’s going to happen with the sand? Fairbrother responds that the Building Inspector knows about the pile and there are limits to how you can use it.

M. Reckard comments that because there has been so much erosion in the “problem corner” it might prove difficult to determine where the original corner and stream bank was located, making delineation difficult.

Fairbrother sees the next steps related to the timing of the delineation, paperwork, and a second site visit. A special meeting might be necessary.

The Agent asks whether a wetland scientist should delineate the entire Montague parcel. The chair believes it is a good idea but cautions that they cannot require action by Sunderland.

Senaida Bautista, neighbor/member of the public, owns the creeks where the sediment is flowing. She asks how to work with the Town and Falls Farm LLC to stabilize and possibly expand the size of the culvert. Fairbrother responds that the first step is to stop the sediment, then evaluate the existing culvert.

The Agent encourages the public to attend future meetings.

A member of the public asks if there is a centralized way to address the issues caused by the erosion. At what point does the onerous shift to a governmental agency? Is there a third party to deal with these issues? It has been a strain with the neighbors.

Turtle crossings on Montague City Road

A number of turtles and other reptiles have been hit by cars. Turtle crossing signs were requested by a group of residents. The Conservation Commission agrees that this is beyond their purview. Fairbrother has no problem with turtle crossing signs if they are approved by the DPW and MassDOT, if required. A. Elan asks the Commission for a recommendation for the Selectboard. The Agent will meet with Melissa Winters who knows about two turtle crossings. Agent suggests the Commission and members of the public to visit: <https://www.mass.gov/news/why-did-the-turtle-cross-the-road> to learn ways to protect native turtles.

To discuss and vote on allocating funds from the Conservation Commission’s WPA filing fees account to assist the Commission in the administration and enforcement of the MA Wetlands Protection Act and its regulations.

The Agent requests a vote for up to \$10,000 (from \$19,000) for assistance from consultants and/or attorneys for the administration or enforcement of the Wetlands Enforcement Act.

Averill asks if there is a law that prevents the Conservation Commission from doing this on its own. The

Agent responds “no,” that funds are raised through NOI applications for this purpose.

Averill questions why we need to have a special fund. The Agent clarifies that because things happen quickly and meetings are only once a month, it is good to have the Commission preauthorize the funds specifically for the purpose. The Agent wants to be prepared if such a case arises.

MOTION by M. Fairbrother to approve the allocation funds up to \$10,000 from the Conservation Commission’s WPA filing fees account to assist the Commission in the administration and enforcement of the MA Wetlands Protection Act and its regulations. Seconded by M. Reckard. VOTE: Mark Fairbrother (AYE), Anthony Reiber (AYE), Margaux Reckard, (AYE), Al Averill (AYE). MOTION PASSES 8:42pm. (4-0)

OLD BUSINESS:

Possible Violations: Springdale Cemetery – Turnpike Road (Parcel #21-0-004), property owner: Springdale Cemetery; Turners Falls Cemetery Association c/o Paul Porter; Associated Activities: tree cutting within wetlands and 100-foot Buffer Zone.

Cemetery Association is working with a wetlands scientist and surveyor. They should have documents and RDA application submitted within the month.

The next meeting is scheduled for July 18, 2024 at 6:30pm.

Project Updates:

- The Agent reports that the new vet clinic at 2 Fosters Road is gearing up. The Agent sent them a friendly reminder that they record their Order of Conditions, review it with the contractor and display the MassDEP sign before the agent does a site visit prior to work.
- Conversation about Sherman Drive (Parcel #19-0-78) is tabled.
- *Approved Order of Conditions for Montague City Road Drainage Improvement Project (DEP #229-0254/NOI #2019-02); Request to remove erosion controls*

Vegetation is growing and the area is stabilized. The plastic netting will be cut and removed but they will leave the straw. The Agent recommends the Commission to require applicants to use non-plastic netting for straw waddles, instead of plastic netting, as a condition of any future approvals.

MOTION TO ADJOURN by A. Reiber. VOTE: Mark Fairbrother (AYE), Anthony Reiber (AYE), Margaux Reckard, (AYE), Al Averill (AYE). MOTION PASSES. (4-0) 8:56pm