

MEETING MINUTES

Special Meeting of the Conservation Commission

September 19, 2023, 6:00 PM

Auditorium, Waterford Town Hall

Members Present: Matthew Keatley, David Lersch, Tali Maidelis
Members Absent: Richard Muckle (Recused), Geneva Renegar, Wade Thomas (Recused) (1 vacancy)
Alternates Present: Ivy Plis, (2 vacancies)
Staff Present: Maureen FitzGerald, Environmental Planner
Kim Powell, Recording Secretary
Also Present: Robert Avena, Esq., Town Attorney

RECEIVED FOR RECORD
WATERFORD, CT
2023 SEP 20 A 10:41
ATTEST: *[Signature]*
TOWN CLERK

1. CALL TO ORDER

The meeting was called to order by T. Maidelis, acting Chairman, at 6:00 PM. I. Plis was seated for W. Thomas.

2. EXECUTIVE SESSION:

Discussion of pending lawsuit entitled Kobyluck Brothers LLC et. al. v. Town of Waterford Conservation Commission; Docket Number KNL-CV-12-6013831-S

Motion: by D. Lersch, seconded by M. Keatley to enter executive session at 6:01 PM.

Vote: 4 - 0

Motion: by M. Keatley seconded by D. Lersch to leave Executive Session at 6:29 PM with no votes taken.

Vote: 4 - 0

3. KOBYLUCK BROTHERS, LLC et. al., v. TOWN OF WATERFORD CONSERVATION COMMISSION; Docket Number KNL-CV-12-6013831-S

Motion: by D. Lersch, seconded by M. Keatley, to Consider and Act on a Proposed Settlement of the Superior Court Administrative Appeal entitled Kobyluck Brothers, LLC et. al., v. Town of Waterford Conservation Commission Docket Number KNL-CV-12-6013831-S, pursuant to new revised plans and conditions, and to instruct the Town Attorney to enter a Stipulated Judgment pursuant to the revised plans and conditions.

Town Attorney Robert Avena explained the meeting is a request by the Superior Court Judge of New London, Connecticut. The judge has recommended that the parties, if possible, enter a stipulated judgement settlement which would be entered on the court records. The applicant's experts will be reviewing a March 8, 2019 letter describing substantial plan revisions to demonstrate to the Commission the reasons for the wetland permission to proceed. The reasons will be discussed in open session. Attorney Avena will present special conditions (Exhibit A) that will be appended to the stipulated judgement along with the reasons for consideration in the motion along with the revised plans and revised Site Environmental Management Manual to be part of the judgement and the court file.

Attorney Kari Olson, Murtha Cullina LLP, Ellen Bartlett PE and Bob Russo, soil scientist of CLA Engineers, Gordon Binkhorst of Alta Engineering, Michael Klemens, LLC herpetologist and conservation biologist were present to review the plan revisions.

Attorney Olson noted they have worked with town staff, town consultant and their own consultants to address all of the concerns raised by the Commission that first denied the application at issue in the appeal. She noted members of the Kobyluck family are also present and hopes that after hearing from the experts, the Commission will agree that the concerns have been addressed and agree to a stipulated agreement with special conditions and vote to approve the request.

E. Bartlett distributed to Commission members a revised plan set entitled "Site Development Plan, Proposed Building Material Manufacturing, 28 Industrial Drive, Waterford, Connecticut, revised through August 4, 2023, prepared by CLA Engineers, Inc." and correspondence dated March 8, 2019 from CLA Engineers, Inc. to M. FitzGerald regarding settlement plans – and description of proposed site development plan revisions. She explained the Town's experts had reviewed the plan and all their comments were incorporated into the revised plans.

G. Binkhorst from ALTA Engineering, reviewed changes to the plans to address water quantity impacts from the proposed development. Groundwater discharge from the cut face of the facility is now intercepted and diverted away from the engineered base material. Curtain drains direct this flow to discharge soils above vernal pool #2 and to the level spreader up gradient of vernal pool #1, to eliminate potential decreases in flows to these pools. A curtain drain has been added at the south end of the engineered base material to distribute flow from the engineered base material to the native subsurface layer. The base elevation of the facility has been lifted to elevation 136.

B. Russo, CLA Engineers, reviewed sheet 1 of the plan set, identifying the proposed driveway crossing of Jordan Brook and the in-stream habitat improvements comprising the direct wetland impacts of the proposal. The activity in the upland review area includes habitat enhancement in the buffer area between the facility and the vernal pools. He explained the plan changes specifying installation of an interceptor trench address the concern of water quantity impacts due to drawdown and groundwater in-flux into the stormwater treatment system from the cut face. The groundwater will be redistributed towards vernal pools #1 and #2.

B. Russo reviewed the changes incorporated into the plans to address water quality impacts. To reduce construction-related sediment impacts, the construction schedule has been reduced to a 2 year time frame. A temporary stormwater treatment basin has been added to the design during the construction period. The permanent stormwater system basin and stormwater pond will not be used until the construction phase is complete. The stormwater treatment system was re-designed to contain the 100-year storm volume with no discharge to Jordan Brook. He noted that the current run-off from Industrial Drive will now be treated with a swirl separator unit that was approved by the Town's Department of Public Works.

B. Russo noted that the Commission's consultant felt that potential thermal impacts were properly handled in the design. To address potential wildlife impacts, the plans include buffer

enhancements to the disturbed soil areas between the vernal pools and the facility, including adding organic materials to the soils and plantings.

B. Russo submitted a revised Site Environmental Management Manual dated 9/19/2023 that outlines a water quality sampling program, dust suppression and good housekeeping measures and visual inspection and monitoring of the facility. He stated all the aspects, previous concerns and comments for denial have been addressed.

Dr. Michael W. Klemens, certified herpetologist and conservation biologist addressed the concerns and impacts to the on-site vernal pools. He noted they are excavated areas that hold more water than typical vernal pools and vernal pool #2 contains a population of fish, but technically by definition they are vernal pools.

M. Klemens stated that the plan revisions and revised management plan create an ecological corridor to allow natural migration of amphibians to and from the pools. The facility will only operate during daylight hours. The silt fence sediment controls have been replaced with wood chip berms to allow amphibians to cross. The curbing along the access driveway has been modified to allow amphibians to cross from the facility to the pools, but has an 8 inch back edge to divert amphibians from returning. He explained the top of the excavated cut and the rims of the stormwater basins will be lined with concrete block to prohibit entry of amphibians. Seasonal restrictions for construction are recommended to have no construction activity between March 1 and April 15 during migration period and post-construction no activity between sun-down and sun-up during migration period. M. Klemens reviewed the buffer enhancement elements included in the plan for the vernal pool envelope.

M. Klemens noted climate related changes and changes in rainfall may affect amphibian productivity. He noted the proposed amphibian monitoring plan includes interpretation of the monitoring data in light of other environmental changes and regional patterns. Annual monitoring reports will be submitted to the Commission. In his opinion the design and proposed monitoring plan will adequately protect the vernal pools from potential negative impacts from this project.

E. Bartlett noted the plans address concerns that were listed in the application denial as well as other concerns raised during the reviews. She noted the location of the raw materials stockpile was moved away from the stormwater pond and the height from which materials are dropped into the facility reduced to 25 feet. The area of disturbance in the northeast part of the facility was reduced by approximately 1 acre. The plan revisions presented were summarized. The facility is located outside the 100 ft. Upland Review area, the bridge crossing for the driveway is an improvement over existing conditions. The only work in the 100 ft. upland review area beside the crossing are for habitat enhancement. The storm water treatment basins have all been enlarged to hold a 100 year storm event. An 8 ft. bench and retaining wall was added to the cut face of the facility to collect groundwater from the cut and distribute it to vernal pools 1 and 2. A restrictive conservation easement has been added on the western side of the property to include Jordan Brook and the western tributary.

I. Plis asked what type of fish were in the vernal pool and how dust will be managed on the site. Mr. Klemens replied sunfish were observed. B. Russo explained the dust suppression spray machinery and water trucks used to control dust along the crushing machines and conveyors and to water the facility floor area when required. He noted best management practices include sweeping the access drive, and inspection for dust accumulation at designated monitoring stations. The water will be supplied from an on-site well, not from the stormwater basins or brook.

D. Lersch asked about amphibian population declines and if amphibians can traverse the Eversource right-of-way to reach upland forests to the east. Mr. Klemens replied yes they can migrate across the area. The improvements proposed in the buffer area will increase habitat, but not necessarily productivity of the amphibians.

Chairman Maidelis requested Attorney Avena read into the record the recommended special conditions dated September 19, 2023 (Exhibit A). Conditions 1 through 10 were read aloud. Attorney Avena noted Exhibit B is the March 8, 2019 correspondence by CLA Engineers, Exhibit C is the revised plan set and Exhibit D is the revised Site Environmental Management Manual. Chairman Maidelis requested the 4 plan sheets used in the presentation also be included in the record and they were added to Exhibit C.

There were no additional questions from the Commission.

Call for Vote: T. Maidelis called for a vote on the motion to accept this consideration via roll call vote.

Voting in Favor: M. Keatley, D. Lersch, I. Plis and T. Maidelis

Voting Against: (none)

T. Maidelis stated the Commission voted 4-0 in favor of the documents.

ADJOURNMENT

Motion: by I. Plis and seconded by M. Keatley to adjourn at 7:30 PM.

Vote: 4-0

Respectfully Submitted,



Kim Powell

Recording Secretary

FIFTEEN ROPE FERRY ROAD



WATERFORD, CT 06385-2886

Re: Kobyluck Brothers LLC et. al., v. Town of Waterford Conservation Commission
Proposed Stipulated Judgement pursuant to revised plans and documents
September 19, 2023

SPECIAL CONDITIONS:

1. The construction of the facility is to be completed within 2 years of commencement of construction in accordance with the site plans and Site Environmental Management Manual (2023).
2. A \$25,000 dollar bond is required for the costs of installing and maintaining erosion and sediment control measures, the buffer enhancement plan and monitoring of the stormwater system performance. The bond is to be in the form of cash or letter of credit, and may be released in whole or in part, upon completion of construction and required monitoring, by approval of the Waterford Conservation Commission or its designated agent.
3. A conservation easement shall be established over the wetlands and adjacent upland areas on the west side of the facility extending to Jordan Brook, as depicted on the site plans. The conservation easement shall be granted in favor of the Town of Waterford and provide permanent protection to the wetland resources and riparian corridor therein. The language of the easement shall be approved by the Waterford Town Attorney as to form prior to filing on the land records. A survey plan and description of the conservation easement boundary is required as an attachment to the filed conservation easement. The boundaries of the conservation easement area shall be permanently marked on the property by a licensed surveyor with survey monuments/pins.
4. Unconfined in-stream construction work for the access road crossing of Jordan Brook is restricted to occur between June 1 and September 30.
5. Construction of the engineered base material and stormwater basins is to be inspected by a CT licensed engineer during construction to verify that the type, depths, and permeability of the specified fill materials are consistent with the plan specifications. Sieve analysis testing of the specified impermeable layer material required in the engineered base material and the stormwater treatment ponds is required to be submitted to the project's engineer for review and acceptance prior to installation.

Exhibit B

Rec'd
9/19/23
6:32 PM

CLA Engineers, Inc.

Civil • Structural • Survey

317 MAIN STREET • NORWICH, CT 06360 • (860) 886-1936 • (860) 886-9165 FAX

March 8, 2019

Ms. Maureen Fitzgerald
Planning and Zoning Department
Town of Waterford
15 Rope Ferry Road
Waterford, CT 06385

Re: 28 Industrial Drive, Waterford, CT
Settlement Plans – Description of Proposed Site Development Plan Revisions
CLA – 2725

Dear Maureen:

We understand that a compromise to settle the pending appeal regarding denial of a wetlands permit for the development of 28 Industrial Drive is being proposed. To that end, we have been asked to revise the Site Development Plans for 28 Industrial Drive to facilitate that compromise. Those revised proposed plans are enclosed herewith.

Please note that the plan revisions are intended to address the concerns of the Commission as outlined in the denial of the application. The following is a description of what changes have been made to the plans and the design basis for these changes.

A. The Vernal Pools

Michael W. Klemens has become part of our design team. Dr. Klemens co-authored "Calhoun, A. J. K. and M. W. Klemens. 2002. Best development practices: Conserving pool-breeding amphibians in residential and commercial developments in the northeastern United States. MCA Technical Paper No. 5, Metropolitan Conservation Alliance, Wildlife Conservation Society, Bronx, New York.", which is referenced by everyone in Connecticut, working in the field of vernal pools. Dr. Klemens has reviewed the project and has made the following suggestions, which have been incorporated into the project.

The proposed facility will not have large areas of pavement and is only operating during daylight hours, therefore, Dr. Klemens' opinion is that the site should be left open to allow migration of vernal pool amphibians. The plans have been revised to utilize wood chip berms instead of silt fence and Cape Cod curbing instead of concrete curbing. The Cape Cod curbing used for this project will be modified to have an 8 inch back to allow migration across the site to the vernal pool, but not through the site from the vernal pool. The modified curbing

is shown on sheet 7A. In this vein, a 4:1 sloped area has been shown on sheet 1,4,10, 10A, located on the south side of the access drive and adjacent to the riprap level spreader, to allow migration of amphibians to vernal pool #1. In addition, concrete blocks that have mortared joints will be installed at the top of the rock walls and around the stormwater basins to prevent unwanted mishaps. The construction of the facility will not occur between March 1 and April 15, when migration of the animals is at its peak. During construction and for the life of the actual facility, there will be no work done between hours of sundown and sunup, as the nighttime is when the amphibians migrate. These changes are shown on sheets 3, 4, 9, and 10, and noted on sheet 5 concerning the March 1 to April 15 restriction and the sundown to sunup restriction.

A silt fence has been added to the plans surrounding the temporary sedimentation basin and the temporary stormwater pond. The silt fence will keep the migrating amphibians away from these basins during the construction phase. The silt fencing is shown on sheet 3.

Dr. Klemens has also recommended further enhancement of the existing scarified areas surrounding the vernal pools. Sheets 4B, 8 and 10A show additional plantings, loam, stone piles, and logs. A detailed plan for augmenting and monitoring the vernal pools will be provided in the Site Environmental Management Manual.

B. Water Quality

1. Water Quantity Impacts from Draw Down

A concern raised by the third party reviewer LBG, was that if there was more groundwater from the rock wall than estimated, would it overwhelm the stormwater treatment basin system. Although we do not believe that would be the case, we nonetheless have added a retaining wall between the rock wall and the stormwater pond. This retaining wall will provide an 8 foot wide bench with an underdrain system to collect the groundwater breakout from the rock wall. The groundwater will be collected in two curtain drains, an 6 inch curtain drain outletting to the new infiltration outlet located above vernal pool #2 and a 12 inch curtain drain outletted to the riprap level spreader located above vernal pool #1. This will separate the groundwater from the surface flow, and eliminate any lingering concerns presented by LBG during the application process. An addendum to the original drainage calculations has been attached, which contains the design basis for the curtain drains.

During the application process concerns were raised regarding the decrease in groundwater flows to vernal pool #2. It was estimated that there would be no more than an 11% decrease in flow to vernal pool #2. As stated in the last paragraph, to eliminate this concern, the plans have been revised to include the installation of a curtain drain system, which will direct a proportional percentage of the groundwater to vernal pool #2. This new curtain drain and infiltration outlet are shown on sheets 1,10,10B, and in profile on sheet 1B,

and details have been added on a new sheet 12. Based on this alternative design, there will no longer be a decrease in groundwater flow to vernal pool #2 or the western riparian corridor.

2. Water Quality Impacts from Stormwater Discharges

One of the issues that the Commission was concerned with was the period of time that the property would be under construction. In the years since the application was denied, Kobyluck has acquired and permitted another site in Montville for storage and processing of material. This means that the time for construction of the site can now be limited to two years, a typical time period for construction of a site of this size. During construction, the only processing of materials on-site would be for producing materials needed for the proposed construction of the facility, a practice that has been allowed on similar sized projects in Waterford. This allows for additional area being available during the construction phase for the construction of temporary stormwater treatment basins. Sheet 4 shows these temporary construction stormwater treatment basins in detail. They are also shown on sheets 4, 4B, 8, and 10, 10B. These new temporary basins will remain in place until construction is completed and the entire site is stabilized. This will eliminate the concerns regarding separation of temporary construction stormwater treatment from permanent water quality treatment facilities. The permanent stormwater treatment system: two sedimentation basins, stormwater pond, and filter base, will not be functional until the construction phase is completed and the site is stabilized.

During the application process concerns were raised regarding the possibility of pollutants reaching the wetlands and Jordan Brook. The water quality treatment system has been redesigned to contain the 100 year storm event. The basins have been widened and the outlet pipe sizes reduced to provide storage for the 100 year design storm. No discharge will occur in the 100 year storm. The addendum to the drainage report includes a revised TR20 drainage model showing zero flow leaving the facility during a 100 year storm event. The plans have been revised to show the wider basins and the new outlet pipe sizes. Sheets 4 and 10 show these changes in the most detail. The attached addendum to the original drainage calculations includes the calculations for the redesign.

As discussed in the previous section, Water Quality Impacts from Draw Down, the plans have been revised to segregate the ground water from the surface water. And as discussed in this section, the plans have been revised to segregate the construction runoff from the permanent water quality treatment system.

Dr. Gordon K. Binkhorst, Ph.D., LEP ALTA Environmental Corporation, Robert Russo with CLA and myself, have collaborated to provide a detailed Monitoring and Action Plan, as part of the Site Environmental Management Manual, to ensure that the engineered base material and impermeable liner materials will continue to meet the design standards. Additional monitoring wells have been shown on sheets 3 and 9.

3. Water Quality Impacts From Industrial Drive Stormwater Discharge Design:

As per to the requirements of the Waterford Public Works Department, this was the only alternative that Waterford Public Works would approve, for the proposed Industrial Drive outlet. And as the Town owns this drainage system we had to comply with their requirements.

4. Thermal Impacts to Jordan Brook Fishery Resource

During the application process concerns were raised regarding thermal impacts during the construction phase. As discussed above in Water Quality Impacts from Stormwater Discharges, a five year construction period is no longer proposed. The facility will be constructed within two years, which is a normal construction time period for a facility of this size. During construction, the only processing of materials on-site would be for producing materials needed for the proposed construction of the facility, a practice that has been allowed on similar sized projects in Waterford. This allows for additional area being available during the construction phase for the construction of temporary stormwater treatment basins. Sheet 4 shows these temporary construction stormwater treatment basins in detail. They are also shown on sheets 4, 4B, 8, and 10, 10B. These new temporary basins will remain in place until construction is completed and the entire site is stabilized. This will eliminate the concerns regarding separation of temporary construction stormwater treatment from permanent water quality treatment facilities. The permanent stormwater treatment system: two sedimentation basins, stormwater pond, and filter base, will not be functional until the construction phase is completed and the site is stabilized.

By the end of the application review process the Town's third party reviewer LBG was satisfied that the proposed design will not result in any thermal impacts to Jordan Brook. In Exhibit 94, LBG finds the discharge through the base material adequately addressed concerns of thermal loading. Therefore, no revisions have been made to the plans for thermal impacts.

5. Fish & Wildlife Impacts

As discussed in the first three paragraphs of this letter, Michael W. Klemens has become part of our design team. He has reviewed the plans and revisions to the plans have been made based on his recommendations, as discussed above.

6. Fugitive Dust Impacts to Wetland & Watercourses

A revised dust suppression plan has been prepared, as part of the detailed Site Environmental Management Manual.

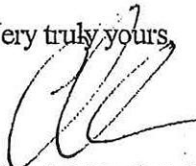
In addition to concerns outlined in the denial letter, the plans have been revised to relocate the raw materials pile (which was previously located in the back northeast corner of the site, adjacent to the stormwater pond) to the middle of the site. This will eliminate the concerns for materials and fines entering the stormwater pond when the material would have been dropped from a height of 45 feet. The new location is over 200 feet from the stormwater pond and the height has been reduced to 25 feet.

The access drive within the Eversource easement must remain, as Eversource required this access. However the grading at the top of the access drive has been revised to eliminate the level area and topsoil and a specific seed mix has been specified for this area. The mix was selected to obtain quick stability and is appropriate for both mowed and non-mowed areas, as Eversource may periodically clear brush from this area.

In addition, a stormwater diversion berm has been added to the bottom of the access drive to redirect surface runoff from the Eversource easement towards the easterly wetlands. This area within the easement presently flows to the easterly wetlands. As this access drive will only provide access to the easement area and the undeveloped section of the property, it will be easily maintained for such a low volume of traffic.

If you have any questions please do not hesitate to contact me.

Very truly yours,



Ellen M. Bartlett, PE, CPSWQ
LEED Accredited Professional