

VILLAGE OF CROTON ON HUDSON, NEW YORK  
MINUTES OF THE WATERFRONT ADVISORY COMMITTEE MEETING  
Wednesday, June 29, 2011

A meeting of the Waterfront Advisory Committee of the Village of Croton-on-Hudson, New York was held on Wednesday, June 29, 2011 in the Municipal Building.

MEMBERS PRESENT:           Ann Gallelli  
  Charlie Kane  
  Bruce Kauderer

ALSO PRESENT:               Daniel O'Connor, Village Engineer

ABSENT:                        Stuart Greenbaum  
  Ian Murtaugh

**1. Call to Order**

Chairman Kane called the meeting to order at 5:30 p.m.

**2. Referral from Water Control Commission regarding Wetlands Activity Permit application for replacement of coax cable with new fiber optic under Croton River – AT&T Corporation – Croton River Boring Project – South Riverside Avenue (Sec. 79.17 Blk 2 Lot 9) – Preliminary Consistency Review**

Mr. Larry Lynn, of Lynn Utilities and Mr. Paul Palusio of J. Robert Folchetti & Associates, LLC were also present. Mr. Lynn gave a brief overview of the proposed AT&T project to replace a coax cable with a new fiber optic cable under the Croton River. The purpose is to upgrade the cable to a higher capacity in order to meet greater consumer demands. The plan is to drill under the river.

In reviewing the EAF, there were no corrections.

In reviewing the CAF, p. 2, C1. *“Will the proposed action be located in, or contiguous to...upon any of the resource areas identified on the coastal area map”* the answer should be YES, not NO, because the proposed action is contiguous to an area identified on the coastal area map. For C1, a) *“Will the proposed action have a potentially adverse effect upon...significant fish or wildlife habitats”* the answer should be YES, not NO. The explanation for any measures undertaken to mitigate any adverse effects for this question should be explained in Section D on the CAF. Chairman Kane noted that the Croton River is a significant wildlife habitat. Mr. Kauderer concurred.

Also on the CAF, p. 3, 3(e) *“mining, excavation, filling or dredging in coastal waters”*, it should be explained in Section D that there will be “no excavation in water.” On p. 4, 4(j) *“Does the project involve transport, storage, treatment or disposal of solid waste*

*or hazardous materials?"* the answer should be YES, not NO because the project will generate slurry waste (solid waste). On p. 5, 4(p) *Will best management practices be utilized to control storm water runoff into coastal waters"* the answer should read YES, not NO. This question refers to sedimentation and erosion control.

The WAC also recommends that a copy of a section of the FEMA FIRM be provided to document that the work is not located in a flood prone area as indicated by the answer to question on the CAF, p. 4, 4(a)(6) of the CAF.

The committee reviewed the policies of the LWRP and found the following to be applicable to this proposed project:

*Policy 1: Restore, revitalize, and redevelop deteriorated and underutilized waterfront areas for commercial, industrial, cultural, recreational and other compatible uses.*

*Policy 1A: Existing planning and zoning documents should be reviewed and amended where necessary to ensure development within the community is consistent with adopted goals and policies.*

Policy 1 and 1A are relevant to the current application because Van Cortlandt Manor, as part of Historic Hudson Valley, is designated as a National Historic Landmark whereby any action considered within this coastal zone area must be reviewed in terms of its impact on the site. The proposed coax cable project is consistent with these policies because the installation of a new fiber optic line to replace the existing line will be performed beneath the river and therefore will not affect any adjacent viewsheds.

*Policy 7: Significant coastal fish and wildlife habitats will be protected, preserved, and, where practical, restored so as to maintain their viability as habitats.*

*Policy 7A: The quality of the Croton River and Bay significant fish and wildlife habitat and Haverstraw Bay significant fish and wildlife habitat shall be protected and improved for conservation, economic, aesthetic, recreational, and other public uses and values. Its resources shall be protected from the threat of pollution, misuse, and mismanagement.*

*Policy 7B: Materials that can degrade water quality and degrade or destroy the ecological system of the Croton River and Bay significant fish and wildlife habitat and the Haverstraw Bay significant fish and wildlife habitat shall not be disposed of or allowed to drain in, or on land within, the area of influence in the significant fish and wildlife habitats.*

*Policy 7C: Storage of materials that can degrade water quality and degrade or destroy the ecological system of the Croton River and Bay significant fish and wildlife habitat or Haverstraw Bay significant fish and wildlife habitat shall not be permitted within*

*the area of influence of the habitat unless best available technology is used to prevent adverse impacts to the habitat.*

*Policy 7F: Construction activity of any kind must not cause a measurable increase in erosion or flooding at the site of such activity, or impact other locations. Construction activity shall be timed so that spawning of anadromous fish species and shellfish will not be adversely affected.*

*Policy 7G: Such activities must not cause degradation of water quality or impact identified significant fish and wildlife habitats.*

*Policy 8: Protect fish and wildlife resources in the coastal area from the introduction of hazardous wastes and other pollutants which bio-accumulate in the food chain or which cause significant sub lethal or lethal effect on those resources.*

AT&T Corporation obtained a Freshwater Wetlands permit, an Excavation & Fill in Navigable Waters Permit, and a Water Quality Certification permit from the NYSDEC for the installation of a new fiber optic line to replace the existing line under the Croton River. The permit components specify certain conditions under which the installation can be conducted. The NYSDEC conditions included in the permit authorizations are consistent with the above policies because the intent of these conditions is to protect significant habitats, water quality, fish species, and wildlife habitats, as well as to prevent contamination of waters from pollutants. The following NYSDEC Natural Resource Permit Condition #5 applies to the above policies: *Precautions against Contamination of Waters: All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.*

AT&T Corporation also obtained coverage under a Department of the Army, Corps of Engineers Nationwide General Permit Number 12 which stipulates that the work may be performed provided the activity complies with the appropriate permit conditions. The following conditions apply to the above policies: *Condition #4: The permittee shall discharge only clean construction materials suitable for use in the oceanic environment. Condition #5: No debris, soil, silt, sand, sawdust, rubbish, cement or concrete washings thereof, oil or petroleum products, from construction shall be allowed to enter into or placed where it may be washed by rainfall or runoff into waters of the United States. Therefore, the permittee shall employ all standard Best Management Practices to ensure that toxic materials, silt, debris, or excessive erosion do not enter waters of the United States during project construction. Upon completion of activity, any excess material or debris shall be removed from the work area and disposed of in an appropriate upland site. All slurry from the horizontal boring shall be transported off-site to an appropriate upland site.*

The coax cable installation is consistent with the above LWRP policies dependent upon compliance with the above-mentioned NYSDEC and Department of Army, Corps of Engineers conditions.

*Policy 11: Buildings and other structures will be sited in the coastal area so as to minimize damage to property and the endangering of human lives caused by flooding and erosion.*

*Policy 11A: Erosion and sediment control measures shall be undertaken in order to safeguard persons, protect property, prevent damage to the environment, and promote the public welfare by guiding, regulating and controlling the design, construction, use and maintenance of any development or other activity which disturbs or breaks the topsoil or results in earth movement.*

*Policy 12: Activities or Development in the coastal area will be undertaken so as to minimize damage to natural resources and property from flooding and erosion by protecting natural protective features including beaches, dunes, barrier islands and bluffs. Primary dunes will be protected from all encroachments that could impair their natural protective capacity.*

*Policy 14: Activities and development, including the construction or reconstruction of erosion protection structures, shall be undertaken so that there will be no measurable increase in erosion or flooding at the site of such activities or development, or at other locations.*

*Policy 17: Whenever possible, use non-structural measures to minimize damage to natural resources and property from flooding and erosion. Such measures shall include: (i) the setback of buildings and structures; (ii) the planting of vegetation and the installation of sand fencing and draining; (iii) the reshaping of bluffs; and (iv) the flood-proofing of buildings or their elevation above the base flood level.*

*Policy 17A: Efforts to control erosion along the rivers and on the steep slopes rising from areas inland shall be of a non-structural nature, wherever possible, in consideration of the visual impact of structural measures. The retention or planting of vegetative covers will be preferred to structural measures.*

Both the NYSDEC natural resource permit conditions and the Department of the Army, Corps of Engineers Nationwide General Permit Number 12 conditions include requirements for sedimentation and erosion control measures to provide the appropriate degree of protection to the coastal zoning area. The following NYSDEC conditions contained in these permits apply to the above policies:

**Condition #7: Install, Maintain Erosion Controls:** *“Necessary erosion control measures, i.e., straw bales, silt fencing, etc., are to be placed on the downslope edge of any disturbed area. This sediment barrier is to be put in place before any disturbance*

*of the ground occurs and is to be maintained in good and functional condition until thick vegetative cover is established.”*

**Condition #8: Trenching in Wetland Area:** *“Trenching within 100 feet of the regulated freshwater wetland shall be conducted in the following manner: a) Approved erosion control structures shall be installed prior to construction...d) Excess excavated material shall be removed from the site and stabilized at a location away from all wetlands or water bodies, e) Disturbed soils on roadway shoulder to be stabilized with seeding and mulch.*

**Condition #9: Stabilize Disturbed Areas:** *“All areas of soil disturbance resulting from this project shall be stabilized immediately following project completion or prior to permit expiration, whichever comes first.”*

The following Department of the Army condition is applicable to the above policies: **Condition #5:** *No debris, soil, silt, sand, sawdust, rubbish, cement or concrete washings thereof, oil or petroleum products, from construction shall be allowed to enter into or placed where it may be washed by rainfall or runoff into waters of the United States. Therefore, the permittee shall employ all standard Best Management Practices to ensure that toxic materials, silt, debris, or excessive erosion do not enter waters of the United States during project construction. Upon completion of activity, any excess material or debris shall be removed from the work area and disposed of in an appropriate upland site. All slurry from the horizontal boring shall be transported off-site to an appropriate upland site.*

The proposed installation is consistent with the above LWRP policies contingent upon meeting the above NYSDEC and Department of Army conditions because adhering to these conditions will afford the appropriate degree of protection to the coastal zone area.

**Policy 23:** *Protect, enhance and restore structures, districts, areas of sites that are of significance in the history, architecture, archaeology or culture of the state, its communities or the nation.*

Policy 23 applies to properties that are designated for inclusion in the State and/or National Registers of Historic Places and therefore includes Van Cortlandt Manor, a National Historic Landmark. This application is consistent with this policy because the fiberoptic cable will be underneath the Croton River Bed, not overhead, and consequently will not disturb the viewsheds or any Historic Hudson Valley property or structures therein. The applicant has also obtained a new easement from Historic Hudson Valley for the installation of the cable on the riverbanks and under the riverbed.

**Policy 30:** *Municipal, industrial, and commercial discharge of pollutants, including but not limited to, toxic and hazardous substances, into coastal waters will conform to state and national water quality standards.*

Although the proposed installation of the fiberoptic cable beneath the Croton River is not disturbing the wetlands or the bed of the Croton River, there may be an accidental discharge of pollutants, and therefore this policy is applicable to the proposed project. The measures put in place through Best Management Practices to ensure that pollutants do not enter waters of the Croton River is consistent with this policy.

*Policy 33A: Encourage new developments to retain stormwater runoff on site so as to not increase flows within the existing system or to improve existing stormwater runoff systems to that runoff from such developments does not adversely impact coastal waters.*

Having adequate erosion and sedimentation control measures is consistent with Policy 33A in order to retain stormwater runoff on site so as not to adversely impact coastal waters. The site plan indicates in the "Soil Erosion and Sediment Control notes" that the "site shall at all times be graded and maintained such that all storm water runoff is diverted to soil erosion or sediment control facilities. Except for minor perimeter embankment areas, all graded areas shall be directed through one of the sediment barriers."

Adhering to the following NYSDEC natural resource permit condition #7 is also consistent with the above policy: *"Necessary control measures, i.e., straw bales, silt fencing, etc., are to be placed on the downslope edge of any disturbed area. This sediment barrier is to be put in place before any disturbance of the ground occurs and is to be maintained in good and functional condition until thick vegetative cover is established."*

*Policy 37: Best Management Practices will be utilized to minimize the non-point discharge of excess nutrients, organics and eroded soils into coastal waters.*

*Policy 37A: Standards and specifications for the control of non-point source discharge as set forth in Westchester County's Best Management Practice Manual or other recognized reference shall be utilized during development of any site.*

*Policy 39: The transport, storage, treatment and disposal of solid wastes, particularly hazardous wastes, within coastal areas will be conducted in such a manner so as to protect groundwater and surface water supplies, significant fish and wildlife habitats, recreation areas, important agricultural lands and scenic resources.*

*Policy 39A: Require transporters, producers and storers of hazardous material to inform the public or allow public access to records involving the transport, storage, treatment and disposal of hazardous materials. This is of particular concern with respect to rail transport of such materials, storage of identified materials on railroad property and uses in the waterfront area involved in the treatment, storage and disposal of such materials.*

The Department of the Army, Corps of Engineers, stipulates in the following special conditions the use of Best Management Practices and the disposal of solid wastes to protect coastal waters that are consistent with these policies:

*Condition #4: The permittee shall discharge only clean construction materials suitable for use in the oceanic environment.*

*Condition #5: No debris, soil, silt, sand, sawdust, rubbish, cement or concrete washings thereof, oil or petroleum products, from construction shall be allowed to enter into or placed where it may be washed by rainfall or runoff into waters of the United States. Therefore, the permittee shall employ all standard Best Management Practices to ensure that toxic materials, silt, debris, or excessive erosion do not enter waters of the United States during project construction. Upon completion of activity, any excess material or debris shall be removed from the work area and disposed of in an appropriate upland site. All slurry from the horizontal boring shall be transported off-site to an appropriate upland site.*

The WAC reviewed correspondence dated June 10, 2011 to the Village Engineer from Todd Atkinson, P.E. of J. Robert Folchetti & Associates, in which it was written "no material will be brought to site as part of the project. The slurry from the boring activity will be collected onsite and removed from the site...we estimate that less than 5 cy of slurry will be removed from the site via a vacuum truck."

This is consistent with the above-referenced policies regarding erosion control and disposal of solid wastes within the coastal area. The WAC recommends that information be submitted regarding the classification of the borehole slurry material under DEC regulations.

*Policy 44: Preserve and protect tidal and freshwater wetlands and preserve the benefits derived from these areas.*

*Policy 44A: Wetlands, water bodies and watercourses shall be protected by preventing damage from erosion or siltation, minimizing disturbance, preserving natural habitats and protecting against flood and pollution.*

According to the above-mentioned correspondence from Mr. Atkinson, P. E. dated June 10, 2011, "no wetlands, waterbody or watercourse will be affected by the proposed activities" and "the project will not affect the water retention, capacity, water flow or other drainage characteristics of any waterbody, watercourse, rainfall drainage system or wetland." Erosion control details are provided on the plans and are consistent with Policies 44 and 44A.

Having reviewed the policies of the LWRP, a motion was made by Ms. Gallelli to approve the preliminary determination of consistency, seconded by Mr. Kauderer, and

carried by a vote of 3-0. A memo will be written to the WCC which will issue a negative declaration and then refer this application to the WAC again for a final determination of consistency.

**3. Referral from the ZBA regarding request for variance from the requirements of Code Section 230-164 (E) for extension of the expiration date on the two ZBA Special Permits under Code Section 230-51 (C) and Code Section 230-52 (B) and ZBA Area Variance under Code Section 230-49 (C) (1) granted by the Board on May 12, 2010 – Peter Tsagarakis/Rakis, Inc. – 6 Hudson Street, 215 So. Riverside Ave. & Bungalow Road (Sec. 79.09 Block 1 Lots 52, 53, 54 & 55) – Final Consistency Review**

The WAC noted the correspondence from Mr. Charles Henley, 7 Hudson Street, and his written objections to extending the ZBA special permits.

Ms. Gallelli stated, for the record, that although she was sympathetic to Mr. Henley's concerns, there had been no changes made from the preliminary determination of consistency to this final consistency review.

For the record, Chairman Kane and Mr. Kauderer agreed with Ms. Gallelli that they were sympathetic to Mr. Henley's objections, but again, there had been no changes in consistency findings from the perspective of the WAC. There was a general discussion about the lack of progress in site plan improvements at the diner thus far. The Village Engineer stated that at this point in time the applicant had not started on any site plan improvements.

Mr. Kauderer made a motion for a final determination of consistency, seconded by Ms. Gallelli, and carried by a vote of 3 to 0 all in favor.

**4. Referral from the Planning Board regarding an application for preliminary subdivision approval (two lot) -- 157 Maple St. LLC - 157 and 159 Maple Street (Sec. 68.17 Block 4 Lot 41) – Preliminary Consistency Review**

The Planning Board, as lead agency, referred this application to the WAC for a preliminary consistency review. The committee noted that the Zoning Board granted the requested variances for this two-lot subdivision. In reviewing the CAF and the EAF, there were no comments. Mr. Kauderer stated that there would be the "least disturbance" to the environment and the Village Engineer noted that the subdivision was consistent with the neighborhood.

Chairman Kane stated that no policy reviews were needed since no policies were applicable. This subdivision would have no significant impact on the environment. Ms. Gallelli concurred.

Mr. Kauderer made the motion to make a preliminary determination of consistency, seconded by Ms. Gallelli, and carried by a vote of 3 to 0 in favor.

**5. Approval of Minutes**

The minutes of June 1, 2011 were approved, as amended, on a motion by Mr. Kauderer, seconded by Chairman Kane, and carried by a vote of 2 to 0 (with 1 abstention).

**5. Adjournment**

There being no further business to come before the Committee, the meeting was duly adjourned at 7:00 p.m.

Respectfully submitted,

Ronnie Rose  
WAC Secretary