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TOWN OF KILLINGLY, CT
PLANNING AND ZONING COMMISSION

WORKSHOP SESSION
TUESDAY, OCTOBER 11, 2016

5:00 PM

KILLINGLY TOWN HALL, 172 MAIN STREET, KILLINGLY, CT
ROOM 102

MINUTES

I. **CALL TO ORDER** – Chair, Keith Thurlow called the meeting to order at 5:00 pm.

ROLL CALL – Todd Nelson, Milburn Stone, Virge Lorents, Keith Thurlow. Brian Card and Sheila Roddy were absent with notification.

Staff Present – Ann-Marie Aubrey, Director of Planning and Development; Town Attorney, William St. Onge.

Present From TRC Environmental Corporation (Third-party Consultant hired by the Town of Killingly)

Carl Stopper, Vice President

Present From NTE Energy:

Tim Eves, Senior Vice President of Development

Mike Bradley, Senior Vice President, Commercial

Chris Rega, Senior Vice President of Engineering and Development and Operations

David Groleau, Developer

Present From Tetra Tech, Environmental Consultant on this project:

Lynn Gresock, Vice President of Power

II. **SEATING OF ALTERNATES** – None.

III. **BUSINESS – REVIEW/ DISCUSSION / ACTION**

1) Preparation and possible approval of Draft of the Commission's Order of Regulations and Restrictions to be submitted to the CT Siting Council regarding the application of NTE Connecticut, LLC to construct a power generating facility off Lake Road in Killingly, CT.

Ann-Marie Aubrey explained that there had been revisions to the draft previously provided to the Commission Members and the Commission reviewed the revised draft document page by page:

- There were no changes to page one.
- Ann-Marie Aubrey stated that the following had been added to page two:
3) that the Applicant has provided erroneous and insufficient information with their filing to fully evaluate the impact of all aspects of the proposed development project relative to items 1 & 2 above and the health, safety and welfare of the community and environment.
- Ann-Marie Aubrey had received the following comment from Brian Card for addition under Water Supply (on page three):

That the owner/applicant confirm that after construction and all improvements; there is sufficient water supply to provide for the operation of the plant under all circumstances and for the fire protection for the duration of the project. (Reference is hereby made to the correspondence from CT Water Company, stating the project is to be revisited annually.)

- Ann-Marie Aubrey read the following addition under Widening of Lake Road and Traffic (page three):
The Commission would like to see / require the switchyard be moved across the street (to the north side of roadway) onto the main location of the proposed energy power plant. The reasoning behind this is as follows:
 - a) The removal of high tension lines over the roadway (between the switchyard and the main plant);
 - b) less impact on the rural neighborhood;
 - c) minimize the impact on the cemetery that is located on the present switchyard site;
 - d) would allow the minimization of the curve radius on the widening of Lake Road.

She also recommended the addition of the following paragraph:

Should the Siting Council and/or Connecticut DEEP find that the factors and reasons for not moving the switchyard override the Planning and Zoning Commission's preference for the move, the P&Z will request that the Owner/ Applicant be required to do research in the graveyard area outside of the stone walls to verify that the switchyard will not interfere with any parcel gravesites located outside of those stone walls.

She stated that this also appears under Neighborhood Impact and she asked the Commission where it fits best. Keith Thurlow asked for the opinions of Attorney St. Onge and Carl Stopper. Attorney St. Onge stated that it affects road construction and suggested that it be left under Widening of Lake Road and Traffic and that it be cross-referenced. Carl Stopper stated that the CSC would understand where the emphasis is. The Commission agreed.

- Page 4, fifth paragraph, had a typographical error that was corrected.
- Attorney St. Onge advised that, from a legal point of view, the words "shall" and "require" are considered to be a requirement and that a "request" is something to consider and be given if they agree with it.
Ann-Marie Aubrey replaced instances of "The Commission requests" with "The Town of Killingly requires."
- Page 4, sixth paragraph, to read, "The Town of Killingly requires that inspection of all road construction along Lake Road is inspected by either the Town or, in its sole discretion, its designated representative paid for by NTE, to make sure that all construction is done to the proper standards and that public safety is recognized and properly required traffic controls, and construction matters are in place at all times."
- Page 5, seventh paragraph under Pre-Construction and Construction, there was discussion regarding whether the independent third-party representative has the authority to shut down operation at any time (during construction or after completion of the Project) for non-compliance. This was also discussed for noise issues. Mr. Stopper stated that they should be required to comply with the noise regulations in order to move forward either during construction or after during operation. It was decided that this should be consistent and Ann-Marie Aubrey will revise all instances throughout the document.
- Page 5/6, Ann- Marie Aubrey read the following addition under S.470.9.2 - Storm Drainage: The Commission also requests that the Owner/Applicant be held to the standards listed in the "2002 Connecticut Guidelines for Soil Erosion and Sediment Control" (by the Connecticut Council on Soil and Water Conservation in Cooperation with the Connecticut Department of Environmental Protection / now DEEP); and the "2004 Connecticut Stormwater Quality Manual" (by the Connecticut Department of Environmental Protection / now DEEP).

There was discussion regarding comments/suggestions of the IWWC. Mr. Stopper read from the comments from the IWWC and the P&Z Commission found that the IWWC was addressing this appropriately. Ann-Marie Aubrey explained that the above two standard Guidelines are required to be followed by everyone.

- S.470.9.3 – Pedestrian and Vehicular Access. There was discussion regarding temporary employee parking during the construction phase, permanent parking, safe access and restoration of the wetlands. Ann-Marie Aubrey read from Pre-Construction and Construction (page 4) and Landscaping (page 8) and the Commission was satisfied that these issues are addressed appropriately under those sections.

There was discussion regarding the practice of restoration of wetlands destroyed by development and how it is working out. Mr. Stopper explained that, in this case, for the type of wetland that will be destroyed and the type of wetland that they are proposing, the habitat and type of planting should be easily established without getting a lot of invasive species because they would not be creating a really wet environment. TRC's wetlands ecologist visited the site and discussed the proposal with NTE's wetlands specialist and he (TRC) feels that it would be a viable way to offset the impact.

- Page 6, S.470.9.4 – Noise Abatement, third paragraph, first sentence should read as follows, per Mr. Stopper:
There is no analysis in the Application of the potential impact that the modeled operational sound levels may result in non-conformance with noise standards.

There was discussion regarding the issue that was discussed earlier regarding consequences for failure to comply. Should it be added as a paragraph under each section or should there be one statement covering all sections? Attorney St. Onge stated that he doesn't think that the CSC would agree to shutting down the operation for every violation and he advised that the more reasonable the request, the more likely you are to get it. He suggested that the Commission use a scale of importance/priority. Discussion continued. Milburn Stone suggested a general statement asserting that the Project cannot start until evidence in the

form of adequate data is presented that noise regulations will be met during construction and operation phases. Keith Thurlow read from page 2 and Milburn Stone agreed that it had been addressed there. However, Mr. Stone suggested moving the fourth paragraph from page 1 and merging it with paragraph six, which is on page 2, to read as follows:

“WHEREAS, the Town of Killingly, PZC reviewed the above referenced Application to the CSC, “as if” it was a request for a special permitted use, and therefore referred to Article III (Definitions); Section 410.1.2 (Special Permitted Uses in Rural Development); Section 450 (Dimensional Requirements); Section 470 (Site Plan Review); Sections 470.9, et seq (Site Plan Objectives); Section 720 (Special Permits – Procedure); Section 720.40 (Review of Site and Architectural Plans); Section 740 (Additional Conditions and Safeguards); and Section 790 (Bonding) of the Town of Killingly Zoning Regulations and the Plan of Conservation and Development of the Town of Killingly during their review; and the Town of Killingly PCZ has reviewed all of the information and comments given to them by their Consultant; NTE Connecticut, LLC and the public; and they made the following findings:

- 1) that the proposed site development – and possible future electric generating facility – as presented does not meet certain criteria of the Zoning Regulations of the Town of Killingly; and
- 2) that the proposed site development - and possible future electric generating facility – as presented does not meet certain criteria of the Plan of Conservation and Development; and
- 3) that the Applicant has provided erroneous and insufficient information with their filing To fully evaluate the impact of all aspects of the proposed development project relative to items 1 & 2 above and the health, safety and welfare of the Community and environment;”

Milburn Stone also suggested concluding with the following sentence:

“If the Commission were acting solely on its own Regulations and Policies, a special permit could not be issued for this industrial project in a rural development zone, and no order of regulations and restrictions could make the project compliant.

NOW THEREFORE, the Town of Killingly PZC hereby makes the following:

ORDER OF REGULATIONS AND RESTRICTIONS”

Milburn Stone feels that there should be a definitive statement regarding the Commission’s support or opposition for the Project. He stated that if this had come as a special permit to the Commission, solely on its own authority, it would have been rejected because it does not meet the Regulations for a special permit within a rural development zone or the POCD. Virge Lorents stated that, given the data that they have been given, the Commission would be legally required to reject it based on the Town’s Regulations. Milburn Stone stated that the Town has met its legal responsibilities and that they are operating within their Regulations. Mr. Stone also feels that IWWC should make a statement.

Keith Thurlow asked for an opinion from Attorney St. Onge. Attorney St. Onge explained that it is important to balance between making sure that it is clear that it was reviewed according to the Regulations and that it was found that it does not comply and, at the same time, not just saying, “no, not in our backyard,” so that the CSC would give a lot of weight to the Commission’s conditions if the CSC exercises their power to overrule or ignore the Commission’s conclusion. He suggested that Mr. Stopper give his opinion. Mr. Stopper stated that he does not know how the CSC would view the statement, but they do need to take into consideration the conditions that the Commission would like to impose (as part of any ruling) as well as any additional information needed to fully evaluate what it proposed.

Milburn Stone stated that this is not a “not in my backyard” attitude and he stated that the citizens’ comments were not of that nature at all. He stated that the one sentence clarifies the advice of the Commission and that it is a straightforward, honest statement. He asked if other Commission Members disagreed. Todd Nelson stated that he came into the process with an open mind and that, with the review, he has come to an opinion and he feels that the Commission should state its opinion. Virge Lorents stated that she has read every document and that she doesn’t feel that the CSC couldn’t handle reading the best analysis of the Commission, as it was asked to do. She feels the ability to comment to the CSC has evolved greatly over the years. Mr. Stopper stated that, if the statement is factual in representation of how the Commission would view an application like this under the current Regulations, he can’t argue that making the statement would be wrong if the Commission decides that this is the direction and tone that it wants to add to this document.

Virge Lorents stated, regarding asthma and air quality, that a pulmonologist should weigh in on the medical aspects.

Attorney St. Onge referred to State Statutes regarding the CSC’s jurisdiction and the municipality’s right to review the application to make rules and orders (which will stand unless the CSC reverses them). He explained that he and Ann-Marie Aubrey had discussed strategy and the best way to present it and that, if the Commission decides to make the statement, he has no objection to it.

Discussion continued. Milburn Stone stated that the strategy issue is the relationship of the first page and-a-half of the document to the Orders of Regulations and Restrictions. The Commission is setting forth a list of Regulations and Restrictions for a Project that it doesn't think should happen. He feels a statement that makes that clear is needed. He stated that, if the CSC is going to overrule and allow the Project, these are the Orders of Regulations and Restrictions that don't solve the problem, but, at least mitigate it. Mr. Stone stated that the Commission is serious about its work.

Motion by Milburn Stone to relocate Paragraph 4 on Page 1 of the draft document entitled, Town of Killingly, Planning and Zoning Commission Order of Regulations and Restrictions, and merge with Paragraph 6 on Page 2, and conclude by adding the following sentence: if the Commission were acting solely on its own Regulations and Policies, a special permit could not be issued for this industrial project in a rural development zone, and no order of regulations and restrictions could make the project compliant.

NOW THEREFORE, The Town of Killingly PZC hereby makes the following:

ORDER OF REGULATIONS AND RESTRICTIONS

Second by Todd Nelson. Motion carried unanimously (3-0).

- Page 6, last sentence of the fourth paragraph, under **Noise Abatement**, Mr. Stopper explained that it should read: Increased levels of 3 dBA or more are considered perceptible and the Applicant's data, therefore, indicates a perceptible change. There was discussion.

Milburn Stone suggested an addition regarding enforcement regarding noise abatement, to the last paragraph on page 6, to read as follows:

In the event that a noise abatement issue cannot be resolved in a timely and effective manner, the Town of Killingly shall follow its existing Town Ordinances.

Keith Thurlow suggested including the Ordinance as it is written.

- Page 7, **Air Quality**, Ann-Marie Aubrey read an addition (first paragraph) as follows: The Town of Killingly requires additional analysis regarding the effect of emissions on nearby sensitive receptors. Especially children, as there are three (3) schools, nurseries, and elderly care facilities all located within an approximate 2-to-3 mile radius of the proposed site development.

Todd Nelson suggested that the additional analysis should include a review by a pulmonologist, a toxicologist, and that the State Board of Health be involved. He stated that they have a lot of the data already (longitudinal study). Virge Lorents suggested adding an addendum regarding Windham County and Town of Killingly health statistics (available from the Connecticut Board of Health Report from 2012). Todd Nelson will provide the website to Ann-Marie Aubrey. Virge Lorents stated that the School Superintendent's Office probably has records/data regarding health emergencies. She stated that the Hartford Chapter of the American Heart Association has information regarding the State of Connecticut. Mr. Stopper stated that the CSC could be requested to petition the Connecticut Department of Health to evaluate the impact the air emissions might have on asthma and respiratory concerns of the residents of the area. Virge Lorents mentioned the tri-state component.

The following sentence was added: The Commission requests that the Connecticut Citing Council review and consider additional analysis by a pulmonologist, a toxicologist, and that the State Board of Health regarding the concern that it will affect public health.

Page 7, **Erosion and Sediment (E&S and Dust Control)**.

Mr. Stopper explained the last sentence of the first paragraph per request of Keith Thurlow. They require that chemical analyses of the soil be performed to check for contaminants and to be sure that they comply with requirements.

- Page 8, **Site Plan Conditions/Grading**.
Milburn Stone suggested that the phrases the Commission requires/the Applicant shall be inserted in all three subsections.
- Page 8, **Landscaping**.
Ann-Marie Aubrey stated that she added a paragraph regarding dark skies as follows:
That the Owner/Applicant comply with the necessary lighting to adhere to the Town of Killingly's Dark Sky regulations found in the Town of Killingly Subdivision Regulations Article IV Section 17 Lighting – "Outdoor lighting, if proposed and shall be designed to provide the minimum lighting necessary to ensure adequate safety, night vision, and comfort, and shall not create or cause excessive glare on adjacent properties and public street rights-of-way. Streetlights shall be avoided in subdivisions located in rural areas of Town."
- Page 9 – no comments.

Ann-Marie Aubrey asked Attorney St. Onge if it is appropriate to end as it has been ended. Attorney St. Onge stated that he feels the Commission has done a complete review of the draft and he suggested that a motion be made to adopt or not adopt it.

Motion by Milburn Stone to approve the draft of the Order of Regulations and Restrictions as presented and amended based on recommendations of the Town Consultant and various presentations by the Applicant and by the public at our prior meetings. Second by Todd Nelson. Motion carried unanimously (3-0).

Ann-Marie Aubrey will make corrections and will send to Mr. Stopper to verify. Keith Thurlow will sign the document.

VI. ADJOURNMENT

The meeting adjourned at 6:48 p.m.

Respectfully submitted,

J.S. Perreault
Recording Clerk