



CITY OF NORTH ADAMS, MASSACHUSETTS

Conservation Commission

PUBLIC MEETING

MINUTES

March 23, 2020

Members present Chairman Jason Moran, Jason Canales, Andrew Kawczak, and Elena Traister

Members absent Adam Galambos and Tim Lescarbeau

Call to order Chairman Moran called the public meeting to order 6:01 p.m. with the presence of a quorum. Chairman Moran read the following statement regarding virtual meetings:

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, this public hearing of the North Adams Conservation Commission is being conducted via remote participation. No in-person attendance of members of the public will be permitted, but the public can listen to this meeting while in progress by via teleconference at zoom.us. Members of the public attending this meeting virtually will be allowed to make comments if they wish to do so, during the portion of the hearing designated for public comment, by teleconference.

Public hearings new business

- A Notice of Intent submitted by Stantec Consulting Services, Inc. on behalf of the City of North Adams Airport Commission for property located at 836 State Road to install a security fence around the Harriman-and-West (North Adams) Municipal Airport (AQW).

Chairman Moran stated that the public hearing would not be opened at the request of the applicant so that a joint public hearing with the town of Williamstown can be coordinated. The town of Williamstown has already set a date certain of April 23 so at the request of the applicant this case has been continued to April 23. The location and specific details of the meeting have not been determined at this time. Chairman Moran explained that if there was anyone on the call from the public that they were welcome to drop off the call at that time as the case has been continued and will not be discussed at this meeting.

- A Request for Determination of Applicability submitted by Massachusetts Museum of Contemporary Art for property located at 1040 MASS MoCA Way to determine whether the proposed project to repurpose an existing water tank structure to house an experiential light-based artwork is subject to the Wetlands Protection Act.

Chairman Moran opened the public hearing to Brad Dilger and Joe Thompson of MASS MoCA. Mr. Dilger inquired about the process for explaining the project to the commission. Chairman Moran explained that the commission all received packets of information submitted. He requested an overview of the project and what is proposed as well as a timeline for the project. He noted that there was also some information linking the Marshall Street site to this project so a descriptive yet high level proposal of the project would be helpful.

Mr. Dilger explained that the plan was to convert an existing water tank to become an experiential light-based artwork by James Turrell. That will involve an inner structure inside the existing water tank, removing an existing non-used structure adjacent to the water tank and providing an ADA accessible path. He feels that the square footage of grass and caliber of trees being removed will be offset by the gains made by the Main and Marshall Street Martin Puryear Park. They have already been in discussions with their architects, engineers and design group and have submitted those drawings to the commission.

Chairman Moran inquired about the timeline of the project. Mr. Dilger explained that they have already started fabrication of parts off-site. The design contractor in Australia has begun fabrication of the fiberglass panels and structural steel and they hope to receive that in the next four to six weeks. They're doing some preliminary work while they wait for the materials and hope to open the artwork in the fall of this year.

Chairman Moran stated that he has a few questions that he will ask. He will wait to hear the response and then he will go around to each commissioner one at a time. He explained that his first question was that on C-101 the riverfront area is not shown on the site plan so it's hard to gain perspective of doing erosion control barriers around stockpiled soil and whether that's going to be outside the riverfront area or inside of it.

The next topic of conversation he noted to the commission was in regard to the determinations on the WPA form 2. Some of the negative determinations on the form state that you will not alter the area subject to protection on the act which will not remove, fill, dredge or alter the area and reading through the determinations he was having a difficult time, particularly on A-100 where the note in the middle of the plan says to fill and regrade the exterior as required for the removal of the accessory structure. That was hard for him to understand.

Chairman Moran explained that his third question was; by linking the Marshall Street site to this RDA, whether they were requesting permission for the Marshall Street project at this time or just stating that they're going to be good neighbors and they're going to make a previously degraded area, which they own the property for and are allowed to do, a replication and a mitigation area elsewhere and not doing it here.

Mr. Dilger stated that he would respond to the third question first. He confirmed that they are linking the two projects and using it as a source of offset for any grass and trees that are being removed. In regard to the A-100 question, they anticipate some soil to be surplus; they are uncertain how much. They have contracted with an environmental consultant group to determine a soil management plan if there is any surplus soil. There will be some regrading as they create the ADA path to the entrance of the network. They are working through those details of regrading.

Mr. Dilger stated that in response to the first question on C-100, the riverfront is shown as south branch Hoosic River, so it's just on the other side of the north side of the water tower. Chairman Moran confirmed and stated that normally what you would see is the flood chute is the start of the riverfront area but technically even though we are up against the flood chute and it seems contradicting, there is a 200-foot horizontal offset from the flood chute heading south on the page to the area of the existing concrete pad. It's kind of weird as there is technically not riverfront area given that it's a flood chute but it's still an area that is subject to DEP. If you were to scale from the containment wall south, where would 200 feet put them on the site plan. Mr. Dilger stated that he would check with the engineers to have them put that on a larger plan.

Chairman Moran stated that in rebuttal to the answer about the Marshall Street lot, it would be helpful to understand what the new degraded area is that is proposed at the location for the water tower versus what the new vegetated area is proposed at Marshall Street. Management standards would have a 2:1 mitigation replication. So, if you were increasing the imperviousness by 100 square feet at the location of the water tank you would theoretically demonstrate 200 feet of mitigation area but it would be helpful to understand the impervious and pervious calculations for both sites so that way the commission can understand that yes, the Marshall Street site really is accounting for some of the disturbance at the water tower location. Mr. Dilger stated that in the letter submitted to the commission, they noted that they were expecting about 400 square feet of concrete to be added to the water tower location and over 5,000 square feet of sod plus many new plantings on the Marshall Street park location so he believes that is much greater than 2:1 but he can work out

the math later. Chairman Moran stated that he did not see that in the packet but that would satisfy the mitigation question that he had.

Chairman Moran turned it over to Commissioner Kawczak for his questions. Commissioner Kawczak stated that he appreciates the work that MASS MoCA does for the town, it's impressive at times. One of the things he has an issue with is the Marshall Street activity that is being proposed as an offset because most times, MoCA staff comes before the commission with an RDA in advance of the work being performed but in this case, with the demolition of the mill building (ultimately it's going to be a fine looking landscaped park), but he was disappointed because the south branch of the Hoosic River flows directly behind the mill building and if you're marching out distances of 178 feet it comes to the granite curb of Marshall Street. So basically, everything to the west of the Marshall Street curbing falls under the Wetlands Protection Act (WPA). Whether you are trying to combine the landscaping project now or something was missed on the front end when the gigantic piece of art was put up and the building facade removed, but the Conservation Commission was not included in the protection of the environment at that level and he is hoping they could talk to that issue.

Mr. Thompson apologized and stated that they were given a checklist of everybody that they needed to be in contact with ranging from building inspectors and planning boards to Verizon and a million others and the Conservation Committee was not on that and he apologized again. He should have asked about it but it wasn't on the list of 12 things to check off and maybe we need to work on that form. Secretary Eells stated that the Conservation Commission is on the form. Commissioner Kawczak confirmed that Conservation Commission is on the form, it's just a matter of getting it checked or something. Aside from that, moving forward, he doesn't see erosion control on the Marshall Street activity even though it's included as an attachment to the current water tank project and he would like to know how that will be sorted for the commission. Mr. Dilger stated that he knows that the contractor has been aware of activities and proximity to the river. It is his understanding that he has taken erosion control measures but it has not been an engineered plan from Hill. He can look further into that with Hill if the commission would like to see that to straighten this out.

Chairman Moran turned the meeting over to Commissioner Traister for her questions. Commissioner Traister stated that she was curious about whether this was an artistic preference but she inquired about the paving adjacent to the river where they toured earlier and whether there was ever any discussion about impervious pavement and if not, why not. There may be good reasons for it but she believes it's worth a discussion. Similarly, she inquired about the process in terms of where we are now, as she does not recall deliberating about a similar project where an impervious area was being offset by a different plan and she's curious about whether the other project needs to be permitted as well or do we look at another project informally and say that counts. She is not sure of the legal process. Commissioner Traister also requested further clarification on what constitutes riverfront area in terms of what is covered by the Wetlands Protection Act.

Commissioner Traister stated that she doesn't see how since the work is clearly happening in a WPA area, that it could receive a negative determination. She also noted that there was discussion at a recent MACC conference from other municipalities for a need for a better understanding of when property owners need to submit forms to the Conservation Commission because it's not always clear. Maybe a future discussion for the Conservation Commission.

Commissioner Traister stated that her specific question for Mr. Thompson or Mr. Dilger is on the pervious pavement and whether that is a possibility. She would also like to know how they will justify receiving a negative determination since it is happening in the riverfront and there is filling and earth moving happening; she doesn't see how it could receive a negative determination.

Mr. Thompson stated that as for the impervious versus pervious membrane, that decision came from the artist due to the high volume of traffic coming across. Hundreds of thousands of people are expected to visit that. They could ask the artist if needed. With respect to the other, they are working on an industrial site and have a soil management plan for dealing with that. It will be quite elaborate and well thought as they always do. The exact location of those soils to be moved will be very much a part of that plan and he is confident that is under control. Mr. Dilger stated that it goes back to Mr. Moran's question of the 2:1 ratio. Because the ratio of the

offset is so large, even though they are within the 200-foot of the wetland area, their hope was that because of the sheer magnitude of the offset that they could have a negative determination.

Chairman Moran turned the meeting over to Commissioner Canales for his questions. Commissioner Canales stated that his only question is that the commission is being asked to simultaneously approve plans for two separate projects without seeing plans for the Main and Marshall project so it's hard for him to determine the protections that are going to be taken there. His caution is that if the commission approves this, are they approving the plans that are being done for Main and Marshall. He would like to see something come forward with some erosion control and plans for at least the Main and Marshall plan that might be simultaneously linked to this because the two are together. They're approving the offset to be done at Main and Marshall to be able to do this project. He would like to see something more concrete for the Main and Marshall plan so the commission can understand what is being done there.

Mr. Dilger stated that along with the Main and Marshall Puryear Park plan, the planting list was included with the application. There was not a stormwater plan from the architect but as mentioned earlier, they can talk to Hill Engineering to have the 200-foot demarcation indicated on the plan and also have them look at the Main and Marshall project as well.

Chairman Moran stated that to answer Commissioner Canales' question, he doesn't feel like this RDA was a request for permission for the Marshall Street work, it was merely at the time, stating their good faith effort to mitigate the Marshall Street site and to take advantage of that location unbeknownst to the applicant that the Marshall Street site technically was in Conservation Commission jurisdiction, which in turn is kind of a bad/good thing that happened for the applicant because you can't take credit for mitigation outside the riverfront area. So, if all of a sudden, the applicant wanted to utilize the Marshall Street site to say that they just removed 5,000 square feet of impervious and they want to offset that with the 300 square feet that they're proposing in their location – it has to be a riverfront mitigation and a riverfront mitigation. Say you want to disturb 300 square feet in the riverfront and make better 5,000 square feet of side of the riverfront, it's kind of like he said, a good/bad thing that the Marshall Street site, for the purpose of the applicant is now considered to be riverfront area because you can take credit for mitigation at that location because it's now deemed to be in riverfront. So, it kind of worked out for the applicant that this is coming through. In his mind, this RDA is not signifying permission for the Marshall Street site, they were merely just bringing it to the commission's attention that they were going to use it as a mitigation area.

Chairman Moran stated that it seems like, in his mind, one, there are some things that the applicant needs to get back to the commission on. The way he sees it, he can see DEP standing on one shoulder and all of a sudden they see a negative determination that the site of the water tower will not impact the riverfront area, even though it will, he's having a hard time finding a negative determination that he could say with a straight face that could be filed – only to have them come back and ask what the commission was thinking, that's not even close. Then there's the other part of him that says that in the 10 years that he's been chair, the commission doesn't take lightly issuing a positive determination because they like to work with the applicant. Like Commissioner Kawczak said, MASS MoCA does wonderful things for the city and the commission does not want to be a hinderance. At the same time, we are a committee for a reason and we have jurisdiction for a reason. He can't recall the last time the commission issued a positive determination, if that was decided upon tonight. With that being said, he is struggling with the negative determination side so he would like to hear the feedback from each commissioner and then he will open the floor to MASS MoCA for their opinion as well.

Chairman Moran turned the meeting over to Commissioner Kawczak. Commissioner Kawczak stated that he shares the Jiminy Cricket issues with left arm/right arm/good cop/bad cop. He feels uncomfortable with the amount of work that is being done in the close proximity even though there's flood control chutes to suggest the RDA would trip into a negative category and simplify the process for MASS MoCA. As much as he would want to go in that direction philosophically, he has an uncomfortable feeling. He also has an uncomfortable feeling not having any documentation/erosion control for the Marshall Street site. He's torn by both, even though we're primarily talking about the water tank, the project itself sounds fascinating; interesting, he applauds MASS MoCA for bringing something in that will enlighten the arts but the hats that

the commissioners wear make him feel uncomfortable to suggest a negative determination of applicability at this time.

Commissioner Traister stated that she shares Commissioner Kawczak's viewpoint but would also like to stress more good praise for MoCA and she definitely wants to be supportive of all the really great work they do in the community. She would also like to clarify that from her perspective and what she's hearing from the rest of the commission is that there is not much objection to the projects that are being proposed, just the process, even though she favors a positive determination; what that means is that they would require a Notice of Intent, which is a different application and she would encourage that this is the right opportunity to include the Marshall Street project to get it permitted legitimately. She would like to see the work continue but it's pretty clear that the work is happening in the riverfront and that area is in the jurisdiction of the WPA and the activity that is being proposed is regulated by the WPA. It just needs to go through a different process so that it is permitted correctly.

Mr. Thompson interrupted Commissioner Traister to inquire about how long the new process would take. Chairman Moran responded to Mr. Thompson and explained that he may be able to get the Notice of Intent on to the next agenda for the April 23 meeting. Mr. Thompson stated that they would do that, they will stop construction on a project that would have ripped out 5,000 square feet of asphalt and replaced with plants. They will not do a project that will put down 400 square feet on the side bank of a hard river channel. Mr. Thompson requested confirmation.

Chairman Moran explained that the commission doesn't make the rules, they have been hired to volunteer to try to enforce the rules as best as they can. He agrees that it doesn't make sense that there is riverfront area associated with a flood chute. It's his understanding that only North Adams, Adams and maybe Pittsfield in all of Berkshire County, where the riverfront area, according to DEP, is still 200 feet away and he believes elsewhere in the state, outside of Berkshire County, it has been reduced significantly.

Chairman Moran doesn't necessarily agree with the decisions and rules that they are forced to enforce. They're just volunteers who are trying to put their best foot forward just like MASS MoCA is trying to put their best foot forward when it comes to revitalizing the areas on the property that they own. It could be worse for the applicant should someone appeal a negative determination, it could further draw out the process for months, when it seems to be a little bit obvious to the committee members, and, as he stated before, the commission hasn't issued a positive determination and doesn't take issuing a positive determination lightly, but in this instance, it would appear that given what was presented, trying not to block the good of everything, the commission's hands are tied with the WPA.

Mr. Thompson requested confirmation that they won't build a 5,000 square foot park. Commissioner Kawczak stated that this is not a political decision. They're trying to work within the constraints of a legal document.

Mr. Dilger requested clarification of their next steps. They would submit the Notice of Intent with the requested paperwork to get on the April 23 meeting agenda. What is the process with that Notice of Intent.

Chairman Moran explained they had mentioned Hill engineers earlier in the process and that they are capable of shepherding them through the NOI process. They will need to submit some additional information that allows the Conservation Commission to accurately grant approval for the project that is proposed. All it really means is that they would provide additional information in regard to stormwater. The RDA and the NOI are filed at the Registry of Deeds so having the correct documentation, particularly when it comes to mitigating two locations on the same property, is very important that it gets done correctly. If this were a Notice of Intent, he feels it would have been approved because the NOI allows you to take credit for everything being done already. The problem is that the RDA does not allow for that type of discretion. The Notice of Intent is the only way that can happen. He understands that everything about the project is great but if the commission signs off on a negative determination willingly knowing that the area near the water tower will be changed, that is out of the control of the commission.

Mr. Dilger explained that he thought he was going in the correct direction with the form but obviously he was incorrect so they will work on the requested additional information and file the Notice of Intent to get on the agenda for the meeting on April 23. Chairman Moran explained that they have most of the information already provided by Bruner/Cott, it's a matter of procedure. The commission is at the lowest level that is trying to administer rules and regulations that are written at a much higher level. They're not trying to be a road block, they're trying to avoid a situation in the future that could involve an appeal process that would change the direction that the applicant would want to go. The Notice of Intent paperwork is a little more exhaustive but he sees no reason that they can't get the proper paperwork in so that the commission can give a proper approval. Mr. Dilger confirmed. Mr. Thompson stated that they will see the commission on April 23.

Chairman Moran confirmed that the applicant is requesting a voluntary withdrawal of the application without prejudice in an effort to resubmit documentation for the next meeting. Chairman Moran explained to Mr. Dilger to reach out to Secretary Ells for details necessary to get on the April 23 meeting agenda.

Chairman Moran requested a motion to accept the voluntary withdrawal of the RDA. Commissioner Traister made a motion to accept. Commissioner Kawczak seconded the motion. All in favor. Motion carried.

Additional discussion

Commissioner Traister stated that she would welcome having additional discussions with the building inspector or Planning Board to have a better understanding of how the process works to involve the Conservation Commission better. Chairman Moran requested Secretary Ells to spearhead organizing a discussion about a better process. Secretary Ells explained that when this application came through, it was not brought to her attention that this was in a riverfront area so she will try to be more aware in the future and ask more questions. Chairman Moran confirmed that we should begin the conversation to try to be supportive of all applicants coming through the city to make sure they're given all the information they need.

Approval of minutes Public meeting – January 6, 2020

Chairman Moran requested a motion to approve the minutes for the meeting on January 6, 2020. Commissioner Traister made a motion to approve. Commissioner Canales seconded the motion. Commissioner Kawczak abstained. Motion carried.

Adjournment Meeting adjourned at 6:53 p.m.

Respectfully submitted,



Michelle Ells
Conservation Commission Secretary