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NORWELL CONSERVATION COMMISSION

Emergency Operations Center Training Room

300 Washington Street / Norwell, MA

October 10, 2019 @ 5:00PM

Minutes

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Present: Chair Marynel Wahl, Vice Chair Bob Woodill, Ron Mott, Roy Bjorlin, Justin Ivas, Ellen Markham, Conservation Agent Nancy Hemingway, and Recording Clerk C. Sullivan. Mr. Ivas arrived at 5:34 PM; Mr. Bjorlin arrived at 5:36 PM. Bob McMackin was absent and has recused himself from these proceedings.

CALL TO ORDER

The meeting was called to order at **5:02 PM** by Chair Marynel Wahl. The meeting was recorded. These minutes are considered a summary of the lengthy detailed discussion.

AGENDA ACCEPTANCE

The Commission reviewed the proposed agenda and discussed changes and additions.

Motion by Mr. Mott to approve the agenda as posted. Seconded by Mr. Woodill and unanimously voted.

PUBLIC HEARING:

7 John Neil Drive / NCC# 27(19) / Septic Upgrade

Request for CoC Applicant: Robert Bunnell / Representative: Brendan Sullivan, Cavanaro Consulting

Ms. Hemingway advised that this matter was omitted from the October 1 agenda in error; the property is in compliance, and she recommended issuance of the CoC.

Motion by Mr. Mott to issue a Certificate of Compliance for 7 John Neil Drive, NCC 27(19). Seconded by Ms. Markham and unanimously voted.

PUBLIC MEETING:

Simon Hill (Off Prospect St.) / SE52-1154 & NCC# 35(18) / Comprehensive Permit for Dev. Project including Roadway, Parking, Retaining Walls & associated Infrastructure NoI / OoC (cont.) Applicant: Brian Murphy, Simon Hill, LLC / Representative: B. McKenzie, McKenzie Eng.

Present were Ingeborg Hegemann, BSC Group; John Chessia, Chessia Consulting; and Town Counsel Bob Galvin. Also present were about six residents. Those signing in included; Marie

Molla, Jon Salerno, Kim Gately, and Tom Graefe. Chair Wahl noted that the Public Hearing had been closed, and no comments from the public or applicants would be received.

Ms. Hemingway opened the hearing by noting for the record the key documents under review include but are not limited to:

Plan set C1, dated 9/23/19

Drainage calcs, Stormwater Management Plan / O&M Plan, 5th revision, dated 9/23/19

Site plans WS1, WS2, EC1, EC2, Plan D, dated 9/23/19

Delineation from Art Allen dated 12/18

Peer review letters from BSC, two dated 8/1/19 and one dated 8/2/19

Peer review letter from Chessia dated 8/1/19

Abutter comments

Administrative documents

Legal ads

E-mails

GIS map

NOI application

McKenzie responses

Response from Attorney Gene Guimond dated 6/18/19

Response from ECR (Brad Holmes) dated 9/23/19, pre-empting the 6/18/19 filing

(all emails, misc correspondence, photos, gis, and other similar can not be listed in detail accurately)

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Ms. Hemingway advised that at this meeting, the Commission would be reviewing the above-referenced submissions and the accompanying peer review comments, and ask questions of BSC and Chessia regarding both. Town Counsel Galvin added that no new information could be received or commented on, and the Commission could only ask questions regarding the peer review of the submissions made before the hearing was closed.

Chessia August 1 Review

At the request of the Commission, Mr. Chessia reviewed his August 1 comments as they applied to the ten performance standards the Commission must examine. Ms. Wahl noted for the record that Chessia did not have a chance to read applicant's response to his comments before October 1 due to their lateness in arriving; Ms. Hemingway added that applicants had refused to approve additional funds to pay for Chessia to respond beyond the August 1st review.

Standard 1 - Untreated Stormwater

Chessia noted that there was a secondary discharge point from wet pond P1, about four feet from 51 Simon Hill Road, that is actually lower in elevation than the primary discharge point into the on-site wetland, and therefore any stormwater would be discharged towards 51 Simon Hill first; an easement may be needed from this owner. He also noted that the calculations were based on a six-inch discharge pipe but the plans specify an eight-inch pipe, and that there did not appear to be sufficient elevation change between where the primary discharge pipe began and ended for it to drain properly. The system was designed to be secondary but due to elevations acts as a primary discharge in function. Ms. Hegemann commented that if such were the case, applicants may have to grade into the wetland for the pipe to drain.

Mr. Chessia also commented that wet pond P3, originally proposed to be two feet below grade, was now just an inch below grade, and applicants would have to grade into the buffer zone in order for it to drain into the wetland. Ms. Hegemann stated that this would in turn create a channel that would alter the wetland.

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With respect to ponds P6, P8, and P9, Chessia noted he had recommended that the headwalls be moved back into the slopes so as to move the outlets further from the wetlands. The pipes were too flat, were not self-cleaning and in function resulted in different hydraulics.

Standard 2 –

Chessia stated that aspects of applicant's modeling were clearly in error, as it placed water below the grade of the intermittent stream. He also noted that testing had indicated that soils on the southerly part of the property were found to not be suitable for drainage/recharge purposes. He specifically noted that the subsurface system for pond P6 was not in an area with suitable soils; additionally, he stated the model did not note that the discharge pipe was flat, which could affect discharge rates. He reviewed the watersheds. Ms. Hemingway noted that the delineation on 58 Prospect St was inaccurate in the filing and still not consistent with the earlier DEP Superceding decision that involved review of the delineation.

Mr. Woodill asked if Chessia was saying that water, which currently flows to the wetlands, is now being directed offsite. Chessia replied that the system would result in a volume increase toward Simon Hill and that the project reduced volume (eliminated some flow) toward the Molla's.

Mr. Chessia identified three infiltrators and two constructed wetland basins. He stated that the dense till was found from the central road south and there were not suitable soils found west of building two, ?North?, and for both ends of building three. He stated that there were sandy soils found in the location of the wastewater.

Mr. Chessia also noted that applicant had included the separator row as part of the infiltration capacity of the system for pond P6; he recommended that this row not be considered as being part of the system's infiltration capacity. He stated that the soils were not great and they were not in an area of suitable soils. It is in an area that will not infiltrate based on testing. The separator row acts as a forebay, collects sediments and can be cleaned out. The Separator row can not be treated as an infiltration trench – it's not. If they don't and it is included the design calculations can be skewed. The system would lose capacity and would have a higher rate existing. The calculations are incorrectly based on the entire area being infiltration. Mr. Chessia noted that the Commission had the authority to accept the proprietary system and the details presented.

Chessia also reviewed the Central Wetland noting the ponding analysis is not correct. The applicant assumes that no water flows out of the southern wetland in a 2-year storm which gives them more ponding. The model is not reflective of what happens in reality. The data and calculations are inaccurate. He noted that the applicants claim the proposed garages are piped

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and connected into the system, but the roof lines of the garages are not shown on the plan. Furthermore, he pointed out that the plan set claims the elevation of 701.94 feet and on site would be the same in 2, 10, and 25-year storms, which doesn't make sense on its face. It is not the same at the 2, 10 and 25 year storms. For the 25-year storm, 6" rain, the depth of water is much higher than the 2-year.....don't know how it would change or what happens. These are errors that don't make logical sense.

Attorney Galvin asked whether the proposed level spreader would reduce the flow rate as claimed; Chessia felt this was plausible but pointed again to the discrepancy between the size of the discharge pipe, as set forth on the site plan and in the calculations, as another uncertainty.

Standard 3 (Recharge)

Mr. Chessia advised that the site as designed provided about 35% on-site recharge to groundwater but the required standard is 65%. The original site design met this requirement but the redesigned site (Sept 23 revision) does not. Chair Wahl briefly asked about the effect of fill brought onto the site on recharge; Chessia indicated that this could change the percentage depending on what was brought in. There are some suitable soils on site but the plan is aggressive for the soils that are on site.

Standard 4 (TSS Removal)

Chessia commented that this standard had mostly been met with the proposed first defense units, but noted that applicants were taking credit for removal by the separator row. In sand areas the water flows through quickly. The design needs higher pre-treatment to capture the 80%.

Standard 5

Mr. Chessia indicated that this standard was not applicable.

Standard 6

Chessia noted that applicants assume the site is a critical area in the design, although technically it is not.

Standard 7

Mr. Chessia indicated that this standard was not applicable.

Standard 8 Erosion Control

Mr. Chessia noted that a SWPPP will be required for the site; given the potential for problems, he recommended a condition requiring review of the SWPPP prior to construction with sufficient time to review and amend as needed to approve. The potential for problems is massive... tight site.

Standard 9 (O & M Plan)

Chessia recommended that snow storage take place outside of the 50 ft buffer, and felt there was inadequate area for on-site snow storage in relation to the project size. In some areas snow is being pushed into neighbors yards. He recommended a condition requiring that applicant/property manager have a contract for snow removal. There are no areas left for snow to soak into.

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Standard 10 (Illicit Discharge)

Mr. Chessia indicated that applicants would need to sign an illicit discharge statement.

Attorney Galvin asked Mr. Chessia whether the issues he raised were correctable. Chessia was not sure, as he feels applicants would have to reroute the pavement to meet the 65% groundwater recharge standard; they also may not have the elevations needed to route sufficient stormwater to the central wetland, and it can't be pumped. Attorney Galvin also asked if applicants had provided a narrative saying they met the standards; Chessia stated that numbers cited in their narrative seemed to be inconsistent with their calculations, possibly because they didn't update the impervious area values.

Commissioner Bjorlin commented that he saw no way applicants could abide by a "no salt or sand" requirement, and he had never heard of an apartment complex that didn't do so.

BSC Review

Ms. Hegemann opened with a discussion of MACC standards regarding the buffer zone's role with respect to wetlands, stating that the burden of proof was on an applicant to prove that an area where work was proposed was not significant to the interests protected by the WPA, or that the proposed work would not just protect, but contribute to protection of the interests protected by the WPA. The issuing authority has an obligation to look at issues of avoid, minimize, or mitigate impacts to such interests, in that order, in other words an alternative analysis. The applicant has not looked at any alternatives.

Ms. Hegemann stated that applicant did not respond to the majority of their August 1 or 2 comments. She had quickly reviewed the revised plans, and felt applicant had sought to maximize the site without meeting their burden of proof with respect to the DEP (as described by MACC) criteria, and had not done a sufficient alternatives analysis to prove there were no designs that had no or fewer impacts on the interests protected by the WPA. The site not working as designed. The culvert has not been shown to contribute to the interests of the act – the standard which must be met. She then discussed potential impacts to jurisdictional resource and protected interests, of the plan as currently designed, including sedimentation into the wetlands over time from stormwater discharge and a change in water levels impacting the trees in the wetland. Ms. Hegemann noted that changes in the watershed change the dynamics of the wetland. She reviewed the class D soils. She stated that the applicant chose not to provide evidence regarding site soils so the Commission does not know if the wetland is a recharge or discharge wetland. Had they chosen to provide the information, they might have been able to show they designed a system that would manage stormwater. The Burden of Proof has not been met.

Discussion

All parties then discussed the Commission's options as to disposition, including whether to deny the project or approve with conditions. Ms. Hegemann felt main issues with the submission was that it did not meet the stormwater management performance standards and they did not do a sufficient alternatives analysis, and the Commission could deny on the basis of insufficient information or approve with conditions that (1) the project be redesigned to meet the

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performance standards, (2) applicants provide a full alternatives analysis, and (3) the Commission would have the right to decide whether to require a new NoI or redesign.

Ms. Hemingway commented that the Commission also had the legal right to reduce the project if components could not be conditioned to result in compliance, but Attorney Galvin did not recommend this course of action, noting that the Commission could not design an applicant's project for them. Ms. Hegemann agreed with Galvin but commented that DEP actions often effectively redesigned projects.

Attorney Galvin recommended that the Commission consider issuing an approval but document what applicants didn't do in the application process, issue conditions requiring them to revise the plans so they meet the performance standards, and let applicants decide whether to attempt a redesign or appeal. If the Commission does issue a denial, Galvin recommended that it specifically document in the decision the missing, incorrect, or inadequate information as well as applicant's refusal to pay for the needed peer review. Attorney Galvin commented that the correctability of the issues with the current submission is ultimately what the Commission had to decide.

All parties then discussed what assistance would be needed from Chessia and BSC in drafting the decision. Attorney Galvin suggested that both consultants provide proposed conditions of approval. Ms. Hemingway noted for the record that the Commission had the legal right to utilize consultants in its decision-making, and suggested that they also be asked to provide statements of issues, recommended findings and conditions if the Commission approves, as well as reasons for denial if the Commission denies.

All parties briefly discussed payment for the review. Ms. Hegemann advised that this could not be a condition of an OoC under the WPA. Attorney Galvin suggested that the Commission document that applicant was asked to provide funds for peer review and refused to do so. The Commission unanimously agreed to cover peer review fees for Simon Hill Village for Chessia and BSC from the Professional services and NoI Filing Fees.

Ms. Hemingway also noted that Commissioners Ivas and Bjorlin, having missed the October 1 hearing, watched or listened to the hearing and signed Mullin affidavits; affidavits were provided for each.

BSC and Chessia will provide their recommendations by October 18. Commissioner Bjorlin commented to the consultants that it would be helpful for the Commission to understand the possible impact of corrections made by applicants on the attainment of other performance standards. Chessia suggested a special condition specifying that remedies to certain performance standards do not result in other standards not being met. Attorney Galvin recommended that at the next meeting, the Commission take a vote as to whether applicant had met (or could meet with conditions) each applicable performance standard. He felt this would be the basis of the Commission's final decision.

Motion by Mr. Woodill to continue the matter to October 24 at 5 PM. Seconded by Mr. Ivas and unanimously voted.

After the hearing was continued, Ms. Hemingway requested that the Commission authorize the expenditure of additional funds for submittal of the information (by BSC and Chessia) as requested by the Commission.

Motion by Mr. Woodill that the Commission expend ^{Funds} for professional services to the degree necessary to provide a determination as to the proposed conditions of approval and/or denial. Seconded by Mr. Mott and unanimously voted.

Next Meeting		October 15, 2019
NEW filing applications due date/deadline		October 1, 2019 @ noon
Legal Notice publication date-Patriot Ledger		October 7, 2019
Revised Information submittal deadline		October 8, 2019 @ noon
Peer Review Supplemental Info Deadline, CoC Requests, Minor Modification & LP Requests		October 8, 2019 @ noon
Public Information Written Comments		No deadline

ADJOURNMENT

There being no further business, a motion was made by Mr. Ivas to adjourn at 7:16 PM. Seconded by Mr. Mott and unanimously voted.

I hereby certify that the above minutes were presented and approved by a majority vote by the Norwell Conservation Commission on November 19, 2019.

Marynel Wahl
 Marynel Wahl, Chair

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