



TOWN OF NORTHBRIDGE CONSERVATION COMMISSION

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NORTHBRIDGE TOWN CLERK
LINDA R. ZYWIEN

Meeting Minutes August 19, 2020

Remote meeting via Zoom.

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, MGL Chapter 30A Section 18 and the Governor's March 15, 2020 Order concerning imposition on strict limitations on the number of people that may gather in one place, meetings of the Northbridge Conservation Commission (NCC) shall be conducted via remote participation to the greatest extent possible. No in-person attendance of members or the public will be permitted, but every effort will be made to ensure that the public can adequately access the proceedings as provided in the Order.

Justine Carroll, Steve Gniadek, Cindy Campbell, Rich Chiras, Justin Arbuckle and Barbara McNamee were present. No one was absent. Barbara Kinney, Conservation Commission (NCC) Administrative Assistant, and David Pickart, NCC Agent, were also present. There is one (1) open vacancy on the NCC. *Note: R. Chiras was not present for all the votes as he was having technical difficulties.*

Ms. McNamee opened the meeting at 7:00PM by roll call vote of J. Carroll – Yes; Cindy Campbell – Yes; Rich Chiras – Yes; S. Gniadek – Yes; J. Arbuckle – Yes; and B. McNamee – Yes.

Attendees: Shelley Buma, 40 Heritage Drive; Mike Wilkes, 3 Cliffe Road; Vincent Osterman, VE Properties IX, LLC; Bruce Williams, Allen Engineering (AEA); Kristen LaBrie, Andrews Survey & Engineering, Inc. (ASE); Rob Knapik, Knapik Law; and Larry Beals, Beals Associates.

Citizen's Forum None

(248-XXX) Osterman Commerce Park, Commerce Drive (Phase 3, Building 4) (Map 28, Parcel(s) 6, 7, 72, 73, 74)

Proposed construction of a 5,000 square foot, single story retail building with associated parking, utility, & drainage infrastructure within the buffer zone of Bordering Vegetated Wetlands (BVW). The applicant for this project is VE Properties IX, LLC represented by AEA, 1 Charlesview Rd, Hopedale, MA 01747.

The Department of Environmental Protection (DEP) File # is needed. R. Knapik, applicant's counsel, explained that the overall project has been going on for some time now in phases. Natural Heritage Endangered Species Program (NHESP) and Massachusetts Endangered Species Act (MESA) applications have already been submitted / approved. Some land has been conveyed to the Commonwealth of Massachusetts with mitigation so there is no take for endangered species. The Notice of Intent (NOI) is for building #4 and related infrastructure. They are before the Planning Board (PB) for a Special Permit and Site Plan Review. The parking shown complies with the bylaw but the PB at their last

meeting wants additional parking spaces. Some of the proposed parking is within local bylaw jurisdictional areas. A portion is in the no-build zone to a vernal pool, however, the area has already been cleared and graded for the driveway shoulder. The Cannabis Control Commission (CCC) has restraints on parking that it must be nearby and not further from the site. R. Knapik would like the NCC to review this plan and if they are agreeable, then the engineer will finalize the plans and present it more formally to the NCC so the Order of Conditions (OOC) can be issued.

D. Pickart stated that the issues were summarized well. If you look at the plans, the vernal pool is under the Army Corps of Engineers (ACOE) when it was permitted. The ACOE had strict guidelines when it was originally permitted. Parking spaces 24-29 are within a previously disturbed area (gravel). D. Pickart does not believe that it will impact the vernal pool critters. The NCC does not have some of the information or the engineered plans. This proposal could potentially increase reclamation, however, the disturbance could be offset in other areas. D. Pickart wanted to know if parking spaces 30 – 33 could be moved. There is an issue with the no disturb and no build buffer zones. There are restrictions due to the railroad so the regulations cannot be met. The letter for a no take has already been received under the first submittal, but not this one with the revised parking spaces. The ACOE regulations have changed a lot since this commerce park was first approved. R. Knapik stated that if the additional parking spaces are allowed, then additional replication could be constructed elsewhere. They are looking for some indication from the NCC that these parking spaces would be allowed so plans can be finalized and sent to the PB. They will come back to the NCC at their next meeting. The NCC agrees it is reasonable, but the details need to be ironed out.

B. McNamee asked about a site visit. C. Campbell would like to join the visit too. They will send their availability next week to B. Kinney who will coordinate the visit with R. Knapik and / or V. Osterman.

Ms. Campbell wanted to know why so much replication has been done. It was explained that it has to do with all the fill required to build the roadway with two (2) wetland crossings and rare species findings.

D. Pickart reminded everyone that we still do not have a DEP file number and it's concerning. B. Williams has contacted DEP last week to remind them that they have had the submittal over two (2) months and the number has not been issued yet. He has not heard back from them other than that they are extremely backed up.

Motion made by C. Campbell and seconded by J. Arbuckle. The NCC voted 5-0 by roll call vote of J. Carroll – Yes; Cindy Campbell – Yes; S. Gniadek – Yes; J. Arbuckle – Yes; and B. McNamee – Yes to continue the Public Hearing to September 02, 2020 at 7:30PM.

(248-679) Douglas Road (Adjacent to 279 Douglas Road) (Map 3, Parcel(s) 117 & 118) Proposed grading, paving, drainage and erosion control to create a contractor yard within a wetland buffer zone with associated wetland filling and wetland enhancement. The applicant for this project is TJJ Development Corp., LLC represented by ASE, 104 Mendon Street, Uxbridge, MA 01569.

J. Arbuckle has recused himself from this Public Hearing.

K. LaBrie, ASE, explained that revised plans have been submitted that have added markers along the 35 foot buffer zone including eight (8) along the bottom border. At the top of the dead-end drive there will be a fence along with some markers outside the 35 foot no-disturb zone about five (5) feet off the pavement. There are additional markers near the infiltration basin and along the 35 foot no-disturb zone. The replication area has been enhanced. The notes regarding the soils need to be corrected to use imported soil and not the existing fly ash soil.

Larry Beals submitted his report that focuses on the status of Meadow Pond and included a photo(s) to show the relation of Meadow Pond over the years. He explained the definition of a river and according to the definition the river stops at the inlet and begins again at the outlet of the dam (perpendicular to the flow of the river). He then explained the different tests used including what the pond looks like. As far as having possible riverine characteristics, it is refutable as to whether this area has them according to the USGS map. There is unidirectional flow and horizontal stratification. A Great Pond is never a river and great ponds exclude man made ponds unless they are over 10 acres in its natural state. There is a wealth of information out there. On an 1849 map, Whitins Pond was all one body of water that time. The dams were built primarily for hydroelectric power. The Environmental Protection Agency (EPA) measures rivers in linear feet and ponds in acres. A flow test was done and a river will move unidirectional and a pond will not. The most effective tool for a flow test is an orange as it will float on the surface but it is dense enough so that most of it is submerged. It is biodegradable so there is no pollution to the water. They tested oranges in several spots (even from the other side of the waterway and the oranges floated looking like they were going upstream (not unidirectional). They were moving away from the dam. The report includes information on the Federal Emergency Management Agency's (FEMA) flood information. The conclusion is that it is a pond and not a river in this section as there are no riverine characteristics. In the past, DEP has said that it has riverine characteristics but they were not able to provide any back up information regarding this.

Shelley Buma, 40 Heritage Drive, is a representative for the Citizens for the Preservation of Northbridge (CPN). She referred to a letter date May 6, 1988 (248-470) from DEP stating that it is indeed a river and that in the past the NCC rendered the same decision.

A quote has been received for peer review of the drainage for this NOI from Graves Engineering in an email. They quoted a cost of \$2,900.00 and the applicant will need to provide a check in that amount to set up the escrow account. The applicant is amenable to that and will provide the check.

K. LaBrie then summarized the comments from DEP and their responses (in italics).

1. Applicant should demonstrate that the proposed basin complies with the design criteria established for infiltration basins in Volume 2, Chapter 2 of the Massachusetts Stormwater Handbook (set back from wetlands, separation from groundwater etc.). This information should include test pit data from locations within proposed basin including estimated seasonal high ground water. *This is shown on the existing conditions plan.*
2. DEP recommends that the applicant provide specific numbers of proposed plantings within the replication area and the composition of proposed seed mix for Commission review. The stated "minimum of 3 of each species" does not appear as though it will

provide sufficient density representative of filled areas if only this stated minimum is installed. *The plan has been updated to increase the replication area plantings.*

3. DEP recommends that the applicant provide clarification in relation to which portions of the project qualify as redevelopment as it relates the Massachusetts Stormwater Standards. Based on aerial imagery, the site appears to be largely vegetated except for an area along Douglas Rd. which may have developed as a pull out and parking for road traffic. Additional clearing of the lot appears to have occurred between 8/2016 and 9/2017, during which a 15-20 foot wide path appears to have been cleared through the lot. The extent of impacts, if any, to jurisdictional areas associated with this clearing is not known, however DEP is not aware of any permits issued for work within jurisdictional areas during this time period. All resource area impacts must be addressed in the NOI. *The pull off area is considered redevelopment and does not need to meet all the stormwater standards. The path cleared through the lot was done for the test pits.*

There will be grubbing / stripping and filling of the wetland. The change in grade will be extent of the filling of the wetland. For the replication area they will need to remove the ash material soil and replace it with a better mix for wetlands. The grade of the parking area is 309 to 311 feet and the proposed grade is 313 feet. The material excavated for the detentions basin(s) that will be at grade should be replaced with infiltration material. A site walk was done several weeks ago.

Per S. Buma, K. LaBrie back in July stated that there would be not building on the site and now referring to it as a contractor's yard, which is not mentioned in the NOI. K. LaBrie apologized, her mistake, the NOI should read warehousing, trucking and contractor's yard. When the site plan is submitted, there should be more details as to what will be located on the pavement. D. Pickart stated that he will need to review the fees to make sure the correct amount has been submitted and he will need to think about this. There will be no permanent foundations. There will be two (2) entrances [one (1) for construction and one (1) with a trench drain]. Both have been permitted from Douglas Road. There will also be a connection to Berkowitz Trucking and a connection on the other side of the lot that will terminate. This is in the Industrial Zone so trucking / warehousing is allowed by-right. They will need a Special Permit for the contractor's yard. They do not have a date yet on when they will submit the application for the Special Permit to the Planning Board.

S. Buma suggested the NCC continue / delay moving forward until more information is received from the Planning Board.

Shelley Buma, 40 Heritage Drive, said there is an Order of Conditions that was approved in December 2012 by the same applicant. D. Pickart reviewed those plan submitted with that NOI and there are no buildings construction on that site as there were no buildings ever on the plan. There are several drainage basins that are on the plans that were not constructed. J. Berkowitz, applicant, stated that this is not part of the current application and the NCC should move on to discuss the current application. S. Buma cautioned the NCC to not approve another OOC when there are others in violation.

D. Pickart sent a memo today regarding the adjacent project with his findings and opinion. An OOC was issued for the other side of TJJ Development in 2013 for a storage area with a basin in front and basins in the east and southwest corners. The basin in front and the storage yard exists but the two (2) basins in the back have not been constructed. The area

has been raised to level grade with recycled materials, sand and stone. The OOC expired in 2018. Per the Massachusetts Association of Conservation Commissioners (MACC) and DEP, they required another project where the replication area was never built in a small subdivision to address the violation when they request the COC or try to initiate dialog to bring it into compliance. Specific input from DEP, our town counsel or the owner's attorney may be requested. However, input from our town council may be problematic at this time during limited spending of town funds. A decision needs to be made on what direction to go.

The applicant wants to keep these issues separate from each other.

B. McNamee stated that since the last OOC was issued, we now have a new Conservation Commission and an Agent that provides more oversight.

Motion made by J. Carroll and seconded by C. Campbell. The NCC voted 4-0-1 by roll call vote of J. Carroll – Yes; B. McNamee – Yes; S. Gniadek – Yes; and C. Campbell – Yes to continue the Public Hearing to September 02, 2020 at 7:45PM. J. Arbuckle – abstained.

Old / New Business

971 Providence Road – Request for Certificate of Compliance

The Agent reviewed the site and it appears to be built as proposed and he did not see any concerns. This OOC is from 2003 and back then it was not required to submit an as-built plan or a statement from the engineer. The OOC has no special conditions. D. Pickart sees no reason that the COC cannot be issued. There is a closing on the house on Thursday, August 20, 2020.

Motion made by J. Carroll and seconded by J. Arbuckle. The NCC voted 5-0 by roll call vote of J. Carroll – Yes; B. McNamee – Yes; S. Gniadek – Yes; C. Campbell – Yes and J. Arbuckle – Yes to issue the Certificate of Compliance for 971 Providence Road (248-427).

Minutes - August 08/05/2020

Motion made by J. Carroll and seconded by S. Gniadek. The NCC voted 4-0-2 by roll call vote of Steve Gniadek – Yes; Barbara McNamee – Yes; J. Carroll – Yes; and C. Campbell – Yes to approve the minutes of August 05, 2020. R. Chiras and J. Arbuckle abstained.

Lovey's Garden Marketplace – The NCC reviewed the response from Gary Vecchione regarding the violation notice that was sent. They still need clarification and a date that the firewood will be removed. There was some discussion regarding the electricity. There is box, but he may be using an extension cord. G. Vecchione wants to speak with our Agent regarding an underground electric trench. The NCC told B. Kinney to inform G. Vecchione that the Agent has limited availability and they will not address anything except the violation(s) until the Order of Conditions is recorded at the Registry of Deeds.

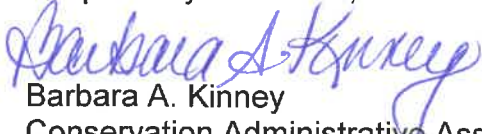
Other

The NCC members present performed administrative tasks (signed Orders, etc.) that were needed.

Adjournment

Motion made by J. Arbuckle and seconded by J. Carroll. The NCC voted 5-0 to adjourn the meeting about 9:12PM by roll call vote J. Carroll – Yes; S. Gniadek – Yes; C. Campbell – Yes; J. Arbuckle – Yes; and B. McNamee – Yes.

Respectfully submitted, .


Barbara A. Kinney

Conservation Administrative Assistant

DATE APPROVED:

