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| Conservation Commission- Meeting Minutes Thursday, May 19, 2016, Dedham Town Hall- Lower Conference RoomMembers Present: Fred Civian (Chairman), Laura Bugay, Joseph Hickey, Kristine Langdon, Joseph Smith and Andrew Tittler. Mr. Civian called the meeting to order at 7:05 PM. |  |

|  | The Town of DedhamCommonwealth of MassachusettsConservation Commission26 Bryant StreetDedham, MA. 02026 |
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Mr. Civian read a letter from the Commission to Brian McGrath into the record as a result of the Board of Selectmen’s recent decision not to reappoint Mr. McGrath to the Conservation Commission.

Mr. McGrath distributed to the Commission draft guidance that he had created which contained a summary of typical Conservation Commission proceedings. He explained that he hoped that this could be helpful to other Commissioners.

2 Bridge Street- *Notice of Intent from Irish Alehouse Inc. for the removal of a deck over the Charles River. (DEP 141-0500).*

Ms. Bugay confirmed that she reviewed the proposed conditions and they look good.

Mr. Civian made a motion to close the public hearing for 2 Bridge Street, seconded by Ms. Bugay, UA.

Mr. Civian made a motion to issue an Order of Conditions for 2 Bridge Street as recommended by Agent Brown, seconded by Mr. Tittler, UA.

7:09 PM- 140 Providence Highway- *Stormwater Permit application for the construction of a restaurant (SWP 2016-10)*

Tony Donato of Bohler Engineering was present. He explained that he had met with Agent Brown and Ms. Eggleston and had reviewed the comments that were submitted and discussed the stormwater management issues. With regards to the soil suitability for groundwater infiltration, he believes they are all on same page for recharge.

Mr. Donato explained that they believe their proposal meets all of the stormwater standards, and they still need to coordinate with Ms. Eggleston when she returns from vacation.

Mr. Civian commented that if they are not able to meet the 44 percent TSS requirement, they need to explain why; the required percentage of TSS is based on UMass studies and not what the manufacturer claims. Mr. Civian suggested that Mr. Bohler confer with Ms. Eggleston if the 44 percent TSS has been met and if so, how. Mr. Civian explained that they will be held to the TSS requirement unless they can show a reason why the standard cannot be met. The typical way to meet the TSS requirements is through infiltration basins on site. They will need to be able to claim and demonstrate that they are meeting the standards.

Mr. Civian made a motion continue 140 Providence Hwy until June 2nd, seconded by Ms. Bugay, UA.

Noble and Greenough School– *Stormwater Permit for a new library and addition to the existing science building (SWP 2016-09).*

Ms. Bugay asked that condition # 18 be edited from “0.75” to “1.5”.

Mr. Civian made a motion to issue a Stormwater Management Permit for Nobles and Greenough as well as an Order of Conditions under the local bylaw only, seconded by Mr. Tittler, UA.

Town of Dedham- *Road reclamation of Booth and Roberts Road (SWP 2016-05)*

Jason Mammone explained that this request is for new asphalt on Booth and Roberts Road.

Mr. Civian made a motion to issue a Negative Determination of Applicability with a Stormwater Management Permit as recommended by Agent Brown, seconded by Ms. Bugay, UA.

100 Rustcraft Rd- *Request for Determination of Applicability for rooftop solar and step-up transformer in Riverfront Area (RDA 2016-06)*

Tony Donato, representative for applicant, explained that the transformer will be within a landscaped area and will be screened with trees. They are requesting approval because a portion of the transformer will fall within the 200-foot riverfront protection area.

Mr. Tittler explained that the Commission needs an alternatives analysis to be submitted since they are requesting to do work within the riverfront protection area. He asked why the transformer needed to be located here and not around the corner.

Bob Donahue, of Energy Management, explained that they had to locate the transformer as close to the solar array as possible. They couldn’t put it on the roof, so it either needed to be located here or the northwest corner.

Mr. Tittler asked why the transformer could not be located on the other side of the building. Mr. Donahue responded that due to other constraints including the gas line, parking, and other aesthetics there was no other logical place they could put the transformer.

Mr. Tittler asked for more details on the make-up of the transformer itself. Mr. Donahue responded that it is filled with dielectric fluid, and is a self-contained, self-sealed unit which never needs to be changed for the life of the transformer, which is expected to be about a 20-30 year range.

Mr. Tittler asked what would happen if it were to leak. Mr. Donahue responded that they will have details included in the Operations and Maintenance Plan to prevent and address any issues.

Mr. Tittler asked how the solar unit would be washed. Mr. Donahue responded, with water.

Mr. Smith asked how much fluid oil is inside the transformer unit. Mr. Donahue responded approximately 400 gallons.

Mr. Donahue explained that if there was an issue, the transformer would shut down and they would know about it immediately.

Ms. Bugay asked that it be noted on the conditions that a written alternatives analysis and the Operation’s and Maintenance Plan be provided to the Conservation Agent before the start of construction.

Mr. Hickey asked about the force necessary to damage the transformer. Mr. Donahue responded, a lot, it would need to be a deliberate act. It weighs about 10,000 lbs.

Mr. Civian made a motion to close the public hearing, seconded by Ms. Bugay, UA.

Mr. Civian made a motion to issue a Negative Determination of Applicability, with conditions as noted tonight and proposed by Agent Brown, seconded by Ms. Bugay, UA.

7:45 PM: 750 Providence Highway - *Request for Amendment to Order of Conditions (DEP 141-0465)*

Matt Smith, of Norwood Engineering was present for the hearing. He explained that he is here with an amendment to a project that was previously approved by the Conservation Commission in 2014. He explained that he would like to explain some of the changes they would like to make and get some feedback from the Commissioners, and to also get a decision as to whether the Commission will review this as an amendment or whether they will have to file a new application.

Mr. Smith reviewed the proposal, including aspects that were previously approved with the Commission. He explained that the approved project included removing the existing driveway between the TGI-Fridays property and the Vitamin Shoppe / Dunkin Donuts building.

Mr. Smith explained that since they received their approvals from the Conservation Commission, they have been in front of the Planning Board and there is a strong desire by the Planning Board to maintain the vehicular access between the TGI-Fridays property and the Vitamin Shoppe / Dunkin Donuts building. He explained that they have revised the plans to show a driveway between the two and he would like to hear the impression of the Commission.

Mr. Tittler asked why the Planning Board is so interested in maintaining the driveway. Mr. Smith responded that it is mainly for convenience; they feel that maintaining connectivity between all of these retail sites is a convenience and improves traffic access. Mr. Smith also explained that there was some talk that years ago there was a master plan to have a separate roadway exist parallel to Route 1. Mr. Smith explained that he does not know if that is feasible now because it is all private property, but that was one of the things that they were concerned with. Mr. Smith explained that while he doesn’t think it makes much of a difference whether the driveway is there or not, the Planning Board felt strongly about having it.

Mr. Civian explained that the Planning Board also sent a letter asking the Commission to favorably view the project as it would be an improvement for the Town and they did make reference to maintaining vehicular access between the sites as being something that would be good for the Town.

Mr. Tittler asked why the convenience of the Planning Board wouldn’t yield to the interest of the state Wetland Protection Act (WPA). Mr. Civian responded that the Commission can look at whether or not there will be enough improvement from the existing situation with the road there to warrant making the findings for the project that’s presented to them. He doesn’t know that they will be able to use the WPA to say that leaving the road there doesn’t do enough to protect the wetlands.

Mr. Smith explained that this is a vast improvement from what is out there now. They are proposing to put in a new driveway, and keep it 20 feet wide with vertical walls on each side of it. The footprint of the driveway is a lot smaller. They are proposing to double the flood storage. They will be substantially increasing the amount of land under water body, wetlands, and bank, from what is out there now, by a factor of 1.6. The previous proposal was to increase these amounts by a factor of 2, so they are offering less additional wetland resource areas in the amended proposal than the approved proposal due to the area of the roadway. Mr. Smith added that the functionality of this wetland system will still be a lot better than what is there now. They also will still have a forward-thinking Low Impact Development (LID) component. Mr. Smith reminded the Commission that he would like their feedback and questioned whether they would consider this to be an amendment or a new filing.

Mr. Civian asked the Commissioners their initial thoughts.

Mr. Civian explained that he doesn’t understand how the water would end up feeding into the wetlands in a flood condition on either side of roadway. Mr. Smith explained that there would be land under water body but there are equalizer culverts between the two, so the water elevation on either side is the same; so there is land under water body bordering this wetland as opposed to a pipe.

Mr. Tittler asked how they would continue to maintain the improved quality of the “wetland”. Mr. Smith explained water flows from the pond across the wetlands, as opposed to through a pipe to the wetlands. Mr. Smith explained that water would free flow underneath the proposed roadway.

Mr. Civian commented that Mr. Smith will need to demonstrate that this claim (that water will free flow) is true.

Ms. Bugay asked if the new plan is essentially the same as the existing plan, except that they will be adding the road back in, and slightly modifying the area of the land under water body. Mr. Smith responded that amount of increase in wetlands are the same, the difference is that they are taking the invasive species management area that would have remained upland and making that wetland.

Mr. Civian asked what will happen to the invasive species. Mr. Smith responded that the area will be excavated and changed to a wetland area.

Ms. Bugay confirmed that the existing roadway would be completely removed, and a new road would be rebuilt.

Mr. Civian confirmed that the proposed road will be narrower than the existing road.

Mr. Hickey asked if that is the only pathway the new road can take. Mr. Smith responded that it is because it pretty much has to start where it starts now, and they chose this route because they felt it was the shortest route with the minimum length and had the smallest footprint.

Ms. Bugay asked if there was any reconsideration to where trash bins are being located. Mr. Smith responded that they are proposing to keep the trash in the same spot as originally approved.

Ms. Bugay commented that she thinks the changes are straight forward enough to potentially deal with this as an amendment.

Mr. Civian explained there are four things the Commission should take into account when determining if this would be an amendment or not. He explained that they are whether the purpose of the project has changed, whether the scope has increased, whether the project meets relevant performance standards and whether the potential for adverse impacts to the resources will be increased.

Mr. Civian explained that Agent Brown has noted that the purpose is the same, it appears to meet the relevant performance standards, but the scope has increased in her opinion as well as the potential of adverse impacts. Agent Brown felt that maintaining a roadway, albeit smaller, results in an increased potential for adverse impacts to wildlife habitat. As such, Agent Brown is recommending the Commission request a new Notice of Intent be filed for the proposed work.

Matt Smith addressed Agent Brown’s concern about increasing the scope and explained that they are putting a driveway in, but the building and parking size will remain the same, as will the drainage system and utilities. Mr. Civian commented that there is lesser protection than the original project. Mr. Smith explained that he disagrees with Agent Brown’s interpretation of the scope of project increasing.

Ms. Bugay commented that building the new road is a change to the scope.

Mr. Civian commented that he thinks the scope has increased, but the scope increase seems minor to him.

Mr. Tittler commented that it would be nice to know information on the qualitative difference on the impact to the wetlands, because a potential impact could be that the flow from one side of the road to the other is not as free as it was going to be without the road, and he does not want to make up his mind about it without a better understanding of that difference.

Matt Smith explained that he does not believe there is any adverse impact to the wetlands as a result of this change. These culverts will not restrict any of the flow.

Mr. Tittler commented that every culvert has a capacity so you can’t just say there is free flow, he wants to see the numbers to make that determination for purposes of the decision of whether a new NOI would be warranted or not.

Matt Smith explained that it is extremely rare that they are asked to do a new application in other Towns in situations like this; they normally file an amendment.

Mr. Civian asked the practical differences between an amendment and a new application. Mr. Smith responded that a new NOI application would require another $17,000 fee, and he thinks that would be unfair. Mr. Smith confirmed abutter notification would be the same.

Joseph Smith commented that he would approve this change as an amendment; he thinks another $17,000 expense would be unreasonable.

Mr. Civian commented that they have to make their findings according to the WPA, and the WPA does not say that you can give them an amendment because the alternative would cost too much money.

Mr. Hickey asked what percentage of BVW restoration is being lost with the new proposal.

Matt Smith responded that they were building 13,856 square feet of restoration of the BVW, and 52,000 square feet of flood plain was being restored. Mr. Civian summarized that they would be losing 170 square feet out of 13,856 and 717 square feet out of the 52,000.

Ms. Bugay commented that she noticed that with the additional area of proposed wetland restoration there would be more impacts to the linear length of wetlands.

Ms. Langdon asked if there would be a way to mitigate trash/litter on the new roadway. Ms. Langdon commented that when they did the site walk a couple years ago there was trash. Matt Smith responded that there will be a very active property manager and they would be willing to put things in that would help restrict the trash.

Ms. Langdon asked why they had not talked to Planning Board yet at the time the project was originally approved by the ConCom. Mr. Smith explained that was the decision he made back then to start with ConCom because he knew that the wetland impact was going to be the most important thing. Matt Smith explained that he respects the opinion of the Planning Board, but his client that owns both properties doesn’t care if the driveway is removed.

Joseph Smith commented that the road is being put back in at the request of the Town’s Planning Board, and he feels that for the ConCom to turn around and force a $17,000 expense on the property owner because of that doesn’t seem fair to him.

Mr. Civian commented that if they adhere to the WPA and it costs the applicant an additional $17,000 then that is the way that it goes because the ConCom’s primary responsibility is to uphold the WPA.

Mr. Tittler commented that there may or may not be a qualitative loss with the new proposal. The applicant is in a bind mostly not of his own making, so he wondered if they could address many of the questions within the conditions of an amended Order of Conditions and still comply with interests of the Wetlands Protection Act. He could see this being addressed under an amendment so long as they get the substantive review to protect the interest of the act.

Mr. Civian made a motion that the ConCom regard this application as an amendment, seconded by Joseph Smith, UA.

Mr. Civian made a motion to request of the applicant $1,000 for a 3rd party review of the amendment, seconded by Ms. Bugay, UA.

Mr. Civian made a motion to reconsider their decision, seconded by Ms. Bugay, UA.

Steven Greenbaum, an Attorney representing the direct abutter, Pearl Realty, introduced himself and explained that while his client did not receive formal notification of the hearing, they were aware of it and are present tonight to add their comments. He explained that they believe this is a material change. They were very much in favor of the road being eliminated as originally proposed. When they heard that the Planning Board was requesting to put the road back in, they were concerned with the serious construction that would be required to build a new road and the inevitable change to runoff and dumping of debris into a stream that flows down to Pearl Realty’s property. They believe that a Notice of Intent filing is the most appropriate method to deal with this proposal. They recognize the fact that there will be a substantial fee to the applicant, but this will be a material change.

Mr. Civian confirmed with Mr. Greenbaum that he does not believe the purpose of the project has changed, but he does believe that the scope has increased. Mr. Greenbaum explained that be believed that taking out existing wetlands to construct the new road, substantially changes the balance of what was previously approved with less replication. Potential for adverse impacts over the plan that was approved have been increased by the addition of impervious surface that will affect stormwater runoff, and the operation of this road will put more debris into the resource area changing the ecosystem of the wetlands.

Ms. Bugay commented that she did some quick calculations on this and found that there was a 1 percent reduction overall in the restoration of BVW from the original proposal; land under water body is a less than 3 percent reduction in restoration and floodplain less than 1.5 percent.

Joseph Smith asked Matt Smith if the Planning Board indicated what they would do if the ConCom didn’t approve the road. Matt Smith responded that they did not give any indication of what they would do if the ConCom didn’t approve the road.

Mr. Tittler asked what substantive or procedural protections Mr. Greenbaum’s client believes they will lose if they proceed with this as an amendment instead of as a new Notice of Intent. Mr. Greenbaum explained that a new NOI would require the Commission to give the project brand new consideration and a new application would allow his client to begin the process to determine whether the proposed project does impair or interfere with the wetlands on their property.

Mr. Civian made a motion to regard this project as an amendment, seconded by Ms. Bugay.

*Discussion:*

Mr. Joseph Smith confirmed with Mr. Civian that there is not a legal quantification of the term “substantial”; if it is a matter of interpretation.

Ms. Bugay commented that visually, it looks like a big change but when you look at the numbers considering the overall project, it does not look as large.

Mr. Civian commented that he doesn’t see how the Commission could approve an amendment unless they find that it fully complies with the WPA so either way, they would be making the same determination.

Ms. Bugay agreed with Mr. Civian that even as an amendment they would need to re-review all of the details as if it were a new application.

Mr. Hickey asked if there is a way to get more information on the reasoning for the Planning Board’s decision.

Matt Smith responded that Richard McCarthy plans to write a letter to the Conservation Commission on behalf of the Planning Board explaining their decision; it was not ready for tonight.

Mr. Greenbaum confirmed with Mr. Civian that they would still put this through peer review, even as an amendment.

Maura Robinson, the property manager for the abutter, commented that she recalled Mr. Civian speaking at a Planning Board meeting, and explaining what he liked about the project was that it was joining back wetlands. She added that putting the road back in there takes away what he liked about the project.

Mr. Civian explained that he liked how the original project did a lot to restore the wetland functions, but he doesn’t know yet how the amended project will impact the restoration of the wetland functions, but they will review it to find out.

The motion that this be considered an amendment was voted 6-0.

Mr. Civian made a motion to request $1,000 for a third party review of the project, seconded by Mr. Tittler, UA.

9:08 PM- The Commission took a 2 minute recess.

9:10 pm: Eversource **–** *Notice of Intent for Geotechnical Borings Eversource ROW/Easement in Cutler Park Reservation (NOI-TBD)*

Jeremy Fennell was present from Epsilon Associates, along with Michael Zullich from Eversource Energy.

Mr. Fennell explained that this would be for geotechnical borings in the Eversource right-of-way, in which the right of way borders Boston and Needham. Mr. Fennell reviewed the locations of the proposed borings and the resource areas.

Ms. Bugay asked if they will be removing trees under this proposal. Mr. Fennell responded there may be some minor removal of brush.

Agent Brown commented that there is no DEP file number yet for this project, and she would like the opportunity to coordinate with the Town of Needham’s Conservation Commission to develop appropriate conditions.

Mr. Civian made a motion to continue the hearing for Eversource to June 2nd, seconded by Ms. Bugay, UA.

9:23 PM- Informal Discussion

Mr. Civian apologized to the Commission for sending an email out regarding his reflections on the Selectmen’s decision not to re-appoint Commissioner McGrath, and he had made comments about how the Commission needs to have sufficient technical expertise. He believes that people took his comments as criticism of existing members and proposed new members, but he wanted to clarify that was not his intent at all. Mr. Civian explained that he enjoyed having Mr. McGrath on the Commission because Mr. McGrath knew what it was like to be on the other side of the table making presentations to Commissions like this one. The team needs to have a certain amount of technical expertise, and now the Commission has only one person with that level of technical expertise.

Mr. Smith explained that he understands that Mr. McGrath was very valuable on the Commission, but in a larger sense, he senses conflict between visions for how people want the Conservation Commission to behave. He also gets the sense that the Board of Selectmen has a different agenda than the Conservation Commission and he finds that adversarial to say the least; he believes that needs to be addressed.

Mr. Civian commented that he would prefer discussions about policy to be discussions about policy, not personnel decisions.

Mr. Williams asked what happened to choosing a couple alternates for the Conservation Commission.

Ms. Langdon confirmed with Ms. Bugay that there were 4 applicants for 2 Conservation Commission openings.

Mr. Civian commented that the Board of Selectmen is making decisions that make it harder for the Conservation Commission to do a good job making decisions.

Mr. Tittler commented that the Commission had an unusually qualified team; no one should feel bad because they don’t have certain expertise.

Ms. Langdon asked if more responsibility falls on the agent when the Commission lacks expertise.

Mr. Smith commented that the Town should have a full-time Conservation Agent, educated like Ms. Bugay, who would review each application, to note where there are deficiencies on proposals and to come to each meeting presenting deficiencies. He also commented that if you are going to have a part time conservation agent you should have a more educated board.

Mr. Tittler sees things working the way they are now, but added the way that Mr. Smith explained is ideal.

Ms. Bugay commented that the Commission has enough work to support a full-time agent, but they did get a great candidate in Agent Brown, and she was only looking for part-time work when she was interviewed.

Ms. Langdon commented that the Commission may need to advise the Selectmen on what is needed as a makeup of the Commission.

Mr. Civian spoke about opportunities for Commissioners to decide they are going to become educated in a particular area to add additional value.

Mr. Tittler made a motion to adjourn at 9:45 PM, seconded by Ms. Bugay, UA.