

Call to Order:

The Planning Board Meeting was called to order at 7:34PM on May 11, 2021 via Cisco Webex online video conferencing platform. Present were Chair Zachary Bergeron, Vice Chair Rocky Leavitt; Members Ann Knowles, Vincent Chiozzi, Jr. (joined at 8:03PM), Neil Magenheim, and associate Morgan von Prella Pecelli. Also present were Jacki Byerley, Planner and Tom Urbelis, Town Counsel.

Stormwater Management & Erosion Control Regulations:

Mr. Bergeron opened the public hearing on proposed amendments to the current Stormwater Management & Erosion Control Regulations. Ms. Byerley stated that Andover has been contracting with CEI, an engineering firm, to ensure that the Town follows our Municipal Separate Storm Sewer System (MS4) permit. This permit regulates pollutant discharges into waterbodies through the Town's drainage system. Rebecca Balke, representative for CEI, was present to review regulatory updates and answer questions.

During her presentation, Ms. Balke provided historical background for the MS4 permit, outlined the six minimum measures that the permit requires, including three regulatory components, and introduced updates to the requirements that were added in April 2016 when the permit was revised, and later became effective in July 2018. The three regulatory components regard Illicit Discharge Detection & Elimination (IDDE), and Construction Site Stormwater Controls, during construction and post-construction. Updated requirements include use of Low Impact Development (LID) Strategies, adherence to Massachusetts Stormwater Handbook Standards, new pollutant removal criteria, off-site mitigation specifications, and conditions for impaired waters. Ms. Balke further provided updates for clarification with regards to threshold, submittal requirements, Operations & Maintenance (O&M), and design criteria.

Following the presentation, the Planning Board discussed comments and questions that were submitted by Keith Saxon, a resident located at 15 Wethersfield Drive. Regarding the employment of outside consultants, Mr. Saxon suggested that the requirement be more clearly defined on which projects would need review and proposed an idea that it applies to a 5+ acres disturbance to minimize costs, as opposed to the current requirement of a 1-acre disturbance. Ms. Byerley explained that peer reviews are often employed for stormwater reports that are submitted to ensure they are meeting the correct requirement. This is needed due to the complexity of a project, rather than its size, and the limitations of the Town Engineer and Planning Staff with regards to time and scope, respectively.

Mr. Saxon also commented that there is no provision for ongoing maintenance or reporting once a certificate of compliance is issued. Ms. Balke explained that the regulation requires the person responsible for maintaining the best management practices (BMP) to submit an annual certification report to the Town. Further, it is the decision of the Town on when to require a Professional Engineer (PE), which is dependent on the complexity of the design. Ms. Balke noted she is unsure of how well this is enforced by the Town. Ms. Byerley stated that reminder letters are mailed when an annual report is due, of which she receives some responses back.

Lastly, Mr. Saxon asked if roof drain discharges for all new developments, including single-family homes, will be required to utilize on-site infiltration or dry wells. Mr. Bergeron commented that Wilmington has a precedent for this. Ms. Balke confirmed that the regulations do not currently require roof drain discharges, but the Town has the authority to change this, if desired.

Mr. Chiozzi asked if further discussion of Mr. Saxon's questions is needed before closing the public hearing. Ms. Byerley informed the Planning Board that these amendments need to be adopted by June 30, 2021 to be in compliance; however, there is time to bring this discussion to a future meeting, if desired. Mr. Chiozzi also inquired if any Town departments had the opportunity to weigh in. Per Ms. Byerley, both the Town Engineer and Conservation Agent have been involved in the revision, and that there is a correction to be made where the incorrect wording, "single lane," should be replaced with "single land." Janet Bernardo, a consulting Engineer, provided an independent review as well.

On a motion by Mr. Magenheim, seconded by Mr. Leavitt, the Planning Board voted to close the public hearing on proposed amendments to the Stormwater Management & Erosion Control Regulations.

Vote: (6-0)

Mr. Magenheim also made a motion to approve the proposed amendments. Mr. Leavitt seconded.

Vote: (6-0)

60 Canterbury Street – Special Permit for a Multi-family Attached Cluster (SP20-03) and a Special Permit for Disturbance of Slopes in Excess of 35% (SP20-04):

Mr. Bergeron opened the continued public hearing. Per Ms. Byerley, CA Investment Trust, property owner, requested that the continued public hearings, originally scheduled for May 11, 2021 and May 25, 2021, be placed on the Planning Board agendas for June 8, 2021 and June 22, 2021.

On a motion by Mr. Magenheim, seconded by Ms. Knowles, the Planned Board voted to continue the public hearings on 60 Canterbury Street – Special Permit for a Multi-family Attached Cluster (SP20-03) and a Special Permit for Disturbance of Slopes in Excess of 35% (SP20-04) to June 8, 2021 at 7:30PM and June 22, 2021 at 7:30PM. **Vote: (6-0)**

DISCUSSION ITEMS:

Frenchman's Reserve / Robert Drive – Beacon Street:

CA Investment Trust has requested a Minor Modification to SP14-04 to correct administrative errors regarding the reference to emergency access contained in Condition 17. Kathryn Morin, Esq., Attorney for Yvon Cormier, Trustee of the applicant, and Doug Lees, CA Investment Trust Engineer, were present for this discussion. Ms. Morin explained there was an administrative error in the original permit from 2015 that referenced emergency access, which is no longer applicable to this project. Ms. Morin confirmed that the request is to remove this language. Ms. Byerley agreed this is an error that should be corrected.

Ms. Knowles made a motion that the Planning Board declare a minor modification to SP14-04 to correct administrative errors regarding the emergency access contained in Condition 17 by removing the associated language. Mr. Magenheim seconded. **Vote: (6-0)**

Following this vote, Ms. Morin noticed that the special permit number was incorrect and should be SP15-04, as opposed to SP14-04. Ms. Byerley confirmed this information. Given the correction, Ms. Knowles made a new motion that, concerning Frenchman's Reserve/Robert Drive, the Planning Board declare a minor modification to SP15-04 to correct administrative errors regarding the emergency access contained in Condition 17, and to approve the minor modification. Mr. Magenheim seconded. **Vote: (6-0)**

Master Deed of Frenchman' Reserve Condominium, Trust of Frenchman's Reserve Condominium Trust, Golf Easement Frenchman's Reserve, and Quitclaim Deed to Cormier Andover Greenbelt, Inc:

Ms. Byerley opened discussion on the request for review and approval of the abovementioned documents and stated these are standard documents; however, there was a condition for approval that required water quality testing be added to the Master Deed, as mandated by the condominium association. Ms. Byerley reported that these documents have been reviewed by Town Counsel and are ready for approval.

Mr. Leavitt asked for clarification on whether any units could be sold if the Planning Board moves forward with approval. Per Ms. Byerley, the applicant must have the conservation restriction approved and recorded before conveyance of any properties, and approval of the documents in question will not impact this requirement. Mr. Urbelis and Ms. Morin concurred.

In referencing Exhibit C of the plans, Mr. Leavitt commented that there is no noted square footage or room designation and asked if they are waiting for as-built plans to complete the forms. Ms. Morin answered affirmatively, and further explained there are other incomplete items, such as final dates and recording information of documents, that will be completed as that information becomes available. Ms. Morin clarified that the intent of the Planning Board is to ensure that the content of the documents complies with the requirements of the special permit.

Mr. Chiozzi asked for clarification on the Performance Guaranty of \$500,000, regarding timing of the payment related to filing with the State and compiling the remaining information needed for the forms to be complete. Ms. Morin expressed that this is dependent on having an understanding with the Town that the proposal, which covers the EOEEA (Executive Office of Energy and Environmental Affairs) and local filings, is an acceptable resolution. In other words, the Town needs to agree to follow the proposal, accept the money, allow the conservation restriction for Frenchman's Reserve to be recorded, and the units to sell, in exchange for the Performance Guaranty backed by the funds in escrow. Mr. Urbelis noted that the Conservation Commission will discuss this at a special meeting on Thursday, May 13, 2021.

Mr. Leavitt commented that the 10-year operating event of when the trust is turned over to the unit owners seemed lengthy. Mr. Urbelis stated that Town Counsel had no major objection to this, but that the Board is welcome to discuss further. Mr. Leavitt also sought confirmation from Ms. Morin that

Counsel for the prospective buyers had the opportunity to review and comment. Ms. Morin answered affirmatively.

Ms. Knowles inquired if there were any loose ends with regards to the Golf Easement and the Quitclaim Deed. Ms. Morin confirmed that except for the plan numbers and recording information that is assigned at the time of recording, the documents are otherwise complete.

On a motion by Ms. Knowles, seconded by Mr. Leavitt, the Planning Board voted to approve the following documents: Master Deed of Frenchman's Reserve, Trust of Frenchman's Reserve Condominium Trust, Golf Easement Frenchmen's Reserve, and Quitclaim Deed to Cormier Andover Greenbelt, Inc. **Vote: (6-0)**

Amended and Restated Conservation Restriction and Pathway Easement Grant and Performance Guaranty in Connection with EOEEA application in connection with the Andover Country Club:

The Planning Board proceeded to have a robust discussion on the request for review and approval of the abovementioned documents. Mr. Chiozzi sought clarification on where the amount of \$500,000 for the Performance Guaranty originated and expressed that this number should be higher as motivation on behalf of the Planning Board, given that the funds would be returned to the developer. Mr. Urbelis noted this amount was suggested by the developer and the Conservation Committee will discuss the matter further at its upcoming special meeting. Mr. Leavitt requested clarification on the mechanism for returning the funds in which the bond would be released when the application is submitted to the State, as opposed to when approval is received. Per Ms. Morin, there is a provision that allows the applicant to request a reduction in the Guaranty amount upon application, but the bond would not be released in full until there is a final decision by the EOEEA. Mr. Urbelis further explained that it is not specifically stated in the Guaranty that the decision of the EOEEA, regardless of approval or denial, is the triggering mechanism for the release of funds, but instead it is the act of the EOEEA making the decision.

Ms. Byerley noted that because the agreement is between the Planning Board and CA Investment Trust with review from Conservation, it would be appropriate for the Board to provide an opinion on the amount. In response, Mr. Chiozzi again stated the amount should be higher and contingent on obtaining state approval and not just filing the application. He expressed that a higher amount would signify that the developer will do everything needed to acquire approval. Ms. Morin explained that gaining approval has never been the requirement as part of the original agreement in 2014 and that there is no basis for the Planning Board to impose such a requirement. Mr. Lees agreed this would be above and beyond the approval of the Board on this project.

Ms. Byerley summarized that the Planning Board is seeking assurance that the applicant will get the approvals in perpetuity. She suggested they consider amending the agreement by perhaps rephrasing some language, adjusting the timeframe, and/or including a statement in writing that the applicant had put in his best effort, in the event that EOEEA denies approval.

Ms. Morin asked the Planning Board if they might look favorably on the concept of the Performance Guaranty if the terms were acceptable. Ms. Byerley asked Ms. Morin to explain why the Guaranty is necessary instead of just applying with the state. Ms. Morin reported that approval is needed prior to submittal because the process of filing the EOEEA application is lengthy. Mr. Urbelis further explained

that the Performance Guaranty originated from a discussion with the Conservation Commission in a meeting on March 30, 2021, regarding the expectation that the developer would obtain EOEEA approval in 2004 and 2014 which never happened.

Ms. Byerley asked that if a Performance Guaranty is agreed upon, the expectation would be that the local restriction for Frenchman's Reserve would be signed and recorded and then the applicant could convey the condominium units. Ms. Morin answered affirmatively.

The Planning Board expressed concern with allowing the units to be conveyed without having EOEEA approval. Additionally, the Board wanted to understand whether the EOEEA is likely to approve the application. The developer has included a public benefit in the proposal, including access to 3 trails and additional restricted land on Lowell Street and Haggetts Pond Road. Mr. Urbelis questioned if this is enough for the EOEEA to grant approval and mentioned that, ultimately, they will not know. Further, it is written in the proposed Performance Guaranty that the developer is not required to add any additional land or restrictions in his proposal if requested by the EOEEA.

Mr. Lees added that there are other items the developer is offering to make the proposal more attractive, including open space, preservation of natural areas, Hussey Brook, green space, and scenic views from a public roadway. Both Mr. Lees and Ms. Morin feel that they have a good argument, but they need agreement from the Conservation Commission that they want the Andover Country Club preserved as open space. Mr. Lees stated that the Town should not be impacted negatively because this land is protected under the zoning bylaws. Mr. Leavitt noted that this is, at best, a 30-year private restriction and the Town could be vulnerable if not extended. Per Mr. Urbelis, when the developer signed the conservation restrictions, it was specified that the restriction is in perpetuity. Therefore, it has been the intent of the developer, the Planning Board when they voted, and the Conservation Commission when they signed off, that the only way to guarantee the perpetuity is by getting EOEEA approval for the last 30 years.

Mr. Urbelis commented that he has not heard from Ms. Morin on how the restriction is in perpetuity if it does not get EOEEA approval, notwithstanding Mr. Lee's analysis of the zoning bylaw. If zoning bylaws change, the restriction would expire after 30 years. Ms. Morin added that the law pertaining to these types of restrictions is not clear; therefore, she cannot give an opinion that it will or will not survive in perpetuity. Ms. Morin believes that if the applicant gets EOEEA approval, the perpetuity will be enforceable.

Mr. Bergeron suggested that this discussion be continued and that the Planning Board is not supportive at this time. Mr. Chiozzi mentioned that he is open to the Performance Guaranty, but it needs to be a significant guaranty in value and the developer needs to do more than fill out an application. The Board agreed. Ms. Morin and Mr. Lees will be meeting with the Conservation Commission on May 13, 2021. Ms. Morin shared the list of documents that has been requested by Conservation, and stated it is her hope that the amount of work they have put into said documents substantiates that the applicant is taking good faith measures to do what the Town is asking him to do.

Regarding next steps, Ms. Morin said that she would like to hear from the Conservation Commission and that will provide a pathway for moving forward. She mentioned that the Planning Board has not commented on the conservation restriction itself and requested feedback on the content of the document. Mr. Urbelis responded that he has not had the opportunity to review the document, but he does not anticipate any problems with the form related to the local restriction. This document will be presented to the Conservation Commission. Ms. Byerley advised that the Planning Board will need to vote to approve the restriction, which is required by the Town's special permit and zoning bylaw.

Ms. Knowles stated that she would like assurance that the Town will get a significant public benefit from the restriction. In referencing the pathway easements in Exhibit 2, Mr. Leavitt asked if they exist, and if so, who is maintaining them. Ms. Morin clarified that there is a recording instrument at the Registry of Deeds identifying the 4 easements. The easement that is designated as proposed has not been granted and there is no recording instrument. She further explained that there was a document identifying the easement in 1992, but to her knowledge there is not a maintained trail within the easement area. Mr. Leavitt requested a copy of the instrument. He also questioned the public benefit argument if the community cannot access these trails. Ms. Knowles added that to increase the likelihood of success with the Conservation Commission and the EOEEA, these easements need to be accessible to the community. In response, Mr. Lees explained that there is no system of trails abutting the Andover Country Club; however, the applicant is offering land on Haggetts Pond Road, as part of his proposal that abuts AVIS land. Ms. Knowles commented that if the applicant negotiated in good faith with regards to this piece of land, the Planning Board would look favorably on that.

Mr. Chiozzi requested that Ms. Byerley share the Planning Board's thoughts and opinions with the Conservation Commission prior to their special meeting. Ms. Byerley summarized that the Planning Board might be amenable to a Performance Guaranty at a higher amount and that the applicant obtains final approval before any funds are released. Further, the Planning Board would be agreeable to approving the local conservation restriction for Frenchmen's Reserve so that the applicant can convey some of the condos. The Planning Board will continue this discussion at a future meeting.

Adjournment:

On a motion by Mr. Leavitt, seconded by Mr. Magenheim, the Planning Board voted to adjourn the meeting at 9:34pm. **Vote: (6-0)**

Documents:

Stormwater Management & Erosion Control Regulations:

- Presentation – 5.11.21

60 Canterbury Street:

- Memo to the Planning Board from Town Counsel re: Clubview Estates – 4.5.21
- Letter to the Planning Board from Doug Lees requesting a continuance – 5.6.21

Andover Country Club:

- Email from Kathryn Morin, Esq. to Town Counsel re: ACC Conservation Restrictions – 5.5.21
- Amended and Restated Conservation Restriction from Cormier_Andover Greenbelt, Inc. – 5.7.21
- Declaration of Trust of Frenchmen’s Reserve Trust – 5.11.21
- Confirmatory Conservation Restriction and Easements – 5.5.21
- Amended and Restated Conservation Restriction and Pathway Easement Grant – 5.7.21
- Quitclaim Deed to Cormier Andover Greenbelt, Inc. – 5.11.21
- Exhibits to the EOEEA Performance Guaranty – 5.6.21
- Frenchmen’s Reserve 10 ft Pathway Easement Plan – 5.6.21
- Golf Easement Frenchmen’s Reserve – 4.30.21
- Master Deed of Frenchmen’s Reserve Condominium – 5.11.21
- Performance Guaranty Agreement for the EOEEA Application – 5.10.21
- Plans referenced in Recorded Conservation Restrictions – 4.16.21
- Proposal Exhibit 1 – 4.16.21
- Proposal Exhibit 2 – 4.16.21
- Proposal for Andover Country Club Conservation Restriction & EOEEA Process – 4.16.21
- Letter from resident, S. James Boumil, Esq., 36 Bobby Jones Drive – 5.3.21
- Email from Kathryn Morin, Esq. to Town Counsel re: 4/16 Andover Country Club Proposal – 4.22.21
- Frenchmen’s Reserve Modification Plan – 2.10.21
- Special Permit Decision for Frenchmen’s Reserve (Bk 14472 pg. 204) – 10.28.15
- Modification of a Special Permit for Frenchmen’s Reserve (Bk 16390 pg. 316) – 6.4.2020
- Letter from Kathryn Morin, Esq. to the Planning Board re: Minor Modification Request & Request for Approval of Documents for Frenchmen’s Reserve – 4.30.21