



TOWN OF NORWELL
TOWN CLERK

NORWELL CONSERVATION COMMISSION

Emergency Operations Center Training Room

300 Washington Street / Norwell, MA

October 24, 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. Bob McMackin was absent and has recused himself from these proceedings.

CALL TO ORDER

The meeting was called to order at **5:08 PM** by Chair Marynel Wahl. The meeting was recorded. These minutes are considered a summary of the lengthy detailed discussion. The final Order of Conditions is the final result of the evening's discussion and should be referenced as the definitive summary of this evening's discussion.

AGENDA ACCEPTANCE

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

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

MISCELLANEOUS

Bills

The following bills were presented for payment:

1. WB Mason – office supplies - \$67.13
2. AMWS – annual membership MW - \$65.00
3. Brad Holmes – peer review lot 43 Kings Landing - \$625.00
4. Steve McViney – trail work - \$97.50
5. Paul Legere – trail work – \$216.00

Motion by Mr. Mott to pay the bills as listed. Seconded by Ms. Markham and unanimously voted.

Minutes

Tabled.

PUBLIC HEARING:

41 Arrowhead Drive / NCC# 48(19) / Replace existing shed with detached Garage

RDA / DoA (closed and approved /signatures only) Applicant: Michael Murphy / Rep: Paul Mirabito, Ross Associates

The completed Determination of Applicability had been approved at the 10/15 meeting and was circulated for Commissioner signatures.

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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 Gillian Davies, BSC Group; John Chessia, Chessia Consulting. Also present were two residents. The Public Hearing had been closed on October 1, and no comments from the public or applicant were received. Refer also to the minutes and audio recording from October 10, 2019.

Ms. Hemingway advised that she had prepared both a draft denial and draft approval with conditions, as instructed by the Commission on 10/10, incorporating comments from Chessia and BSC. Town Counsel Bob Galvin had suggested several legal language changes which Ms. Hemingway had incorporated into the drafts. Mr. Chessia requested an additional edit to both drafts to specify in the discussion on Standard 2 that "The starting water elevation is over two feet below the cart path" and that Pond P-9 scales "8.29 feet from Garage 1."

Preliminary Discussion

The Commission initially discussed whether to approve the project with conditions or issue a denial. Ms. Davies noted that approval with conditions requiring applicant to meet all applicable performance standards may have the effect of allowing the Commission to maintain its status as a party to the process. Ms. Hemingway indicated the consensus from the October 10 meeting was in favor of approval with sufficient conditioning. Commissioner Mott felt this option would give the Commission more control in the process going forward; Ms. Hemingway pointed out that this in itself wasn't necessarily a reason to approve the project. The Commission reviewed recommendations and comments made by Atty Galvin during the hearing on 10/10.

After a discussion Chair Wahl polled the Commission as to whether to focus its review on the draft approval or denial, noting that doing so wouldn't bind the Commission to actually approve or deny at the end of the review. Commissioners Woodill, Markham, and Mott favored working off the approval document. Commissioner Ivas concurred but would only consider approval as a way of ensuring the Commission continued to play a role in the process. Commissioner Bjorlin commented that he understood the rationale behind approval with conditions but stated that the applicant's unwillingness to cooperate and provide information made the idea of approval difficult to accept. Ms. Hemingway noted that the Commission would still be part of the process if it issued a denial, but agreed its role would be reduced in a subsequent appeal to DEP.

Review of Approval Document

The draft approval document, with all parties suggesting corrections to a number of typographical errors as well as discussing and making substantive changes throughout. Each

finding, statement and special condition was gone through in detail. These minutes are a brief summary of that discussion. The final issued Order of Conditions is the result of that lengthy discussion and should be referenced.

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Ms. Davies suggested that the Fisheries box be checked in Section B of the WPA Form 5, noting that the burden would be on the applicant to prove that this interest would not in fact be impacted by the proposed work. Ms. Hemingway pointed out that the wetland on site does not connect to any known fishery, and Commissioner consensus after discussion was to leave the box unchecked. Ms. Hemingway noted that Attorney Galvin had suggested changes to the language in Section D.

In the supplemental Statement of Reason and Findings, all parties discussed and agreed to several editorial and terminology changes. In Finding 5, a statement was added noting that a detailed Wildlife Habitat evaluation, while not required, would be of assistance of the Commission in evaluating the project impacts; Ms. Davies also suggested that the following statement be moved from the middle to the end of the finding: "The Commission notes that the detailed wildlife habitat evaluation is not required by the regulations but would assist the Commission in evaluating whether or not the applicant has demonstrated that there will be no adverse effect from project activities."

In Finding 6, Ms. Davies suggested the addition of the following statement: "The Commission notes, however, that the granting of limited project status is at the discretion of the issuing authority (310 CMR 10.53(3)) and is not automatic." In Finding 7, she suggested the addition of citations 310 CMR 10.53(1) and 10.05(3)(a)2 to the end of the first paragraph. Ms. Davies also suggested edits to BSC comment # 17 on Finding 7 to specify that the MACC Buffer Zone Guidebook was no longer a draft subject to review.

Numerous findings were edited to clarify instances in which applicant had not performed tasks or provided information necessary for the Commission to properly evaluate elements of the project. Statements that the Commission was unable to properly evaluate the project without additional information were removed from Findings 8-11 and later added to the Statement of Reason.

Mr. Chessia proposed edits to Finding 14 to cite an inaccurate starting water elevation, as well as inconsistencies between pre- and post-development conditions, in applicant's modeling. In subsection iv to this finding, Chessia suggested the addition of a statement that applicant had combined the flows of S3A and S3B in the existing and proposed case models, inconsistent with the topography indicated on the plans, and that the model did not assess the impacts to the abutters at each discharge point. In subsections viii and ix, a statement was added "The proposed subsurface infiltration system is substantially similar to an infiltration trench. Infiltration trenches are required to have a 20 ft setback from building foundations."

Chessia also recommended the addition of statements to Finding 15 noting that (1) "DEP regulations require that applicants capture at least 65% of new impervious areas. Applicant has captured only 36% of impervious area for this project." and (2) "The calculations are inconsistent in the report. The hydrology analysis indicates far less impervious area would be

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recharged than the recharge calculations indicate.” Finding 16 was revised to add statements citing unsuitable soils at test pits 6P-4 (subsection iii) and 8P-7 (subsection iv).

Findings / Statement of Reason

The statement was edited to note that, at the October 1 hearing, the Commission asked the applicant for a continuation to allow peer reviewers to review applicant’s September 23 submittals; this was denied and the hearing was closed at applicant request; applicant granted a one-week extension to the 21 day decision deadline for review of all submissions.

Decision

Prior to reviewing the decision statement, all parties discussed again whether to approve the proposed project or deny due to lack of information. Ms. Hemingway framed the question as one of how to best achieve the bottom-line goal of protecting downgradient wetland resources, protected interests and private properties but noted that based on the record available, DEP typically overturned comprehensive permit denials and issued their own conditions. Mr. Ivas felt that approval with conditions would require DEP to work with the Commission’s conditions as opposed to overturning a denial and issuing its own boilerplate conditions.

Chair Wahl asked if the conditions of approval could be changed if applicant did not appeal to DEP and instead submitted an amended NoI. Ms. Hemingway advised that extensive changes couldn’t be made unless the project was modified significantly by the applicant, but individual conditions could be added to or changed as needed to accommodate any changes in the submitted project by the applicant.

The statement was edited to clarify that the approval would be subject to the “receipt of all information requested in all peer review letters and in this document.” Ms. Hemingway advised that Town Counsel would review and comment on the statement of reason prior to the decision being issued.

Motion by Mr. Mott to approve the findings as modified. Seconded by Mr. Ivas and unanimously voted.

Conditions

All parties then reviewed conditions of approval, which included both standard as well as project-specific conditions. Several grammatical and other minor edits were suggested. Ms. Davies suggested that “erosion control” be replaced with “erosion and sedimentation control” throughout the document, as well as the addition of a general condition requiring the filing of a new Notice of Intent for any proposed or executed changes to the approved plans, or a written inquiry to Ms. Hemingway as to whether such change(s) were substantial enough to require a NoI.

Mr. Chessia suggested the addition of a condition requiring a wetland on 58 Prospect to be shown on the plan. All parties also discussed and agreed to a condition requiring no discharge, plowing, or depositing of snow within any 50 ft buffer, and that snow should be removed from the site if there was no suitable storage location outside the buffer.

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Chair Wahl advocated for a condition requiring applicants to put funds in escrow to protect abutters. Ms. Davies stated this was not allowed under the Wetlands Protection Act, but the Commission could issue and enforcement order if there were after-the-fact impacts to wetlands on adjoining properties. Ms. Hemingway commented that legally this would be a matter between the developer and the impacted abutter(s). Consensus after a brief discussion was such a condition exceeded the scope of Commission authority.

Other additions included a requiring a two foot mulch sock overlap in Condition 50 and a modification to Condition 60 specifying no pumping of water "from or to" resource areas. Condition 75 was edited to specify that any debris falling into the wetland area or 100 ft buffer must be removed immediately by hand "unless otherwise approved by the Commission or its representative."

Modifications to post-construction conditions included requirements for no application of road salt or deicing chemicals to parking areas (Mr. Chessia indicated there may be a legal requirement to use such chemicals on certain walkways), and Commission approval of any herbicides, pesticides, or fertilizers used on the property. Ms. Davies suggested an additional requirement that leaf-based compost, and not peat moss, be used if supplemental soil was needed; Ms. Hemingway indicated that this was already a standard condition.

The language/narrative of the entire Special Conditions section draft was modified to reflect what was required to be submitted (reworded as conditions) in order to show compliance with the regulations rather than cataloguing what was missing. The Special Conditions section was also amended to reflect the sequence of findings to an extent.

Motion by Mr. Mott to approve the Simon Hill Comprehensive Permit application as conditioned. Seconded by Mr. Woodill and approved by a 4-1 margin, Mr. Bjorlin having voted no.

The draft document as amended was then circulated for Commissioner signatures. Ms. Hemingway will type in the revisions made per the discussion and circulate the final approved document to the Commission for verification that all requested changes and rewording was included.

ADJOURNMENT

There being no further business, a motion was made by Mr. Mott to adjourn at 9:04 PM. Seconded by Ms. Markham 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, Chair