

Norton Conservation Commission
70 East Main Street

202.

202. 2021 MAY 17 AM 9:23

Email: conservation@nortonmaus.com https://www.nortonma.org/conservation-

commission

Monday, March 22, 2021 6:30 pm **Remote Participation Only** The Public Remote Participation Procedure is found at the end of this Agenda

Chairperson to read about Public Meetings:

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place, this meeting of the Norton Conservation Commission will be conducted via remote participation to the greatest extent possible. Specific information and the general guidelines for remote participation by members of the public and/or parties with a right and/or requirement to attend this meeting can be found at the end of this agenda.

Members of the public attending this public hearing/meeting virtually will be allowed to make comments if they wish to do so, during the portion of the hearing designated for public comment, by raising their hand virtually or pressing *9 if participating by phone.

No in-person attendance of members of the public will be permitted, but every effort will be made to ensure that the public can adequately access the proceedings in real time, via technological means. In the event that we are unable to do so, despite best efforts, we will post on the Norton Cable website (https://www.nortonmediacenter.org/) an audio or video recording, transcript, or other comprehensive record of proceedings as soon as possible after the meeting.

Minutes

6:30pm Open meeting

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

Attendance: Julian Kadish, Lisa Carrozza, Gene Blood, Ron O'Reilly, Dan Pearson, Daniel

Doyle, Jr., Kerry Malloy Snyder, Conservation Secretary Melissa Quirk,

Conservation Director Jennifer Carlino

Kadish read the names of the participating ConCom members.

Kadish offered his apologies on behalf of the ConCom to the audience and the applicants for the glitch with the last meeting. There was an error with the participation instructions which did not allow the public to participate. He made clear there was no discussion on any items on that agenda. All the hearings were carried forward as a continuation and will be discussed tonight.

WETLAND HEARINGS AND POSSIBLE COMMISSION DELIBERATIONS

Wetland hearings will be taken in order.

A. Notice of Intent (#250-1057) Ruscito Brothers LLC, 253 Mansfield Avenue (Map 3, Parcel 722). (continued from 7/27/2020, 9/14/2020, 10/19/2020, 11/23/2020, 1/25/2021, 2/22/2021, 3/8/2021) The proposed project is to convert a commercial building to a 40B multistory, multi-unit residential apartment building, stormwater management, parking and utilities within 100 feet of bordering vegetated wetland. Files can be viewed here https://tinyurl.com/253-mansfield

The applicant requested a continuance to 4/12/2021. Motion was made to continue the public hearing for DEP #250-1057 to April 12, 2021 by Carrozza, seconded by Snyder. Motion passes.

A roll call vote was taken:

Blood-Aye Pearson - Aye
O'Reilly - Aye Doyle - Aye
Carrozza - Aye Kadish - Aye
Snyder- Aye

B. Notice of Intent (#250-1065) Leonard Street Phase II Owner, LLC, 0 Leonard Street (Map 11, Parcels 22, 25-0, 25-01 and Map 12, Parcel 15. (continued from 9/14/2020, 10/19/2020, 11/9/2020, 11/23/2020, 12/14/2020, 1/11/2021, 2/8/2021, 2/22/2021, 3/8/2021) The proposed project is the construction of road and associated utilities within Riverfront Area and 100 feet of bordering vegetated wetland. Files can be viewed here https://tinyurl.com/LeonardSt-Condyne

Carrozza recused herself.

Mark Dibb of Condyne Engineering Group attended the hearing. He gave a brief summary of the project. Dibb submitted revision three from the Town's Consultant, John Chessia, this morning. He also submitted an updated Riverfront analysis by Scott Smeyers at Oxbow Associates showing some additional alternatives. Dibb showed how they have reduced about 6,000 sf of work in the Riverfront Area. The limit of work has been reduced by almost a half-acre.

Chessia briefly reviewed his last letter. He has not yet reviewed the responses sent this morning.

Carlino questioned asked if the work in the floodplain is reflected in the NOI page 3 of the application. Some is temporary and some is permanent. They are probably providing more storage, and she would want that properly documented. Dibb will check if that needs updating. He agrees. They are creating more storage.

The applicant requested a continuance to 4/12/2021. Motion was made to continue the public hearing for DEP #250-1065 to April 12, 2021 by O'Reilly, seconded by Doyle. Motion passes.

A roll call vote was taken:

Blood–Aye Pearson – Aye O'Reilly - Aye Doyle - Aye Carrozza – Abstain Kadish - Aye

Snyder-Aye

C. Amendment to Order of Conditions (DEP #250-1025) Condyne Engineering Group (Map 11, Parcel 32). (continued from 1/11/2021, 2/8/2021, 2/22/2021, 3/8/2021) For proposed plans to amend DEP#250-1025 to remove the approved building and replace with parking and changes to the stormwater system within Riverfront Area to Canoe River. Files can be viewed here https://tinyurl.com/250-1025LOT3Amend

Document List - Blue Star Business Park - Leonard Street - Amended OOC

- 1. Condyne Engineering Group letter dated 12/16/2020 re minor jurisdictional area project change
- 2. Plans entitled, "Blue Star Business Park Building 3 Minor Modification" prepared by Condyne Engineering Group, dated 10/19/2020
- 3. Horsley Witten Group letter dated 1/26/2021 Peer Review
- 4. Horsley Witten Group letter dated 2/2/2021 Peer Review
- 5. O&M Plan dated 3/1/2021

Carrozza recused herself.

Mark Dibb of Condyne Engineering Group attended the hearing. He reminded the audience the proposed changes will pull the pavement away from the resource areas slightly, improving impacts along those resource areas. Since the last meeting, Horsley-Witten reviewed the project and has no further comment.

Motion was made to close the public hearing for DEP #250-1025 by Doyle, seconded by Snyder. Motion passes.

A roll call vote was taken:

Blood– Aye Pearson – Aye O'Reilly - Aye Doyle - Aye Carrozza – Abstain Kadish - Aye Snyder-Ave

Motion was made to approve the Amendment to the Order of Conditions for DEP #250-1025 by Doyle, seconded by Snyder. Motion passes.

A roll call vote was taken:

Blood– Aye

Pearson - Ave

O'Reilly - Aye

Doyle - Aye

Carrozza – Abstain

Kadish - Aye

Snyder-Aye

D. Request to Amend a Determination of Applicability (DET#1103) Christian & Feck Development, 0 Reservoir Street (Map 10, Parcel 651). (continued from 3/8/2021) The proposed amendment is to change the location of the house on the approved plan (DET#1103) within 100 feet of bordering vegetated wetlands. Files can be viewed here https://tinyurl.com/DET1103-0Reservoir

Document List - 0 Reservoir Street

- 1. WPA Form 1 Request for Determination of Applicability received 10/22/2020
- 2. Plans entitled "Proposed House Location at 0 Reservoir Street in Norton, MA, prepared by RIM Engineering Co., Inc., signed and stamped by Craig Cygawnoski, dated 10/14/2020
- 3. Plans entitled "Proposed House Location at 0 Reservoir Street in Norton, MA, prepared by RIM Engineering Co., Inc., signed and stamped by Craig Cygawnoski, dated 10/14/2020, rev 11/4/2020

John Brunelle attended the hearing. He noted the address is now 164 Reservoir Street. He explained he bought the lot from Christian & Feck. They spun the house around mostly for safety on that corner. The house size changed about 100sf, and they increased the recharge for that. They are keeping the approved limit of work.

Carlino showed the approved plan and the proposed changes to the plan.

Carrozza asked if the deck is elevated off of the second floor or ground level. Brunelle stated it is elevated allowing equipment through.

Kadish asked if the Reservoir is nearby. Brunelle stated the corner of the house is 92 feet from the water. Carlino stated there is about 75 feet of the buffer zone left.

Motion was made to close the public hearing for DET #1103 by Carrozza, seconded by Doyle. Motion passes.

A roll call vote was taken:

Blood– Aye O'Reilly - Aye Pearson - Aye

O'Reilly - Aye

Doyle - Aye

Carrozza – Aye

Kadish - Aye

Snyder– Aye

Motion was made to accept the plan change and approve the Amendment to the Determination of Applicability for DET #1103 by Carrozza, seconded by Blood. Motion passes.

A roll call vote was taken:

Blood-Aye

Pearson – Aye

O'Reilly - Aye

Doyle - Aye

Carrozza – Aye

Kadish - Aye

Snyder-Aye

E. Notice of Intent (#250-1072) William Sarro, Jr., 44 Bay Road (Map 19, Parcel 91). (continued from 3/8/2021) The proposed project involves plans to reconstruct decks and add a driveway and patio within 100 feet of wetlands and within the 100-year floodplain. Files can be viewed here https://tinyurl.com/44BayRd

Document List - 44 Bay Road

- 1. WPA Form 3 Notice of Intent received 2/12/2021
- 2. Plans entitled, "Site Plan", prepared by Bay Colony Group, Inc, signed and stamped by William Buckley, Jr, dated 1/2/12021
- 3. Plans entitled, "Existing Conditions Plan", prepared by Bay Colony Group, Inc, signed and stamped by William Buckley, Jr, dated 3/18/12021

Bill Buckley of Bay Colony Group attended the hearing on behalf of the applicant. He explained the site is completely in the buffer zone along the edge of Winnecunnet Pond. It also lies completely within the 100-year flood zone. The site for the project was previously developed and altered for the existing home, a gravel driveway, lawn, shed and decks. About 75% of the lot itself lies within the Commission's 25-foot No Disturb Zone. The average elevation of the lot is 69. The 100-year

flood zone elevation is 73.4. The 10-year flood zone elevation is 71. The inland bank was flagged by Pare Corporation. The work proposed is the reconstruction of the existing house, which is 23 x 27. It will not be expanded. It will be gutted and rebuilt on the inside. On the outside, they would like to change the gravel driveway to a paved driveway. Additionally, they would like to add a patio and expand the deck so that it wraps around the house. The deck will be on the 1st floor about 3 feet above the existing ground level. They located the piers from a previous deck which are noted on the plan on the existing conditions detail sheet. The parking area and patio will be permeable pavers, as requested at the Determination hearing. The generator and A/C unit will be elevated above the floodplain as shown on the detail sheet. Though the existing single-family house is exempt from the DEP Stormwater Standards, the roof drains will be connected into a roof drain infiltration system. They have a restoration plan as shown on the plan. Their O&M Plan for the pervious pavers was taken directly from the DEP Stormwater Manual and their recommendations on maintaining pervious pavers.

Kadish asked if this is connected to a sewer line. Buckley stated there is a sewer connection which will remain where it is.

Snyder questioned the divider between the driveway and the patio. Buckley stated it is a rain garden which will capture any run-off from the driveway.

After discussion, it was agreed the three metal posts noted on the plan will be sufficient versus the post and rail fence that is typically required since it is at the top of Bank. However, the posts will need to be 2 to $2\frac{1}{2}$ feet in the ground in concrete. It needs to be permanent. Doyle recommended using standard sign posts which are $1\frac{3}{4}$ or 2-inch square and not galvanized steel. Carrozza suggested that be a condition since it is not detailed on the plan.

Motion was made to close the public hearing for DEP #250-1072 by Carrozza, seconded by Doyle. Motion passes.

A roll call vote was taken:

Blood-Aye

Pearson - Aye

O'Reilly - Aye

Doyle - Aye

Carrozza – Ave

Kadish - Ave

Snyder-Aye

Motion was made to approve the project, as discussed, for DEP #250-1072 by Carrozza, seconded by Snyder. Motion passes.

A roll call vote was taken:

Blood-- Aye Pearson - Aye
O'Reilly - Aye Doyle - Aye
Carrozza - Aye Kadish - Aye

Snyder– Aye

F. Abbreviated Notice of Resource Area Delineation (250-1073) Al Endriunas, 154 Pine Street, 0 Pine Street, 0 Wood Road, 126 Pine Street and 128 Pine Street (Map 24, Parcels 7, 9, 13, 108, 109). The proposed plan is to verify wetland resource areas. Files can be viewed here https://tinyurl.com/PineStANRAD

Claire Hoogeboom of LEC Environmental Consultants attended the hearing on behalf of the applicant. She explained the site is comprised of five separate parcels totaling 136 acres. There is a pond, but no mapped intermittent or perennial streams are located onsite. The site is largely undeveloped. It contains forested upland and forested wetlands. There is an existing degraded single-family dwelling along with some meadow habitat. She noted there is no 100-year floodplain mapped on the current FEMA map for the site, so there is no BLSF. There are four bordering vegetated wetlands and ten potential vernal pools mapped by Natural Heritage. Hoogeboom will run calculations on the isolated vegetated wetlands after she confirms with Carlino that the wetland boundaries are acceptable. Nine isolated vegetated wetlands were flagged. Carrozza requested a cover sheet done in a scale that would show all the wetlands on one sheet.

The applicant requested a continuance to 4/26/2021. Motion was made to continue the public hearing for DEP #250-1073 to April 26, 2021 by Carrozza, seconded by Pearson. Motion passes.

A roll call vote was taken:

Blood– Aye
O'Reilly - Aye
Carrozza – Aye

Kadish - Aye

Snyder-Aye

G. Notice of Intent (#250-1070) Widak/Sher Corp. LTD, 0 Rear Eddy Street (Map 32, Parcel 31). (continued from 1/25/2021, 2/8/2021, 3/8/2021) The proposed project is to construct a common driveway with associated stormwater management, septic system, utilities, retaining walls and grading for 4 duplex units within 100 feet of bordering vegetated wetland. Files can be viewed here https://tinyurl.com/rearEDDYSherCorp

The applicant requested a continuance to 4/12/2021. Motion was made to continue the public hearing for DEP #250-1070 to April 12, 2021 by Carrozza, seconded by Pearson. Motion passes.

A roll call vote was taken:

Blood– Aye Pearson – Aye O'Reilly - Aye Doyle - Aye Carrozza – Aye Kadish - Aye

Snyder-Aye

H. 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, 8/12/19, 10/7/19, 11/18/19, 12/2/19, 12/16/19, 1/27/2020, 2/24/2020, 4/13/20, 11/23/2020, 1/25/2021) The proposed project is to construct an addition to warehouse, detention basin and grading within 100 feet of BVW. Files can be viewed here https://tinyurl.com/250-1040BerniePhyl

The applicant requested a continuance to 4/26/2021. Motion was made to continue the public hearing for DEP #250-1040 to April 26, 2021 by Doyle, seconded by Carrozza. Motion passes.

A roll call vote was taken:

Blood-- Aye Pearson - Aye O'Reilly - Aye Doyle - Aye Carrozza - Aye Kadish - Aye

Snyder-Aye

I. Request for Extension (#250-976) Wheaton College, 26 East Main Street (Map 17, Parcel 14-03). The proposed project is an Aquatic Management Program to control nuisance, non-native plants and algae growth utilizing manual, mechanical, and chemical actions in Peacock Pond/Wheaton College.

Motion was made to approve a 3-year Extension for DEP #250-976 by Pearson, seconded by Snyder. Motion passes.

A roll call vote was taken:

Blood–Aye Pearson – Aye
O'Reilly - Aye Doyle - Aye
Carrozza – Aye Kadish - Aye

Snvder-Ave

J. Request for Extension (#250-1009) TPC – Boston, 400 Arnold Palmer Blvd. (Map 8, Parcel 123-01). The proposed project is to perform herbicide application control of Phragmites australis within bank, bordering vegetated wetland and within 100 feet of a wetland.

Naomi Valentine of SWCA Environmental Consultants attended the hearing on behalf of the applicant. She stated there was a small amount of sprouting of new phragmites in the previous wetland replication area. Management has gone exceptionally well, but they would like to eliminate any new sprouting as much as possible. She requested a two-year extension.

Motion was made to approve a 2-year Extension for DEP #250-1009 by Carrozza, seconded by O'Reilly. Motion passes.

A roll call vote was taken:

Blood-Aye

Pearson – Aye

O'Reilly - Aye

Doyle - call dropped

Carrozza – Aye

Kadish - Ave

Snyder-Aye

SIGN AND ISSUE ORDER OF CONDITIONS/ORDER OF RESOURCE AREA DELINEATION

REQUEST FOR PARTIAL/FULL CERTIFICATE OF COMPLIANCE

• Full Certificate of Compliance DEP#250-1035, Condyne Engineering Group, 235 East Main Street and 19 Leonard Street, Map 11, Portions of lots 32 and 66 (continued from 3/8/2021) for proposed plans to widen Leonard Street, install utilities, replace culverts and provide stormwater management.

Motion was made to issue a Full Certificate of Compliance for DEP #250-1035 by Blood, seconded by Pearson. Motion passes.

A roll call vote was taken:

Blood-Ave

Pearson – Aye

O'Reilly - Aye

Doyle - call dropped

Carrozza – Abstain

Kadish - Aye

Snyder-Aye

• Full Certificate of Compliance DEP#250-1031, Robert Burk, 49 John Scott Boulevard, Map 31, Parcel 37-1 (continued from 3/8/2021) for proposed plans to construct a single-family house with associated driveway, retaining wall, utilities and grading within 100 feet of wetlands.

Motion was made to issue a Full Certificate of Compliance for DEP #250-1031 by O'Reilly, seconded by Carrozza. Motion passes.

A roll call vote was taken:

Blood-Aye

Pearson - Aye

O'Reilly - Aye

Doyle - call dropped

Carrozza – Aye

Kadish - Aye

Snyder-Aye

• Partial Certificate of Compliance DEP#250-570, 3 Samoset only (Map 25, Parcel 36) (continued from 3/8/2021) for proposed residential and two commercial sewer tie-ins.

Motion was made to issue a Partial Certificate of Compliance for DEP #250-570, 3 Samoset Street only, by Carrozza, seconded by O'Reilly. Motion passes.

A roll call vote was taken:

Blood-Aye

Pearson – Aye

O'Reilly - Aye

Doyle - Aye

Carrozza – Aye

Kadish - Aye

Snyder-Aye

• Partial Certificate of Compliance DEP#250-570, 57 Bay Road only (Map 19, Parcel 72) for proposed residential and two commercial sewer tie-ins.

Motion was made to issue a Partial Certificate of Compliance for DEP #250-570, 57 Bay Road only, by O'Reilly, seconded by Blood. Motion passes.

A roll call vote was taken:

Blood-Aye

Pearson – Aye

O'Reilly - Aye

Doyle - Aye

Carrozza – Aye

Kadish - Aye

Snyder-Aye

REVIEW DRAFT MINUTES

2/22/2021 - Motion was made to accept the meeting minutes for 2/22/2021 by Carrozza, seconded by Pearson. Motion passes.

A roll call vote was taken:

Blood-Aye

Pearson - Aye

O'Reilly - Aye

Doyle - Aye

Carrozza – Aye

Kadish - Aye

Snyder-Aye

3/8/2021 - Motion was made to accept the meeting minutes for 3/8/2021 by Carrozza, seconded by Pearson. Motion passes.

A roll call vote was taken:

Blood-Aye

Pearson – Ave

O'Reilly - Abstain

Doyle - Abstain

Carrozza – Aye

Kadish - Aye

Snyder-Abstain

NEW BUSINESS

• Right of First Refusal – Daggett-Crandall-Newcomb Home, Portions of Newland and Newcomb Street, Map 5, Lot 24.

• Right of First Refusal – Daggett-Crandall-Newcomb Home, Portions of Newland and Newcomb Street, Map 5, Lot 25, 26, 27 and 28.

After discussion, motion was made to NOT recommend exercising our Right of First Refusal for the property at Map 5, Lots 24 through 28 by Carrozza, seconded by Blood. Motion passes.

A roll call vote was taken:

Blood-Ave

Pearson - Aye

O'Reilly - Aye

Doyle - Aye

Carrozza – Aye

Kadish - Aye

Snyder–Aye

OLD BUSINESS

Site Inspections -

Violations

Freeman St, 3 addresses, potential wetland violations

S Worcester, m 27 pcl 193

122 W Hodges St.

184 W Main St.

77 Charlotte

Reservoir Update Chartley Pond Update Barrowsville Dam
Report from Staff
Waterbodies Committee updateGrants
Town Meetings

BILL SUMMARY

Summary list of bills signed – February 23, 2021 – March 22, 2021

National Grid Areas	lodge	\$22.43 meter	001-171-570-5308 – Maintenance of Conservation
Verizon Wireless cell ph		\$36.49 ione	242-171-100-5700 – Wetland Protection Fund
Merrill Engine		\$5,472.50 ty Line Stakeout	344-171-100-5700 – TRSC Grant
National Grid Areas	lodge	\$42.19 meter	001-171-570-5308 – Maintenance of Conservation
National Grid Areas	pool n	\$10.00 neter	001-171-570-5308 - Maintenance of Conservation
Chessia	Norto	\$75.00 n Crossing	243-171-100-5700 — Conservation Outside Fees
Chessia	253 M	\$1,250.00 ansfield Ave	243-171-100-5700 — Conservation Outside Fees
Chessia	0 Rear	\$1,430.00 Eddy Street	243-171-100-5700 — Conservation Outside Fees
Chessia	Leona	\$130.00 rd Street Road	243-171-100-5700 – Conservation Outside Fees
Chessia	Island	\$650.00 Brook	242-171-100-5700 – Wetland Protection Fund

McGregor & Legere \$1,617.00

242-171-100-5700 - Wetland Protection Fund

Island Brook

Comcast Business

\$118.44

001-171-570-5308 - Maintenance of Conservation

Areas

Edith Read

RATIFY LAST MEETING'S OPEN SESSION (TOPICS NOT REASONABLY ANTICIPATED 48 HOURS IN ADVANCE)

 $\#250-1032\ 213\ Oak\ St,\ ratify\ signatures\ for\ the\ Conservation\ Restriction\ Municipal\ Certification\ Form\ (from\ 2/22/21\ mtg)$

Motion was made to ratify signatures for the Conservation Restriction Municipal Certification Form for DEP #250-1032, 213 Oak Street (from the 2/22/2021 meeting) by Carrozza, seconded by Blood. Motion passes.

A roll call vote was taken:

Blood-Aye

Pearson - Ave

O'Reilly - Aye

Doyle - Aye

Carrozza – Ave

Kadish - Aye

Snyder-Aye

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

Motion to adjourn by Doyle, seconded by O'Reilly. Motion passes and meeting closes at 8:15PM.

Respectfully submitted by: Melissa Quirk

Melissa Dujik

Minutes approved by the Commission on 4/12/2021.

Conservation Commission Signature:

Juliah Kadish, Conservation Commission Chairman

Date

PUBLIC REMOTE PARTICIPATION PROCEDURE

For this meeting, members of the public who wish to participate in the meeting may do so in the following manner:

- 1. To participate in the meeting, we recommend downloading the zoom app before the meeting. (This may not be necessary because you can click the link below but we have found that this makes logging in to the meeting easier.)
- 2. Join the Zoom Meeting at 6:30pm. Using your computer or smart phone go the Zoom app and click "join a meeting" or click on:

https://us02web.zoom.us/j/87923953926?pwd=TVQ4Zm9kanI1QXZBa1NOWmlMVUIzZz09 When prompted, enter the **Meeting ID:** 879 2395 3926, **Password:** 585333.

- The site can be a little tricky so if it doesn't work the first time, try again. Try copying and
 pasting the link into a google chrome browser if internet explorer or another browser
 doesn't work for you.
- Using "connecting to video and audio through the computer" has been the easiest method.
 So make sure your computer's video/audio is on.
- If you cannot hear, you may need to phone in by calling 1-646-558-8656, same meeting ID
 and password as above. If it asks for a participant id you can just hit #. Please put your
 phone on mute until the Chairman asks for your comments.
- Everyone will be placed on mute at the beginning of the meeting as you sign in but you should be able to hear. We will unmute you when we reach the public question and answer portion of our meeting.
- 3. If, for some reason, neither option is working for you, you can email the Conservation Commission at conservation@nortonmaus.com to ask your questions. We will read your email address, name and comments into the public record.
- 4. The standard procedure for a public hearing is a presentation by the applicant's representative, questions and comments by the Conservation Commission and Director, then opening questions and comments to the abutters. Please be patient and wait for your turn to participate.

5. If there are no additional questions by the Conservation Commission or Director, the hearing would typically close; however, to ensure adequate opportunity for public participation, those specific hearings will be continued until the next meeting. This will be announced. You will have until the next meeting to provide your comments and questions before the Commission closes the hearing and makes a decision.