

Present: Chair Paul Powers, Jack Karcz, Jack Downing, Roger Barham, Tim Lavelle, alternate member Mike Wason, alternate member Leanne Miner, Senior Planner Jenn Rowden, and Land Use Administrative Assistant Casey Wolfe

Also Present: Jack Mullen, Duane Hyde, Rita Mullen, Chris Hickey, Gordon Muench, and Peter Eliopoulos

Mr. Powers opened the meeting at 7:00 pm. He appointed Ms. Miner to vote on behalf of Mr. Hunter and Mr. Wason to vote on behalf of Mr. Lavelle.

I. MINUTES

Mr. Karcz made a motion to approve the minutes of March 6, 2019. Ms. Miner seconded the motion. The motion passed 7-0-0. Mr. Karcz made a motion to approve the minutes of March 20, 2019. Ms. Miner seconded the motion. The motion passed 7-0-0.

II. NEW BUSINESS

Public Hearing for applicant John A. Mullen to subdivide Map 6 Lot 47-1-1 (117 Tavern Road) into two lots. One lot (3.45 acres) will have the existing single-family home and the other lot (33.42 acres) is proposed to be put into conservation.

Chris Hickey, an employee of Eric Mitchell Associates, introduced himself as the representative for Jack Mullen and the Southeast Land Trust. Mr. Hickey explained that his client would like to cut out 3.45 acres for his existing home and put the rest of his land into conservation. Mr. Mullen is working with the Natural Resources Conservation Services' Wetlands Reserve Program to place an easement on the land. Afterwards, the easement will be transferred to the Southeast Land Trust. He did need State subdivision approval from NHDES to create the smaller lot (which the Town does have a copy of). A note of this approval will be on the final plan. Mr. Hickey has already taken care of the monumentation. He has submitted a letter requesting four waivers from the Subdivision Regulations as follows: (1) Article 3 Section 3-E Topographic Contours; (2) Article 3 Section 3-H Delineation of Wetlands; (3) Article 3 Section 3-L Site Specific Soil Mapping; (4) Article 2 Section 6.B.2.C 90 Conditional Approval.

Ms. Wolfe read the department comment sheets that she received back for this project. The Building Inspector wrote, "*As part of the subdivision requirements, two test pits were observed on March 8, 2019 and passed.*" Neither the Fire Chief nor the Police Chief had any problems with this application. Ms. Miner noted that the payment for the land that will be conserved was funded by the Aquatic Resource Management (ARM) Fund. She felt that this project is a great example of contributing towards the ARM fund for mitigation purposes directly benefiting the Town of Fremont. She summarized that this piece of land has a tributary to Brown Brook (which is a tributary to Piscassic River) and has about 12.5 acres of high value wetlands. This lot is adjacent to the Town Forest. The land includes 12.1 acres of prime wetlands, one documented vernal pool, and Blandings turtles (an endangered species).

Mr. Lavelle arrived to the meeting a few minutes late. Due to missing the beginning of the presentation, Mr. Wason will vote on behalf of Mr. Lavelle for this application. The Board decided to address all four waiver requests at the same time. **Mr. Karcz made a motion to open the public hearing. Mr. Barham seconded the motion. The motion passed 7-0-0.** There were no comments. **Mr. Karcz made a motion to close the public hearing. Mr. Barham seconded the motion. The motion passed 7-0-0.** Mr. Powers asked if these lots are in the Aquifer Protection District. Ms. Rowden stated that there are portions of that lot that are in this district. Mr. Powers asked Mr. Hickey to change note three on the plans so that it states that the minimum lot size is three acres (due to the lot being in the Aquifer Protection District). Mr. Hickey agreed to do this. **Mr. Karcz made a motion to grant all four waivers. Ms. Miner seconded the motion. The motion passed 7-0-0.**

Mr. Karcz made a motion to accept jurisdiction of the application. Ms. Miner seconded the motion. The motion passed 7-0-0. Ms. Rowden had a few recommended conditions of approval for this application: (1) that the applicant executes a conservation easement and that Town Counsel has the opportunity to review the language (2) that all approved waivers be added as a note on the plan (3) the State subdivision permit number from NHDES be noted on the plan. Mr. Hickey pointed out that this is not a Town conservation easement and that it is going through the Federal government. Mr. Hyde of the Southeast Land Trust explained that the easement language will be in a standard template and the Federal government is not willing to change this form. He didn't feel it was necessary for the Town to review this document. Ms. Miner suggested that the Town should simply get a copy of this easement for its records. Mr. Hyde explained that the easement will not allow for residential structures, commercial structures, sand and gravel mining, or anything else that would disrupt the wetlands. The Southeast Land Trust will end up holding the easement. Mr. Barham was not sure if there would be any value to having the applicant pay for the Town Counsel to review the easement language.

Ms. Rowden repeated her suggested conditions of approval:

1. A Conservation Easement must be executed on the 33.42 acre parcel.
2. A note to be added to the plans with the granted waiver requests listed.
3. A note to be added to the plans with the permit number for the NHDES subdivision approval.
4. A recordable Mylar, four paper sets, and an electronic file of the final plans is produced.

Mr. Barham made a motion to approve the subdivision with the conditions that Ms. Rowden had listed. Mr. Karcz seconded the motion. The motion passed 7-0-0.

III. OTHER BUSINESS

Dispute of latest Stantec invoice billed to the Altaeros construction project

Mr. Powers recused himself as an abutter to the project. Mr. Lavelle recused himself as a representative of the applicant. Mr. Wason will vote in place of Mr. Lavelle for this part of the meeting. The Board members took some time to look at the most recent invoice from Stantec

billed to the Altaeros construction project. Mr. Eliopoulos and Mr. Lavelle are interested in disputing the charge on the invoice for the report from the erosion specialist dated February 12, 2019. Mr. Barham stated that the dispute on stabilization was an ongoing issue. The developer was denying that they were out of compliance and disputed everything that Stantec said. After this ongoing dispute, the Board did not end up finding that it was worth stabilizing that site perfectly “by the books” when it was so close to spring. He stated that he was frustrated that Mr. Tatem’s (of Stantec) opinion was being disputed because he is not a licensed professional engineer, so he asked Mr. Tatem for an opinion from someone at his firm who specializes in this field. That is why this additional report was produced. This additional report confirmed Mr. Tatem’s opinion that the site was not in compliance with winter stabilization rules.

Mr. Barham stated that the developer has been acidic towards the town engineer and the Board is now looking into hiring another reviewing engineer because of the toxic situation. He felt that the charges in the invoice need to stand. Mr. Eliopoulos stated that the developer felt that they had met the winter stabilization requirements. They came before the Board to ask the Board members to come out and see the site for themselves. Mr. Barham stated that most of the Board members are not experts in erosion control. He felt that if the developer communicated better with Mr. Tatem, then they would have come to a solution. He felt it was the developer’s fault that the Town and the town engineer had to rebut the developer’s accusations. Mr. Eliopoulos felt that it should be a two way street and that the developer should be able to dispute the town engineer’s opinion.

Mr. Barham emphasized the importance of the developer communicating with the town engineer. He felt that projects go much more smoothly when there is more communication. There was some discussion about the meeting when the Board decided to give Altaeros a temporary occupancy permit, contingent on the Board visiting the site and seeing the stabilization for themselves. Mr. Eliopoulos felt that the Board only had the site walk as a condition and did not require another report from Stantec. Mr. Lavelle stated that the Board as a voting body never asked for the report. He did not feel that one Board member can request additional work from Stantec. Mr. Lavelle stated that the Town did not authorize this charge. Mr. Eliopoulos felt that the additional charge from Stantec violates the agreement between the Board and the applicant.

Ms. Miner agreed that the Board did not vote on asking another engineer at Stantec to write up this additional report. She was unsure of the process for approving charges to the applicant’s escrow account with the Town. Ms. Rowden explained that an escrow account is set up for a project so that when the Town receives invoices from the reviewing engineer, the Town can bill it to that account. The applicant provides the funds for that account. If there is money left over when the project is done, then the applicant is given back this amount. However, if additional review work is required, the Town can request additional funds from the applicant. Mr. Barham felt that all of these charges occurred because the developer rebutted the town engineer’s opinion. While the Board ultimately agreed with the town engineer, the Board relented because the winter season was about over. Mr. Lavelle mentioned that the engineer from AoT said that they were in compliance with winter stabilization requirements. There was a good reason for the developer to rebut the town engineer.

There was more discussion about whether or not the additional report was ever authorized. Ms. Miner felt that it boils down to whether or not it was legitimate for an additional report to be done by Stantec at Mr. Barham and Mr. Karcz' request. Mr. Barham felt that the report was necessary. Ms. Miner could see why another opinion was requested but it was unfortunate that there were extra charges for the report. She felt the report was a little over the line. Mr. Eliopoulos felt that this extra charge did not seem right. **Mr. Barham made a motion that the charges as presented by Stantec stand. Mr. Karcz seconded the motion. The motion passed 3-2-0.** Mr. Eliopoulos left at 7:58 pm.

2019 Earth Removal Permit renewals

Mr. Powers and Mr. Lavelle rejoined the Board as voting members. Mr. Wason is no longer a voting member for this meeting. Ms. Rowden summarized that every year the active gravel operations in town have to renew their earth removal permits. The applications are always due on April 1st and the permits need to be renewed by July 1st. The Board typically schedules site walks for each site with the town engineer. There is also usually a discussion about the reclamation surety for each pit. Mr. Barham suggested writing to the applicants to let them know that the Board may need to extend their existing permits to give the Board more time than usual for the site walks. It's possible that a different engineering firm will be doing this work. Ms. Rowden suggested waiting until late May to decide about extending the existing permits. Ms. Wolfe has received renewal applications from the Fremont Park, Fremont Land, and Governor's Forest. She has not received one from Galloway Trucking. The Board will table this discussion until their second meeting in May. There was some discussion about updating the excavation regulations. There was also some discussion about the reclamation surety.

Planning Board Third Party Review Firms – review draft RFP

Ms. Miner reported that the Town Administrator has talked to Mr. Tatem and told him that Stantec is welcome to submit an application to this RFP for a third party reviewing firm. She summarized that this RFP is for independent review of subdivision and site plans, construction observation services, and review of earth removal permits. She clarified that Stantec is not being let go by any means because there are ongoing projects that it would make sense to keep Stantec on for. Mr. Karcz was under the impression that they were looking for two additional firms along with Stantec. Ms. Miner stated that they are looking for a total of three firms and Stantec can apply to be one of the three if they would like to. Ms. Wason stated that it is very common for a town to use more than one firm. Mr. Karcz wanted to know if this request is looking for this firm to review road construction projects. Ms. Wolfe stated that this RFP is only for Planning Board related projects. So, new roads as part of a subdivision application would be reviewed, but existing road construction projects are unrelated to this contract. Mr. Barham felt this was the best way to handle this as the Board of Selectmen have been very happy with Stantec for those projects.

There was some discussion about having more than one firm for reviewing projects. Ms. Rowden stated that it is always the Board's decision which firm reviews each project, not necessarily the applicant's. Mr. Lavelle stated that some towns have a conflict of interest form for the applicant to sign to confirm that they do not do business with the reviewing engineering firm. The Board

went through some tweaks to the RFP language. The next step is to get this RFP finalized and on the website. The Town Administrator will get this advertised on the NHMA website and it can also be distributed to whoever they want to apply. There will need to be a subcommittee to review the submittals once the deadline closes. The Board may also want to do interviews. Mr. Powers stated that he would like to have Stantec respond to the RFP so they can have a clear comparison to the other firms. There was an agreement among the other Board members. There was also an agreement to keeping Stantec on already existing projects.

Ms. Wolfe asked about her scope of responsibility during construction review projects, because the language of the RFP mentioned her position as the contact for the reviewing engineer. Anything related to actual structures would be more related to the Building Department, however, forms of correspondence related to the site work should go through the Land Use Office. Typically the town engineer is primarily overseeing the review of the construction project. Construction projects really should only come back to the Board if there is some kind of dispute. Different firms might handle this differently. It may be a priority for the Board to stay informed about ongoing construction projects. **Mr. Lavelle made a motion to move the RFP to print after some minor amendments. Mr. Barham seconded the motion. The motion passed 7-0-0.**

IV. CIRCUIT RIDER BUSINESS

Accept new zoning districts map per the zoning changes that passed at Town Meeting

Ms. Rowden walked around the final versions of the zoning maps that were passed by the voters at Town Meeting to show the Board members. She reminded the Board of the major changes to the zoning map. **Mr. Lavelle made a motion to approve the new zoning map as being reflective of what the voters approved in March. Mr. Karcz seconded the motion. The motion passed 7-0-0.**

Master Plan Update

Ms. Miner stated that the Conservation Commission has talked about doing an update to the Natural Resource Inventory chapter of the Master Plan. Generally, the Planning Board updates Master Plan chapters. There should be a consensus from the Board that they are okay with the Conservation Commission working on updating on this chapter. There was a consensus among the Board members that this was okay.

The Board adjourned at 8:50 pm.

Respectfully submitted,

Casey Wolfe
Land Use Administrative Assistant