

**TOWN OF MANCHESTER
MINUTES OF BUSINESS MEETING
HELD BY THE PLANNING AND ZONING COMMISSION/
INLAND WETLANDS AND WATERCOURSES AGENCY
MARCH 4, 2024**

MEMBERS PRESENT:

In Person: Eric Prause, Chairman
Patrick Kennedy, Vice Chairman
Michael Stebe, Secretary
Teresa Ike
Chris Schoeneberger
Michael Farina

ALTERNATE MEMBERS SITTING:

In Person: Zachary Schurin

ALTERNATES PRESENT

In Person: Bonnie Potocki
Electronically: Maliha Ahsan

ABSENT:

Daniela Luna

ALSO PRESENT:

In Person: Megan Pilla, Principal Development Planner
Gary Anderson, Director of Planning & Economic
Development
Electronically: David Laiuppa, Environmental Planner/Wetlands
Agent
Nancy Martel, Recording Secretary

The Chairman opened the Business Meeting at 8:35 P.M.

HILLIARD MILLS LLC – Changes to previously approved PZC plans at 640 & 642 Hilliard Street and 370 Adams Street for renovation of buildings 5 & 6 and various site improvements. – Inland Wetland Permit (IWP-0054-2023); Special Exception Modification (PSE-0055-2023); Flood Plain Permit (FLDP-0005-2023)

Inland Wetland Permit (IWP-0054-2023)

MOTION: Mr. Kennedy moved to approve the inland wetlands permit for an addition to Building 5 and various site improvements at the Hilliard Mills complex, with the modifications as specified in a staff memorandum from:

1. Megan Pilla, Principal Development Planner, dated March 1, 2024.

Mr. Stebe seconded the motion and all members voted in favor.

The reason for the approval is that the proposed activity does not disturb the natural or indigenous character of the wetlands by significant impact or major effect.

The approval is valid for 5 years. The work in the regulated area must be completed within one year of commencement.

Special Exception Modification (PSE-0055-2023)

MOTION: Mr. Kennedy moved to approve the special exception modification for an addition to Building 5 and various site improvements at the Hilliard Mills complex, with the modifications as specified in a staff memorandum from:

1. Megan Pilla, Principal Development Planner, dated March 1, 2024.

Ms. Ike seconded the motion and all members voted in favor.

The reason for the approval is that the proposed activity meets the special exception criteria in Article IV, Section 20.

Mr. Prause expressed his pleasure that there is progress on the site. It is an asset to the community, and he appreciates that the applicant follows the process. Additionally, it is very compliant with the special exception criteria.

Flood Plain Permit (FLDP-0005-2023)

MOTION: Mr. Kennedy moved to approve the flood plain permit for an addition to Building 5 and various site improvements at the Hilliard Mills complex, with the modifications as specified in a staff memorandum from:

1. Megan Pilla, Principal Development Planner, dated March 1, 2024.

Mr. Schoeneberger seconded the motion and all members voted in favor.

TOWN OF MANCHESTER PLANNING & ZONING COMMISSION

Zoning Regulation Amendment (REG-0001-2024)

MOTION: Mr. Farina moved to continue the public hearing to March 18, 2024. Ms. Ike seconded the motion. Mr. Prause, Mr. Stebe, Ms. Ike, Mr. Farina, and Mr. Schurin voted in favor of the motion. Mr. Kennedy and Mr. Schoeneberger voted against the motion. The motion passed five to two.

DISCUSSION: MUNICIPAL FINES FOR INLAND WETLANDS VIOLATIONS

Ms. Pilla reported that there is a State statute that allows municipal fines for inland wetlands violations by ordinance, so an ordinance would have to be adopted. The majority of towns in

Connecticut appear to have such an ordinance. She had no data on how often the citations are issued.

Mr. Farina stated that this involves a recommendation to the Board of Directors, as the PZC has no authority to enact an ordinance. The draft is based on current ordinances in other towns. He observed that he was surprised that Manchester did not have fines and the Wetlands Agent cannot enact a fine. He surmised that, if this goes to the Board of Directors, they will modify it. There was a discussion about the amount of the fine, and there may be an ordinance or potentially charter that limits the fine to \$100.

Ms. Potocki noted that, as there is currently no hearing officer in town, this would involve hiring a hearing officer. This also included aquifer protection, which is not part of the Inland Wetlands and Watercourses Act. Reviewing the list of violations, it does not appear that the Town has gone to court in the past few years. There would be the administrative burden of a hearing officer, usually an attorney or retired attorney on retainer or other Town staff that has been assigned the duty.

Mr. Farina reported that the requirement for a hearing officer is found in state statute. There must be one if an ordinance is passed, because a resident or entity must have a way to dispute the fine; the statute is clear on who cannot be a hearing officer, which he elaborated upon.

Mr. Prause noted that there was no exclusion of Planning Department staff, though not the Inland Wetlands agent. He assumed this would be someone who, for a period of time, would act in that position.

Ms. Pilla commented that that is one of the items she is not qualified to answer, and the Town Attorney would have to weigh in.

Mr. Prause agreed with Mr. Farina that it could be someone who is appointed to that position.

Ms. Pilla reiterated that reference to the Aquifer Protection Area would be stricken because the ordinance is specifically for Inland Wetlands. She commented on some considerations:

- III - Repeated violations on the same property. Fines shall be doubled to the extent permissible by law. As written, the fine is proposed to be \$1,000, which is the maximum fine, and therefore cannot be doubled because of the statute maximum.
- Citation Hearing Procedure. To be confirmed with the Town Attorney is whether the Town would have to establish a specific citation hearing procedure. The statute that allows for this ordinance for wetlands mentions also adopting a citation hearing procedure, and the Town does not have a formalized procedure.

Mr. Prause speculated whether this should be reviewed by the Town Attorney before sending it to the Board of Directors (BOD). Ms. Pilla confirmed that would be her suggestion, as they could weigh in on items that will inevitably come up.

Mr. Kennedy referred to the fine of \$1,000 for each offense; he assumed it would be “not to exceed \$1,000,” which is the common wording. He asked about the definition of an offense.

Mr. Schoeneberger felt that, conceptually, it is worth pursuing. He speculated on the extent of the nuances the Commission would deal with and the administrative burden of who the hearing officer would be. His primary concern is whether the Town is crushed with these instances to require something of this significance, and what could be done better to avoid getting to that stage.

Mr. Farina stated that the \$1,000 but not doubling was done intentionally and modeled after other towns. He noted that the state statute maximum is the \$1,000 but he kept it in Art. V (3) so the ordinance would not require a change every time State Statute increased the maximum penalty. He noted the language is not “shall,” but “may” at the discretion of the Wetlands Agent.

Mr. Stebe noted that it is clear that there have been situations where an applicant did not heed the certified letter stating that they are in violation. He assumed that the initial interaction would not change but, with no compliance, the Agent would have a lever to create a substantial reason to comply. The draft is very clear on the concerns and the expectation of how this should function, and there will be multiple attorneys and opinions from other professional Town staff and directors that will shape the final verbiage.

Mr. Prause noted that Art. IV states, “violations shall be subject to citation and fine.” He felt that should be changed to “may” to protect innocent violators. Mr. Prause was concerned about the gray area of fining some but not others, which may give the appearance of favoritism. Perhaps there should be language referring to “intentional” or “egregious” that may help clarify the position for the agent. Leaving staff to execute puts them in a problematic area for execution.

Ms. Potocki inquired whether Mr. Anderson felt this would be a good tool.

Mr. Anderson responded that he has mixed thoughts. He understands the intent, but shares the Chairman’s concerns about when and how it should be utilized.

Mr. Laiuppa recognized that, if this is established, it would be part of the existing tools. He felt some language should be added up front, stating that the intent is to enable enforcement in addition to the existing tools that are part of the regulations. Mr. Laiuppa reported that his first step is to talk to the involved individuals and 75% of the time that resolves the issue. If that is not successful, he issues a Notice of Violation or an Order and it is handled according to severity. He felt that defining the other options is helpful, but it should not be defined too tightly. Mr. Laiuppa noted that his Notice of Violation letters imply a softer offense than an Order letter. Going to the level of fines, the language must imply that it is a more egregious offense. However, if an individual knowingly does something in violation, it would be to their benefit, in this verbiage, to not apply for a permit but to just fill in the wetland because they would be fined \$500 rather than \$1,000. He pointed out that “Continual Violations” is very common. Most, if not all, towns that have a fee structure include this language. It is important because if someone is not compliant or slow to comply with an order, it is more of a burden. If the individual drags their feet, the fine will be much higher than for someone who complied.

Mr. Schoeneberger reiterated that, conceptually, he would bring this forward to the attorneys to review, which will elicit specifics on the language he is concerned with. He acknowledged that Mr. Laiuppa works cooperatively, clearly, and concisely with violators so when there is a case of willful neglect, perhaps this is the best option. His concern on the appeal process is whether the hearing officer would understand the situation, whether additional staff would be added, and how much more of a burden can be put on Mr. Laiuppa.

Mr. Farina added that, given it is based on many towns' ordinances to enact fines, it is not reinventing the wheel but refining the wheel as long as there is consensus to have the Town Attorney review it. He suggested having the BOD first decide whether they want to enact it. The Letter of Violation states "additional actions may include an official order and/or fines," but there are no fines.

Mr. Stebe observed that this is an addendum to the current tools, process, and procedure available to the Wetlands Agent; he did not feel this ordinance needs more detail on how it gets done. When looking at a budgeting item, it says they will establish a commission; it does not say the process and procedure within it.

Mr. Anderson suggested floating the proposal to the leadership through the manager for their assessment. Then it would be driven by them, though he was unsure of their interest. If the Commission wants the BOD to take a look at it, a memo should be submitted through Town staff to the General Manager asking the Board to consider this.

Mr. Prause felt issues need to be cleaned up beforehand. Something should be added to Art. III saying that this is intended for repeated or egregious violators, not a primary tool.

Mr. Farina concurred with Mr. Prause's opinion except that he would not state "egregious violation." With the "may" language, it is up to the Wetlands Agent if it is warranted.

Mr. Anderson stated that he would feel more comfortable if the Commission reviewed it again. It could be run by the Town Attorney briefly to ask about any major concerns, make changes, and get it back to the Commission.

DISCUSSION: OPEN SPACE ACQUISITION PROCESS

Mr. Prause noted that Mr. Farina requested an opportunity to meet and look at properties such as these and make a recommendation to the Board of Directors for an acquisition plan. There was no resolution and, subsequently, Mr. Farina questioned staff about how this ties in with the Plan of Conservation and Development (POCD). How the Town plans for conservation and open space management is something the Commission must look at. Currently, the Land Acquisition and Historic Property Investment Committee does the groundwork identifying specific parcels. In the recent POCD, they are identified as coming up with a detailed list and making recommendations to the BOD. He speculated whether the members felt this Commission needs to get more involved. Mr. Prause reported that he and Mr. Kennedy are members of the Land Acquisition and Historic Property Investment Committee, along with two members of the BOD,

a representative from the Conservation Commission, someone from the Historical Society and someone from the public.

Mr. Kennedy noted that this is being done now with the Land Acquisition and Historic Property Investment Committee identifying significant properties to preserve and works quite well. There will always be areas that do not have much value where an entity will try to install a solar array. In his opinion, the problem is more with the State process, and the Town cannot be blackmailed into buying overvalued property.

Mr. Farina noted that he had previously sought a recommendation to the BOD to assess and potentially purchase property through many different mechanisms. The fact that the State can put a solar array in a Rural Residentially zoned neighborhood, effectively destroying the character of the neighborhood and ignoring wetlands regulations, does not sit well. He was concerned that there are other parcels that are equally at risk. Mr. Farina felt the Commission should recommend that the BOD look at 250 Carter Street to negotiate the purchase or take it through eminent domain. State statute says the Town may make a plan to implement the purchase of open space which is not part of the POCD. Currently, the Temporary Trails Committee and the Land Acquisition and Historic Property Investment Committee make recommendations to the BOD agendas and the PZC reacting to the public's concerns.

Mr. Prause noted that one of the criteria of the Land Acquisition and Historic Property Investment Committee is the likelihood of development. Many properties are felt to have too many wetlands to build up. He suggested that, the next time that Commission meets, they should look at that criteria again and acknowledge that there is a risk of the Siting Council approving a development. The Land Acquisition Committee is reconstituted around the referendum passed in 2016 that sets a \$4 million amount with \$1.7 million left over. There is the intention to spend roughly half of that between land acquisition and historical preservation, though more has been spent on land acquisition. Perhaps that Committee should look beyond the amount of the referendum and continue to make recommendations regardless of that limit. The statute regarding open space allows the Commission to develop an open space plan, but many towns have large areas of undeveloped space. He suggested keeping the list of open space close to the vest on the Committee to hamper the ability to negotiate a higher price or cause families stress about trusts they want to hold as an asset.

Mr. Schoeneberger asked how the Town was informed about the Siting Council's process. He noted that, on the Siting Council website, there were multiple open applications from this entity. He asked whether that is standard practice.

Ms. Pilla explained that, when a petition is submitted to the Siting Council, they are required by statute to give notice to the Town, as well as the abutting property owners. In November, the Town received notice via the mayor to expect a petition to be submitted. The lack of PZC jurisdiction is written into the statute.

Mr. Anderson remarked that they do have multiple applications. These are not applications from the Siting Council. It is between a private owner and a company.

Mr. Kennedy noted that the State has overridden the PZC jurisdiction, but there are state legislators that can put riders on bills.

Ms. Potocki reported that, years ago, the Conservation Commission drafted an open space plan and submitted it for review to Planning and Zoning and Inland Wetlands.

Mr. Farina discussed two topics: (1) the recommendation to the BOD to do something at 250 Carter Street, and (2) a plan to implement open space acquisition, which is not included in the POCD, which does not necessarily mean a list of properties, but how to get to purchase the properties. Possibilities are eminent domain, referenda, referenda every few years, and a number of acres to buy over a period of time.

Mr. Prause asked whether an action plan is something the Commission would be interested in creating. Another other option is that the Land Acquisition Committee picks it up, which would be broader than just the Planning and Zoning Commission.

Mr. Stebe noted that, within a generalized POCD plan, it is not the Commission's plan but something that could be worked on with any body that is interested in land acquisition. He reiterated that the POCD does not have a list of properties but highlights some ideals.

Ms. Potocki observed that she liked the former format with the open space plan. Opening it to others would be great to create a wish list over several years.

Mr. Prause assumed the list would be the same that we currently have. He sought the Commission's input.

Mr. Anderson noted that there is the Land Acquisition and Historic Property Investment Committee, which looks holistically at what should be acquired over time. Additionally, changing the charge of that committee so it is not related to the bond fund exclusively would make sense. He pointed out the groups that are having this discussion. He added that he is unsure how this relates to the purview of the PZC, though it has some connections to the POCD. However, there are pieces in the local government that can handle it.

Mr. Farina reiterated that this is really about the "how." There is no plan to implement land acquisition. He reported that he will submit an item for the agenda and will put together a resolution.

Ms. Potocki concurred with Mr. Anderson that there are already entities within town to handle this.

Mr. Kennedy was skeptical that this is within the Commission's institutional competence. The Commission must focus on what it is tasked with, planning and zoning. The land acquisition process works fine as is. He does not believe that Carter Street is related to that. In his opinion, it is excessive State control overriding local control in the Siting Council process that needs to be curbed. That is the State Legislature's purview and does not relate to planning and zoning.

APPROVAL OF MINUTES

February 21, 2024 – Public Hearing/Business Meeting

MOTION: Mr. Kennedy moved to approve the minutes as written. Mr. Stebe seconded the motion and all members voted in favor.

ADMINISTRATIVE REPORTS

- Upcoming Training Opportunities
 - In-house training session – March 18, 2024 beginning at 5:45 PM (before regularly scheduled meeting)

Mr. Laiuppa reported that the 14 North Main Street wetland application was administratively approved after the last Planning and Zoning meeting.

RECEIPT OF NEW APPLICATIONS

There were no new applications.

The Business Meeting was closed at 10:35 P.M.

I certify these minutes were adopted on the following date:

March 18, 2024

Date

Eric Prause, Chairman

NOTICE: A DIGITAL RECORDING OF THIS BUSINESS MEETING CAN BE HEARD IN THE PLANNING DEPARTMENT.