

Hopedale Conservation Commission  
Meeting Minutes  
May 20, 2022

Call to Order: 3:02 pm by Becca Solomon  
Meeting held virtually via Zoom.

Attendees on Zoom:

Becca Solomon, Dave Guglielmi.

William (Bill) Buckley, Owner, Developer, 75 Plain Street; Doug Hartnett, Principal, Highpoint Engineering.

**Public Hearing – Notice of Intent  
Discussion of Conditions**

75 Plain Street, former Rosenfeld property. Applicant needs Order of Conditions for redevelopment of Rosenfeld Concrete site into a warehouse facility.

Doug Hartnett: Joining me is Bill Buckley, Director at GFI, the applicant. We had our continued public hearing with the Zoning Board of Appeals on Wednesday evening May 18. We presented the merits of the project with respect to the Groundwater Protection District. The zoning board continued the hearing pending their review of the project from the Planning Board. They hadn't had an opportunity to review the conditional approval and I will note that the Planning Board did issue the final decision for the site plan review and that was provided to the Zoning Board right before the meeting. They took testimony from the public and all the other consultants' reports and just taking a couple of weeks to review that. And then you have our next meeting scheduled for June 15. That's the continued meeting date for Zoning Board of Appeals.

Becca: With that stated, as we have said multiple times, we do not close a public hearing until we have heard both from Planning and Zoning. And we do want to hear what Zoning has to say in regards to the groundwater in the interest of the Wetlands Protection Act. We can certainly go over the conditions. I have close to final language on everything except for the findings. That's going to take more time to summarize. Most of these conditions in the beginning we went over at the last meeting. The language has not changed so I will skip over those with the exception of the highlighted ones.

There was one condition that Dave had recommended. Condition 5: If existing conditions on site are found to be contrary to those submitted as part of the Notice of Intent in areas jurisdictional to the Commission, the Commission will have the right to add additional conditions or require certain action to address the change or changes.

Dave: Because this project is obviously a large one, and the site is an old industrial site, circumstances may arise during the course of construction that no one has anticipated, or there

may be a weather event which would cause us and the developers to recommend changes to the mitigation factors. I would like an easy way in which we will have those changes made on site so as not to cause any delay. That's what I meant by that, by that clause. That in the event of unanticipated circumstances for whatever they may be during the course of construction, that the Commission would reserve the right to incorporate additional conditions that we would feel necessary. I just want to get public feedback from the applicants. Does that make any sense? I'm trying to find an easy way to expedite a change if need be to benefit both parties.

Becca: So just to clarify, in a normal situation, if something happens that was unexpected and it's affecting a jurisdictional area, for example, if you find a pipe that wasn't supposed to be there, and it drains into a resource area and maybe sediment is going through it. That's something that normally is remedied by an enforcement order that needs to be voted on by a Commission meeting. I think the point of your condition would be that we can require that without necessarily needing to issue an Enforcement Order or an Emergency Certification in most situations. Is that correct?

Dave: Exactly. If we get an extreme weather event that warrants additional conditions, because of the change in circumstances, we'd want an easier way to do this to benefit everyone.

Doug Hartnett: Typically the way we're executing projects like this is two methods by which we will notify the Commission if there's any unforeseen conditions, as David has astutely pointed out because it does happen if it affects design. If there's a design change that needs to occur in relationship to an unforeseen condition, we always reach out to the agent or the representative and say, "Okay, we have a change." Can the change be done as a field change? As long as we've notified the Commission of any changes to the design. Say there's a drain pipe that has to be relocated that will be picked up on the as-built. Or if the change was substantial enough that it affects the interests of the Act and varies widely from what was previously conditioned on the Order of Conditions, then we would have to apply for an amendment to the Order of Conditions.

Those are the two methods by which we would normally operate with the conditions. That's language that we see typically from other orders that we receive. Regarding Dave's point on the discharge, if you have a discharge from a weather storm event that was extremely powerful, our obligations for erosion control inspections would notify you through our standard reporting requirements. And then what we had done as erosion control to rectify or mitigate that situation. The storm event comes into the maintenance of the erosion controls under the Stormwater Pollution Prevention Plan and the EPA permit. Design changes due to unforeseen conditions. fall a little bit different track that has to do with we had to do something different from the approved design, then we would approach you whether that can be taken care of as a field change or if it warrants an amendment.

Dave: That will work, if the change is not that significant.

Becca: Other towns have either a minor modification, minor amendments, or minor plan changes as submitted to the Commission and we will take a vote on whether we deem it to be a minor change or a significant change requiring guidance from DEP. Normally it has to be within the original limit of work. It can't be increasing the disturbance, things like that.

Dave: But the procedure for a minor change application would be different. Correct?

Becca: Technically Dave, under the Wetlands Protection, minor plan changes don't exist. It's more of a policy that the DEP and town commissions have follow up. Some actually have it within their local bylaws to make it legal. But the state law technically doesn't have a stipulation for minor plan change. It is only amended orders and any "minor plan change" is for scripter's errors, if you get the name wrong, or the map and parcel number wrong, that's a minor plan change under the Wetlands Protection Act.

Dave: In other words, an applicant, a homeowner says that I want to do this to my property. And the Commission will determine that it is such a minor activity that it doesn't alter the definitions of anything within the Act, and we would allow that to go on without a public hearing, without the necessity of filing a Notice of Intent. A limited project could be something else.

Becca: But legally, it should be an RDA where we say it's not jurisdictional. There are other towns that have something similar in their bylaw, minor buffer zone applications and the like, but that is only allowed under their bylaws.

William Buckley: I appreciate the commissioners' concern as I sense that it's all about trying to keep the project moving, and to keep it under construction, and it's going to be one of those things, that some of these changes will be subject to interpretation. I don't think we'd be able to write anything that's going to be all-inclusive there. I think the important thing for us is to be able to stay in touch with the Commission during construction and throughout the process. In my prior experience, some changes are so small that an inspector or commissioner might say, just make sure that's reflected on the as-built plan, depending if it's a slight deviation of a foot here or there. It's going to be about our construction team and our development team being in close communication with the Commission and with the inspectors that are that are assigned to the site.

Becca: With that in mind, Dave, if we change the condition language to say if any changes or alterations of plans occur due to unforeseen circumstances or different existing conditions, that

the Commission will be notified and they need to provide a minor plan change letter or request an amended order. Was that your goal here?

Dave: Exactly. I like to include language such as “minor field change”.

Becca: We get to the point of eventually doing a bylaw, which we need legal counsel for that to happen.

Doug Hartnett: Can I just make one suggestion in a different experience working in Lexington. They have the same kind of policy there, where we work with the agent if we find an unforeseen condition that results in a minor plan change. The agent makes the determination if it's a minor field change. If they feel it warrants consideration by the Commission, they ask us to come in and formally review the plan changes if they're more significant. And let the Commission make the determination whether it's a minor plan change or if it warrants an Amended Order. That's spelled out in the Wetlands Protection Act in terms of how you petition for a decision by the Commission for the Amended Order. It's got a second tier and that's missing here in the language.

Becca: I appreciate that and we are restricted because Hopedale does not have a conservation agent. We don't believe we'll be getting a conservation agent in the near future for budgeting reasons. We don't have somebody who can look over these field changes within a week and the commission to review it fully, because two people as a quorum would really have to have a public hearing for it. Otherwise, one person is making these decisions and that might not be communicated well. And we want to avoid that for legal reasons and liability. That's something that our Commission has to sort out that's not on the applicant, and we'll be making it clear in the language, but the reason there's a step missing, in other towns a conservation agent would review it and make a recommendation to the commissioners. If there's no other commentary on that condition, we'll move on.

I did put that language in Condition 4, stating that the Groundwater Protection Regulations issued by the Board of Health effective February 21, 2002, will be included as part of the Operations and Maintenance Plan. Any new or amended regulations by the Board of Health for groundwater protections shall be followed. If afterwards feel that needs clarification. You can certainly clarify that, as the operations and maintenance plans are renewed, updated, any new regulations would be included in it. Are there any comments or concerns on that condition?

Doug Hartnett: Not sure about the last sentence. The project obtains a building permit and the inspectional services make a determination that no other referrals for other board actions are required. To require the applicant to go back after the fact, what else regulations will potentially overburden the project? I think that last sentence needs to be removed. When we've done the project designed to date that you've been reviewing, we have done that design

in relationship to the regulations as they currently stand. This language suggests that if they're amended in some manner, that we will be obligated to follow any amendment after we get our building permit. I don't believe legally we can do that. Because the building permit was issued based on the regulations at the time. The project design can only be done in a manner that the applicable regulations are active while you're doing your design and going through your permanent review. It doesn't make sense to burden the project with something that you don't know about. So that's why it was requested that that last sentence get removed.

Becca: Okay, so we'll take that out then. Thank you. If there's no further comments, on that condition, in Condition 12. Construction Phase, lots for future trailer storage. Clarification has been employed in other language. Condition 13. Wetland Scientists will be employed at the expense of applicants, their heirs or assigns. The responsible party noted in the operation and maintenance plan will be on site for the wetland scientists to submit a written status report at the start of excavation of the replication area, and when plantings are completed. At the beginning and end of each growing season for a minimum of two seasons.

Condition 14. The proposed vegetative community as outlined on plan sheet (pending sheet number and narrative page). Any changes to the approved vegetative community, species density or plant and location must be approved by the Commission prior to work. At least 75% of the vegetative community within the replication area will be established at the end of two full growing seasons. This must be met prior to a Certificate of Compliance being requested. If 75% is not established at the end of two complete growing seasons, wetland scientists will provide a corrective plan of action to be implemented in the next growing season. Conservation approval which will be monitored for the conditions of this order as outlined. Condition 16. Replication Area. The replication area must meet or exceed the general performance standards. If these conditions are not met, the Commission may require measures necessary to achieve compliance.

William Buckley: I would like it made clear that the wetland scientist is to be on site only while the replication work is being done and not necessarily throughout construction.

Becca: All right. Thank you. We'll move on to the perpetual conditions. We did go over them in detail; the language on many of these has not changed. We added that as part of the Operations and Maintenance Plan and stormwater report. Condition 20, Stormwater BMPs and post-construction BMPs will be maintained in accordance with the written Operations and Maintenance Plan. Condition 21 Stormwater Maintenance Log kept maintained by the responsible party listed in the Operations and Maintenance Plan will be available upon request by the Conservation Commission or Mass. DEP. Condition 22. language has not changed. Condition 23. Responsibility of maintenance and repair detention basins and drainage systems should be that of the applicant, property owner, their heirs or assigns in accordance with the

Operations and Maintenance Plan. Condition 24. No landscape debris, manmade debris, or other materials will be dumped within any wetland resource areas. Condition 25. No further alteration will occur within the wetland resource areas, buffer zone, riverfront area or other resource areas without a permit from the Conservation Commission, which is just a general law required, but we do like to add it into our conditions just so it's in writing. Are there any issues with any of the perpetual continuing conditions?

Doug: I've got a comment on 23. After drainage systems I think that language should be shall not should. And on 25 I think it needs to be tied to the design plan because we have activities that are going on and proposed, including the cleanup of the debris, there'll be some cleanup going on and it's ambiguous, but they're going have to go out there hunting for all the debris that's in there. We just want to make sure that it's really in relationship to the intent of the design plans. Thank you.

Becca: I did change it to alteration beyond that approved in this order.

William Buckley: Would you envision any scenario, if it turns out that the Zoning Board decides to do a more in-depth review of some of the special permit criteria, that were they to extend this, is there any reason why we couldn't, at the risk of the applicants, close the hearing and issue the order?

Dave: I stopped predicting a long time ago, what other boards may or may not do. I think one of the things that's important is to be consistent and we've said from the beginning, that we will respect the process of all the town boards. They will do whatever they feel is necessary to complete their statutory requirements and their responsibilities. Let's see what happens with the next meeting and go from there. But I don't want to predict or try to foresee what another town board is going to do in the nature of their performance, what they believe is their due diligence they feel a need to go through.

William Buckley: And clearly it would be some risk of us that if there were changes made to require any modification, we would have to come back to the to the Commission. Just from a from a planning perspective, I was just curious how the Commission would feel about that. I think it's a good idea at this point. We're going to into June anyway.

Dave: We're talking just a couple of days between Zoning and our board's next meeting on the 21st. We're just talking about a couple of days and we have substantial agreement on the Order of Conditions. The bulk of the work has already been done.

Becca: We do want to hear what they have to say about groundwater at the very least and there is precedent from us in the past two years, at least, that we have waited for Planning and Zoning, even Board of Health to give approval, before we close hearings. The reason for that is

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this Commission cannot consider any new information once we close the public hearing. And if something comes up, even if it's not a change in plans, maybe it's something that we haven't considered. Maybe it's something new that's found, this Commission legally cannot consider it. And we want to make sure, at least for the groundwater, that we're under consent. We're crossing our T's and dotting our I's.

William Buckley: Fair enough.

The public hearing was continued to June 21 with the approval of the applicant.

The meeting adjourned at 343 pm. Next meeting is June 21, 2022 at 6 pm.

Agenda will be posted per standard posting requirements. Agenda will include call-in/Zoom meeting information.