



NEWINGTON CONSERVATION COMMISSION

Tuesday, December 15, 2015

Meeting Minutes

I. CALL TO ORDER

Chairman Zelek called this meeting to order at 7:09 p.m. in Conference Room 101 of the Town Hall.

II. ROLL CALL

Philip Block
John Igielski
Cathleen-Marie Clark
Jeffrey Zelek
John Casasanta
Andreas Sadil
Alan Paskewich
Peter Manke
John Bachand

Also present

Chris Greenlaw, Town Engineer
Susan Gibbon, Recording Secretary

*(*These minutes are a brief overview of the meeting held on December 15, 2015. Please refer to tapes for full transcript.)*

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS (EACH SPEAKER LIMITED TO 2 MINUTES)

Rose Lyons, 46 Elton Drive. Welcome to new members. John, I am going to miss you back there, I'll speaking alone from now on. Halleluiah, looked out my window and saw the Park River Control Project being done after my begging for 10 years for them to do something to the brook and behind my house, very thankful. Would like for them to keep going and not just stop where they stopped the original project, but to continue on. Hoping for support from town to push for that.

IV. ACCEPTANCE OF MINUTES

A. Regular Meeting of November 17, 2015

Commissioner Casasanta, page 16, is should read Park River, not Park Road.

Commissioner Sadil , page 8, prosperity, should be posterity.

Motion to accept minutes as amended by Commissioner Sadil, second by Commissioner Clark. All in favor, unanimous vote.

V. PUBLIC HEARING

A. Inland Wetlands Regulation Changes – L.I.D. (Low Impact Development)

Chris Greenlaw: No updates at this time.

VI. NEW BUSINESS

A. Election of Officers

The following commissioners were elected to the positions listed:

Jeffrey Zelek - Chairman

Andreas Sadil - Vice Chairman

John Igielski - Secretary

B. Meeting Dates for 2016

The meeting dates for 2016 were distributed and it was determined there were no conflicts.

Motion to accept 2016 meeting schedule by Commissioner Igielski, second by Commissioner Manke. All in favor, unanimous vote.

VII. OLD BUSINESS

A. Inland Wetlands Regulations Changes – L.I.D. (Low Impact Development)

Chris Greenlaw: No updates at this time.

B. New Initiative – Vernal Pools

Commissioner Paskewich: Going through documents regarding vernal pools and I came across a document presented by Alison Clark who was part of the Save Cedar Mountain personnel, reviewed it and it was put together by a senior wildlife biologist from DEEP in CT, quite lengthy and very comprehensive, will review and contact person who composed document to see if there are any updated or changes and then present it to the commission.

Commissioner Casasanta: Is this report available online anywhere?

Commissioner Paskewich: I'm not sure.

C. Invasive Plants

Commissioner Clark: Nothing to report at this time.

D. Quarterly Meetings – IW/CC and TPZ

Chairman Zelek: This is regarding quarterly meetings between IW/CC with the Town Planning Zoning Commission. This is a topic that was discussed at that November CACIWC meeting and some of attended a session on planning and zoning an how they relate to inland

wetlands, the attorneys that were doing the presentation strongly suggest that inland wetlands meet with the town planning and zoning on a quarterly basis to exchange ideas, concerns, etc. I suggest we send our officers to their meeting and likewise, that way all commissioners don't have to attend an additional meeting on a quarterly basis, but will be open to commissioners if you choose to attend. First quarter we attend TPZ meeting, second quarter they attend our meeting, etc. I could draft a letter to the chair of the TPZ.

Commissioner Block: I would like to suggest that the TPZ come to us to see how they work with our regs, have a workshop, closed to the public to explore how to best work with each other.

Chairman Zelek: Good topic, would like to have it open to the public, be a public meeting to allow public to observe.

Commissioner Casasanta: I like the idea. Will have to work out setting parameters. I agree with your vision.

Chairman Zelek: I envision the officers sitting at table with TPZ and discussing items. If the consensus of the commission I will draft a letter to the TPZ chair to propose meeting with them on a quarterly basis, having their officers come and add it to the schedule.

VIII. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS (EACH SPEAKER LIMITED TO 2 MINUTES)

Rose Lyons, 46 Elton Drive. This is just a question to educate myself. I have gone to a few meetings now and they have had their election of officers and everyone seems to do it a different way. Just wondering if there is a set rule, if you use Roberts Rules, or some internal procedures that you use. My other question is when does a commissioner vote. I've seen the TPZ where the alternate doesn't always vote. Internal rules or set procedure?

IX. COMMUNICATIONS AND REPORTS

A. Commissioner's Certification/Training

Chairman Zelek: I asked Chris to put this on the agenda. Commissioner training, asked for commissioners to review, any updates? For new members of commission, the Commissioner of DEEP puts together an annual training program.

Commissioner Sadil: All online, ten modules, certain amount of time to complete, goes through all aspects, procedures. I recommend you take it, very well worth it. Not complicated, can take tests as many times as you want, self paced.

Chairman Zelek: Responsibilities on this commission are both technical in nature and legal in nature and it is important to understand the finer point of both of those. That training will help you understand. Familiarize yourself with our regulations, they are online as well our internal procedures - two very important documents. Also, familiarize yourself with Roberts Rules, this commission uses Roberts Rules as a guideline.

Commissioner Paskewich: Each of the members have a hard copy of the regulations.

Chairman Zelek: Chris, can you provide a binder to the new commissioner's.

Chris Greenlaw: Yes, that should be no problem, they will be provided

Commissioner Block: Those binders original contained the state statutes, the ordinance creating the commission as well as the wetland regulations, just want to make sure they have a full set.

Commissioner Paskewich: I have been in contact with the state soil scientist from the USDA and NRCS recently, I have two wallet sized cards that have apps on them to Access National Cooperative Soil Survey Data Using SoilWeb : an Online Soil Browser and Access National Cooperative Soil Survey Maps Using SoilWeb for iPhone and AndroidOS.

Commissioner Clark: I passed the information for on the van for environmental education at the extravaganza on to Bill DeMaio.

B. Application 2006-26, 751 Russell Road

Chairman Zelek: This is going to be a review of the permit that was issued in 2007 for the Hunter Property. I had Chris add this to the agenda because recently activity is taking place on that site, which prompted questions for commissioner and they started going to Chris for information. Rather than address individual questions from commissioners, I want to keep the dissemination of information to be presented in an orderly fashion so that all commissioners hear the same information. If you have any inquiries regarding requests for information please work through me through the Chair and then I will discuss with Chris and get back to the commissioner. We are going to review the highlights of the application, the site plan and this is in anticipation of the expiration of the permit that was issued for that site that is expiring in March 2016. If it comes to us for an extension, you will be better prepared with the information you are going to hear tonight. This is strictly a review and information session for the benefit of the commissioners.

Chris Greenlaw: I put together a few of the plan sheets outlining the site, the approved plan for Hunter Development that was approved February 20, 2007, so the sunset clause on this permit is March 10, 2016, based on the effective date of this permit. I went though the plans sheets and took 5 or 6 sheets that really outlined the operations or activities that needed to be completed within the regulated area and some of the operations currently under way. No pdf, but do have hardcopies. Application was very large. Very happy to bring in additional reports and document if wanted. Would like to point out conditions that go with approval, standard conditions as well as some additional special conditions. One thing there is no blasting on the site without them coming back, that is a special condition. This application was for the approval of land use for gas station, retail and a hotel.

Commissioner Block: Can you define the location for us?

Chris Greenlaw: This site is at the intersection of Russell Road and East Cedar Street or State Route 175 which is directly adjacent to 5/15 as well. It is a large area that is under construction, most specifically in the northwest corner of the site. Some of the operations within the upland review will be an access road coming off 175 to the property, a parking area being constructed, drainage associated with this, a wall being put in, which a was a special condition of the permit, that the wall not infringe or encroach within 50' of the 100' buffer. I went out and took pictures of the wall, identical to the detail they have. The developer knows that pursuant to the permit and the conditions these operations have to be completed within the 100' upland review, anything within the regulated. If the developer believes that they are not

going to finish within the permitted time they have to come to this commission for an extension. Anything that is contrary to the conditions, for instance - blasting, they come back to the commission; that is why we have special conditions.

Chairman Zelek: Before we take a recess, will you speak to condition 14 about the exposed rock area.

Chris Greenlaw: Condition 14 says all exposed rock in the area of the retaining wall and any construction below the estimated water table is to be sealed with hydraulic cement or other appropriate materials, procedures as approved by the town engineer or its application. This condition stipulates that if they run into rock face, regardless of the methods and techniques, this condition dictated that they come to the town engineer to discuss why they will do to preserve water from coming through this rock face, so I specifically went out and took a picture to the wall under construction so that you can see there is silts and fragmented rock. In this picture there is no rock face there.

Chairman Zelek: I would like to get a motion for a recess to allow commissioner to review materials and discuss with Chris.

Chris Greenlaw: Keep reiterating to developer - no rock blasting performed on site.

Commissioner Block: Are there any instances of need for blasting?

Chris Greenlaw: No.

Chairman Zelek: Reiterate that this information is for Application 2006-26 for the Hunter proposal which is hotel, gas station and retail. Approved inland wetlands permit. There is also another planned use of that property. Do we have any other inland wetland permit issued for any other activity on that property?

Chris Greenlaw: Not to my knowledge.

Commissioner Block: Wasn't there a convalescent hospital?

Chairman Zelek: Yes, I believe it is call the Amara project and we do not have an inland wetlands permit issues for that.

Commissioner Block: So that is defunct?

Chairman Zelek: No, we have no knowledge of that. Strictly focusing on approved application permit that we have.

Motion to go into recess by Commissioner Casasanta, second by Commissioner Clark. All in favor, unanimous vote. (Recess commenced at 7:50 p.m.)

Chairman Zelek: I am calling the meeting back in to order at 8:12 p.m. Do the commissioners have any questions or information that they would like to share?

Commissioner Bachand: I am a little concerned about putting the type of wall they put up. Not sure of threat to wetlands.

Chairman Zelek: Sealant needed if rock salt was found; more of a soil bank than a rock bank.

Commissioner Block: At the time, the 50' buffer would suffice to protect the wetlands.

Chairman Zelek: 50' was a fair improvement measure to protect the wetlands.

Commissioner Bachand: 100' upland review line, correct? Special permission to build in there. Because it was assumed solid bedrock, deemed less of a threat.

Commissioner Block: This is a column of the salt mountain and the question is whether of not there were any seams in the solid rock, in which case the regulation was 50'. Apparently, there is no sign of solid rock so the 50' would be deemed adequate.

Commissioner Clark: Can you make it clear to me what do they have to accomplish by the deadline?

Chris Greenlaw: Good questions. All operations within the regulated area are to be completed, because otherwise you need to address an extension with the commission. Look along that 100' review line. They have had this permit for almost 9 years, they could have worked on it, at the end of the day there is a sunset clause on the permit and they are well aware of the task ahead of them.

Commissioner Casasanta: Can you confirm what the development is? Is it the one proposed on the Hunter application, which is 2006-26 or is it the Amara development which hasn't come before us yet. The work is permitted work, in the regulated area. Right now we are unsure of plan.

Chris Greenlaw: Only approved plan is 2006-26 with Hunter Development; no signed Mylars with Amara. Hunter Development has approval to do all work on site. Permit is for Hunter, goal is to complete. At the end of the day, they finish their wetland presuming that another developer came in and tried to buttress this site, that is a possibility.

Commissioner Clark: Can you explain that again.

Chris Greenlaw: If the developer finishes all the work within the wetland area, another developer can come in and get approval, match exactly along line.

Commissioner Block: If is quite possible that after they finish the wetlands corner, it is possible that they can complete the rest of the project with their retirement home.

Chris Greenlaw: That is a possibility.

Chairman Zelek: Any work that is performed on site, regardless if its in an upland review area, is subject to review by the Inland Wetlands commission if it has a potential for impacting the wetlands. So that is any activity outside of the buffer area, that is in our regulation, any activity at the site whether Hunter or Amara is subject to review by the inland wetlands commission if it might potentially have an impact on the wetlands.

Commissioner Paskewich: I agree with Chairman Zelek, that would be the protocol and the sequence of events and I am sure that we would receive communications from Chris or the planner or TPZ as to what it going to be presented for an application for use.

Commissioner Bachand: I followed this very closely in TPZ and I am afraid that the commissioners may be under the wrong assumption. The way the developer and the planner are addressing this, it is already approved, they do not have to come back here for anything and I think the engineer could clear up on that, they are not coming back here for Amara.

They assume that if they complete the work in the wetlands, then they are done, they are already approved for Amara.

Chairman Zelek: They can make that assumption, but the law is, according to regulations, if they do any activity that has a potential to impact the wetland it has to come before this commission.

Commissioner Block: My memory may be failing me, but Amara has an approval from this commission for the retirement home.

Chairman Zelek: No, there is no approval for any activity on that site other than Application 2006-26 for Hunter.

Commissioner Block: So the retirement home was never approved?

Chairman Zelek: Not by this commission, they did come to us with an application which they withdrew.

Commissioner Block: That is why what they would do outside would have to be verified as not effecting wetlands.

Commissioner Clark: I would like to ask if suddenly Amara starts building, how do we become a party at the table to enforce our regulations.

Chairman Zelek: There is a notice process that we would request them to come before the commission to explain what their activities are, correct?

Chris Greenlaw: What I would recommend to the Chairman is that you get a consensus from the commission that you want to explore, because it was explained to TPZ as far as their approval process, Amara was approved, but as far as approval process there were conditions and the planner is currently waiting for those conditions to be incorporated as part of the approval on the Mylars to be signed by the chair. As far as the approval process, there was a legal opinion that was offered. I would ask the planner or the town attorney come in and share their approval process and what was explored and rendered as far as legal judgment. The door is still open, we want an interpretation of the law as it pertains to the wetlands with this project with wetlands. Then through the chair, through staff to the town attorney we initiate a process. We want to hear first hand what was explained to TPZ as far as what satisfied that application without having to go to wetlands, in conjunction with the town attorney and at the end of the day being able to ask those questions. Have regulations explored legally through town attorney.

Commissioner Casasanta: A couple of meetings ago you stated that you were going to be examining recourses and us being bypassed. How are those efforts going?

Chairman Zelek: After the CACIWC legal session, I did have a consultation with an inland wetlands attorney and basically to appeal that it would have to have taken place within a 10-15 day period and secondly you have to be an aggrieved party, either an adjoining property owner or someone within 100' of the property, so neither of those conditions were applicable to us so there is no action we can take.

Commissioner Block: In this scenario you have a development proposal with a wetlands segment that has been approved by this commission and the purposes being built, you now

have a suggestion that there is a possibility that the remainder of the land may be built differently than the proposed and approved plans. If this commission finds reason to question a different project outside the buffer area, the question is going to be what has changed within our area of jurisdiction that puts our charge at risk. Using the facts we have available, the main building on the convalescent hospital was closer in some areas, if they were to do that they would be intruding, that would be the change from the shopping center approval. Maybe that is enough to invoke our jurisdiction.

Chairman Zelek: Want to be careful that we don't talk too much about the other project that may potentially be coming. This is an information session to brief you on the current activities with the current permit that is approved. So I would like you to avoid speculating anything outside the else that may occur. If something else does occur, then we will address it when it happens.

Chairman Block: Once something starts to be done in the ground our ability to get a response in place will be very limited. If we are taking about procedure concerns with a change of use in addition permit or a potential change in use.

Chairman Zelek: Would the commission like to explore that further with the Town Attorney? Make a request to town attorney presenting hypothetical situation if a change in use did occur after a permit expired.

Commissioner Bachand: Again, there may be some misunderstanding on this commission, but there is absolutely no misunderstanding through TPZ and with that developer - he has two permits. He is moving ahead and if he gets his financing for Amara, he is building Amara. The one question to end debate is to have the town attorney come here and explain to the commission what they can do.

Chairman Zelek: No dispute, just a finding of legal truth. You and Commissioner Block are both going in the same discussion as far as having a discussion with the town attorney prior, so that we understand what is the potential here, whether there will be any action or not. I think the suggestions you are making is good one.

Commissioner Casasanta: This question has been addressed already, I'll address it as well. Let's assume that Hunter is still board since we can't make any assumptions on alternate uses of the land. Hypothetically, if there is a change to those plans after the permit expires which requires work in the 100' upland review area, since it is not going by what was presented to us in the original plan, wouldn't that automatically mean that they have to come before us to get approval?

Chairman Zelek: Yes.

Commissioner Paskewich: Have been working under building development for 16 years and overlooking permitting processes, I don't have any value in assumptions nor is it ethical to do that. Also I've been trained that there is a permitting process and it goes through all the channels in a town, ordinances, statutes and everything governing a town body of permitting - no assumption.

Commissioner Bachand: I'll explain how they came to the decision not to come back to this commission. They had legal ground and an attorney consulted with them. The issue was if this project was smaller or reduced then you didn't have to come back or go back to wetlands.

That is what everything hinged on, if the project was smaller or reduced they argued because nothing changed in the wetlands they didn't have to come back to wetlands, nothing changed in upland review even though the project drastically changed. They did have case law to support them.

Chairman Zelek: Consensus is that we ask the town attorney to meet with us next month and talk about this situation which we are all concerned about.

Commissioner Block: Why next month? You said this permit expires in March? Next month is going to be our January meeting so that means that we have approximately 45 days to act after that before the permit expires.

Chairman Zelek: There is no action that we will take. I don't foresee any action this commission will be taking prior to the expiration of that permit.

Chris Greenlaw: I would say that Mr. Bachand probably has more experience than all of us with some of the testimony at TPZ, but I still recommend the town attorney or the town planner to come in and discuss the process in which they were allowed to entertain the application, to process that application based on a legal opinion. Ask for consensus and get authorization for email from you so that I can get this moving along. I want to make sure that we get the answers for the questions we have.

Chairman Zelek: I will get you a message summarizing our concerns and requesting that the town attorney be present at our next meeting.

Commissioner Block: I want to make my concerns clear. There have been occasions when we have been confronted with situations in which we would have liked to intervene, but the time was not there for us to do it. It was too late and we missed our chance. If there is something here that is contrary to what the commission intended to have happen, that we be in a position to know how we can act and have time enough to act.

Chairman Zelek: Not clear of what the situation might be or the action we may take. Can you give me some ideas.

Commissioner Block: I think the biggest one is that they have approval to build a specific project; there is a basis for us to believe that there is a different project in mind and the question of whether they are going to be able appropriately and safely, within our purview, protect the wetlands if they switch horses midstream.

Chairman Zelek: Again, we are not going to act without a consultation with the town attorney.

Commissioner Igielski: In regards to Mr. Greenlaw's thought on having the town planner attend, I would like to say that it might be appropriate for that person to attend because he has the background of the application that was approved by TP&Z and I believe the town attorney has changed. The town planner can fill in the gaps and might help to condense the time frame.

Chairman Zelek: I think the focus is really the legal situation.

Commissioner Clark: Might we want to consider involving a wetlands lawyer?

Chairman Zelek: Will take under consideration if necessary. Only consultation by town attorney at this time.

Commissioner Block: Right now concerned with procedure and with the individual and joint jurisdictions of these commissions.

Chairman Zelek: Again, this was an informational session to prepare you in case we do get this application coming before us for an extension or maybe an entirely new application. I wanted you to be briefed on this since there is activity going on at the top of the mountain and that permit is going to be expiring rather soon.

X. ADJOURNMENT

Chairman Zelek: Would like to respond to the questions by the public as far as how certain commissions proceed. I can really only speak to ours, when we do the elections for the officers, we do it according to our internal procedures and we do use Roberts Rules in legal discussion and seminar that we have attended regarding Roberts Rules it is up to the individual body to apply them in a manner in which they see fit. Some bodies are very strict and go by strict parliamentary procedures, others use Roberts Rules as a general guideline to bring order to a meeting; I think we follow the later of that. We do have internal procedures, if you are interested in them they are posted on the engineer's website.

Commissioner Bachand: I would like to educate myself more about your regulations. Are there any other sites, some discussion about testing sites.

Chairman Zelek: I will point you to CACIWC.

Commissioner Bachand: Heard discussion about online testing or training.

Commissioner Sadil: Mr. Greenlaw gets vouchers on a yearly basis.

Chris Greenlaw: Correct. We get one voucher per year for training.

Commissioner Block: My last official class was quite a few years ago, I would like to request that Chris propose in his budget retraining for some of us oldtimers.

Chris Greenlaw: Yes, we will take that into consideration.

Commissioner Bachand: Ms. Lyons has been asking for so long, can we get someone to take a walk along Mil Brook, the path behind St. Mary's, she is concerned about it, will to take walk to see if there is anything that can be done.

Chairman Zelek: I will join on that walk and then we can report back to the commission at the next meeting.

Commissioner Black: Would like to suggest that the contract for the work is being done was published. Should another maintenance contract be issued for this segment.

Chairman Zelek: Part of flood control, but it serves a different function, more for retaining water. You need different types of environments. I think that area is really intended to retain water like the headwaters of Piper Brook that is why it is left in a naturalized state and not maintained.

Chris Greenlaw: I have been attending the weekly project meetings for the SBPR, and I will tell you that I have been meeting with DEEP weekly and they have been updating me. This is flood control project designed in approx. 1961 after the great floods that we had. The point I want to make on record is the fact that it is roughly \$4.5 million project, with not cost overruns. Two weeks ago I went on record with DEEP, if any extra work the town would like to be notified as a prioritization so we can inform you as the end user the people who witness the flooding and close town state road and do repair works. Already cost overruns. This flood control project was designed to be much larger, first time coming through in '86 they scaled that back and agreement signed by SES and DEEP and out town with a resolution by council that we were in acceptance of those improvements. I cannot get DEEP to budge to go past those project limits or even within those project limits those areas deemed to be improved. There are a lot of areas that are to remain in natural state. I did go on record and brought town planner with me, areas on Main Street. Experiencing cost overruns, much larger project. No increase within improvements.

Commissioner Zelek moved to adjourn the meeting at 8:53 p.m., motion by Commissioner Block, seconded by Commissioner Casasanta; it was unanimously voted to adjourn.

Respectfully Submitted



Mrs. Susan Gibbon

Recording Secretary - Conservation Commission