

TOWN OF FITZWILLIAM

CONSERVATION COMMISSION MINUTES

Monday, July 15, 2019

7:00 PM

Members Present: Paul Kotila, Hiel Lindquist, Susan Silverman, Beth Vanney, Kevin Woolley, Dorothy Zug

Members Absent: Cheryl Norskey

Mr. Kotila called the meeting to order at 7:04 p.m.

PRIMARY:

Approval of Meeting Minutes: June 17, 2019 – Mr. Lindquist made a motion to approve the minutes as amended. Mr. Kotila seconded. Paul Kotila – Yes, Hiel Lindquist – Yes, Susan Silverman – Yes, Beth Vanney – Yes, Kevin Woolley – Yes, Dorothy Zug – Yes. Approved 6-0

7:15 Meet with Attorney Amy Manzelli and Selectmen: To discuss the purpose of the Common Interest Participation Agreement with regard to the Chinook Solar Project.

Ms. Bates shared that the meeting with Attorney Manzelli was to get to an understanding of the Common Interest Participation Agreement and Attorney Manzelli's role for us collaboratively to diminish any fears or misunderstanding. Ms. Bates apologized that Dan Baker and Charlie Kenison were unable to attend. Also in attendance were members of the Planning Board.

Attorney Manzelli shared who she was and gave an overview of the law firm she is associated with. Attorney Manzelli explained the Selectmen's process to hire an attorney and shared they were selected.

Attorney Manzelli stated that when she first started thinking of this and working with the Selectmen as her client, she thought everyone would be well served to put into place a document that would protect confidential documentation. Attorney Manzelli discussed the resources if an applicant does a study, i.e. by State law they are required to keep that information secret (ecological and same for endangered species) for protection. She shared that the studies released today had been redacted. By law it is required to be non-public. The terms of the MOU and the PILOT Agreement as they are being negotiated, is non-public but when done they are a public document and not secret. The back and forth discussion is non-public. Attorney Manzelli handed out a document on the recommended process on how to keep the public informed while maintaining confidentiality and shared that the Selectmen haven't seen it. Attorney Manzelli reviewed the first and second sections and explained how it fits together.

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Attorney Manzelli shared that she has made a request of NextEra for the presentation and it would be available once it was finished.

Ms. Gray asked if questions received at the Planning Board's information session were to be run by Attorney Manzelli. Attorney Manzelli shared that the boards/commissions should determine the importance of the concern and that would be done in a joint meeting in non-public. What's added on the summary sheet would be public knowledge. Attorney Manzelli stated that Section One was public information and Section Two covered non-public.

Attorney Manzelli reviewed the Common Interest Participation Agreement. She stated that it listed who was in the agreement and advised the Selectmen, Conservation Commission, and the Planning Board to enter into this agreement. Ms. Bates asked if there were any questions and reminded everyone that Attorney Manzelli was here to clarify the agreement. Ms. Bates reported that at last week's Selectmen's meeting, they were advised by Attorney Manzelli not to discuss and this was how it became a big misunderstanding.

Ms. Vanney shared that it clearly delineated that Attorney Manzelli was the Selectmen's attorney. No board was required to collaborate together and that was cause for concern. She felt it undermined the collaboration that they were trying to get. It also speaks to the fact that the other boards don't have an attorney.

Attorney Manzelli shared that requiring every party to share everything – she has never encountered a group that would enter into an agreement like that. The Conservation Commission was its own board and allowed to meet and come to their own opinions. If the Conservation Commission wanted to have a meeting where they discussed the issues and they state they are against the project. The Conservation Commission could do that and she wouldn't recommend putting in place an agreement that would require the Conservation Commission to give all of their thoughts and concerns to the Planning Board and the Selectmen. Attorney Manzelli explained why BCM can't represent all of the boards. If it comes to be that the boards don't agree and were against the project – she couldn't represent the group in favor of the project and would have to withdraw as their attorney and everyone would have to get their own attorney or continue without one.

Ms. Bates asked if Attorney Manzelli could represent us until there was a difference of opinion and the project goes sideways. Attorney Manzelli stated no.

It was questioned where funding would come from for an attorney, since the Conservation Commission wasn't a governing body. Attorney Manzelli shared that she has a lot of experience in this type of case, was familiar with the project players, and the Conservation Commission and the Planning Board could get their own attorney and the 3 attorneys could work together and she would take the lead. The other attorney fees would be lower and the applicant might come up with some money for that. She sees very little harm in asking.

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Attorney Manzelli shared that regarding fees when the project goes to the SEC – they have the legal authority to hire their experts and require the applicant to pay. Counsel for the public is an independent body – represents the public at large – also has the statutory right to hire experts and hire outside attorneys and have the applicant pay for all of that. The Town doesn't have that right under the law as it would if doing a site plan review.

A question about fees was asked regarding the agreement that the Selectmen signed with Chinook. Attorney Manzelli shared that in site plan review the applicant was required to pay those fees and they have agreed to pay up to \$30,000 for anything. Discussion was held on what the \$30,000 covered and the concern of the Planning Board that experts needed to be hired and the fact that this agreement was entered into with Chinook without the Planning Board being involved.

Attorney Manzelli discussed what the counsel for the public could and couldn't do. They can't get too specific.

Attorney Manzelli explained that the Common Interest Participation Agreement was to get the solar project approved by the SEC and to get all of our concerns and questions and getting what we wanted to protect the Town. Attorney Manzelli explained why we would become an intervenor and file pre-filed testimony and reports.

There was a question about having a more neutral agreement and not stating that the Town was in favor of the project. Attorney Manzelli shared the additional language that read: as long as the wants and needs of the Town were met.

Attorney Manzelli reported that the SEC process (until a decision was reached by the SEC) was a year-long process, if not extended. Attorney Manzelli noted that we would get the MOU and PILOT done within 3-6 months.

Attorney Manzelli shared that it was very hard to make productive use of time with having a lot of people in attendance. Discussion was held on how the information could be disseminated to the members of the Boards/Commissions.

Attorney Manzelli reviewed the questions asked by the Conservation Commission regarding the agreement and provided answers.

Discussion was held on the process for disseminating the non-public meeting minutes to the Boards/Commissions.

Ms. Bates shared that the Selectmen were meeting a lot more and stated from her perspective that we need a project manager.

Mr. Kotila asked Attorney Manzelli what the primary purpose of the MOU was. Attorney Manzelli stated it was to get everything the Town wanted for this project.

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Ms. Bates asked if the Planning Board and the Conservation Commission could make a decision within the next 2 weeks.

Attorney Manzelli thanked everyone for attending. Ms. Bates thanked the Conservation Commission for their time.

Trails Updates & Design: Discuss next steps for the Katie Metzger Forest – Deferred discussion.

Correspondence:

Memo from Suzanne Gray, Chair Planning Board:

- On-line seminar about Brownfields hosted by the EPA - July 16th - 11 a.m. - 12 p.m.
- Concerns - Chinook Solar Project

NH DES – Forestry Notification – 310 Rte 119E - for information only

Meadowood Task Force Update: Ms. Zug discussed the webinar that would be held on Tuesday, July 16th from 11-12. She noted they have a contract with the EPA and they would be coming in the fall. The snowmoles were still interested in the assembly hall and the pavilion.

Ms. Zug left the meeting.

Common Interest Participation Agreement: Mr. Kotila stated that he wasn't interested in rotating members through the meetings. Commission members agreed. Ms. Vanney stated she was a little uncomfortable with the fact that Attorney Manzelli was the Selectmen's attorney. There was too much at stake to spend money on an attorney. Mr. Lindquist stated if we want to participate in the conversation, we need to sign the agreement. Ms. Silverman shared that it was a big infrastructure project. Ms. Silverman felt the agreement was the best we could do and she didn't think the Conservation Commission by itself would have enough issues to hire its own attorney. Mr. Kotila asked Commission members about signing the agreement. Ms. Vanney asked if an attorney was needed before signing. If we decide not to have an attorney before signing then we are agreeing to sign. Mr. Lindquist shared that if we hire an attorney to review the document they would make changes.

Ms. Silverman moved that the Conservation Commission sign the Common Interest Participation Agreement. Mr. Woolley seconded. Paul Kotila – Yes, Hiel Lindquist – Yes, Susan Silverman – Yes, Beth Vanney – Yes, Kevin Woolley – Yes. Approved 5-0

Mr. Lindquist had a question about the PILOT. Ms. Silverman explained a PILOT. Mr. Lindquist would like to know the answer to the question - if the value of the site ended up in the Town's evaluation. His concern was that the PILOT would be low. Ms. Silverman explained the PILOT that was done in Hinsdale. Mr. Lindquist's second point – he mentioned a wind farm and the value was

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based on the energy produced. Ms. Silverman shared that her concern was different - the properties were woodlots and they weren't bringing in much revenue and were in current use. Our County bill would go up and the school bill might also go up due to equalized evaluation.

Mr. Lindquist asked where the new maps were as no one knows where they are. He needed more and mentioned that in the spring, 500 were printed. Ms. Silverman thought it would be helpful to know who did the printing. It was suggested to e-mail Barbara Green.

OTHER BUSINESS:

ON-GOING BUSINESS:

Budget Report: Expenses (including payroll) as of July 9, 2019

Dog Waste Cleanup Bags:

Initiatives - Invasive Bittersweet: Ms. Vanney gave a handout to all members present.

Meadowood Task Force Update: Discussed earlier.

Monadnock Advisory Committee Update:

Property Updates:

Site Walk Reports:

Solar Array Proposal – NextEra: Public Information Meeting scheduled for July 18th from 5-7 p.m.

Well Water Testing Workshop Update: Ms. Silverman shared that this was something that Barbara Green was working on. It has been scheduled for August 14th at 7:00 p.m. at the Town Hall first floor meeting space. DES was too busy to give any test kits. Kelly at EAI in Swanzey, was willing to leave test kits here and would also pick them up. Ms. Silverman shared they would give a discount. Ms. Silverman also reported that the arsenic level has been lowered. Fitzwilliam has the highest level in Cheshire County.

Ms. Silverman asked the Conservation Commission if they would be willing to fund the cost of flyers. She didn't know if copies could be made at the Town Hall. Ms. Silverman shared that the reason EAI comes to Fitzwilliam was the trailer park and the campground. Mr. Kotila asked if prices of the kits would be announced in advance. Kelly would write up a price list. Mr. Woolley asked if a collection date would be set. Ms. Silverman stated Kelly comes through Fitzwilliam at 10 a.m. on Wednesdays. She thought maybe the kits could get turned in at the Library since the Town Hall was closed and a cooler was needed. Mr. Woolley thought the cost of a piece of card stock at Staples was a \$1.

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Mr. Lindquist made a motion to spend up to \$50 on flyers. Mr. Woolley seconded. Paul Kotila – Yes, Hiel Lindquist – Yes, Susan Silverman – Yes, Beth Vanney – Yes, Kevin Woolley – Yes. Approved 5-0

Updating Ordinances: Review of Shoreland Protection Overlay District – Draft – On hold until final draft was completed by the Planning Board, at which time a joint meeting of the Planning Board and the Conservation Commission would be held.

There being no further business, the meeting was adjourned at 9:04 p.m. The next meeting is scheduled for Monday, August 19, 2019 at 7:00 p.m.

Respectfully submitted,

Sheryl White
Secretary to the Board of Selectmen