



Norton Conservation Commission

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RECEIVED
NORTON TOWN CLERK

2019 JUN 25 A 10:41

Monday, April 29, 2019

6:30 pm

2nd Floor Conference Room

Norton Town Hall

Minutes

Recorded by Melissa Quirk, Conservation Secretary

6:30pm Open meeting

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

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

Absent:

WETLAND HEARINGS

Wetland hearings will be taken in order.

A. Notice of Intent (#250-1040). Michael Trowbridge of Hutchins-Trowbridge Assoc. 306-308 East Main Street. (Map 5, parcel 38 and 252). The proposed project is to construct an addition to warehouse, detention basin and grading within 100 feet of BVW.

Michael Trowbridge attended the meeting to present the project and provide an update to the Commission on requests made by the Planning Board during site plan hearings.

Trowbridge states they will place a chain link fence along the property line with gate and provide a key to the town. Also, they will place a post and rail fence along the 25 ft No Disturbance Zone. Peer review to come. JC asked about doing an infiltration basin instead of the retention pond since it is located right in the aquifer. He says they are limited due to the size of the area. Infiltration basin may require a larger area. He will look at it. JC will do a wetland inspection. JK asked about placement of fence along the property line. The fence will be a 6ft high chain link and will go right up to the property line. JK asked if it could be pulled back. He states it is necessary and has been approved by the Planning Board. LC states there is no existing conditions plan. LC questioned if within flood zone – Trowbridge stated no. The proposed addition is for interior use only. No loading dock doors.

The applicant requested a continuance to 6/10/19. Motion was made to continue the public meeting for DEP# 250-1040 to June 10, 2019 by Kadish, seconded by Carrozza. Motion passes

- B. Notice of Intent (#250-1037). Next Grid Redwood LLC. 54 Plain St. (Map 18, parcel 9).** (continued from 1/28/19, 2/25/19, 3/11/19, 4/8/19) For proposed plans to install a ground mounted solar array, driveway, stormwater, utilities within 100 feet of wetland in the Canoe River Area of Critical Environmental Concern.

The applicant requested a continuance to 5/20/19. Motion was made to continue the public meeting for DEP# 250-1037 to May 20, 2019 by Kadish, seconded by O'Reilly. Motion passes

- C. Notice of Intent (#250-1034). Mass Dept. of Transportation. East Main Street (Route 123) Elm Street to Rt 495 overpass.** (continued from 1/28/19, 2/11/19, 2/25/19, 3/11/19, 3/25/19) For proposed plans to perform roadway improvements including new sidewalks, wider road shoulders, rehabilitation of existing roads and sidewalks, installation of traffic signals at Rte 495, and stormwater management within 100 feet of wetland and 200 feet of the Canoe River within the Canoe River Area of Critical Environmental Concern. Alteration includes 174 square feet of wetland and 89,924 sf of Riverfront Area.

The applicant requested a continuance to 5/20/19. Motion was made to continue the public meeting for DEP# 250-1034 to May 20, 2019 by Kadish, seconded by Pearson. Motion passes

- D. Notice of Intent (#250-1036). NextSun Energy LLC. 210 Bay Rd. (Map 6, parcels 6 and 11).** (continued from 1/28/19, 2/11/19, 2/25/19, 3/25/19, 4/8/19) For a proposal to construct a 2MW dual use solar energy facility on existing cranberry bogs with 48 linear feet of Bank alteration, 17,900 square feet of floodplain alteration, 15,150 square feet of wetland alteration and 7,000 square feet of riverfront alteration within the Canoe River Area of Critical Environmental Concern.

Stacy Minihane of Beals & Thomas and Adam Schumaker of NextSun attended the meeting to update the commission on their progress with requests from the last meeting. Pat Garner attended the meeting to discuss his peer review.

Minihane states they are close to completing responses to the requests from the last meeting and the Commission should receive by Friday.

Pat Garner discussed his peer review. Garner states that within an ACEC, there cannot be any BVW loss unless under a limited project exclusion. Minihane had stated there is no BVW loss. Garner said there is loss as noted on the NOI. Garner states that DEP has issued guidance on agricultural solar energy. The guidance states that if the area is altered on dual use projects, additional assessments should be made to determine if the project will destroy or impair the bog's (BVWs) ability to function. Garner states there are no WPA definitions on what destroy/impair means, but there is also no discussion of it in the NOI. This needs to be clarified. Garner agrees with the Commission that the applicant's description of meeting performance standards is inadequate and need more specificity. Garner states the alternative analysis needs more details justifying this location vs others. Needs to address the scope of alternatives section. He also needs

information on whether the dry bogs were created with permits or not. Garner states the construction related details that were provided in response to the ConCom letter need to be added to the plan. Details such as the square footage of loss must be clarified and noted on the plan. Loss of BLSF quantities are correct but must be noted on the plan for the contractors. Garner states the hydrology methodology is now correct but he feels that the 1965 TP40 calculations that Beals & Thomas are using are outdated and that current projects now use the NOAA Atlas 14. LC said as long as the applicant understands the comments and can address. Minihane replied to clarify that they are not contending there is not a loss to the piles or alteration to the BVW. Minihane confirms alteration and loss but says she does not think it is an impairment. They are looking at no destruction/impairment using the 10.55a performance standard. She states they will respond in writing to all comments by end of the week. They addressed destruction/impairment in their 3/15 response letter and in their draft response have reorganized the description of meeting performance standards as requested by the commission. This response will be submitted at the end of this week. Minihane states that a response is forthcoming where they address reducing the number of panels, other locations that were considered, installation types (technology) and past permitting. They will add more detailed information to the construction plans. Minihane also stated that regarding hydrology, they rarely see NOAA14 due to the constraints of the regulations. Garner replies he has not seen TP40 used in the last 3 to 4 years when doing peer reviews. Garner also says the Regulations citing TP40 is not a constraint but a minimum standard. Carlino asked if Beals and Thomas require NOAA14 of other applicants when they are doing peer reviews for other municipalities. Minihane preplied they do not. Carlino stated that was not her understanding. Garner said DEP produced a guidance document a year or two ago about NOAA 14 and will provide the DEP clarification to Minihane. SO, Garner and JC request they provide documentation such as a citation from DEP or precedent to back up their claims regarding the BVW in an ACEC loss.

Resident questions were addressed;

- Joel Johnson of 208 Bay Rd questioned reducing the size of the project by reducing the number of panels. Minihane addressed the reduction within the riverfront area.
- Chuck Gallagher of 201 Bay Rd questioned what other locations were looked at outside of Norton. Stacy states they looked within the property, at adjacent lots and at other locations for sale within Norton. They are not required to look outside of Norton. JC responds the scope of alternatives requirements are specific to the size of the project. The commission will look at their response letter and regulations, but they appear to be evaluating an accurate scope.
- Jeanine Simmons of 15 Massasoit Ave provided a handout with articles on the wildlife conservation, PARC, bird mortality, noise/lighting pollution and electro-magnetic fields. She states there is information on the Conservation website regarding wildlife habitat evaluations within the Canoe River. She wants to make sure we are addressing the ecosystem and its effects. JC will provide the articles to the commission and the applicant address.

- Schumaker questioned scheduling a site visit. JC noted that would be for the Conservation Committee to gather information. There would be no discussion or votes taking place and it is not open to the public, unless the landowner approves it. Several residents questioned attending. JC states they would need permission from the owner. JK notes that a potential problem could be that the applicant is not the owner. JC said she would get some dates together for the Commission's inspection and coordinate with Beals and Thomas.

The applicant requested a continuance to 5/20/19. Motion was made to continue the public meeting for DEP# 250-1036 to May 20, 2019 by Kadish, seconded by Carrozza. Motion passes

E. Abbreviated Notice of Resource Area Delineation (#250-1030). John Quattrochi. East Hodges Street (Map 36 Parcel 2-0) (cont. from 10/22/18, 11/19/18, 12/17/18, 1/28/19, 2/11/19, 2/25/19, 3/11/19, 3/25/19, 4/8/19). For proposed plans to verify wetland resource areas.

The applicant requested a continuance to 6/10/19. Motion was made to continue the public meeting for DEP# 250-1030 to June 10, 2019 by Kadish, seconded by Carrozza. Motion passes

F. Notice of Intent (#250-1032). Albert Faxon. Oak Street (Map 15 Parcel 9). (cont. from 10/22/18, 11/19/18, 12/17/18, 2/11/19, 2/25/19, 3/11/19, 3/25/19, 4/8/19). For proposed plans to construct a driveway associated with a new single-family house within 100 feet of wetlands.

The applicant requested a continuance to 6/10/19. Motion was made to continue the public hearing for DEP# 250-1032 to June 10, 2019 by Kadish, seconded by Doyle. Motion passes

G-L Notices of Intent (#250-1023 through #250-1028).

Mark Dibb, Jeff O'Neill and Don O'Neill of Condyne, Brad Holmes of Environmental Consulting & Restoration and Susan Bernstein of Susan Bernstein Law attended the meeting to update the commission on their progress with Commission letters and requests from the town's consultant, Horsley Witten (HW).

LC recused herself.

Motion was made to close the public hearings for DEP #250-1023 through #250-1028. Motion was made by Kadish, second by Doyle. Motion passes

G. Notice of Intent (#250-1023). Condyne Capital Partners Lot 1 Leonard South Subdivision Plan (Map 11 Portions of Parcels 34 & 32) (cont. from 9/24/18, 10/22/18, 11/19/18, 12/17/18, 2/11/19, 2/25/19, 3/11/19, 3/25/19, 4/8/19). Proposed plans to construct one 10,935 s.f. commercial/retail building and associated parking and utilities discharging to wetland resources.

Motion was made to approve the draft order of conditions for #250-1023 by Kadish, seconded by O'Reilly. Motion passes.

- H. Notice of Intent (#250-1024). Condyne Capital Partners Lot 2 Leonard South Subdivision Plan (Map 11 Portions of Parcels 32 & 35)** (cont. from 9/24/18, 10/22/18, 11/19/18, 12/17/18, 2/11/19, 2/25/19, 3/11/19, 3/25/19, 4/8/19). Proposed plans to construct one 14,400 s.f. commercial/retail building and associated parking and utilities discharging to wetland resources.

Motion was made to approve the draft order of conditions for #250-1024 by Kadish, seconded by O'Reilly. Motion passes.

- I. Notice of Intent (#250-1025). Condyne Capital Partners Lot 3 Leonard South Subdivision Plan (Map 11 Portions of Parcels 32 & 35)** (cont. from 9/24/18, 10/22/18, 11/19/18, 12/17/18, 2/11/19, 2/25/19, 3/11/19, 3/25/19, 4/8/19). Proposed plans to construct one 16,480 s.f. retail building and associated parking, grading, and drainage within 100 feet of a wetland and within 200 feet of the Canoe River.

Motion was made to approve the draft order of conditions for #250-1025 by Kadish, seconded by O'Reilly. Motion passes.

- J. Notice of Intent (#250-1026). Condyne Capital Partners Lot 4 Leonard South Subdivision Plan (Map 11 Portions of Parcels 32, 33, & 35)** (cont. from 9/24/18, 10/22/18, 11/19/18, 12/17/18, 2/11/19, 2/25/19, 3/11/19, 3/25/19, 4/8/19). Proposed plans to construct one 125,000 s.f. warehouse building, parking, grading, utilities and stormwater management within 100 feet of wetlands.

Motion was made to approve the draft order of conditions for #250-1026 by Kadish, seconded by O'Reilly. Motion passes.

- K. Notice of Intent (#250-1027). Condyne Capital Partners Lot 5 Leonard South Subdivision Plan (Map 11 Portions of Parcels 32 & 66)** (cont. from 9/24/18, 10/22/18, 11/19/18, 12/17/18, 2/11/19, 2/25/19, 3/11/19, 3/25/19, 4/8/19). Proposed plans to construct one 258,000 s.f. warehouse building and associated parking and utilities within 100 feet of wetlands, fill of 6 acres of the 100-year floodplain, and within 200 feet of the Canoe River.

JK states that JC has determined that certain parts of this lot are not consistent with the wetlands protection act. JK would like clarification on the specific objections by JC or the commission. JC states her recommendation is that the commission should not be approving new buildings or parking lots in the flood plain. JC had no issues with the stormwater management or the flood plain compensation for stormwater management in flood plain. JC states it is her opinion that it is irresponsible to build a new building in the flood plain. JK questions that this is allowed under the wetland protection act with compensation. JC agrees that it is allowed, but she feels it can be avoided. JK questions that after an extensive public hearing process where these issues were discussed, he is not aware that our consultant felt this was a deal breaker. SO states the applicant must avoid, minimize and mitigate and the applicant did not avoid. JK states his objection is the law does not say that development can't occur or that we can't impact the flood plain. JK states we can as long as we compensate. JK feels if the commission denies this, there will be a superseding order. JK questions that there is no legal basis to defend this. JC states the wetland protection act is the defense since the floodplain alteration can be avoided. JK states everything can be avoided if we have no development and he does not believe that is the intention of the act. The intention is to regulate the development. JK states the applicant has come forth with a very carefully argued design. JC states the applicant came forward with the largest building possible. SO agrees with JC that the size of the building is his issue. JK feels this is within the legal rights of the applicant and the commission cannot deny the applicant just because they are maximizing what they can do with their particular agenda. JK personally feels as a citizen of the town using his best judgement that the activity is consistent with the law that even if he may or may not want to see it. JK feels denial is an arbitrary decision. SO says it is not black and white. JC states it is a wide open site where the applicant has the ability to design the project in a way that can avoid floodplain alteration. JK states the town had the opportunity to avoid the project by buying the land but did not accept that financial responsibility to keep the open space. JK feels now his ability to say no to the project is dependent on the restrictions of the wetland protection act. SO states it could be avoided but JK does not feel that argument will hold. JK will not vote for or sign a denial.

Motion was made to deny the project for #250-1027 by O'Reilly, seconded by Pearson. The commission voted 5-1 to deny the project and took a roll call vote. DP, DD, RO, GB, SO voted to deny. JK voted to approve. Motion to deny passes.

L. Notice of Intent (#250-1028). Condyne Capital Partners Lot 6 Leonard South Subdivision Plan (Map 11 Portion of Parcel 32) (cont. from 9/24/18, 10/22/18, 11/19/18, 12/17/18, 2/11/19, 2/25/19, 3/11/19, 3/25/19, 4/8/19). Proposed plans to construct an asphalt foot path and creation of compensatory storage area within 100 feet of wetlands, within the 100-year floodplain, and 200 feet of a perennial stream.

Motion was made to approve the draft order of conditions for #250-1028 by Kadish, seconded by O'Reilly. Motion passes.

M. Notice of Intent (#250-1039). Condyne Capital Partners Bldg 7 Leonard North (Map 11 Parcel 22). (cont. from 12/17/18, 2/11/19, 2/25/19, 3/11/19, 3/25/19, 4/8/19) Proposed plans to construct one 130,000 s.f. warehouse building and associated parking and utilities within 100 feet of bordering vegetated wetland, with alteration of 1,702 sf of riverfront area and 10,871sf/17,091cf of 100-year floodplain.

DD clarified with JC what the project was and what the issues were. JC states that Lot 7 is on the north side next to the river and the vernal pool and it is a single building. There is activity in the flood plain for a portion of the road. The stormwater basin is in a portion of the riverfront area and there was discussion about avoiding those areas and minimizing as much as possible. JK commented there are two infiltration areas on that lot. JK feels the issue is that there are not existing trees in the proposed basin areas. JK states there is an area outside of the riverfront area and flood zone where you could put a detention basin, but that would require a large portion of trees be removed that could provide a buffer to neighbors. JK feels it's a matter of opinion if destroying that ecosystem has an advantage over preserving an area that is already cleared. SO agrees as to previously modified land. JK feels a statement would be made that the work within the riverfront is more important than the work outside the riverfront even though it's already cleared and he cannot agree with that. JK fears that if this is denied, it will create a result that is worse than what he thinks should be there. JK also noted that the commission requested in writing that the applicant reduce the size of the building and the impervious cover. JK questions if the commission stated they would deny the request if they did not reduce the size of the building. JC states the request is to avoid alteration. JK states this goes back to his prior analysis where the law does not prohibit activity, it regulates the activity. JK does not feel it will hold up in appeal if a denial is issued. JK states it is his job to work through the problem and not create more problems. JK feels this has the potential to create more problems during the appeal process as the court could say it is consistent with the law and does not deviate. JK states the appeal process would slow down the applicant but that is not what we are supposed to do, being an obstructionist as opposed to a regulator. JC and SO state that is not what they are trying to do. JC states the regulations require them to review alternatives to alteration was and that there are in fact alternatives. Impacts to flood plain could be avoided. JK states that if part of the denial is to recommend removing trees and a hole be dug where they are to preserve that riverfront line even though part of that riverfront line is now hayfield. SO agrees that was the part he did not understand. JC states that is the stormwater area. There is alteration in the riverfront area for stormwater that the commission was okay with. It is the portion of road through the flood plain that could be avoided. JK had JC show him the area on the plan. JC states if they reduce the size of the building so they would not have to get the road around it, they would not be in the flood plain. JK questioned the compensation that was being given which JC showed on the plan. JK and SO discuss how the commission may allow this, to fill one portion of the flood plain and compensate. JC clarifies that the commission may allow them to do this.

Motion made to close the public hearing for DEP#250-1039. Motion was made by Kaddish, seconded by Doyle. Motion passes.

Motion was made to deny the project for #250-1039 by O'Reilly, seconded by Pearson. The Commission voted 3-3 to deny the project. RO, DP and GB voted to deny. DD, SO and JK voted to approve. A split decision requires a denial.

N. 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) 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.

Mark Dibb, Jeff O'Neill and Don O'Neill of Condyne, Brad Holmes of Environmental Consulting & Restoration and Susan Bernstein of Susan Bernstein Law attended the meeting to update the commission on their progress with Commission letters and requests from the town's consultant, Horsley Witten (HW).

Mark Dibb reported they have resubmitted 4/22 wetland narrative, wetland replication plan, updated application, revised stormwater report and revised road widening plans in response to comments. Awaiting response from HW. Dibb provided a detailed review of the plan. He is awaiting HW response to the 16 points on the peer review but discussed a few of the comments. There was concern as to how they were meeting the Norton stormwater bylaw. Dibb states HW has concurred with the approach of 10.C of the bylaw to treat to the maximum extent feasible. Dibb states Holmes submitted detailed summary of wetland modifications and how they meet the performance standards. They also submitted an updated replication plan. They provided a new floodplain diagram and calculations and feel they meet the requirements. JC requested a stream crossing table as previously requested, showing how they meet each standard. DP clarified it is just the 3 culverts being changed being discussed. DD questioned why the road widening on the north side goes down the street so far. Dibb replied there is another proposed driveway that they have not submitted for permit yet.

Susan Bernstein asked if possible if the hearing could be limited to one more meeting for the roadway comments. JC and SO respond they need to see HW comments first. JK states can't say definitively before they see the HW comments. Dibb notes that HW's contract, signed by Condyne, allows 21 days for response.

The applicant requested a continuance to 5/20/19. Motion was made to continue the public meeting for DEP# 250-1035 to May 20, 2019 by Kadish, seconded by O'Reilly. Motion passes

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

REQUEST FOR PARTIAL/FULL CERTIFICATE OF COMPLIANCE

REVIEW DRAFT MINUTES

3-25-19 Motion was made to accept meeting minutes of 3-25-19 by Doyle, seconded by O'Reilly. Motion passes. SO abstained – absent.

4-4-19 Motion was made to accept meeting minutes of 4-4-19 by O'Reilly, seconded by Doyle. Motion passes. JK and DP abstained - absent

OLD BUSINESS

NEW BUSINESS *Carlino will propose to Garner and applicant ConCom site inspection for Bay Rd 5/16/19 at 4PM.*

Founders Day- June 15, 2019

Site Inspections

Violations

- 211 Oak, 215 Oak, 219 Oak, 68 Dean, 54 W Hodges, 4 Kensington and 21 Kensington
- *These were put on hold until spring. Carlino will send reminders to the residents.*

Reservoir Update

Chartley Pond Update

Barrowsville Dam

Report from Staff

Waterbodies Committee update *new pond treatment schedule submitted. Attachment E*

Grants

BILL SUMMARY

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

- *Town Meeting called for June 3, 2019*

Motion to adjourn by O'Reilly seconded by Pearson. Motion passes and meeting closes at 8:30pm.

Respectfully submitted by: Melissa Quirk

Minutes approved by the Commission on 6/10/19 (Date)

Conservation Commission Signature:

Scott Ollerhead
Scott Ollerhead, Conservation Commission Chairman

6.24.19
Date