



TOWN HALL
238 Danbury Road
Wilton, Connecticut 06897
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TOWN OF WILTON
2017 MAY 17 P 2:42
BY: A. Fiteni

MINUTES

May 11, 2017

PRESENT: Liz Craig (Acting Chair), Tom Burgess, Kathie Mandel, Rick Stow, Mark Andrews

ALSO PRESENT: Mike Conklin, Director of Environmental Affairs; Liz Larkin, Recording Secretary; Scott & Beth McFarland, Property Owners; Kate Throckmorton, Environmental land Solutions, LLC; Daniel Hudson, Property Owner; William & Cheryl Littlefield, Property Owners; Casey Healy, Gregory & Adams; Mark Lancor, DyMar; William Kenny, William Kenny & Associates; George Cross, Property Owner; Peter Gelderman, Berchem, Moses & Devlin; Ray Gradwell, BL Companies; Jeff Shamas, Dewberry; Holt McChord, McChord Engineering Associates; Marjorie Shansky; Phil Lauria, Neighbor

ABSENT: John Hall & Nick Lee (notified of intended absences)

I. CALL TO ORDER

Ms. Craig called the meeting to order at 7:30 p.m.

II. APPLICATIONS READY TO BE REVIEWED

A. WET#2449(I) MCFARLAND – 14 Partrick Road – “corrective action” for tree clearing

Mr. Conklin explained that the property owners were issued a Notice of Violation for removing trees from a regulated area. He reminded the commission that the property owners were granted an extension to present their application due to weather and other logistical issues. He provided the commissioners with GIS maps and site photos to show the clearing on the property. He stated he estimates 31 trees were removed that looked like they were recently cut. He noted there was one stump that looked like an older cut and he did not count it.

Mr. McFarland stated they have lived at the property for 10 years and have been fixing up this neglected site. He indicated they thinned some trees and cleared debris that was there when they purchased the property. He stated he is an Environmental Professional and they are working to improve the pond, the landscaping and the stone wall.

Mrs. McFarland stated there is an order of priority to restore, preserve and protect. She stated the pond is trophic due to the lack of maintenance which has diminished the viability of the pond. She noted there is a fish dock present but no fish could survive at this time. Mrs.

McFarland indicated the pine trees were planted by a Boy Scout Troop many years ago and these pines are now within 25 feet of their well. There was a permit granted to dredge the pond about 20 years ago but the work was never executed.

Ms. Craig commented that the work should have been permitted, per the law, prior to any activities taking place and noted that the commission wants to work with people. Mr. McFarland stated that some of the trees were damaged in super storm Sandy. Ms. Craig asked what the concept is going forward. Mr. McFarland stated trees have fallen on cars and close to the house. Ms. Mandel asked if they are working with a professional. Mrs. McFarland asked why they would hire a professional as they do everything themselves. Mr. McFarland added that their entire property is within the 100 feet of the pond and they have no intention of pulling permits on everything they do on their property. Ms. Craig confirmed the area in violation should be shaded and stabilized to slow the runoff into the pond. Mrs. McFarland stated they wanted to have 50% of the property as living space in lieu of the forest they are living in. She stated they did not know they were moving into a forest.

Mr. Andrews asked for the depth of the well. Mrs. McFarland estimated 150 ft. deep. Mr. McFarland asked where she took that number and Mrs. McFarland stated she was guessing. Mr. McFarland stated all activities cannot be regulated. Mr. Conklin countered that there may have been pine trees that fell during Sandy but that the 2014 GIS Aerial photo show the trees were cleared after Sandy. Mr. Burgess explained that the purpose of the commission is not to take over their property, but that the house was built prior to wetlands regulations and any activities requested now would be under the commission's jurisdiction. Mr. Burgess added that if there are damaged or dead trees present, the commission is not here to prevent them from removing these, but the wetlands must be protected.

Mr. Conklin stated the tree stumps he inspected were about 8" in diameter or greater. Mrs. McFarland stated the roots are out of the ground which affects the other trees in the area. Ms. Craig stated they may be required to replace the trees that were removed and a planting plan would be required prior to approval. Mrs. McFarland asked how the commission determines the reported damages to the regulated area. Ms. Craig responded that there is a hole in the ground and erosion and sedimentation problems can occur. Mr. McFarland stated Mr. Conklin did not know where the 100 ft. regulated area was located during his field visits and questioned his knowledge of soil science. Mr. Andrews countered that he should not pick on Mr. Conklin and this request is outside the normal protocol of what is required of an applicant to obtain an outside expert. Mr. Conklin explained that the property owner must provide a planting plan with timeframes and types of plants for mitigation approval. Mrs. McFarland stated she wanted to level the area. Ms. Mandel asked that she please come back with a plan as the picture of a garden from a magazine was not enough for an approval.

Mrs. McFarland stated there are 57 trees on the border with "Jim" and she would not have moved to Wilton if she knew it was a forest. She also stated all her neighbors have direct access to the pond, but they do not. Mr. Conklin suggested that staff provide the McFarlands with two planting plans that are typically proposed to give the property owners some idea of what the commission requires. As the applicant was not able to attend the next meeting on May 25, 2017, it was agreed that they would come back to the June 8, 2017 meeting.

B. WET#2452(I) HUDSON – 532 Danbury Road – proposed addition to existing residence 14

ft. from a wetland

Ms. Throckmorton advised that this property is a little more than 2 acres with the Norwalk River in the back and a small residence with a gravel drive and a small lawn. The owner is requesting to add a garage with minimal disturbance, as the entire property is within the upland review area. The application includes removing seven maple and ash trees, consolidating the driveway and adding a new retaining wall. Four of the trees will be replaced in the front and a rain garden for the additional roof drainage will be installed. Ms. Throckmorton confirmed the debris pile around the trees will be removed, the driveway will be consolidated with boulders and new trees will be introduced to replace the ashes that are declining.

Mr. Andrews asked if the driveway will remain as gravel. Ms. Throckmorton confirmed that it will remain as gravel. Mr. Conklin advised that there was a previous violation with hundreds of shrubs that were replanted for mitigation that did not do well in that area. He suggested switching the shrubs for one tree for survival as the shrubs succumb to invasives. Ms. Craig asked for the distance from the garage to the Norwalk River. Ms. Throckmorton responded that the distance is 140 ft. She also noted 10 new trees are being planted to replace 5 that are being removed.

Ms. Mandel MOVED to APPROVE WET#2452 with the General and normal Special Conditions and the additional Special Condition that 11 trees be planted in lieu of 10 trees and 4 shrubs, SECONDED by Mr. Burgess and CARRIED 5-0-0.

C. WET#2454(M) – LITTLEFIELD – 131 Spoonwood Road – removal of five dead trees

Mr. Conklin explained that this minor application is before the commission as the owners are requesting to remove trees that were meant to remain from a wetland approval for their pool construction. Mr. Littlefield stated that a neighbor's tree fell onto his tree so he is concerned for safety reasons as the trees are confirmed as dead. Mr. Littlefield confirmed he has planted other trees in the vicinity and a crane is required for the tree removals. Ms. Craig encouraged the owners to replant.

Mr. Burgess MOVED to APPROVE WET#2454, SECONDED by Ms. Mandel and CARRIED 5-0-0.

D. WET#2455(I) – 211 DANBURY ROAD, LLC – 211 Danbury Road – construct a 90-unit assisted living facility

Mr. Conklin, Ms. Craig, Mr. Burgess, Mr. Stow, and Mr. Andrews indicated they visited the site.

Mr. Healy described the property as a plant nursery with no wetlands or watercourses on or within 100 ft. He confirmed the Norwalk River is 250 ft. from the southwest corner of the property but the commission previously deemed that a wetlands permit would be required. The site currently has no stormwater facilities.

Mr. Lancor provided a summary letter to confirm the basics of the water quality basins and infiltration systems. He confirmed they will bring in public water and gas. The current conditions are clay-like soils, silty till and asphalt with no drainage on site. He described the

ditch on Orem's Lane as being a challenge for the highway department and noted they are assisting the town with adding additional infiltration systems in that right-of-way.

Mr. Lancor described the peak rates of runoff will be reduced by 65% - 68%. He explained the volume reduction is assisted by the infiltrator which takes the water, uses the gravel to percolate and moves it out of the detention basin. This process has a positive impact to the site and to Orem's Lane. Mr. Lancor added that Sunrise wants to beautify the site with plantings and very little lawn.

Ms. Craig asked how the stormwater systems are maintained. Mr. Lancor explained there would be an easement drawn for the land records and suggested that there be a yearly requirement for inspection. A question was raised about the construction embankments and the fill being brought in for this purpose. Mr. Lancor stated the fill must be clean and the basins must be built using published best practices. Mr. Andrews asked for the surface area amount to be paved. Mr. Lancor stated that the paving percentage will remain the same and confirmed they will abandon the old water line per Mr. Stow's request.

Mr. Kenny confirmed there are no wetlands or regulated areas on the site. He described the site as being 250 ft. from the watercourse so his recommendations stem from a stormwater management perspective. Mr. Kenny noted there are current adverse effects on the site due to the soil being tight and not pervious but the top layer is loose which causes the catch basins to fill with sediment. The site has been used for irrigation and has runoff on a regular basis which is a stronger vehicle for contaminants.

Mr. Kenny explained they are proposing 95% native plants and a limited lawn area so that they can establish a meadow around the perimeter with pollinator habitats. He described the southwest corner, closest to the Norwalk River will have 100 ft. of meadow along the road. In addition, a 2-stage large rain garden system will be installed to cool the water prior to reaching the river. Ms. Craig asked how they construct a building on this impacted soil. Mr. Kenny confirmed the top 12 – 18 inches is removed. Mr. Andrews confirmed that only clean fill should be brought to the site. Ms. Craig asked if that fill can be screened for invasive species. Mr. Kenny stated this is not possible.

Mr. Burgess MOVED to APPROVE WET#2455 with the General and normal Special Conditions and the additional Special Conditions that the Stormwater Management Plan be filed on the Land Records, the Engineer of Record is required to attest to the conformance of the system including an as-built survey, SECONDED by Ms. Mandel and CARRIED 5-0-0.

III. APPLICATIONS READY TO BE ACCEPTED - None

IV. APPROVED MINOR ACTIVITIES

A. WET#2446(M) – CORTINA LEARNING CENTER INTERNATIONAL – 9 Hollyhock Lane – “after-the-fact” handicapped ramp, rear stairs, and pave parking lot

B. WET#2450(M) – DESOUZA – 192 Cheese Spring Road – proposed bathroom addition and mudroom

Mr. Conklin provided a brief description of each of the Minor Activities that have received permits since the last meeting.

V. CORRESPONDENCE

A. WET#2430(I) – CROSS – 105 Old Belden Hill Road – request to extend “corrective action” deadline

Mr. Conklin stated he received an email request from Mr. Cross to extend the due date for all mitigation as weather was hindering the process. Mr. Conklin confirmed the work has now been completed from what he can tell based on the photos that Mr. Cross submitted via email. The only missing piece is the final as-built survey.

Mr. Burgess MOVED to EXTEND the due date for Mr. Cross to provide the as-built by May 25, 2017, SECONDED by Mr. Andrews and CARRIED 5-0-0.

VI. OTHER APPROPRIATE BUSINESS

A. Approval of Minutes – April 13, 2017 Meeting & April 27, 2017 Meeting

Ms. Mandel MOVED to APPROVE the April 13, 2017 Meeting Minutes, SECONDED by Mr. Burgess and CARRIED 5-0-0.

Mr. Andrews MOVED to APPROVE the April 27, 2017 Meeting Minutes, SECONDED by Ms. Mandel and CARRIED 5-0-0.

VII. PUBLIC HEARING

A. WET#2429 (S) – DAVID W. BRUBECK TRUST, IOLA W. BRUBECK TRUST, DERRY MUSIC COMPANY – 221 Millstone Road (Assessors Map#94 Lot#1), Millstone Road (Assessors Map#79 Lot #40), 67 Hickory Hill Road (Assessors Map#94 Lot#9), 69 Hickory Hill Road (Assessors Map#94 Lot #10), 73 Hickory Hill Road (Assessors Map#94 Lot#11), 85 Hickory Hill Road (Assessors Map#93 Lot #16), & 87 Hickory Hill Road (Assessors Map#93 Lot #17) – (i) the renovation of an existing wetlands crossing; (ii) the construction of a new wetlands crossing; (iii) the development within upland review areas of six (6) lots that were subdivided in 1954 and resubdivided in 1968 (cont.)

Mr. Gelderman spoke on behalf of Ira Bloom, Counsel for the Town of Wilton. Mr. Gelderman confirmed he had provided a memo to the commission on April 20th to convey their authority with this application. He stated feasible and prudent would not include the authority to re-draw the subdivision. The subject of the application is to create lot line revisions that are minor, not an additional subdivision. Mr. Gelderman urged the commission to look at the regulated activities only and that each lot is individual. He stated the land is nowhere near the confiscatory taking that was mentioned. He asked the commission to make their decision based on the evidence provided, credible expert testimony, and reasons must be stated for how the board arrived at the final decision so that it can be defended in a court of law if necessary.

Mr. Conklin noted the commission may wish to schedule a special meeting next week to hear more testimony and have time to review the newly submitted documents. The commissioners agreed that Wednesday, May 17, 2017 at 7pm we will hold a final public hearing for Brubeck.

Mr. Healy noted the last hearing was continued due to late responses being received. The major revision before the Commission is changing the box culvert on Millstone Road with an open bottom arch culvert. The ratio of mitigation to wet impacts is 5 to 1. The lot 10 level spreader and detention basin have been moved outside of the 100 ft. review area and the landscape plan has been revised accordingly. Mr. Healy also noted the vernal pool studies have been submitted with the high water line noted. Environmental Land Solutions attested that all site disturbance is outside the 100 ft. vernal pool envelope.

Mr. Gradwell, of BL Companies, stated there are not a lot of unresolved technical issues from their review. He noted the construction sequence is imperative to make sure the improvements are done in a timely manner with the seasons in mind. The culvert systems are placed but there is no detail on the diversion of water during installation. He confirmed the common improvements are covered under the declarations. Mr. Gradwell stated he would like to see more detail on the timing of the crossing installation but noted he agrees with the arch as it will minimize activities in the wetland. He also added it was a good idea to move the systems on lot 10.

Mr. Shamas stated the high water line of the vernal pool was field located but he was not certain how they located it and what methods they used. He noted that Ryan & Faulds Surveyors updated survey shows the vernal pool but there is no date associated with this revision and he was not sure if this was actually surveyed or sketched. He stated that he posed a question in the January letter dealing with the conclusion that the envelope and terrestrial habitats are compromised from the surrounding developments. He confirmed that if the wetland and the vernal pool are critical habitat and are already impacted and when you layer in the proposal to fill the wetlands and watercourse, you are cutting additional buffer. He asked what it takes to get a detrimental compromise. He asked where they would expect salamanders and frogs which is not included in the vernal pool studies. He was also unclear on the 2 ft. cut which was revised as he does not understand where the enhancements are being done. He questioned the bridge off Hickory Hill Road asking if it would require larger footings although this may be outside the wetland. He stated they could re-design the entry road on Hickory Hill so that it is further north outside the wetlands. He was not certain they fleshed out the details when McChord stated this was a poor alternative. He added that they state the system is above ledge but there are no test pits. He questioned whether they need a water quality basin right against the wetland. He suggested the house could be smaller on this lot. He confirmed he found alternatives but he cannot design the system.

Mr. Shamas stated the common areas should be developed in a logical manner that makes sense. He stated there is grading noted into a wetland where they have plantings proposed. He stated lot 6 & 8 do not call out where the select fill will go for the septic. Mr. Shamas confirmed the Health Department wanted the entire site tested noting the pipe may go through the brook if the best soils are found there. Lastly, Mr. Gradwell suggested that there is one bond holder for all the common improvements.

Mr. McChord stated the Dewberry reviewer was not being fair to state they have not looked at

alternatives. He showed how the common drive off Millstone is saddled so that it affects the flow which needs to go through the arch culvert and moving it 5 ft. will not make less of an impact. He stated they if they moved the basin, more fill would be required. He confirmed the bridge crossing which would have a 40 ft. span would have the footings installed outside of the wetlands but would not be cost effective. He agreed to add additional notes and details on the construction sequence.

Ms. Throckmorton confirmed the high water flags were set at the high water mark which was surveyed and will be provided to the commission. She noted that while she appreciates Mr. Shamas' comments on the span, the bridge is cost prohibitive. She explained the arch culvert is best as it provides an open and wide span for critters while having a small footing. She confirmed the mitigation she is proposing is large enough for a net gain on the property. Ms. Throckmorton stated the area of the vernal pool has already been compromised due to historic reworking for drainage. She also noted they looked in the Army Corps of Engineers and Dr. Klemens recommendations and will explore other alternatives for water quality. Ms. Craig raised concern about the proximity of the Jeep road to the brook as asked that this driveway is tightened up and substantial plantings are installed.

Mr. McChord stated the driveway includes a small length that is within 25 ft. of the brook but noted that proximity is not everything; it is how you deal with the runoff.

Ms. Shansky passed out responses to questions raised at the last hearing and stated "ditto" to Mr. Mason's letter. She stated the application is incomplete and provided citations in all court levels and four sections of the wetlands act. She noted Mr. Cowen requested a stream study which was not completed. As the stream was considered superior in some reports and the owners report no fish, what is going on here? Mr. Andrews stated it is a AAA stream and asked what a stream study would accomplish. Ms. Shansky responded they need to know what is in there and what do they say about trout and the lack of them in that section.

Ms. Shansky also stated they did not answer the question about ice and salt going into the brook and stating that the driveway is flat is not acceptable. She also noted that Dr. Klemens confirmed a proper vernal pool study was not completed. She stated the water quality basin is a decoy vernal pool and it impairs the water quality. She was disappointed that Dr. Klemens was not able to inspect the vernal pool and read a letter from him regarding this matter. She stated the fill information was not adequately addressed per the regulations and adequacy is the commission's determination. The commission may approve the application with conditions but they cannot condition something necessary for approval. Ms. Shansky stated the adverse impacts are being called out and the conservation restriction just submitted is all on one document instead of lot specific. She stated there is no prohibition of dumping yard waste which is an omission. She asked that signage be erected for the conservation area and possibly for invasive species control so they cannot be ignored.

Mr. Lauria, of 32 Silver Spring Road, asked the commission to be impartial and thanked them for their attention to this matter. He stated the property has been well stewarded for years and as a property owner, they should be able to maximize their property with this reasonable development.

Mr. Andrews MOVED to CONDUCT a Special Meeting on May 17, 2016 at 7pm, SECONDED

by Ms. Mandel and CARRIED 5-0-0.

Mr. Healy stated the applicant is granting an extension to close the Public Hearing. Mr. Healy attempted to schedule a visit for Mr. Klemens but he is not available per Ms. Shansky.

VIII. ADJOURN

Mr. Andrews MOVED to ADJOURN at 11:03 pm, SECONDED by Mr. Stow and CARRIED 5-0-0.

Respectfully Submitted,
Liz Larkin
Recording Secretary, Environmental Affairs