

FALMOUTH PLANNING BOARD MEETING MINUTES
TUESDAY, APRIL 1, 2014, 6:30 P.M.
FALMOUTH TOWN HALL, COUNCIL CHAMBERS

MEMBERS PRESENT: Jay Chace (Chair), Rudy Israel, William Benzing, Christopher Hickey, Thomas McKeon (alternate)

MEMBERS ABSENT: Bernard Pender (Vice Chair)

STAFF PRESENT: Ethan Croce, Senior Planner

The meeting was called to order at 6:32 pm.

Tom McKeon was appointed as a voting member.

1. Approval of minutes from the March 4, 2014 Planning Board meeting.

Chris Hickey moved to approve the minutes; Tom McKeon seconded. Motion carried 5-0.

Administrative Action Items

2. Ridgewood Associates, LLC. – Falmouth Road – Request for subdivision and site plan amendment for Phase 2 of the Ridgewood Subdivision. Tax Sheet 310; Map-lot R04-026. Zoned OSRD.

Chris Hickey asked if staff had any concern with the permits that are yet to be issued. Ethan Croce said no, considering the *di minimus* nature of the changes. Issuance of those permits would be a condition of the approval. All the conditions of the approval in 2006 would still apply and carry forward.

Bill Benzing moved to approve the administrative item; Chris Hickey seconded. Motion carried 5-0.

Agenda Items

3. Unitil Service Corp. – Gray Road and Blackstrap Road – Request for Shoreland Zone approval to relocate a gas pipeline. Tax Sheets 110 and 190; Map-lots R06-065-001 and R06-092. Zoned Farm & Forest, RCZO, LR and RP (Shoreland).

Ethan Croce said applicable ordinances include Sections 5.34, 5.39, and 7 of the ZSPRO. He sent the Board a response memo from the applicant which answered questions staff had about the application. Staff was comfortable with the answers provided.

Trey Dykstra of Stantec identified an error on their plans; the text identifies 763 feet of temporary wetland disturbance, but the plans show 1430 feet. 1430 feet is the correct number. He explained that there are two underground utilities in the area of the turnpike. One is the Buckeye underground oil pipeline constructed in the 1940's, prior to the turnpike's construction in 1956-57. The Unitil gas line was constructed in 1968. The gas line follows the Buckeye pipeline to the river, where it turns to the west, goes into the river channel, and then rejoins the pipeline on the other side. This was done with a license by the Turnpike and allowed them to get the pipeline from the east to the west side without affecting the turnpike itself. The turnpike has asked Unitil to remove the pipeline from the river channel prior to September 1 when the Turnpike begins its work on the bridge. They have asked that the pipeline cross perpendicular to their right of way and that the pipeline be at least 20 feet away from their bridge. They determined that the best option to move the pipe is a horizontal directional drill under the river and the travel lanes. On the west side they will enter the area off the turnpike; this allows them to avoid disturbing a vernal pool in the area. On the east side they would come in off Trolly Farm Way. They are trying to limit their impacts, but will have some wetland impacts; they need the location on the east side for placement of drills, supplies, etc. They cannot conduct the required historical/archeological study until the

ground thaws. They have an approved sub-consultant for that work and are just waiting for thaw; they will try it in two weeks and hope to have the information back from him in early May.

Public comment period opened; no public comment.

Chris Hickey asked where they are proposing to use timber mats as opposed to geotextile. Mr. Dykstra identified where they would use timber mats near the river; those are good for wetland crossings and swampy areas. Geotextile with stone is better for the other areas.

Chris Hickey asked if there are any areas where they are not using mats to cross wetland. Mr. Dykstra said there is one wetland area that will have to be filled; they can't work around it and need to offload trucks in that area.

Chris Hickey asked if they would have to mat over the two pipelines; Mr. Dykstra said there would be some crossing detail of some kind over the pipelines to protect them.

Jeff Simmons agreed that mats are the way to go in most instances; he felt, in that one wetland area they have to fill, the stone would be easy to clear up with the geotextile under it. Generally speaking, these are not high-quality wetlands, since are at the toe of the slope along the turnpike.

Chris Hickey asked why they couldn't use mats in that area. Mr. Dykstra said they need to fill it 4-5 feet deep to bring it up to the level of the turnpike grade so they would still need to fill that to lay mats down. He clarified that the wetland that will be filled is in the drainage area of the highway.

Jay Chace asked if they would restore the area they are filling; Mr. Dykstra said that was correct. That fill would not remain.

Rudy Israel asked if Buckeye has approved their crossing of the pipeline. He thought they would have to have that approval prior to start of work. Mr. Dykstra said Buckeye is aware but they don't have their approval yet. They have to work that out with them.

Rudy Israel asked if they had all the necessary approvals from property owners, including the Land Trust.

John Davis of Unitil said Buckeye would have a representative there during construction to confirm that their pipeline is protected. Their attorney drafted an agreement with the Town Attorney and they have worked everything out regarding the Land Trust.

Tom McKeon asked about what kind of re-vegetation would be installed and if the agreement with the Land Trust addressed that. Mr. Dykstra said the Land Trust initially wanted it to grow back naturally; there is now a replanting plan in the agreement.

Tom McKeon asked about the restoration plan and how the Board makes this a condition. Ethan Croce said Unitil submitted a response memo and plan sheets that included a restoration plan. These documents become part of the approval.

Jay Chace asked if they have had any discussion with the Maine Historic Preservation Commission.

Mr. Simmons said they did a consultation with MHPC at the beginning of the project and it was identified as a potential hotspot. They retained a consultant that is approved by MHPC to do Phase 2 surveys. This is a requirement for Army Corps as well; they will not issue a permit until this issue is resolved.

The consensus of the Board was that they were in favor of the waiver on the road grade, in recognition of the temporary nature of the road and the type of vehicles that will be using the road. The Board wanted to limit the impact on the environment. Tom McKeon expressed concern with potential erosion of the road.

Mr. Dykstra said they have an erosion and sedimentation control plan; in areas of steep slope they will use crushed aggregate, which tends to lock into place and not erode.

Jay Chace asked what kind of guarantee they have that the restoration will be done and what kind of inspections would be done. Ethan Croce didn't know what inspections would be required by DEP but the Town Engineer would inspect for the Town.

Jamie Mason, Town Engineer, said that, despite the remote nature of the site, he was comfortable inspecting the site.

Chris Hickey asked about who would be inspecting the site during construction and whether there was a third-party inspector required.

Mr. Simmons said they would have someone inspecting the work. They have not filed their applications with the Army Corp or the State, so they don't know what will be required. This is a small project by DEP standards. They would be an inspector on site to review erosion controls, etc.

Chris Hickey asked the duration of the work. Mr. Dykstra said they have to build the roads, prep the site, do the actual drill and then restore the site. They estimate 6 weeks to do the work.

Chris Hickey asked if they would have enough time to finish if they start on July 15. Mr. Dykstra agreed that it would be tight. The old pipe has to be offline by September 1, but they can do the restoration and clean up work after that date.

Chris Hickey asked how Unitil would acquire right, title and interest for the new alignment. Currently there is a 20 foot easement for the existing line; he asked if there would be a new easement.

Mr. Davis said there would be a new easement for the new line location that stipulates that no structures can be located above ground in that area. The whole line will be underground.

Chris Hickey said the conservation easement language prohibits a new utility on the property. Mr. Davis agreed, but said they would be allowed to install a new gas line within the existing easement, since it predates the conservation easement. Any replacement that would be done would be within the easement itself.

Chris Hickey pointed out that a section of the new pipeline is outside of it. Mr. Davis said it was determined that it is not materially detracting. That section of the pipe will be underground bore and will cause no surface disturbance.

Chris Hickey said this is a new easement and a new area. Mr. Davis agreed and said the Land Trust has agreed to that new easement. They will give up the old easement in exchange for the new location.

Chris Hickey struggled to understand how they are allowed to do this with the easement.

Ethan Croce clarified that Unitil's attorney submitted an opinion letter indicating that they believe they have right, title and interest to conduct these activities, including relocating the pipeline outside the existing easement area and that they are not required to do anything else. Town Attorney Bill Plouffe, working on behalf of the Town and not the Land Trust, felt it was not crystal clear and that any approval should be conditioned upon a redrafting of the conservation easement, including a new easement location for the relocated gas line. He felt this could be done without requiring any other approvals, such as the Attorney General's, given that it is adjacent to an existing line and the land is being restored to its existing condition. The statute allows these agreements to be redrafted as long as it does not materially detract from the land's natural state. Attorney Plouffe is comfortable proceeding with clarification of the easement language if the Board grants a conditional approval.

Jay Chace summarized that the project still needs approvals from MHPC, Army Corps, and DEP, and amendment of the easement language. He asked if the Army Corps application has been submitted.

Mr. Simmons said it will be submitted this week; they can't go through the entire review process until the archeological survey is back. If that comes in without any resources identified, they might do a Category

1 approval and turn it over in 30 days or less. If resources are found it might be a Category 2 review and would take a little longer. The DEP review time is 45 days; it is a Tier 1 review.

Jay Chace asked about the July 15 start date. Mr. Dykstra said that is a hard date, in order to get everything done on time.

Jay Chace felt the archeological report might change some things. He would rather see some of these items further along in the process before they issue an approval. He suggested the application come back for an administrative approval once they have the permits in hand.

Mr. Simmons said they can't move forward without those permits anyway. The archeological survey is required by federal law. He felt it was unlikely that they would find anything during the archeological survey. They have met with all the agencies and they didn't raise any significant concerns about it.

Jay Chace said there is some question regarding the third-party inspections.

Bill Benzing wondered if staff was comfortable reviewing the outstanding items if they issued a conditional approval. Ethan Croce pointed out that, if the archeological report or the regulatory agencies required material changes to the project, it would have to come back to the Board anyway.

Tom McKeon would like the plans to specifically list how they plan to restore the site.

The Board discussed how best to proceed with the application, either a issuing a conditional approval or asking the applicant to come back for an administrative approval. The items that need to be resolved are the archeological review, the Army Corps permit submitted, the DEP permit submitted, a final draft of the conservation easement, and the answer on third party inspections.

Rudy Israel understood that the engineer that submits the application makes sure that inspections take place and that conditions are met.

Mr. Simmons said the protections are there; any problems on the site are a violation and Unitil would be responsible. This is a small project with minimal impact; given the scale of the project he thought the Army Corps and DEP are not too concerned.

Jay Chace said that was why he wanted the answer about third party inspectors – if Army Corps and DEP are not that concerned, the Town might want to look into requiring inspections. Mr. Simmons expected that post-construction monitoring would be required, since they are restoring it. The Army Corps typically goes out 5 years.

Tom McKeon asked if they are drafting a new easement that will be recorded. Mr. Davis said they are, and it will include the language that describes the location.

Chris Hickey moved to table the application to the next meeting; Tom McKeon seconded. Motion carried 5-0.

Other Business

Jay Chace suggested scheduling a Board workshop, starting prior to the May meeting to discuss the ordinance, comprehensive plan, etc.

The meeting adjourned at 8:00 pm.

Respectfully submitted,

Melissa Tryon
Recording Secretary