



TOWN OF KILLINGLY, CT
PLANNING AND ZONING COMMISSION

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WORKSHOP SESSION *Elizabeth M. Wilson*

MONDAY, OCTOBER 3, 2016

5:00 PM

KILLINGLY PUBLIC LIBRARY, COMMUNITY ROOM
25 WESTCOTT ROAD, KILLINGLY, CT

MINUTES

I. **CALL TO ORDER** – Chair, Keith Thurlow called the meeting to order at 5:05 pm.

ROLL CALL - Brian Card, Virge Lorents, Keith Thurlow. Sheila Roddy was absent with notification. Todd Nelson arrived at 5:40 p.m. Milburn Stone arrived at 5:50 p.m.

Staff Present – Ann-Marie Aubrey, Director of Planning and Development; Town Attorney, William St. Onge; Elsie Bisset, Economic Development Director (Seated in the audience. She left at 6:53 pm); Sean Hendricks, Town Manager, (Arrived at 5:40 pm and was seated in the audience. He left at 6:11 pm).

Also Present – Joyce Ricci, Town Council Liaison; Lynn Laberge, Town Council Member (Seated in the audience. She left at 6:17 pm).

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

Mark Mirabito, Chief Operating Officer (overseeing all development on this project)

Chuck Coursey, Consultant for NTE

Norm Thibeault, Killingly Engineering Associates

Present From Tetra Tech, Environmental Consultant on this project:

Lynn Gresock, Vice President of Power

II. **SEATING OF ALTERNATES**

Due to the absence of Sheila Roddy, Chair, Keith Thurlow announced that Virge Lorents would be seated as a voting Member.

III. **BUSINESS**

1) Preparation 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.

Keith Thurlow read a statement, prepared by Staff, explaining that the Commission would be working on drafting its Order of Regulations and Restrictions regarding the NTE application (to the CSC) and that the Commission must make its submission to the CSC by the deadline of Friday, October 14, 2016. Carl Stopper, Attorney St. Onge and Ann-Marie Aubrey would be available to answer/clarify questions from the Commission. No further questions will be asked of NTE. Comments from the public would not be heard at this meeting, but the Commission is well-aware of the public's sentiments toward the proposed power plant and that the Commission will state, in its correspondence to the CSC, that the proposal does not meet certain requirements. The Commission would be remiss in its obligation to the Community and the CSC if it did not prepare the required Order of Regulations and Restrictions as this is the only opportunity to try to have restrictions on the project that would protect the health, safety and general welfare of the Community. The CSC has sole, total control of either approving or denying NTE's application. The CSC could also ignore any or all of the Commission's Order Regulations and Restrictions. The Commission Members will look at the proposal as if it were coming before them as an application for a special permitted use and comments should be centered upon those items that would be considered for a special permit application. The Commission will also look at the Zoning Regulations regarding Site Plan Review because special permits often require Site Plan Review.

The Commission began with questions for Carl Stopper of TRC:

- Keith Thurlow asked if he is familiar with the environmental equity policy of the deed. Mr. Stopper explained that this policy started approximately 15 years ago to consider the siting of any type of facility that would add additional pollution to those communities that tend to be the focus of having these facilities located in their community. The idea is to provide a more equitable analysis so that these facilities don't just automatically get put in the communities that are economically distressed.

Keith Thurlow asked if that had any merit in this Community. Mr. Stopper explained that the DEEP, as part of the process, makes sure that there is adequate community involvement and understanding of what is being proposed. The DEEP Environmental Justice Coordinator cited NTE for not providing enough information to the Community prior to the meetings, and, therefore, put a hold on the DEEP's review on the Air Permit Application until NTE would come into compliance. Mr. Stopper did not know what the current status is.

- Virge Lorents asked if Mr. Stopper had ever seen the CSC or DEEP Environmental Justice Group say no to an applicant because it decided that a particular community has a sufficient number of emitters and that one more is too much. Mr. Stopper stated that he, personally, has not experienced that, but there may be instances.
- Ann-Marie Aubrey asked if the Environmental Justice Process makes their report directly to the CSC. Mr. Stopper stated that it is an internal review for the Air Permit Application so he believes they would offer it to the CSC as well to address all issues adequately. He said that there is some overlap of information in the process.
- Brian Card asked if Mr. Stopper was aware of news reports regarding the access of the northeast pipeline project being put on hold, by ISO New England, until sometime in 2017, due to legal issues in Massachusetts and Rhode Island. He asked if this would have impact on fuel supply. Mr. Stopper stated that, since the Applicant (NTE) has put forth this request to the CSC, they must have somehow secured what they need as available gas supply for the project. The commitment for the gas needed is discussed in the Narrative of the First Volume of the Application. He said that the gas would probably be coming from the Pennsylvania area.

Brian Card asked about the feasibility of the widening of Lake Road (impacts). Mr. Stopper stated that their Traffic Engineering Staff had looked at it and felt that it could be accomplished. It is a question of right-of-way. Are they going to use some real estate from the switchyard side to make the curve that is needed? Because they may not own all of the property needed on the other side (of Lake Road). Mr. Stopper feels this should be presented up front before any approval is granted.

Brian Card asked (regarding the Air Assessments) if any additional health assessments/analyses need to be done for sensitive nearby receptors (the schools in , particular). He asked if there was any response to his questioning this at a previous meeting (September 8, 2016). Mr. Stopper did not recall if this had been addressed. He stated that they would have had to look at receptors as part of their air modeling study. He explained that the DEEP would scrutinize, very carefully, to be sure everything needed is included in order for them (DEEP) to assess the numbers being proposed to emit from the facility. He explained that TRC's review revealed a weakness as all of the components of BACT that should be factored into the analysis were not included. They will need to prove the numbers.

- Virge Lorents asked how stringent the Regulations are regarding BACT (based on technology or is there a political component). Mr. Stopper explained that it is purely technology based and that they look at a broad spectrum of information to determine what is BACT. The applicant can request a technology that might achieve a lower emission rate, if they have justification for it, but they would have to go through the DEEP permitting process.
- Keith Thurlow asked, although the pre-existing power plant has storage for 300,000 gallons fuel and does not have fuel on hand anymore, this proposed smaller facility is asking for 1 million gallons of storage, what is the reason? Mr. Stopper stated that Mr. Thurlow is correct and that plant has not burned fuel there. He explained that it depends on how that plant is set up to operate on the ISO New England grid system. They may not be a critical facility if their gas supply was interrupted and would not need the back-up fuel. NTE is proposing to be available 100 percent of the time (except for maintenance).

The Commission began its discussion on coordinating the draft of its Order of Regulations and Restrictions. Ann Marie Aubrey explained that they could do it different ways:

- By Site Plan Review/Special Permit Review
- Pre-Construction, Construction, Post-Construction

The consultant, TRC, had given proposals of what could be included. Mr. Stopper explained that TRC's comments were by major categories and their many comments and questions were broken down into a simpler form for the Commission to present to the CSC which the Commission could then provide its conditions and back-up as part of the documentation to the CSC. Mr. Stopper explained that the Town has filed to become a party to the application and, during the interrogatory phase (to begin sometime in November), there will be an opportunity to provide testimony in rebuttal to anything presented and that experts can testify.

Keith Thurlow suggested that the Commission work on a statement that would support the comments/documentation submitted from the public. He stated that the majority of people that spoke were in opposition. He suggested that the statement could say that the public, as a whole, were opposed and give their reasons why. Then, he suggested that it could be looked at as an application coming before the Commission addressing the special permit/site plan review process.

Attorney St. Onge stated that when the Commission acts, it is acting in the Planning and Zoning capacity and that any comments/restrictions/suggestions made have to make reference to the Town's Zoning Regulations. The Court only gives weight to those areas where the Commission has jurisdiction. He

stated that restrictions/comments should be backed-up with both evidence and reference to the Regulations.

Ann-Marie Aubrey provided a copy of the Regulations and she stated that she also had some comments from Brian regarding things that the Commission may want to consider. She stated that if the Commission goes through the special permit process and site plan review there are some things that don't qualify or meet requirements, therefore, there was a suggested submittal. She stated that there was an issue/question and provided copies of Rural Development, Section 410.1.2 - Special Permitted Use and the definition of a public service corporation.

Virge Lorents asked if Article 5, General Provisions, Section 510 can be used as a foundation to analyze the data that has been presented. Attorney St. Onge explained that, to have effective conditions that are upheld by the CSC, it is important that the Commission act from their expertise and from interpreting their own regulations rather than with the general feeling of the Community.

Virge Lorents asked about compounds degrading into either harmless or harmful components. Mr. Stopper explained that a plant would need to be designed in a way that will meet the requirements for air permitting with a stack high enough so there is enough dispersion.

Virge Lorents asked whether there are state or federal entities that look at the accumulation of materials that go into the air and get into the surrounding soil and water over the 30-year life of the operation. Mr. Stopper explained that the EPA is responsible for doing regional analyses for impacts of air emissions.

Todd Nelson arrived at 5:40 p.m.

Sean Hendricks arrived at 5:41 p.m. and sat in the audience.

Keith Thurlow stated that the Commission would work from Section 700 (Special Permit Section) which includes Site Plan Review. There was discussion regarding how to format the document. Attorney St. Onge read from the Statutes and stated that it is important to tie into the consultant's technical analysis and what the Regulations say. Attorney St. Onge also stated that there should be an overall statement of Final Orders from the Commission.

Ann-Marie Aubrey suggested that the Commission go through: Rural Development, Section 410.1.2 - Special Permit; Special Permit Requirements; and Site Plan Requirements. If there are any issues not reached, they would go under general health, safety and welfare.

Mr. Stopper stated that there are two ways the Commission can restrict:

- To offer another site; or
- To recommend that the location of the facility or components of the facility be moved somewhere within the property boundary of the site.

There was more discussion regarding format. Ann-Marie Aubrey stated that she had received some information regarding concern/analysis from Sheila Roddy.

Milburn Stone arrived at 5:50 p.m.

Ann-Marie Aubrey began the process:

- She read from the Regulations and stated that the Commission should keep it in the back of their minds as people are opposed due to location.

- She read from Section 470.9 – Site Plan Objectives, Public Safety.
 - Keith Thurlow – Design and scheduling of any roadwork with participation of Town Engineering and Staff. To include road widening and utility work on public roads.
 - Security fencing of entire project.
 - Buffers.
 - Creation of a site plan for the temporary construction of employee parking area including lighting, crosswalks, fencing, including schedule of arriving and departing employees to minimize traffic flows, restoration of that area of the site upon completion of construction.
 - Brian Card referred to a letter from Connecticut Water and he stated that a full-engineered design should be requested. He read from the letter. Should require an annual review of water usage.
 - Brian Card mentioned fire protection.
- Storm Drainage – Ann-Marie Aubrey read, into the record, from the TRC Report regarding suggested corrections and revisions. She stated that some of the comments in this section (Storm Water) were put forth in the IWWC letter and that the P&Z Commission would not want to conflict with the IWWC.

Virge Lorents asked if the Northeast Regional Climate Center makes projections for increasingly intense storms over the next few decades. Mr. Stopper explained that they provide precipitation numbers for various storm events.

Ann-Marie Aubrey suggested that storm drainage be referred to the IWWC. The Commission agreed.

- Pedestrian and Vehicle Access
Keith Thurlow stated that he had covered this above under Public Safety.
- Virge Lorents read from an e-mail from Sheila Roddy which had been provided to all Commission Members. Ms. Lorents asked if Ms. Roddy's objectives would be met. Brian Card answered yes.
- Keith Thurlow mentioned Security of the Site During and After Construction. There was no comment.
- Noise Abatement
 - Virge Lorents stated that the noise projections were based on potential noise levels for the plant as opposed to a study of the cumulative effect of all of the noise emitters around the Lake.
Ann-Marie Aubrey stated that the Regulations provide for this.
 - Brian Card referred to TRC's evaluation and mentioned ambient background sound.
Ann-Marie Aubrey read the definition of ambient background sound from the State of Connecticut Noise Standard and the Town of Killingly Noise Ordinance. She offered to put these in if the Commission would like her to. She read from the TRC Report.
 - Virge Lorents stated that noise sounds different on the second floor than it sounds on the ground floor.
Ann-Marie Aubrey asked if the Commission was in agreement that she use the TRC comments for the section on Noise and asked if there were any other comments or changes.
Keith Thurlow stated that a contact person is needed if there are issues.

Sean Hendricks left at 6:11 p.m.

- Other Pollution or Related Problems
 - Keith Thurlow stated that lighting should be minimized and they should meet typical dark sky lighting standards.
 - Brian Card stated that TRC's Analysis of Air Quality should be put in this section.
 - Keith Thurlow stated that under vibration and dust, you have the Gravel Regulations for crushing operations on the site and dust control during the temporary construction phase.

- Landscaping/Screening
 - Ann-Marie Aubrey read from TRC's Report. She stated that a portion had come under the IWWC and that the P&Z Commission should be in support of the IWWC. She stated that, in areas of the site disturbed by site grading activities that are not part of the facility shall be replanted with trees to re-establish wooded forest and coverage, then topsoil and subsoil need to be between 12 to 18 inches as discussed with Keith Thurlow earlier.
 - Keith Thurlow stated construction inspection for all road work either by the Town or a third-party paid for by NTE. Part of that will go to construction and somebody working for the Town should make sure that things are done properly and that public safety is being recognized (proper traffic control and construction methods).
 - Mr. Stopper asked if the Town requires bonding for road destruction (utility, trenching, excavation, widening).
 - Brian Card stated that he feels the widening of the road needs to be done prior to construction.
 - Keith Thurlow stated that, regarding landscaping and screening, the Regulations allow to have buffers doubled and he would like to see that where possible on the site
 - Brian Card stated that he would like to see the switchyard moved to the north side of the road.
 - Keith Thurlow mentioned minimizing the impact on the cemetery that is there and the potential for grave sites to be outside of the stone walls.
 - Keith Thurlow mentioned that, by moving the switchyard, it would allow the road to be expanded to the inside (minimizing the curve).
 - Virge Lorents mentioned a document submitted by someone from the public regarding the impact of property values around power plants and she asked that, if found to be credible, it be included in the submission.
 - Todd Nelson stated concern for adding to the air quality problem. He said that respiratory problems and asthma rates are much higher in this area (double the national average of childhood asthma) and, although the emissions standards of the plant meet the EPA guidelines, it still adds that level of emissions to an existing problem. Ann-Marie Aubrey stated that TRC, in its revised report, has comments regarding air quality that they suggest putting into the Commission's document to the CSC.

- Architectural and Aesthetic Impact
 - Buffer zones, re-plantings
 - There was discussion regarding IWWC and maintaining a separating distance from wetlands.
 - Mr. Stopper stated that they did a thorough job with the visual analysis and he mentioned that on October 20th, they will float the balloon to get a visual of different perspectives. He stated concern for the overhead power lines and what could be planted underneath them.

There was discussion with Attorney St. Onge regarding the formatting of the document.

- Zoning Regulations
 - There was discussion regarding stack height.
 - They need to follow E & S Control Plans, Gravel Regulations, Hours of Operation, Gravel Operation, Mounds of Material and Stockpile Locations, Temporary Storage of Fuel Tanks for Equipment, Storage of Fuel, Safety Precautions that go along with Fuel storage tank, Spill Kit Station in that area, snow removal operation, storage of salt on site (it should be covered if they do).
 - There was discussion regarding the 1 million gallon tank.
 - Brian Card asked about the cut impact on ground water levels (seasonal high). Mr. Stopper explained that there had not been enough information provided to evaluate.
 - Mr. Stopper suggested that there be a plan for dust suppression.

There was discussion regarding the document and Attorney St. Onge suggested that the Commission make it as easy for the CSC as possible to understand the document by referencing the Zoning Regulation for each item, by referencing where TRC's comments for that item can be found in the Report, and by supplying technical backup for each item.

The Commission continued:

- Special Permit - Section 720
 - Keith Thurlow stated that some questions that don't apply to other sections, may be applicable here. He read from Section 720.
 - Avoidance of Potential Nuisances
 - Section 740 - Additional Conditions and Safeguards
 - Setbacks
 - Vegetative Screening for the Temporary Parking Area and what is going to happen to that parking area.
 - Times of Operation mostly during the construction phases
 - There was discussion regarding entrance and exit to the site
 - Bonding required for streets, public utilities
 - There was discussion regarding right-of-way agreements and the widening of the road.

Attorney St. Onge explained the Commission's right to regulate and restrict. He explained that the important thing is to protect the citizens of Killingly by issuing orders that would be authorized by the Zoning Regulations that deal with the issues that could arise if the facility were sited. He stated that the Commission has the right to: say whether this fits into the Regulations/criteria; and to issue orders which would take effect unless overruled by the CSC.

Brian Card stated that the Commission should go on record with its opinion of this project, whether it meets Regulations, etc.; and if it is approved by the CSC, the Commission offers the Regulation & Restrict Orders to be looked at or included. He referred to the POCD and the term "public service corporation" and he stated that he does not feel that it has been proven that it is for the benefit of the Town of Killingly because of the word "shall."

There was discussion with Attorney St. Onge and he explained the process of the CSC and that the Commission has to issue orders, pursuant to the Statutes, which can be modified or reversed. He stated concern that the Commission issue orders, which they have jurisdiction to do, and that the orders are well-organized, back by references to the specific Regulations, and that they are backed by references to the engineer's report. He stressed that it should not be too lengthy.

There was a consensus of the Commission Members to follow the advice of Attorney St. Onge regarding format of the document.

Ann-Marie Aubrey will prepare the draft and will send via e-mail to the Commission Members. The Commission will meet again on Tuesday, October 11, 2016, at 5:00 p.m., to take a formal vote on the final draft. Ann-Marie Aubrey will find out availability for a place to meet.

Attachments to the Document will be:

- TRC's Report
- NTE's Responses to TRC's Report
- A document containing a photo of what was located in the area
- Copy of the Zoning Regulations

VI. ADJOURNMENT

Motion by Brian Card to adjourn at 7:13 p.m. Second by Virge Lorents. Motion carried unanimously (5-0).

Respectfully submitted,

J.S. Perreault
Recording Clerk