



Halifax Zoning Board of Appeals

Meeting Minutes

January 13, 2021

The Halifax Zoning Board of Appeals held a special public hearing on Wednesday, January 13, 2021 via Zoom (hosted by Town Administrator Charlie Seelig) with all Board members in attendance: Chairman Robert Gaynor, Vice Chairman Kozhaya Nessralla, Clerk Peter Parcellin, Member Robert Durgin, Member Gerald Joy and Alternate Member Dan Borsari.

Chairman Gaynor calls the meeting to order at 7:04pm and reprises the Zoom audience that this public hearing/meeting is being recorded. He also explains the procedure and the protocol at the public hearings.

Appointment:

7:00pm – Petition #920 – Country Club Estates 40B – Hearing for Comprehensive Permit

Present: Town Administrator Charlie Seelig, Paul Cusson of Delphic Associates (consultant for R&J LLC/John Peck/Country Club Estates), Rebecca Baptista (Silva Engineering), Bill Scully (Green International), Attorney Amy Kwesell - Land Use Counsel (K-P Law), Pat Brennan (Amory Engineers), Joseph Peznola (Hancock Associates / Consultant for ZBA), Alan Dias (representing Halifax Board of Health and Planning Board)

Traffic Study is discussed. Updated traffic study submitted by Bill Scully of Green International. Cusson explains that an agreement has been reached by Amory and Green International for the lineup of intersection. Brennan reports that Gillon Associates (subcontractor) reviewed traffic study and goes over Gillon's recommendations (referring to Gillon's report dated 1/13/21). Driveway from CC Estates is opposite Stop & Shop driveway but does not line up. Gillon's recommendation was to stagger the timing on the two approaches. Staggered timing had no adverse impact on the operation of the intersection nor the nearby signalized intersections. Scully goes over Green International's traffic findings and points out items that Gillon concurred with. Specifically talks about the staggered timing. Trying not to re-do much although know some construction will be needed. Will split the phasing of green light signals to address the offset. Levels of service will stay the same with or without this development. Design changes will be needed in terms of signal timing, modification of timing and construction changes. Will finalize all timing plans during the design of the project. Residents will have ADA ramp provided along with crosswalk. Site access will be part of the high visibility condition that is already present in the area.

Parcellin voices his concerns. Refers to daily trip destinations in Green International's letter. The impact of this development along with the current 106 traffic. Parcellin asks that since the roads are not going to be aligned, the town will have to wait 32 extra times a day for traffic lights. Scully responds that there will already be a significant cost to do what they need to do but aligning will triple the cost. There is less than 1% increase of volume impact due to trips. The volume of exits for CC Estates is estimated very low. Parcellin is more concerned about wait time, not so much volume. Scully responds that aligning the drives would not change anything. Parcellin responds that it would avoid an extra traffic light. Scully states his opinion that split phasing is safer than aligning the roads. Gaynor asks Scully if speed limit changes will affect this concept. Borsari states that it looks like there's room to line up the roads and asks why it would be so expensive and would like to know the extra cost in aligning. Scully responds that lining it up needing wheelchair ramps, sidewalk roundings; they are pretty close to the control box and utility poles. Moving the utility poles would be costly and could be two or three poles that would require agreement and alignment. The arm pole would have to be modified – moved with new foundation and new pole. If the offset works, new signal posts, signal housing and detection will be needed for CC Estates site drive. A post will need to be modified facing the Stop & Shop drive. Aligning doesn't become a practical solution when the item can be addressed with signal times. Kwesell asks if there is a cost for the alignment versus the additional light. Cusson responds that they have looked at the numbers, but they are guestimates at this time. The current proposal of phasing is anywhere from \$75,000 - \$100,000. The cost to align the roads could be \$250,000 - \$300,000. Kwesell states that guestimates can't prove that the project is more economical. States that Parcellin and Borsari's concerns are important as there will be an extra traffic light and it's a tough road already. Parcellin would like to see a real estimate. Brennan states that the traffic engineers agreed that it would be safest to have the split timing. Brennan doesn't have specific numbers for cost either, but he would say they were in the ballpark as it would be a fair amount of work to make the driveways line up. Even lined up, as Scully stated, it would be safer to still do the split timing. Brennan doesn't believe there would need to be much modification of the three-signal stretch (route 58/106).

Site Layout is discussed. Cusson discusses the issue of the septic system with easement which Cusson believes gave them site control. Kwesell responds with a reference to Title 5. "Locating a system component beyond a property line of the facility whether

pursuant to an easement or otherwise requires a variance (310 CMR 15.410)” which means one cannot claim site control because a variance is required from the Board of Health. Baptista speaks to the petition. Baptista has made changes to the cul-de-sac size for fire apparatus and removed two units which puts the primary area (septic) on site rather than off-site, as it once was. Has no opinion on easement/site control and would need to refer to attorney. Reserve could also be moved on-site. Can avoid conflict of site control. With more maneuvering, she would be able to put both the primary and secondary on site. Baptista states that the primary is 20-plus feet from the foundation, as per code. Went with Presby System which provides additional treatment and doesn’t require pressure dosing. Baptista confirms that there are annual inspections to the Presby System and that this would be a condominium association. Total of 28 units, 7 affordable – 25% of whatever the final unit total is approved, per Cusson.

Dias states that both primary and secondary components of septic system need to be on site. The entire septic system must be fully Title 5 compliant and primary and reserve areas are components of septic system and must be on site. Baptista would move some underground utilities (parking area) to move secondary component (Presby System) underground. These units have one single septic tank. The original plan showed going through affluent pump and then to Presby unit. Will need a 7,000- or 8,000-gallon storage capacity tank somewhere on this facility in the event of a power outage based on 100 gallons/day/bedroom at 1/3 capacity. Will need backup generator power in the event of any extended power outage. Needs more design work. Baptista agrees with tank and can look at everything in more detail. Will have either full septic design and/or schematics for next meeting. Cusson states that they are presently trying to work with lender on Halifax Country Club to see if they can get a release from mortgage to allow a certain part of the land to be relieved from mortgage and made part of this development.

Wetland lines are discussed in respect to abutting property of O’Reilly’s Auto Parts. Dias speaks about topography concerns. Noticed wetland line determined in 2015 was dramatically different from 2018 plan from O’Reilly’s. This plan (CC Estates) shows a drainage basin in the O’Reilly’s wetland area. Not clear how wetland was determined on this plan compared to the 2018 plan. Another of Dias’ concerns looking at drainage and percolation tests is there is a substantial amount of storm water going through this project. Good job on off site basins on Country Club property. Because all these basins are in silt loam there’s no soil at all in any of the observation test kits, but these things will hold water every month with the exception of maybe June, July and part of August. Their outlet for all this affluent is into a pond on the Country Club property which this applicant has no control over. If this pond fills up, there will be no place for storm water to go except to back up from the four bays into the basins which could be problematic. Location of basin is discussed on plan. The wetlands flag shows a 120-foot difference on the CC Estates plan. On the O’Reilly’s plan that 120 feet of area is shown as wetlands. Baptista responds to Dias’ concerns stating CC Estates’ ORAD was approved in 2015 and extended in 2018 which still makes their wetland line valid. There was an overlap of timing where O’Reilly’s came in and had the line reflagged and wetland lines change over time, but CC Estates went with the line they were approved in 2015. Baptista doesn’t have an explanation for the 120-foot discrepancy but confirms that their wetland line is still valid. O’Reilly’s wetland line was established in 2018, per Dias.

Dias adds that through further research, two plans recorded at the registry of deeds were clearly marked that a particular area was not buildable. Reference numbers for these plans (in Planning Board files) are from Plan Book 57 Page 877. This plan was approved by the Planning Board in 2013 and indicates that a portion of Lot 6A had an approved ANRAD from Conservation which would have expired but for some reason the area was an agreed area of no-build zone. Dias has no opinion as to why, this research was just found. He can only assume that this parcel lacks adequate frontage which brings Dias to try and ascertain where CC Estates has the necessary frontage. More research is needed as to why this is on the plan.

Kwesell responds that the ORAD could be valid but could be that when O’Reilly’s came in nobody caught that wetlands had changed. There is a provision in Wetlands Protection Act that if site plans change there could be grounds for a modification or revocation of the permit. Regarding the unbuildable area of the plan that is concerning Dias, Kwesell explains that because they are a 40B they don’t necessarily need the adequate frontage on this road that any other development would need because they can ask for a waiver from frontage under the Zoning bylaw. Regarding the no build zone on a recorded plan at the registry - it appears that this could be a valid title issue.

Peznola responds that the restriction shown on a plan does not necessarily create a prohibition on building. During the A&R process there might be something about the lot, a frontage question for example, that could make the lot not buildable. The Planning Board can sometimes ask that certain notes be added to a plan to reflect those existing geometric peculiarities of a particular lot. Here, there seems to be an area referring to a wetland delineation from 2006. There’s really no way to know, per Peznola. The mere noting on a recorded plan doesn’t create a legally binding prohibition against building. There would have to be another supporting document that memorialized the restriction. Peznola agrees with Dias that more research is needed.

Baptista points out the plan showing unbuildable lots separates into Lot 30A and Lot 6A, dated 2013. Lot 6A is further divided into 3 or 4 parcels and that note/agreement disappears. She would like to look deeper to confirm but she didn’t find this note in the plan dated 2017. Baptista speculates that it was the developer at the time. Baptista reiterates that their wetland line is still valid. Baptista

would need to know more on the delineation that O'Reilly presented. Dias weighs in on wetland line discrepancy again by comparing O'Reilly's plan and CC Estates plan. Dias believes this is something Conservation needs to figure out, where the wetlands are in this area. Baptista adds that the backside of O'Reilly's wetland line cannot be seen. If there's a backside to O'Reilly's wetland line, it would be important to see. Dias agrees and states that it would be smart for CC Estates/Silva Engineering to find out any agreement made and get an accurate determination from Conservation as there is an ORAD and an ANRAD; the ANRAD would have expired. If CC Estates puts their basin in, it needs to be lower as it would otherwise cause flooding on O'Reilly's and Route 106.

Kwesell recommends that Amory Engineering/a wetland scientist, should look at this wetland line because she is concerned about Dias' concerns regarding flooding. Brennan can get a third-party wetland scientist to look at this wetland line. Peznola states that the delineation and approval of delineation of a wetland is in the jurisdiction of the Conservation. Zoning needs to reach out to Conservation to get history of the wetland line that the applicant has put forth which is the 2015 ORAD extended in 2018 to 2021. Peznola recommends that the ZBA start with involving the Conservation Commission rather than engaging in a 3rd party peer reviewer as this moves across jurisdictional lines and states within 760 CMR56 40B Regulations that the Board cannot do independent studies of its own. Peznola further recommends that the ZBA request additional information from the applicant on how the two properties interact – what is the bottom of the basin on O'Reilly's site and what are proposed elevations of CC Estates drainage, grades and so on. Amory will then look and see if the questions have been answered. Baptista would like to request O'Reilly's site plan from the Planning Board to better understand what's going on. Cusson adds that Conservation Commission must be involved and must resolve this issue. Applicant is willing to do whatever is necessary. Dias states that it's not unusual to have a discrepancy of wetland lines, but 120 feet is unusual. Dias agrees that a 3rd party should be brought in to do research on these lines.

Kwesell opines that 120 feet is a big discrepancy. She thinks that the applicant should submit data which Amory will review. She is also concerned about O'Reilly's possible flood issue so this must be resolved. She would like proof that O'Reilly's won't get flooded. Baptista agrees that more homework is needed.

Kwesell states her notes thus far: the septic system must be changed with respect to the reserve area being on a separate property; stormwater detention basin and infiltration of those; wetland line discrepancy; recorded plan states by agreement regarding this wetland area being unbuildable and Planning Board file needs to be looked at for more information on this agreement. Durgin states that the April 2017 map shows two parcels, B and A, being unbuildable lots. Kwesell responds that parcel B is unbuildable because there is no frontage which gets knocked out because of 40B. Baptista confirms. Parcel A is labeled unbuildable as it doesn't have the required frontage for a single lot and it also doesn't have the area for an estate lot. Baptista gives some history of these lots. Parcel B was "just in case" the applicant needed it for septic. Per Baptista, Parcel A didn't become part of 6A as they were meant to be sold for business and "wanted to be cheap." Dias gives additional history of area. The latest recorded plan is 2017 which is labeled as unbuildable. Borsari refers to the 2017 note regarding wetlands which was confirmed by Baptista as not on the deed. Baptista will look further to understand what this note was for.

To be addressed at the next meeting:

1. Cost of realigning the intersection – will be a best-guessed estimate per Cusson
2. Baptista will review Planning Board and Conservation files for O'Reilly's wetland line
3. Septic System on one lot under site control property
4. Basins, infiltration and elevation issue
5. Wetland line discrepancy – Applicant, Dias and Conservation will determine where the wetlands begin and end and explain the 120-foot discrepancy
6. Recorded plan references addressing acreage numbers
7. Drainage where all basins are on easement and go into pond – person who owns and/or controls this pond; where affluent will go
8. Brennan's May 2020 letter with drainage concerns not addressed by Silva Engineering. Drainage needs full review as wetland location will have a major impact on drainage design. Brennan adds that the wetland line is most important.
9. Alger property effects with respect to drainage

Thomas Alger (abutter) wants to see plans revised to show agreed upon drainage on Alger property as they do not reflect this change.

M/Joy, S/Parcellin. It is Unanimously Approved (5-0-0) to continue Petition #920 Country Club Estates hearing to Wednesday, February 24, 2021 at 7:00pm via Zoom.

Roll call: Joy – Yes; Nessralla – Yes; Parcellin – Yes; Durgin – Yes; Borsari – Yes; Gaynor – Yes

Respectfully submitted,

Date: 2/8/21

A handwritten signature in black ink, appearing to read "Robert Gaynor". The signature is fluid and cursive, with the first name "Robert" and last name "Gaynor" clearly distinguishable.A second handwritten signature in black ink, also appearing to read "Robert Gaynor". This signature is more compact and stylized than the one above it.

Robert Gaynor, Chairman
Zoning Board of Appeals