



Norton Conservation Commission
70 East Main Street
Norton MA 02766
508-285-0275
508-285-0277 fax
conservation@nortonmaus.com

RECEIVED
NORTON TOWN CLERK
2020 JAN 28 A 9:25

Monday, August 12, 2019
6:30 pm
2nd Floor Conference Room
Norton Town Hall

Minutes

6:30pm Open meeting

The meeting was called to order at 6:30pm.

Attendance: Scott Ollerhead, Lisa Carrozza, Ron O'Reilly, Julian Kadish, Dan Pearson, Daniel Doyle, Jr., Conservation Secretary Melissa Quirk and Conservation Director Jennifer Carlino

Absent: Gene Blood

WETLAND HEARINGS AND POSSIBLE COMMISSION DELIBERATIONS

- A. Notice of Intent (#250-1043). Paul & Jeanne Saariaho, 122 East Hodges Street (Map 36, Parcel 25).** (continued from 7/8/19, 7/22/19) The proposed project includes the construction of an addition to a single-family home within 100 feet of the wetland area.

Document List

1. *WPA Form 3 – Notice of Intent*
2. *ECR Riverfront Area Analysis dated 6/11/19*
3. *Plans entitled, "Proposed House Addition at HSE.NO.122 East Hodges Street in Norton, MA", signed and stamped by Craig Cygawnoski of RIM Engineering Co. Inc P.O. Box 32 Mansfield, MA 02048, dated 6/12/19*
4. *ECR Riverfront Area Analysis dated 7/15/19*
5. *Plans entitled, "Proposed House Addition at HSE.NO. 122 East Hodges Street in Norton, MA", prepared by RIM Engineering Co., Inc., signed and stamped by Craig Cygawnoski, dated 6/12/19, rev 7/15/19*
6. *Plans entitled, "Proposed House Addition at HSE.NO.122 East Hodges Street in Norton, MA" prepared by RIM Engineering Co., Inc., signed and stamped by Craig Cygawnoski, dated 6/12/19, rev 7/18/19*
7. *Plans entitled, "Proposed House Addition at HSE.NO.122 East Hodges Street in Norton, MA" prepared by RIM Engineering Co., Inc, signed and stamped by Craig Cygawnoski, dated 6/12/19, rev 8/5/19.*

8. Site Plans

Craig Cygawnoski of RIM Engineering attended the hearing for the applicant. He submitted a slightly updated plan. He has not heard back from NHESP but states he will no longer need to file with the changes he has made. He states the 10 percent of the riverfront area would be 24,548 sf. The site now has a degraded area of 23,842 sf. After construction, with removal of the pavement, the site will be less than what exists now at 23,091sf.

Motion was made to close the public hearing for DEP#250-1043 by Kadish, seconded by O'Reilly. Motion passes.

Motion was made to accept the order of conditions with modifications as discussed for DEP#250-1043 by Carrozza, seconded by Kadish. Motion passes

- B. Notice of Intent (#250-1044). Alan & Lori Sylvestre, 20 Margaret Drive (Map 27, Parcel 137-104).** (continued from 7/22/19). The proposed project includes the construction of an addition to a single-family home within 100 feet of the wetland area.

Document List – 20 Margaret Drive

- 1. WPA Form 3 – Notice of Intent prepared by RIM Engineering Co., Inc. dated 7/5/19*
- 2. Plans entitled, "House Addition Plan Existing Conditions HSE.NO. 20 Margaret Drive", prepared by RIM Engineering Co. Inc., signed and stamped by Craig Cygawnoski, dated 7/5/19*
- 3. Revised WPA Form 3 – Notice of Intent prepared by RIM Engineering Co., Inc., received 7/11/19*
- 4. Revised WPA Form 3 – Notice of Intent prepared by RIM Engineering Co., Inc., received 7/16/19*
- 5. Plans entitled, "House Addition Plan Existing Conditions at HSE.NO. 20 Margaret Drive", prepared by RIM Engineering Co., Inc., signed and stamped by Craig Cygawnoski, dated 7/5/19, rev 7/12/19*
- 6. ECR Riverfront Area Analysis dated 7/15/19*
- 7. Plans entitled, "Proposed House Addition Plan at HSE.NO. 20 Margaret Drive in Norton, MA", prepared by RIM Engineering Co., Inc., signed and stamped by Craig Cygawnoski, dated 7/5/19, rev 7/18/19*
- 8. ECR Riverfront Area Analysis dated 8/8/19*
- 9. Core Grass Technical Specifications from Core Landscape Products*
- 10. Plans entitled, "Proposed House Addition Plan at HSE. NO. 20 Margaret Drive in Norton, MA", prepared by RIM Engineering Co., Inc. signed and stamped by Craig Cygawnoski, dated 7/5/19, rev 8/7/19*

11. Site Plans

Craig Cygawnoski of RIM Engineering attended the hearing for the applicant in addition to Cameron Larson, Wetland Scientist with ECR. Larson described the project and submitted a color coded plan. He explained the existing degraded area is 2,939 sf which is already over the allowed 10%. He is proposing a total of 624 sf of additional degraded beyond what is there. He is proposing a combination of restoration and mitigation within the riverfront area. The restoration area is 480 sf. The mitigation area required is 144 sf. He is proposing 288 sf providing a 2:1 ratio. Carlino and Carrozza questioned the areas on the plan that are restoration and mitigation. Cygawnoski clarified and will clearly identify on an updated plan. Carrozza suggested a condition be added for the updated plan and updated numbers for the permit being issued.

Motion was made to close the public hearing for DEP#250-1044 by Kadish, seconded by O'Reilly. Motion passes.

Motion was made to accept the order of conditions with modifications as discussed for DEP#250-1044 by Carrozza, seconded by Doyle. Motion passes

C. Notice of Intent (#250-1035). Condyne Capital Partners Leonard Street reconstruction (Rte 123 to west of house #54). (continued from 1/28/19, 2/11/19, 2/25/19, 3/11/19, 3/25/19, 4/8/19, 4/29/19, 5/20/19, 6/10/19, 6/24/19, 7/8/19, 7/22/19) for proposed plans to widen Leonard Street, install utilities, replace culverts and stormwater management. Project involves alteration of 4,607sf wetland, 12,918 sf of 100-year floodplain and 2600 sf of Riverfront area within Canoe River Area of Critical Environmental Concern.

Document list

- 1. Notice of Intent (NOI) application prepared by Condyne Engineering Group LLC, received January 14, 2019.*
- 2. Plans entitled, "Blue Star Business Park – Leonard Street Improvements", prepared by Condyne Engineering Group LLC, signed and stamped by Mark Dibb, P. E., dated 1/11/19, rev 3/15/19*
- 3. Condyne letter dated Jan 14, 2019 project narrative, rev. 3/15/19*
- 4. Carlino letter to Condyne dated 2-14-19 comments to NOI*
- 5. Plans entitled "Blue Star Business Park – Leonard Street Improvements", prepared by Condyne Engineering Group, signed and stamped by Mark Dibb, P.E., dated 1/11/2019, rev 4/19/2019*
- 6. Condyne letter dated 4/22/19 – response to HW comments 4/8/19*

7. Highway dept letter dated 4/16/19
8. SWPPP prepared by Condyne 3/18/19
9. Condyne project review summary: (Project narrative, CEG'S response to comments, ECR'S response to comments, Wetland replication narrative with soil profiles), dated 1/14/19, revised 6/10/10
10. Plans entitled, "Blue Star Business Park Leonard Street Improvements", prepared by Condyne Engineering Group, dated 1/11/19, rev 6/10/19
11. Summary of changes made to plans and documents for Leonard Street widening dated 6/27/19
12. Plans entitled "Blue Star Business Park Leonard Street Improvements" prepared by Condyne Engineering Group, signed and stamped by Mark Dibb, dated 1/11/19, rev 6/27/19.
13. Horsley Witten Peer Review Letter 3 dated 7/8/19

Mark Dibb of Condyne and Scott Smeyers, Professional Wetland Scientist of Oxbow Associates attended the meeting to update the commission. Amy Ball and Neil Price of Horsley Witten, town consultants, were present to review HW comments.

Carrozza recused herself.

Dibb provided a brief summary of efforts made over the last few months. Since the last meeting there was a peer review letter from HW dated 7/8, a conference call 7/15 with Condyne, Carlino, Brad Holmes of ECR and HW, site visit on 7/18 with same group of people and Scott Smeyers. Response to 7/8 HW letter from Condyne and summary letter on the culverts from Oxbow Associates on 7/26. Dibb states there are 3 main items they are trying to achieve.

- Widen the road for a total of 20-22 feet
- Install a sanitary force main down the center of the road to connect the building 7 development and phase 2 development (not filed yet).
- Install a gas main - Columbia Gas would do the work

Dibb states the goals they are trying to achieve along with the widening project:

- Upgrade the 3 existing culverts
- Not compromise the water system
- Not modify conditions on the approved superseding order of conditions received from DEP
- Not affect flooding upstream and downstream
- Improve the road for the town by widening the road just 3 to 4 feet to provide extra shoulder

Dibb stated he received a HW review today dated Friday. He noted there are 2 intermittent culverts and a perennial stream culvert. There is a summary page for the intermittent crossings where they are replacing 12 inch pipe with a proposed 19 inch elliptical culverts. HW comments

that the vertical invert in each culvert is controlled by the existing water function. Dibb states that is not accurate. The inverts are shown on the plans and they are at existing stream bed. Dibb states he has been able to confirm that they can put the culverts at the existing stream bed elevations and they will work. Vertical restriction has been a concern. He states there is a water line along the entire length of the project. At the bottom of the culverts, there is at least a 6 inch separation to the water line. At the top, they are proposing to do the culverts without significantly modifying the finished grade of the roadway.

Scott Smeyers was brought in to assist with the culvert discussions. He submitted a letter. They took the table provided and broke down each standard and how they improved on that standard. These are all existing culverts. In his opinion, for replacement culverts, they adequately meet the stream crossing standards within bank. The 2 intermittent streams were measured at 7 feet wide. The standard is 1.2 times 7 feet which is 8.5 feet. The perennial stream was measured at 18 feet. The standard requirement would be a 22 foot wide culvert. Dibb states a culvert that wide could compromise the water line and be impossible to maintain, fix and repair. Therefore, they are proposing a 6 foot wide culvert allowing safe maintenance. The standards require 3 typical widths. The 18 foot pipe comes down to 5 feet at the last 3 feet. At the culvert face, the bank is 5 feet wide. Kadish questions weren't the standards developed for new construction. Dibb states yes for new construction and it also has a replacement component. Kadish notes apparent tension as to what size culvert is acceptable in meeting the standards. Ollerhead states we must determine if they are meeting the standards or to the maximum extent they can. Kadish states it seems they have done the best they can. Carlino noted HW is also here to discuss their letter.

Amy Ball of Horsley Witten agreed with Dibb that there were 3 major issues before their last letter.

- Amy stated their comment was with regard to the wetland replication area being included in the limit of work. The plan was revised or is being revised so that is all set.*
- Resource Area Alterations*
- Culvert replacements*

Ball states her comments about the wetland performance standards were specific to this one limited project.

- To meet all of the performance standards for the BVW which she believes they have now covered.*
- Meet all of the performance standards and the protection of the Interests. For all other resource areas they need to meet the protection of flood control and storm damage prevention. That means for all of the other resource areas they are proposing to alter in addition to BVW (there is inland bank, land under water, bordering land subject to flooding and riverfront area), Ball states that must be addressed so the Commission can understand the very stringent standards in this limited project. Ball feels it may be more useful to have findings and conditions to demonstrate that. Ball states the 7/25 Condyne letter focused on*

the culverts and the roadway. HW is looking for Condyne to state how, when they alter the bank of the intermittent and perennial stream and mitigate, how would they restore this to protect flood control and stormwater damage. HW suggested the commission require conditions that require they are restoring the bank, stabilize, revegetate and monitor it. Carlino clarifies the findings and conditions are on pages 3 to 6 of the HW letter.

Ball states one of the problems is they are replacing the culverts with larger culverts. While she agrees a larger culvert will allow for better flow during storm events, HW is looking for some back-up, some analysis, some calculations that demonstrate what they're putting in is not going to exacerbate the situation. At the site visit, they measured the stream bank width of 18 feet, and contrary to Smeyer's claims, they are not close to the 1 and ½ times required by the standard. But could they get closer? Ball feels no analysis has been given to the commission to demonstrate if this design is protective of the other resource areas and its Interests.

Neil Price, Senior Hydrologist with Horsley Witten, discussed the culverts and stream crossing standards. Price clarified the standards apply to both new and existing culverts. However, the standards to the replacements are to the maximum extent practical and that determination rests with the commission. The standards were put in place to correct the conditions of inadequately sized culverts built over the years with systems that mimic what the natural hydraulics would have been for the system prior to the road going in. There are 3 criteria in the standards. The first two are about direct impact. If you were to replace this culvert with one that meets the standards, would you create a significant stream erosion, or stream bank damage? The second is would you cause a flooding hazard? Price does not believe Condyne has identified either of those criteria. The 3rd criteria is whether site constraints physically prohibit these culverts being put in that would meet the standards? Condyne has stated the water main is the main constraint from preventing the standards from being met. Price says that may be the case, but is up to Condyne to provide that documentation and for the commission to decide the benefits of meeting the standards against the cost of the water main situation. Price states that putting water mains at a lower position to accommodate a larger culvert is routinely done. Prices states if the water line can't be moved, that is a significant limitation. Referenced Brewster. Price states many towns welcome a developer paying for a new water line. If the water main is not going to be replaced, he suggests going to a pre-cast to determine at what point does the weight of the culvert become an issue with the water line? How close can we get to the standard? Condyne has not presented information to the maximum extent practical. Price states Condyne is failing to meet the standard for the width of the intermittent and perennial streams by about a factor of 3 (Dibb stated 7ft, 7ft and 18ft). At the site visit everyone agreed that the stream banks were 7, 7 and 18 ft. The board must decide is that the best that can be done? HW does not feel they have seen appropriate back-up.

Regarding the invert, Price states HW had said the limitation was the water line and Dibb had replied that the invert was matching the existing stream condition. Price states that may be the case, but the existing stream condition may also be impacted by the undersized culverts. The

stream crossing standard will require them to do a longitudinal profile. He has not seen this. Price feels the commission needs more information to make their decision as to whether the standards have been met to the maximum extent practical.

Kadish states he understands the philosophy but feels the law was framed with the idea of making things the way they were in pre-colonial times. The reality is that road pre-dates this law. He feels HW is asking us to change the landscape back to what it might have been prior to this road being there because somebody feels that is a benefit. But, as pointed out, there are certain risks to doing that. He feels Condyne has existing conditions but are trying to meet the regulations by improving the culvert flow. He is uncomfortable with changing the levels and what that may do to the hydraulics of the stream.

Ollerhead asks Dibb if he is planning to do a study on the weight limitations above the water pipe or a longitudinal study. Are they done presenting what they want to the commission? Dibb replies, as far as the longitudinal study, this area is very flat upstream and downstream. There is topographic information on the plans. Out to 50 feet, there is almost no change in elevation. There is siltation at the entrance to the pipe. The siltation is not considered. The invert is to match the stream bed. Regarding the flooding, as an engineer you must consider the flooding upstream and downstream. To his knowledge, there has never been a flooding issue there. By replacing a 21 inch culvert with a 22 foot wide culvert could significantly affect flooding downstream. Ollerhead says that has not been demonstrated. Dibb replies you are increasing capacity by 10 times. The 2 intermittent streams are man made ditches. They are trying to significantly improve them at a major cost. The change from elliptical to 6 foot wide box culvert is about \$60,000. The change from a 6 foot wide to a 22 foot wide is about \$250,000. Kadish questions that we are looking at the cost. Carlino points out this is the information we have been asking for all along and not sure why it hasn't been submitted. Ollerhead replies that is one of the reasons why it is not practical. Kadish questions if the commission is comfortable with replacing a 21 inch culvert with a 22 foot wide culvert? Carlino replies if the stream is 18 feet wide, it would require a new culvert that wide. Kadish questions the risk of flooding the downstream. Carlino agrees there is a risk, but that is their burden of proof to show where the risk is. Kadish sees a departure from common sense. He feels this a ridiculous choice and can not endorse this.

Smeyers states he has a different take than HW. He says the standards must be met to the maximum extent practical for the applicant to put them in engineering wise and cost wise. The 3 culverts are being increased from 12 inches to 30 inches. The intermittent streams from 22 inches to 6 feet. It doesn't meet the bankful. However, the bankful is artificial. As previously stated, the bankful for each of these streams is much smaller than 18 feet. (We note that this statement is different than what was agreed upon at the site visit.) They are increasing the capacity of the pipes by a reasonable amount, allowing more flow and transition of animals. Regarding the resource areas, most of the bank being altered is culvert area. They are replacing culvert with culvert. If forced to make bigger culverts, it will have more impact to bank and BVW.

Price responds that it is a matter of perspective. What are the existing conditions and how are we changing them? He says that may be logical, but the regulations and standards look at things as what is the ideal and work backward from there. It doesn't matter what the existing conditions are per the regulations. The understanding is the existing conditions are bad and they are trying to improve them to those ideal standards to the maximum extent practical. The question is the processing of the regs. Are they getting as close as what is maximally practical. He says they have not demonstrated that. He says maybe it is as close as they can get, but Price has not seen the back-up to demonstrate that. Every culvert HW has ever designed, they run a hydraulic model. Without that, he can't tell if these are the right sizes. If Dibb says the area is flat, present a profile showing that flatness going from upstream to downstream. Cost is a factor, but if cost makes the project economically unfeasible, that should be presented with actual numbers. Dibb's numbers are not realistic. You can't just take the cost of one culvert and multiply times 4. Price says he is just trying to guide the process, not say what is right or wrong.

O'Reilly questions if we have anything from the water dept saying why they don't want that pipe changed. Carlino added a letter from the water dept to the record. Kadish read the letter from Frank Fournier of the water superintendent to Mark Dibb stating there are other options available. However, Carlino felt the letter was vague. Kadish questions do we have enough information to make a decision. He understands the ideal world, but we do not live in an ideal world. What is an improvement and what is sustainable. He cannot support the ideal models being presented as the best improvement.

Ollerhead asks Dibb if they are content with what they have presented before they close. Dibb replies he is content with the restrictions of the water line and the reasoning as to why they don't want more than a 6 foot wide culvert. He feels they have provided the calculations that are needed and the additional calculations brought up are not critical to this design. The restrictions are. Rather than continue to do more surveys and provide more data, he asks the commission do they need more information rather than be denied and go through the appeal process.

Pearson questions the reasoning behind the large differences between what the regs are requiring in culvert size with what is being presented. Ollerhead states the regs are shooting for the ideal. But Pearson questions why is that ideal? Price explains the purpose of the standards. Ball discussed the stream crossing standards. She states the applicant must demonstrate they have done everything they can with their design to meet the standards and explain what informed this design. For example, the change from the elliptical to the box culvert. She has Dibb explain. He states the change was specifically to not affect the flooding. It was to increase their improvement of some of the standards while not compromising the water system or flooding. Kadish states there is a deep conflict with predevelopment vs post development runoff with extreme conditions. States the law is inconsistent. Doyle questions the effect a 22 foot culvert would have on the downstream if for example, we had a 50 year flood. Dibb replies the sheer volume of water would be able to pass. As an engineer, he must consider both the upstream and downstream flooding. Engineering wise, the intention is to keep conditions within the same parameters. He has pictures of existing culverts. Carlino states they are just asking for backup

information in those decisions. Price states Dibb is giving his opinion which may or may not be correct. Says the role of the engineer is to quantitatively assess this. He has not seen that. The way to do that is with a hydrologic and hydrology model. That information is used to determine if there will be flooding according to the model. Says the standards are asking for analysis, not opinion. Ball states the stormwater standards are different where you are trying to match pre and post development. She says here you are trying to improve conditions. Kadish agrees there is room for more analysis, but views that as a form of refusing to take on your responsibility to make a decision with reasonable information provided. O'Reilly has issue with how the water line is affecting the culverts. The inability to move the water line. Dibb responds, as an engineer, he does not want to put a 14 foot culvert on top of a water line. That's why he proposes a 6 foot wide culvert. All the impacts increase if they make it any bigger. Carlino noted that they must document that not just say it. He states calculating the flow is not a criteria. Smeyers notes there has been talk of raising the road. Dibb states raising the road is possible, but there is more fill to the flood plain and cost of the culvert is 4 times (per his contractor). Smeyers also notes the theoretical calculations through stream stats submitted tell him, as a wetland scientist, that these culverts are within the realm of reasonableness.

A resident from 283 E. Main St, a chemical engineer, notes an apparent reluctance to dig into this deeper through topographical maps. Always better to prove that your postulation is correct. Why the reluctance to continue? May turn out we don't need as big as the regs require, but since they are the regulations, should have to prove it.

Carlino noted much of the information presented tonight was the back-up H&W had requested for a while now. O'Reilly would like more information from the water dept and their consultant as to why they are opposed to moving the water line.

Ollerhead asked each member if they feel more documentation is needed. O'Reilly, Pearson, Doyle all agree with Ollerhead that Condyne hasn't provided the required documentation as laid out by HW. Kadish disagrees.

The applicant requested a continuance to 9/9/19. Motion was made to continue the public hearing for DEP#250-1035 to September 9, 2019 by Pearson, seconded by O'Reilly. Carrozza recused herself. Motion passes.

D. Notice of Intent (#250-1040). Michael Trowbridge of Hutchins-Trowbridge Assoc. 306-308 East Main Street. (Map 5, parcel 38 and 252). (continued from 4/29/19, 6/10/19, 7/8/19, 7/22/19) The proposed project is to construct an addition to warehouse, detention basin and grading within 100 feet of BVW.

The applicant requested a continuance to 10/14/19. Motion was made to continue the public hearing for DEP#250-1040 to October 14, 2019 by Kadish, seconded by Pearson. Motion passes.

7:00pm WETLAND HEARINGS AND POSSIBLE COMMISSION
DELIBERATIONS

Wetland hearings will be taken in order.

- E. Request for Determination of Applicability (DET #1086). Rick Coutu, 15 Eddy Street (Map 33, Parcel 6-03).** The proposed project involves plans to remove 4 trees within 100 feet of wetlands.

Document List

1. *WPA Form 1 – Request for Determination of Applicability – received 7/23/19*
2. *Plans entitled, “Proposed Garage”, prepared by Silva Engineering Associates, P.C., signed and stamped by Lawrence Silva, P.E., dated 4/25/19*

The applicant presented the project to complete the house that was started in 2012. He is adding a garage which is outside of the 100 foot zone. However, there are a few trees just within that would be overhanging the garage that he would like to remove to prevent future issues. Carrozza asked if he would be stumping them. Coutu replied he would cut and leave the stumps there.

Motion was made to close the public hearing for DET #1086 by Kadish, seconded by Pearson. Motion passes.

Motion was made to issue a Negative 3 Determination for DET #1086 by Kadish, seconded by Doyle. Motion passes.

- F. Notice of Intent (#250-1045). Peter Kalivas, 68 Maple Street (Map 30, Parcel 61).**

The proposed project involves the upgrade of an existing septic system within 100 feet of the wetland area.

Document List

1. *WPA Form 3 – Notice of Intent dated 7/11/19*
2. *Plans entitled, “Plans and Details Subsurface Sewage Disposal System Upgrade”, prepared by Collins Civil Engineering Group, Inc., signed and stamped by George Collins, dated 6/18/19*

Dave Klennert of Collins Civil Engineering Group presented the project for the applicant. It is a system upgrade for an existing duplex. The entire project would be within the 100 foot buffer. The proposed system will be completely outside the 25 foot buffer. There is a siltation fence that is proposed. It is a pump system mounted about 2 feet above ground. The system will go where

the previous system is but about 5 feet further from the wetlands. The only alternative would be putting it in front which would wipe out all parking that is there. The plan has been reviewed and approved by the Board of Health. Carlino noted there is a minor violation of compost in the wetland, which would be a condition of the permit to have it removed and the wetland restored. Klennert noted he is proposing a post and rail fence with the conservation markers. Carrozza questioned there is an existing stockade fence and they are putting the split rail fence behind it? Klennert replied it is not actually a stockade fence. You can see through it. They mow behind. Ollerhead noted that's why they need the barrier. Carrozza asked Carlino is there a reason we are not requiring that at the 25. Klennert states if it is moved to the 25, it would be right in the middle of the lawn area. But, Carrozza notes it is closer than what is currently there. Is there a picture? Carrozza asks is the fence permanent? Clement provided. Carrozza ask could markers be placed on the fence instead of building a fence between a fence? Carlino notes they mow behind the fence where the wetlands are in the power easement. In that area, might consider a couple of posts with markers on it rather than the expense of a fence for mowing purposes. But in the area where the system is, put a fence there. Carlino requested the plans be revised. Klennert will show where the posts and markers will be along with the proposed fence as discussed.

Motion was made to close the public hearing for DEP #250-1045 by Kadish, seconded by Pearson. Motion passes.

Motion was made to accept the draft order of conditions as submitted for DEP#250-1045 by Kadish, seconded by Pearson. Motion passes

G. Notice of Intent (#250-1046). Joseph Fernandes, 461 South Worcester Street (Map 32, Parcel 182). The proposed project is to construct a dwelling, septic, driveway, grading and utilities within 100 feet of bordering vegetated wetland.

Document List

- 1. Plans entitled, "Sewage Disposal System 461 South Worcester Street", prepared by Hutchins-Trowbridge Associates, Inc., signed and stamped by Michael Trowbridge and Ralph Maloon, dated 6/10/19*
- 2. WPA Form 3 – Notice of Intent received 7/22/19*

Michael Trowbridge of Hutchins-Trowbridge Associates presented the project for the applicant. He provided a color plan. Everything proposed is within the buffer zone. They are proposing to construct a house, driveway, septic system, patio and pool area. He showed where siltation control is in place on the diagram. He is proposing a 12 inch silt soc. Plans have been submitted to the Board of Health. They are awaiting ConCom decision. Carlino asks for clarification where the lot is on the diagram, which the applicant, Joe Fernandes of 455 So. Worcester

demonstrates. Carrozza would like the driveway location that was previously approved in the file attached to this notice to reference the lot. Fernandes showed on the plan the common driveway, his son's house under construction and the lot in question. Carlino asked if they heard from Natural Heritage. Fernandes spoke to them Friday. They are looking for an addendum to the memorandum of the original agreement which Fernandes will get them. Carlino states the commission cannot close the public hearing until they have a letter from Natural Heritage. Carlino asked if there was a wetland report and who flagged it? Trowbridge states it was flagged by Goddard. Carlino asks if there was an ORAD. Fernandes states an ORAD was done for the whole cul-de-sac. Pearson asked if they complied with the stormwater bylaw. Not yet per Carlino. Trowbridge states it does not apply because this is a single family home. Carlino states this is the town's stormwater bylaw, not stormwater bylaw under Wetlands Protection Act. They must read the town's stormwater bylaw. They are separate. Carlino questioned why is there a 50 foot buffer to wetland? Trowbridge felt it was a good number for a conceptual line to look at. Carlino questioned that grading will come in at right angles to each other? Yes per Trowbridge. Carrozza asked if they are taking material out of the area. Trowbridge says it is a stockpile area. Carlino questioned the distance to limit of work. Trowbridge states the distance varies. He will add it onto the final plan. Carrozza asked if they could reference the ORAD and the driveway on the plan. She clarified it is not in a flood zone.

The applicant requested a continuance to 9/9/19. Motion was made to continue the public hearing for DEP #250-1046 to September 9, 2019 by Carrozza, seconded by Pearson. Motion passes.

7:30 PM DISCUSSION

Request by David Gay, Esq, on behalf of Kingsbury Hill condos, to remove 4 acres of land within the recorded Conservation Restriction subject to Article 97 protection and under EOEEA Land Disposition Policy.

Tom Gay, Jr. of Gay & Gay attended the hearing on behalf of Kingsbury Hill condos along with Carlos Skulty, their engineer. Amy Kwesell, KP Law, was present to represent the conservation commission. Gay presented a history of the project and a potential land swap he is proposing. There is a portion of land that was set aside for conservation restriction. He is proposing to have that restriction removed on the 4.6 acre parcel and possibly find a parcel of land that is better situated for conservation and resource values. He has a binding P&S agreement for a 19.4 acre parcel of land on East Hodges Street. The parcel contains wetlands, vernal pools and Natural Heritage sensitive areas. The 4.6 acre parcel that he is hoping to remove is all upland and does not contain any Natural Heritage or environmentally sensitive features. He is hoping to remove any concerns the commission may have.

Skulty discussed how the area has changed significantly with commercial development since the restriction was placed on the property 30+years ago. It is an unused open meadow with no

wetland resources to speak of. It was a 47 acre parcel with housing cluster development on about 10.6 acres with about 36 acres of conservation area. He states at the time of the restriction, it significantly exceeded the requirement. He has looked at how the removal of the restriction on the 4.6 acre parcel would impact the compliance with the cluster standards. With the information he has provided, the removal of the restriction would still meet the intention with the cluster development as they exist today. He showed a conceptual plan for reference as to what could be developed while respecting the buffer zones and floodplains. It is his opinion this presents a better opportunity for the town to preserve the resource areas from a wetland perspective, more so than continuing this restriction.

Carlino states conservation of land is not only about floodplains and wetlands. It's about different habitats. We should take a look at the purpose of this conservation restriction. It is not accurate to say an open field in the aquifer does not have any environmental importance. The other property does have certain environmental features, but that does not change the ecological value of this property. This property was farmed and mowed until maybe 5 or 10 years ago. We need to look at the purpose of that conservation restriction and then the commission's job is to review that to determine if the purposes of the conservation restriction are surplus to the town's needs. And does removing the conservation restriction serve an Article 97 purpose? Those are the questions to be answered before we get to what the replacement property could be.

Carlino read the purpose of the conservation restriction on page 3. She explains the purpose of the restriction was to keep the area open as a field, in agricultural use and to protect the watershed resources. It is in the Canoe River ACEC and the Sole Source Aquifer. Their first task is to determine if we no longer need fields or agriculture or to protect the drinking water source. Skulty responds there is no formal design for the proposed property, but it would be designed to adhere to the standards. Carlino states the submitted proposal states the conversion is for traffic purposes which would not require 4 acres of land. She has never seen a conservation restriction removed for a private benefit. It's for a public program. Skulty responds that with the development of additional property, he states the town and the applicant have been looking to potentially widen Leonard Street. He states if the restriction were removed, it would allow the condo association to work with the town and the applicant across the street to improve the traffic flow there. Carlino responds the most recent request for a conversion and the approval was with the Plain St. bridge. And then only the bare minimum that was needed for the bridge was removed from Article 97 and then replaced with more land of equal value.

Maureen Sroczynski, President of Kingsbury Hill Condo Association, of 283 East Main St spoke about the agriculture of this lot. She states this plot was connected to the Houghton Farm. It was mowed by Houghton up until 10 years ago and was getting benefit from it, which the association was not. The association could not enter into an agreement with them not to mow it. They asked them to stop mowing it. Since the town gave the Houghton Farm land across the street to Condylne, the town has removed that farming piece from whatever farm land is necessary. Why is there a problem with 4 acres being removed? It's not been used for farmland and it's not been used for agricultural purposes for over 20 years since that development was built.

Regarding the traffic, she states at the Planning Board meeting, the Condyne traffic engineer indicated this would be valuable property to improve the traffic flow on East Main Street. It is not the condo's plan to use it for traffic. It is their plan to sell that land while replacing the town with more than double the amount. Carlino replies removing land from a conservation restriction has to serve another Article 97 purpose. What Article 97 purpose is served by removing that property? Gay argues that by removing this with the purchase of land on Hodges Street, we are not negatively impacting. We are staying consistent with the purposes of Article 97. They are taking 4.6 acres and have found a significantly larger parcel of land that contains significantly more sensitive resources. Carlino asks if it is in the aquifer. Carlino states you are taking away something that protects the drinking water source and adding something that doesn't. Sroczynski, asks since 273 East Main St was built much closer to the Canoe River aquifer than this land with 8 buildings on that property, and Condyne is dealing with areas impacting aquifers, how can you justify 4 acres that they are willing to trade for 19.6 acres to give the town more conservation land. How can you say those 4 acres have a greater impact on the Canoe River aquifer? Carlino responds none of those properties had a conservation restriction on them. Sroczynski, says they are asking for the removal of those restrictions. Carlino states under Article 97, you must describe the exceptional circumstances. Pearson notes that many people may not know what a conservation restriction is. He reads a definition. He emphasizes the word "permanently" in the definition. He also reads language from the donor of the land that again refers to a "permanent conservation restriction". Pearson believes the idea is both the donor and the Commonwealth are arguing that conservation restrictions are something they don't want changed. Gay agrees that there is a high burden placed on removing the restriction to meet and exceed. That is why they have purchased a significantly larger property with more resources. Granted different, but they are not proposing to just remove. From a history perspective, all of the circumstances around this property have changed drastically over time. If this were being developed today, removing this restriction would still meet all the standards. He believes his client is acting in good faith and in the town's best interests. Removing this does serve a public purpose because it will allow this roadway and intersection to be improved and will allow the town to use this property for some other town purpose such as a senior center.

Pearson questions the area on the map and where the wetlands are which Skulty discusses. He says they used a plan that had been approved by the planning board for a 4 lot subdivision proposed and overlaid the resource areas. He notes a vernal pool and it is in the wetlands protection district. Carrozza remarks that it's essentially unbuildable. Skulty says not necessarily. It's all upland in the rear. Gay states the seller of this property had filed with the conservation commission for a common driveway and 4 lots. He was not sure how far the process had gone. Carlino noted they withdrew the application after seeing the extensive wetland and floodplain that had to be crossed. Sroczynski says that at the time the restriction was put on, it was under Chapter 184 which was open space related to the condominium development. Now under Chapter 97 which is different. Kwesell confirms that the property is in fact subject to Article 97. Gay says they have gone through all the aspects of Chapter 97. Gay states, from a

conservation value with wetlands and heritage and vernal pools, he cannot think of a parcel to better exhibit the natural resources. Carrozza disagrees. As a resident of this town, she would rather have her drinking water supply protected than a wetland on the other side of town. She believes they are minimizing the value of this property. She does not believe it would have been put into conservation restricted property if it wasn't valued for something, that being our drinking water supply.

Sroczynski, states they previously met with the chairman of the selectmen and the town manager who suggested to them to find a conservation piece of land that they could trade for this and they (selectmen and town manager) did not see where this would be an issue. Carlino states they may have been told that, but the Conservation Commission has the first vote and review for compliance. Carlino again states they must go through Article 97 and meet each of those requirements. So, do exceptional circumstances exist? There are at least 4 items that need to be addressed in the application package. Skulty responds they are here today for initial feedback and thoughts. Carlino notes removing conservation property or restrictions is documented to threaten the town's ability to get additional grants from state and federal sources. The town has received over \$1.3 million in grants over the last 20 years. Also, with cluster developments, the zoning bylaws require at least 35% of the buildable area is used in calculating the minimum 35% open space and it shall not include wetlands, ponds or marshes. If the 4 acres are removed, the property will be below the 35% required and would not comply with zoning. Skulty responds of the 47 acre parcel, 26 is upland and 12.5 is the open space restriction which is roughly 47%. If the parcel is removed, would still meet the requirements based on calculations done. Carlino asks if they are submitting to the ConCom for review. Gay states they are not looking for a decision tonight. They are here to address concerns the board may have.

Amy Kwesell of KP Law attended the hearing as town counsel. Kwesell clarified that simply because a conservation restriction is pursuant to chapter 184 does not mean that it goes from 184 to Article 97. It is both. It is protected under Chapter 184 as a CR and the land is dedicated as Article 97 land. This is why it must go through the whole process and certain steps must be taken. The first is this Board must declare a surplus.

Carrozza states she has never dealt with Article 97 as a private entity to private entity, only public to public. She asks both attorneys if they have ever encountered anything that goes from Article 97 for the benefit of a private entity, not public. Kwesell states she has not. Carrozza also has not. States it is highly unusual. Gay states it seems private to private, but there is a public purpose with the East Main St/Leonard Street intersection that will need to be addressed, whether at this time or down the road. Carrozza responds it would be different if Mass DOT needed to take a right of way for a public purpose. That is not the case here. It's a private entity. O'Reilly states Condyne can resolve any of those traffic problems since they own the land across the street. Sroczynski responds Condyne's traffic engineer said they would need to take part of that land. She asks what if the town decided to take part of that land to benefit the town. Pearson states the land is benefiting the town now. Sroczynski, says the land could better benefit the town's needs for something like a senior center or town hall. Pearson feels the town would be

wrong. The town is doing what it should do. We should develop on land that is already built on and limit environmental impact. People assume when we bring in development, we bring in a tax base, but it also requires services. Those services nullify that development to a certain extent.

Ollerhead asks if they are coming back with more information with their package.

Skulty asks with regard to the parcel on East Hodges Street, what is the additional information as to the resource value that the commission would want. Ollerhead replies there are several items required for alternatives they must meet. He reads the list. Carrozza clarifies it is our (conservation commission's) responsibility to first respond to the question of whether we believe it is a surplus? Kwesell says yes that is the first question. Carlino states that is the question to determine if you go on to any of the other questions. Is that property surplus and does the removal satisfy or further, does it improve Article 97 purposes? Then the commission would go on to is the replacement appropriate or not. Gay asks about further study or mapping to show how much property is within the aquifer. Carlino states the entire property is in the aquifer. Pearson comments to the audience that part of our mission with the WPA is not just the wetlands, but also the drinking water.

Resident Sue Nichols of Kingsbury Hill questions how does the aquifer fit into this property, the Condyne property and the property across the street (273 East Main St). We are taking a small amount compared to those big areas. Is the aquifer under everything? Yes, responds the commission. Carrozza responds it is the groundwater that you drink. Also, those other parcels did not have restrictions and cannot be compared. Kadish does add that part of the review of those projects did involve aspects of protecting the groundwater in terms of re-infiltrating systems which are present in both properties mentioned. Gay asks if designing a re-infiltration system and what would be developed be of value to the commission. Ollerhead states must pass hurdle of surplus first. Kadish asks why they are bringing this project forward as such a compelling value to their perspective? You're asking us to take an open space in an area that is becoming a large area of development and change it to more development. Sroczynski responds they have an aging condominium development with an aging septic system. They have discussed for years, what would be the approach to be able to sell that land so that at the time they may have to connect to the town sewer, it does not impose a significant financial issue for the 40 homeowners of this development. Carrozza states again that this would meet a private purpose, not a proper public purpose which is not the intent of Article 97.

Gay discusses coming back in October. Gay questions the process and about notifying abutters. Ollerhead responds the commission needs a full completed application submitted. Carlino states there is no abutter notification. It must be done at a public hearing. Kwesell suggests submitting all information 2 weeks ahead and it must be on the agenda. The commission suggests to Gay they just address the first hurdle of that being surplus land before going on to the other issues.

REVIEW DRAFT MINUTES

7-22-19 - *Motion was made to accept meeting minutes of 7/22/19 by Kadish, seconded by Carrozza. Motion passes.*

OLD BUSINESS

NEW BUSINESS

Special town meeting called for August 26th, cancel regular con com meeting

Open Meeting Law training rescheduled until 9/23 6:30PM before regular ConCom meeting.

Remote participation was discussed. Commission members agreed it was not workable.

Proposed additions to Policies

1. **Policy Regarding the 100-year Floodplain at Mulberry Meadow Brook**

During wetland hearings for DEP file # 250-1036, Beals & Thomas provided hydrologic calculations in a letter dated February 27, 2019 to support a Base Flood Elevation (BFE) of ranging from 73 to 77 feet (NAVD88) along the Mulberry Meadow Brook within the existing cranberry bog. The mapping of BFE within that letter is accepted as the most recently available best scientific evidence of BFE.

Motion was made to add a Conservation Commission policy regarding the 100-year Floodplain at Mulberry Meadow Brook by Carrozza, seconded by Kadish. Motion passes.

2. **Policy Regarding precipitation frequencies and stormwater management calculations**

The Conservation Commission shall require applicants to use the most recent rainfall data for stormwater management, culvert replacement and Isolated Land Subject to Flooding calculations. Most recent rainfall data is determined to be National Oceanic and Atmospheric Administration (NOAA) Atlas 14 (https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html).

- a. 2-yr storm=3.46 inches
- b. 5-yr storm=4.43 inches
- c. 10-yr storm=5.22 inches
- d. 25-yr storm=6.32 inches
- e. 50-yr storm=7.14 inches
- f. 100-yr storm=8.02 inches

Motion was made to adopt a change in Policy Regarding Precipitation Frequencies and Stormwater Management Calculations by Kadish, seconded by O'Reilly. Motion passes

Site Inspections

Violations:

Carlino noted there was a new violation at 10 Dean Street. She has met with the owners and they came in for the permit application.

211 Oak and 21 Kensington

68 Dean and 4 Kensington

Reservoir Update

Chartley Pond Update

Barrowsville Dam

Report from Staff

Waterbodies Committee update

Grants

BILL SUMMARY

Summary list of bills signed period – July 1 – July 31, 2019

FY2020

Vendor /Item	Amount	Town Account #
MSMCP	\$20.00	001-171-570-5730 Operating-Prof Orgs
Membership dues		
Town of Norton	\$70.00	001-171-570-5308 Operations Maint. Cons. Areas
Water and sewer		
B&B Landscaping	\$1,000.00	001-171-570-5308 Operations Maint. Cons. Areas
tree work		
Chessia Consulting	\$1,937.50	243-171-100-5700 Outside Consulting
54 Plain St solar		
Chessia Consulting	\$1,437.50	243-171-100-5700 Outside Consulting
Wheaton College		
Horsley Witten	\$1603.99	242-171-100-5700 Wetland Protection Fund
Leonard St appeal		
Norton Ace Hardware	\$412.42	001-171-570-5308 Operations Maint. Cons. Areas
Edith Read – paint		
MACC	\$503.00	001-171-570-5730 Operating – Prof Orgs
Membership dues		
DPI, LLC	\$6,750.00	242-171-100-5700 Turtle Crossing
remaining consulting funds		
Pare Corporation	\$1,160.00	448-171-000-5800 Chartley Dam
Engineering Services		
Verizon	\$36.49	242-171-100-5700 Wetland Protection Fund
Agent cell phone		
W. B. Mason	\$7.23	001-171-570-5420 Operations
Office Supplies		

OPEN SESSION (TOPICS NOT REASONABLY ANTICIPATED 48 HOURS IN ADVANCE)

Regarding open session, Carlino received an email from town counsel today stating there is a court date tomorrow for PESA

At the Selectman meeting last Thursday, it was requested that Carlino ask the commission if they are interested in a wetland bylaw. Selectman are interested in having it for the fall town meeting. The commission discussed having town counsel work on the bylaws. Carlino noted we can apply for a grant to have SRPEDD help with the bylaw. Would need significant support and probably not be ready until spring due to the volume of material.

Camp Edith Read – Volunteers are coming 9/10 and 9/14 to paint the inside and outside of the lodge. Recreation, Conservation and the Senior Center are looking to have an open house 9/28 at the camp.

Rail Trail meeting 8/15 at 7PM.

Ollerhead noted the Charter Commission has changed and they have 18 months to write a new charter and have it voted on by the town. They are asking for representatives from all town departments to come in and share their thoughts about what changes they think are necessary. Ollerhead will be going in October as Conservation Commissioner and Water Commissioner. He will let the rest of the commission know the date once it is scheduled. They are just doing employees or department heads now. Carlino is going next week.

Appeals:

DEP approved Lot 5 and Building 7.

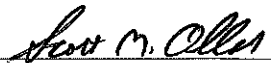
The superseding order for the cranberry bogs – the applicant appealed our approval. Meeting scheduled for 9/10, but Carlino cannot attend. She has requested a change in date and is waiting to hear back.

Motion to adjourn by Kadish, seconded by O'Reilly. Motion passes and meeting closes at 9:30pm.

Respectfully submitted by: _____Melissa Quirk_____

Minutes approved by the Commission on _____10/7/19_____ (Date)

Conservation Commission Signature:


Scott Ollerhead, Conservation Commission Chairman

1/27/20
Date