

**Town of Northwood
Planning Board Work Session
May 25, 2017**

MINUTES

Chair Robert Strobel called the meeting to order at 6:30 p.m.

PRESENT: Chair Robert Strobel, Betty Smith, Selectmen's Representative Rick Wolf, Joe McCaffrey, Hal Kreider Justin Mikolyski and Vice-Chair Lee Baldwin.

TOWN STAFF PRESENT: Board Administrator Linda Smith, and Land Use Secretary Susan Austin, and Town Planner James Burdin

VOTING DESIGNATION: Chair Robert Strobel, Betty Smith, Selectmen's Representative Rick Wolf, Hal Kreider, Joe McCaffrey, and Justin Mikolyski.

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May 11, 2017

Ms. B. Smith made a motion accept the minutes of May 11, 2017. Mr. McCaffrey seconded. Motion carried 5/0/1. Mr. Kreider abstained due to absence.

CONTINUED CASES

Case# 17-01

1334 First New Hampshire Turnpike LLC; 1334 First NH Turnpike; Map 110, Lots 28 & 29.1. Expansion of existing restaurant to include commercial brewery and function room with associated parking and stormwater facilities.

Geoff Aleva from Civil Consultants was present to discuss this case. Mr. Burdin stated that one of the outstanding issues that they were going to discuss this evening was the stormwater plan and whether it should be sent out for a peer review. He stated that Mr. Aleva would speak to that point and once he was finished he would follow up with procedural things about how he would like to proceed. He stated that he didn't think a waiver request would be necessary on the applicant's part if they would prefer not to have it sent out for peer review. It would just be a matter of needing a motion from the board to send it out and then discussion on that point.

Mr. Aleva stated that he would like an extension to the next planning board meeting to go over the review process. He stated he would request the extension in writing via email.

Mr. Aleva stated he would like to go over the project and where the stand now. They have made some minor revisions that are centered on a small portion of the stormwater with respect to conversations with town staff and New Hampshire DES. He stated that they have also submitted the driveway permit

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to DOT, and they have accepted the application and it is in the queue to be reviewed.

Lee Baldwin arrived at 6:42 PM

VOTING DESIGNATION: Chair Robert Strobel, Betty Smith, Selectmen's Representative Rick Wolf, Joe McCaffrey, Vice-Chair Lee Baldwin and Justin Mikolyski.

They have also submitted the final application with revision to New Hampshire DES for the alteration of terrain.

He stated that they have provided the copy of the alteration of terrain, along with a copy of a letter that discusses their compliance with the town ordinance for stormwater. He stated that they comply with everything over the requirements with the exception of one area which has to do with how the stormwater is held under certain storm events. What the ordinance says is that the post total runoff volume shall equal 90% to 110% of the pre-development total runoff volume based on a two year, ten years, and twenty-five years 24-hour storm event. The calculations shall include runoff from adjacent upgradient properties. What that means is that as part of the storm water design, it used to be that you would hold the flows to what the pre-conditions were. With the stormwater quality design aspects now, not only do we hold how fast the cubic feet per second the flow goes off, but we also hold the volume back. What is controlling us is that the design of the grass infiltration gives us 85% reduction. So, we are increasing our amount of quality detention time as compared to what the ordinance asks for. This is actually better than what Northwood's ordinance asks for, they are actually holding the water back a little more than is asked for. He stated that they have indicated that in the memo to the town. That is the only difference between Northwood's ordinance and AOT.

He also stated that they were finishing up the septic design and using the water meter that is on the well for the existing restaurant and they are gathering that information and the septic designers are going to use the flows to help design the upgrades to the leach field and the treatments.

He stated that originally, they had asked for a stormwater waiver to not have an outside peer review for the storm water because they knew that DES would do that work. They have provided the AOT submission for their stormwater and the memo that indicates that they comply with the town of Northwood requirements. The work order came back from the 3rd party review engineering company. Their estimate for reviewing of the drainage was a low side of \$2,500

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and a high side of \$4,000. Obviously, they feel that it's high value and they feel that they are double reviewing the same type of work. So, their argument is that they have a state agency that is reviewing stormwater for not even 5% of the same standard that the Town of Northwood has. They have indicated in the only section where they don't exactly meet the town standards but the way they don't meet it is more of a benefit than a drawback to the town.

Mr. Burdin stated that they felt that when the applicant was originally requesting a waiver for the stormwater review, essentially what they were requesting a waiver from was the town requirement that they submit the information regarding the stormwater plan for the board review and approval. They have since supplied that information, so because of that we don't think a waiver is necessary. The applicant obviously feels that they have shown compliance with the Northwood code. At this point, what they would need for the application is for the board to determine compliance. The board has the authority to do that without a peer review. The question that they need to ask themselves is do you feel that you have the expertise to make that determination without a peer review. Mr. Burdin stated that he doesn't feel that he had that expertise to make that determination as a city planner. They have gotten an estimate about what the scope of services would be. That proposed scope includes making a brief site reconnaissance, a review of the design drawings, the alteration of terrain application, and other relevant documentation supplied by the applicant and/or the town. Preparing a written evaluation of the review with respect to compliance with town standards and the local land use ordinance. If appropriate and requested, they will also attend a meeting with town staff to discuss the findings. The engineering fees would be assessed in a time charge plus expenses basis in accordance with the master engineering and services agreement. This specific referral is anticipated to require costs of between \$2,500 and \$4,000, depending on specific conclusions and issues that they run into. Anything that exceeds \$4,000 would require an additional approval. Mr. Burdin stated that he and Ms. L. Smith would recommend a peer review, simply because they don't have the expertise to corroborate the findings that are in the stormwater plan, and in the interest of giving every board member an equal standing of information, and official peer review report would help with that. The applicant has asked if there was an option to limit the certain aspects of the review or put a lower cap than \$4,000 on the proposed review, but he stated that he'd be concerned about the budget determining the extent to which they review for compliance, rather than the merits of the project itself. The procedure for this going forward is that they would ask the board to make a motion to send this out for peer review. A

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discussion of the motion based upon the merits, the information supplied by the staff and the applicant would determine whether or not this is sent out.

Ms. B. Smith made a motion to require a peer review. Mr. Kreider seconded for discussion.

Mr. McCaffrey stated that he felt it was a lot of money, but much of what CMA would bring back to them, they have in front of them now. He feels that Mr. Aleva's presentation is enough to satisfy the board based on the fact the Mr. Aleva is a certified engineer. He also takes into account that they are getting a better treatment process than what the ordinance asks for. He stated that he sees a certain overkill by having the peer review.

Ms. L. Smith stated that they have the peer review because neither the staff or the board have that level of expertise. As far as duplication is concerned, and the fact that Mr. Aleva is a civil engineer goes, he works for his client. When the board tasks CMA to do a peer review, they are working for the town. It has been typical practice of the planning board on projects that have this type of system and have stormwater designed to have a peer review so the board can see if there are any differences or not. It's not to question Mr. Aleva's ability, in fact, many times the two engineers will work together. But she would caution the board against picking and choosing who gets a peer review. Either you should be consistent and do them whenever you have this type of stormwater management on a project. AOT being part of this does not answer that part that is specific to the Town of Northwood. As far as what they said they are doing, the engineer specifically said until they get into it and doing the review, they cannot give an exact dollar amount, they will only bill on the hours that they have. Again, one of the important things is that the board is consistent, it reflects on the integrity of the board.

Mr. Aleva stated that he wholeheartedly agrees that a peer review makes sense for boards to be able to make sure that the design engineer is doing their job and making the right assumptions.

Mr. Kreider asked if the state reviews the calculations the same way CMA would review them. Mr. Aleva stated that the state has a similar review process. The state regulations are almost identical to the Northwood regulations.

Chair Strobel stated that the real question was is the board willing to accept one of two things. Either that the applicant reviews of the difference between the state standards and the Northwood standards are minor, and that Mr.

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Aleva's statement that he meets the state regulations is enough to meet the vast majority of the town's regulations.

Ms. L. Smith read a memo from CMA dated April 4, 2017:

Northwood site plan review regulations in section 9 include a series of design and performance standards for stormwater drainage. These are rather comprehensive and address flow, volume, water quality, stormwater treatment, ground water recharge, operation and maintenance and other aspects of stormwater management. The project also has applied to the NHDES for an alteration of terrain permit. That permit addresses stormwater and erosion control. The applicant's position is that the town should rely on NHDES review for compliance with the local ordinance provisions and that the entire section 9D not apply and have requested a waiver of that section. The applicant has evaluated some flow and volume scenarios that are not included in the NHDES and concluded that performance will meet the town's ordinance. While there is a fair amount of overlap in the NHDES AOT permit requirement and the town ordinance, they are not entirely coincident. NHDES's perspective for issuing a permit is somewhat different from the town's. The criteria for issuing a waiver is specified in section 10, a fair reading of these criteria indicate that they are not met particularly criteria B, C, and D. We understand that arguments relating to a separate issue regarding the amount of parking provided were used in these, and not related to stormwater management. We suggest that the design and performance be reviewed on behalf of the town, including the design documentation. We anticipate that the design and well documented but the town's perspective will be specifically maintained and compliance with ordinance also would remain consistent. This could be primarily with respect to the stormwater design, or could also include general compliance with other provisions.

Mr. Aleva stated that the memo Ms. L. Smith read was in reference to the waiver request that didn't have any technical information attached to it. Subsequent to that is when they submitted the memo indicating their compliance with the town that was dated May 18. Their thought process is that the review standards are very close, and they indicated in the memo how they comply with the town and their concern is the double review process. If one entity wants revision that the NHDES may not want, how do they handle that? With all due respect, it's the DES that ultimately trumps everybody.

Chair Strobel stated that his concern is that he doesn't know what the difference is between town and DES requirements. He has to take Mr. Aleva's word on it.

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Mr. Aleva read from the memo sent on May 18, 2017

The DES requirements are similar to the Town of Northwood drainage requirements, with the exception the Northwood regulation state the post-development flows off site for the two-year event must be less than or equal to either 50% of the predevelopment 2-year event flows or the predevelopment 1 year flow. This requirement has also been met with the proposed design, but was not reported in the alteration of terrain application. The requirements of the Northwood Site Plan Regulations Section V II D with regard to the stormwater flows are listed below, with calculated values indicating how they are met by design.

Mr. Aleva read the calculated values to the board. He stated the two-year event is the only area where they do not meet the town ordinance, but they meet it in a way that they can reduce the volumes. These numbers are what they submitted to the state as well.

Selectman Wolf asked when the last time they sent stormwater drainage for peer review. Ms. L Smith stated that they typically do it when they have larger projects that have large parking lots. Family Dollar, Northeast Credit and Hannaford are the most recent. Ms. L. Smith stated the she was obligated to provide a recommendation based on their regulations. The board is free to decide however they want to. Chair Strobel stated that he felt that they are essentially tasked to decide that everything equals out. What he is struggling with is whether the town's regulations meet the states regulations. What he is leaning towards is a statement from CMA doing a comparison of the AOT regulations to the town's. Ms. L. Smith stated that he can't just look at part of the project, he'd have to look at the entire project in order to determine the differences. Ms. L. Smith stated that the ordinances that are in place now were thoroughly reviewed by the town engineer and the planning board in previous years. Some of it is more restrictive than the states, but that's not because they are out of touch with the state, it was all reviewed and voted on and public hearings were held on it. If this board feels that they want to do a mirror image of the AOT, then they need to go back and reduce the regulations. She stated that it was up to the board and they could decide that they were comfortable with what the applicant has presented. Mr. Burdin stated that the applicant does have the right to request a different consultant. If he feels that CMA is charging more than another firm, then he is welcome to find another firm. Chair Strobel stated that, as Mr. Aleva pointed out, if the engineers come back with something that needed to be changed that the state doesn't agree with,

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there are three hats in the ring and the project would be delayed. But, ultimately the state trumps all.

Mr. Burdin stated that if the motion on the table is denied, then they would go back to the default which is the board determining compliance without any sort of peer review. If the board decides not to send this out for peer review, then staff's recommendation would be that any approval be conditional on obtaining the alteration of terrain permit.

Ms. B. Smith moved the question. Motion denied 0/7.

Ms. B. Smith made a motion to allow an extension for case 17-01 to the June 22, 2017. Mr. McCaffrey seconded. Motion carried 7/0.

Ms. L. Smith stated that Dave Docko was present in order to update the board on his conditionally approved plan. Last month she had a discussion with CMA. They inspected the detention pond and presented a revised bond that took the numbers out for the work that was completed. There has been some concern by the Selectmen and the Planning Board that they still haven't received the security on the conditional approval. As of next Thursday (June 1) it will be one year from the date of the approval. Since she still hasn't received any indication of when the security would be received, she wanted Mr. Docko to speak to the board. She cautioned the board that the only allowed discussion was timeframe for the bond. Mr. Docko stated that he received a letter today from the insurance company that stated that they were willing to provide a surety of \$106,000, not the total of \$211,000. They stated that the bonds were difficult to support because they were insuring the future and require very strong financials as a result. They stated that they hoped the town would accept \$106,000 or give him a few more weeks to find another solution.

Ms. L. Smith stated that the board had two options. They could revoke the site plan and order a cease and desist for the excavation portion for what is approved, he can continue with the retail portion. They can request that he come in June and reapply and change the conditions of his site plan that was approved. But that was approved back on May 31, 2016 with those specific conditions. You can't change them without him reapplying and changing and asking for a different outcome. One of the other conditions of the site plan that was approved last May was that the detention pond was to be put in by December 31, 2016. The bond should have come in before then, but the requirement of 12/31 wasn't complete so the insurance company knew that they were already out of compliance. The insurance company didn't want to get involved because they knew the town could come after the bond on January 1.

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Mr. Docko worked with the town and finally completed the pond in May, the engineers inspected it and took that amount of money off of the bond, bringing the amount to \$211,000. The other option is that Mr. Docko can come back in June and ask for a reconsideration on the bonding. Ms. L. Smith stated that Mr. Docko has been operating without a valid site plan or excavation permit for one year. Mr. Burdin stated that if a citizen filed a report, the code enforcement officer would be obligated to investigate, so Mr. Docko runs that risk. Ms. L. Smith stated that her intent was to have Mr. Docko come in and discuss his options with the board. He does have the option to come back and do a compliance of conditions and address on particular condition, and if all other conditions are met and work with the board, it will open the case back up again, but while it's alive then it is in process. If they make any changes to the conditions, it would need to happen under a public hearing. Mr. Burdin stated that the board could revoke the approval, which would require a public hearing. Chair Strobel stated that they could decide tonight to put revocation on the agenda for June. He asked if Mr. Docko were to reapply, what would his status be right now? Mr. Burdin stated that the only way the code enforcement issue would be resolved would be if there were a signed plan on file. So, from the Planning Board's perspective, if the goal is to get him compliant with a site plan as soon as possible, that would mean they would have to reconsider the conditions and think about what might be another way to frame things in order to expedite the process. Chair Strobel asked if they could set the agenda for June 22 to discuss revocation, would that preclude the reapplication for rehearing of conditions. Mr. Burdin stated that it doesn't. If he applies to amend the existing application, they should make sure that it was higher on the agenda than revoking the application. Since the application deadline is the first of the month, there is a bit of a time crunch. However, initiating the discussion doesn't mean that they have to act on it. If by next month's meeting Mr. Docko has an intent to file to amend the site plan by July 1, at that point the board could consider tabling the revocation until that was in hand. Chair Strobel stated that they would put the discussion on the agenda for June 22. He stated that Mr. Docko is now on notice that the board would be amenable to tabling that if he has a request to rehear the conditions of the original site plan in place and get everything to the town by July 1, for discussion during the month of July. That gives him a month to discuss any changes with the engineers or pursue the surety.

Mr. McCaffrey made a motion to revoke Mr. Docko's site plan approval. Ms. B. Smith seconded. Motion carried 6/0/1. Mr. Kreider abstained.

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Update on CIP and the Master Plan

Ms. L. Smith stated that she received an email from Mr. Gunter stating that he has three chapters done on the Master Plan, and he's collected all of the departments CIP forms.

Mr. McCaffrey made a motion to adjourn at 9:02 PM. Ms. B. Smith seconded. Motion carried 7/0.

Respectfully Submitted,

Susan Austin, Land Use Secretary.

Official