

DRAFT Minutes of the Peterborough Conservation Commission
ZOOM Meeting
February 18, 2021, 6:30 p.m.

Present: Jo Anne Carr, Matt Lundsted, John Patterson, Francie Von Mertens, Robert Wood; Select Board Liaison Tyler Ward; Town Planner Danica Melone

Hillside Self-Storage site plan application, Route 202S (Han-Sul Sandpit property)

Town Planner Danica Melone requested Conservation Commission comment regarding wetlands on the property, and restoration/revegetation of the excavated slope as required by state RSA and a deeded slope easement that allows slope encroachment on an abutting property. The town holds a conservation easement on that abutting property, location of Long Hill Estates condominiums.

The slope easement predates the conservation easement.

Wetland. Matt Lundsted stated that the wetland at the front of the property appears to be too small to trigger town jurisdiction through the Wetland Protection Overland Zone (quarter-acre threshold). And further that the submitted engineering plans indicate no impact to the wetland. The state has jurisdiction over all wetlands, no matter the size.

Members noted that owing to the size of the storage-shed project impacts and the change in use, an Alteration of Terrain permit from the state will be required. AOT permitting assesses stormwater / water table / floodplain issues thoroughly.

Slope reclamation. Lundsted said that NHDES has standard BMPs for gravel pit reclamation ("It's a pretty standard process"), as does the state RSA 155-E:5, cited in the slope easement language as follows:

"Also conveying to the grantees [sandpit owners], their heirs and assigns, an easement and right to enter upon other land of the grantor located northerly of the premises described in Schedule A for the purpose of grading and sloping same over an area sufficient to allow the grantees to comply with the requirements of Peterborough Planning Board relative to the said restoration of the premises described in Schedule A pursuant to the provisions of RSA 155-E:5 after consultation with the Superintendent of Public Works of the town of Peterborough."

Registry of Deeds Bk3224; Pg22 / 1984 PIDC to Hanson and Sullivan (Han-Sul, Inc., current sandpit owners)

By RSA-E:5 slope reclamation is to have been completed by one year after excavation ceases. The property went on the market two years ago, suggesting excavation has ceased and the property is in noncompliance.

[NOTE: After the meeting ConCom learned that sandpit owners file an annual Notice of Intent to Excavate with the state, most recently in April, 2020.]

Jo Anne Carr recommended that a Certificate of Occupancy not be granted the storage sheds until slope stabilization through revegetation following RSA 155-E:5(I) has been confirmed. State and town regulations require a restoration plan be submitted to the Planning Board and Conservation Commission.

There was agreement to recommend that a third-party inspection a year after reclamation plantings (grasses and seedlings) be required, along with a performance bond in the event further stabilization is indicated by that inspection.

Members cited the long history of Conservation Commission and Long Hill Estates condo association concerns over reclamation of the slope that encroaches deep into the condo property, a property for which the town holds a conservation easement intended to conserve natural resources.

Matt Lundsted will draft a note to Danica Melone with ConCom recommendations.

Equestrian Village Route 136/Burke Road Conceptual Plan under Open Space Residential Development town code

Members agreed again that the Conservation Commission should be included early on for any application under the town's Open Space Residential Development code, given its purpose to site lots to minimize impacts to natural resources like wetlands, shoreland, intact – not fragmented – forest blocks, open field, stonewalls, and the like.

Town Planner Melone confirmed that there was no conversation between the town's planning department and the applicant before the conceptual plan was submitted for Planning Board consideration.

The Equestrian Village's uniformity of lots in size and placement around three loops, resembling "cookie-cutter development," ideally is avoided when the land's features help to determine varying lot sizes and their placement.

Robert Wood expressed concerns over groundwater contamination given the apparent density of septic on each of the 46 proposed lots. Size of the lots was not indicated on the conceptual plan, however Mr. Chad Brannon, project engineer, mentioned quarter-acre lots to the Planning Board as preferred.

Although posted as a public hearing for the conceptual plan, the Planning Board did not accept public comment. Jo Anne Carr persisted as representing the Conservation Commission and was recognized. She advocated that Mr. Brannon meet with the ConCom before plans are further developed. Francie Von Mertens similarly requested she be recognized, and questioned whether the Equestrian Village, as it was not requesting bonus points under OSRD, was appropriate under the OSRD v. a subdivision seeking lot-size waivers. Mr. Brannon stated it clearly was appropriate under the OSRD.

Town Planner Danica Melone will inform Mr. Brannon that a meeting with the ConCom is desired.

Walden Eco-Village subdivision under the town's Open Space Residential Development code

Commission members discussed whether further comment is called for at the Planning Board's March 15 meeting scheduled to consider that application as the only agenda item. The ConCom's December 10 comment to the Planning Board made a strong case for the OSRD code's "in no case" shall lots be smaller than three-quarter acre; and "in no case" shall density greater than 25% be allowed.

Town counsel recently gave his opinion that the Planning Board has flexibility to ignore the "in no case" restrictions.

Jo Anne Carr questioned that opinion, pointing out that the OSRD was not drafted under Innovative Land Use guidelines that do allow flexibility. She made a distinction between guidelines and code requirements, noting also that the OSRD is in the Performance Standard section.

All agreed that if the Planning Board waives lot sizes to allow quarter-acre lots, a willingness suggested from the project's conceptual plan period, a solid list of reasons supporting such a divergence from the "in no case" restriction is needed. The proverbial "slippery slope" was again mentioned, given the example of the Equestrian Village likely applying for quarter-acre lots under the OSRD.

Von Mertens said that the Planning Board chair had requested at the end of the Board's February 1 meeting that Mr. Brannon draw up plans showing three-quarter-acre lots. Members questioned whether one "cookie-cutter," one-size-for-all approach, switched to another was in keeping with open space planning.

Jo Anne Carr said that respecting natural features and resources on a property naturally leads to lots of different sizes. She suggested that quarter-acre lots is not the real issue; ALL lots that size (and some smaller than quarter-acre as indicated on the plans) is the issue. A mix of lot sizes drawn to respect natural features, including some larger than three-quarter acre and some quarter-acre, honors open-space zoning.

Members respect Carr's credentials as a planner for Jaffrey, and agreed.

They also agreed that it is problematic to accept a subdivision application when there are several outstanding issues identified – existing units in the Wetlands Protection Overlay Zone and roadways crossing wetlands without Zoning Board approval, included, as well likely court cases involving the applicant and the town.

Von Mertens will draft comment capturing the main new points discussed, and confirm that the town's wetland code with a 50-foot buffer existed before the three structures were built in the buffer. An applicant's representative questioned that.

As yet, the size of the wetland has not been given by applicant's representatives.

Conservation Easement monitoring 2021

All agreed with enthusiasm to hire Robert Wood to monitor easements following protocol set up when Richard Pendleton was hired for three years. Number of easements to be determined, but Von Mertens suggested a dozen would help bring ConCom up to compliance with their monitoring duties. Very few were monitored in 2020.