



Halifax Zoning Board of Appeals Meeting Minutes February 24, 2021

The Halifax Zoning Board of Appeals held a special public hearing on Wednesday, February 24, 2021 via Zoom (hosted by Town Administrator Charlie Seelig) with the following Board members in attendance: Chairman Robert Gaynor, Clerk Peter Parcellin, Member Robert Durgin, Member Gerald Joy and Alternate Member Dan Borsari. Vice Chairman Kozhaya Nessralla is absent.

Chairman Gaynor calls the meeting to order at 7:02pm 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 and reads the Governor's March 12, 2020 Order regarding Open Meeting Law and March 15, 2020 Order regarding remote meetings. Chairman Gaynor takes a roll call of members present.

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), 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)

Cost of realigning the intersection. Cusson does not have the estimate as they are still waiting on their traffic engineer. Cusson adds that it is still of the opinion that what is being proposed – moving the large set of traffic lights – would not gain any benefit as the green light would still need to be coordinated. Cusson states that Silva and Amory agree that this would be uneconomical. Will get this estimate to the Board. Cusson states there is a delay due to the declining health of John Peck and now working closely with John's sons Joe and Robert Peck.

Gaynor states that the Board received Cusson's letter this afternoon (sent at 4pm) with plans attached, very last minute. Cusson responds that there were some further things to be addressed like water looping, fire access improvement (turning radius of cul de sac) and as a result two units were eliminated, and septic system was reconfigured. Also addressed was the issue of site control and the septic system raised by Alan Dias and Attorney Kwesell, as they felt an easement did not satisfy Title 5. Cusson states the applicants, R&J, LLC, are committed to satisfying this requirement and have no objection to the ZBA including in their decision, if approved, that the applicant must have the reserve replacement area in the applicant's name. Cusson states that they would not appeal this decision. Kwesell responds that there is no appeal for the applicant as this is Title 5 and does not go to HAC. Kwesell adds that the applicant does not own the property and an easement doesn't satisfy Title 5 so an offer that Cusson and applicants will not appeal is, in her opinion, disingenuous as there is no appeal. Under Title 5 you need a variance, the applicant must transfer the property. Kwesell explains that a Comprehensive Permit has a three-year span and substantial construction must be started in those three years.

Regarding the wetland line discrepancy of 120 feet, Kwesell explains that the applicant has a wetland line that has been delineated and is still in effect according to DEP, however this doesn't help Halifax's peer reviewer in terms of flooding and stormwater due to the discrepancy of wetlands on other properties. Kwesell and the Board have not had the chance to review an updated plan (revised 2/24/21) that was received at 3:35pm today. Baptista speaks to the wetland line and states that, upon much research and confirmation, the applicants have an approved DEP wetland line granted in 2015 and extended in 2018 to be current. O'Reilly's had a site plan approval and Notice of Intent for wetland delineation. When Baptista overlaid with O'Reilly's she didn't find a lot of discrepancies with a lot of the elevations as Dias had suggested but found that O'Reilly's had developed their site. Silva Engineering's existing conditions from a survey before this doesn't match what O'Reilly's built which was two drainage pipes flowing towards CC Estates site at drainage basin. Baptista also discovered that O'Reilly's built their drainage basin in CC Estates' approved wetland line. Baptista states that O'Reilly's didn't think about how their site would impact future surroundings sites and did not do any diligence on approved wetland lines nearby. It is a problem, but Baptista states that nobody is right, and nobody is wrong. The letter and updated plans sent earlier this afternoon outlined that Silva is going to regrade near CC Estates basins so that O'Reilly's flow can find its way to the onsite ditch as there are drainage ditches throughout CC Estates' site. O'Reilly's site plan shows that they were removing existing drainage structures without fully understanding that these structures were part of the farm that was developed there. Baptista was surprised to see how O'Reilly's drainage changes impacted the site overall. Baptista adds that the grades O'Reilly's discharged to can be worked into CC Estates' drainage. Bottom line, both wetland lines hold.

Dias agrees with Baptista that O'Reilly's might have done some grading within CC Estates' line. However, he does not agree about the outlet invert coming off the pipe from O'Reilly's as it would eventually seep over to the applicants' property...there is a two-foot difference. Baptista agrees on difference. Dias thinks CC Estates' proposed plan will be difficult as there has been some flooding. He does not agree with Baptista regarding the drainage ditch. Dias believes there should be a plan to show how Silva is going to get the elevations to where they are proposing. Dias adds that additional flow is going to go out to Alger's property, potentially, especially without good soil conditions. Dias adds that the drainage coming off the southeast side of property goes into a series of drainage basins and ultimately goes to a pond on the CC Estates' property, but Dias is concerned about who controls the elevation to this pond. Chairman states that Kwesell had this same concern. Baptista responds that Silva postponed a lot of the full drainage design reviews due to other issues. Adds that the drainage basin discharge is to the Country Club pond controlled by the Country Club, as far as she knows. It goes through another series of ponds and final result is that it gets down to the wetlands through the Country Club property. As for the drainage for the Alger's, CC Estates submitted a Notice of Intent that has lapsed but Baptista has added information to the schematic drawing submitted today – note on the plan 2/24/21 in the area of the Alger property. CC Estates will file a Notice of Intent for impacts to the wetlands and make drainage revisions according to Amory's review which will show additional information regarding the Alger's property.

Cusson responds that one of the issues they are faced with is that the wetland line they have expires in November 2021. The applicants are proposing to submit a Notice of Intent to Conservation Commission with all required drainage, reviewed by peer review engineer and report back to ConCom and/or the ZBA but states that the ZBA can decide subject to the satisfactory review of the drainage. If the applicants wait until the ZBA decides, the applicants could be putting in jeopardy the approval of wetland line which would cause a possible legal issue. Chairman doesn't understand why the applicant hasn't gone in front of Conservation. Kwesell responds that the applicant is not required to get an Order of Conditions at the same time or prior to filing a 40B but it's a little different here as Kwesell states they are talking about the drainage for the overall project. Kwesell doesn't know why the applicant can't be continued by the ZBA, go before ConCom to find out where the drainage actually is and return to ZBA as the ZBA must look at everything which includes drainage and stormwater, etc. Kwesell does not think the issue right now is with the wetland line, the issue is with the drainage. Cusson does not object to keeping the ZBA hearing open while the applicant goes through the Conservation Commission process. Kwesell agrees. Brennan has no problem with this continuance and feels the drainage is the most important part of this project. Peznola states that this is not the normal process for obtaining a Comprehensive Permit and goes over what normally occurs but agrees that this is a great idea to pause with the ZBA to get answers from Conservation so that everyone in the town and the Boards are more comfortable. This will also allow the ZBA to focus more on housing issues and will require less conditions to consider.

Parcellin speaks about and expresses his frustration with the applicants' lack of information at each meeting for this project that is consistently being requested by the Board, specifically with traffic, comparable intersections, septic and drainage as these are questions Parcellin has been asking at every meeting. Parcellin feels these questions must be answered before the ZBA can approve anything as these are concerns from other Boards and residents that don't have a say. Chairman agrees. Joy agrees. Borsari agrees and states his reason for his concern on alignment with driveways due to the intersection. Borsari asks about a prior issue of a (red) building on the abutting lot owned by the applicant being too close to this lot. There is discussion regarding this issue between Borsari, Kwesell and Peznola. Peznola states that this is not something the ZBA can control and is not part of this project and defers to Kwesell. Kwesell states that it is important to note that there could be a zoning violation on the abutting property, but it is not what the ZBA is looking at currently. Durgin agrees with Parcellin, especially regarding traffic and drainage and hopes to come up with a better solution.

Chairman, Cusson and Kwesell discuss continuation and extension of 90 days. Cusson agrees on a 90-day extension and will submit this in writing.

M/Parcellin, S/Durgin. It is Unanimously Approved (5-0-0) to continue Petition #920 Country Club Estates hearing to Wednesday, May 19, 2021 at 7:00pm via Zoom.

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

M/Joy, S/Parcellin. It is Unanimously Approved (5-0-0) to adjourn at 8:15pm.

Respectfully submitted,

Date: 6/14/21



Robert Gaynor, Chairman, Zoning Board of Appeals