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MINUTES

November 8, 2018

PRESENT: John Hall (Chair), Liz Craig, Kathie Mandel, Nick Lee, Scott Fischer, Karen Silverberg, Rick Stow

ALSO PRESENT: Mike Conklin, Director of Environmental Affairs; Liz Larkin, Recording Secretary; Marina Dostal, Property Owner; Aleksandra Moch, Green Roof Concepts; Casey Healy, Gregory & Adams; Craig Flaherty, Redniss & Mead; Kate Throckmorton, Environmental Land Solutions; Paxton Kinol, Wilton Heights, LLC; Mike Bartos, LandTech; Kevin O'Brien, O'Brien Premiere Properties; Meghan Miles, Carmody, Torrance, Sandak & Hennessey, John Eoanou, Property Owner

I. CALL TO ORDER

Mr. Hall called the meeting to order at 7:30 pm.

II. APPLICATIONS READY TO BE ACCEPTED

A. WET#2539(I) DOSTAL – 200 Rivergate Drive – “corrective action” to address fill material in a wetland and regulated area

Ms. Dostal stated she was hoping to get approval at this meeting to remove the fill on her property adjacent to the driveway so that she can plant grass before the winter. She stated she did not realize there were laws relating to the protection of wetlands and it was not an intentional act on their part. She stated the situation has placed her in a financial hardship and she is asking for a waiver of the \$960 Corrective Action Application Fee.

Ms. Throckmorton stated she would suggest modifying the Cease & Desist to enable the owner to start removing the fill adjacent to the driveway. She confirmed the silt fence is installed as requested and the fill will be direct loaded onto a truck and hauled away.

Mr. Hall was hesitant to allow for any modifications as there is no structure or recourse without the application receiving a full review. Mr. Lee stated he sees no down-side to removing the fill near the driveway with the silt fence in place in an upland review area. Mr. Conklin suggested modifying the Cease & Desist to include the removal of the piles along the driveway. He added that the removal of the fill in the wetland and the stabilization of the area could be pursuant to a formal application review.

Ms. Craig MOVED to MODIFY the Cease & Desist Order to allow for removal of fill piles near the driveway, SECONDED by Ms. Fischer and CARRIED 7-0-0.

Ms. Mandel MOVED to MODIFY the Intermediate Corrective Action Application Fee, SECONDED by Mr. Fischer and FAILED to CARRY by a vote of 1-6-0.

The Application could not be accepted as the fee has not been paid.

III. SHOW CAUSE HEARING

Mr. Lee MOVED to ADD a Show Cause Hearing for the Cease and Desist issued to BEMA Group, LLC for 338 Westport Road to the Agenda, SECONDED by Mr. Stow and CARRIED 7-0-0.

Mr. Conklin advised that he received the as-built survey as required in the resolution and the plan did not match up with the approval granted by the board. He explained the lawn area was expanded into a regulated area by fill being brought in to level the yard. Mr. Conklin confirmed he issued a Notice of Violation with a one month deadline to submit the "Corrective Action" Application. He reminded the Commission that they asked Staff to issue a Cease & Desist Order as this deadline was not met.

Mr. Conklin confirmed the application has now been received but the fill material has been removed per the owner. He explained by doing the removal, the owner did not adhere to the Cease & Desist order. He added that the level of the Activity is determined by the cubic yards of material. If more than 100 cubic yards of fill are being moved, the activity increases to a Significant Level Permit. He cannot confirm the amount as the fill was removed under a Cease Order.

Mr. Lee stated he drove by the site while site work was taking place and noticed the contractor was Michael Lato, a serial violator of this Commission. He asked that a Citation be issued. Mr. Conklin advised that staff can move forward with this request. Mr. Conklin also advised that he has asked the engineer to evaluate how much fill was brought onto the site and what was recently removed to get a clearer picture of the extent of the amount of fill.

Ms. Moch showed the area that received the fill and explained the disturbance was the backyard of the old home that was demolished. She confirmed the area is stabilized with mulch and seeded and indicated that the owner would like to finish his plans before winter hits. Mr. Conklin responded that he would need the engineer to verify the amount of fill prior to granting a permit due to the fact that the owner continued to work under a Cease & Desist. Ms. Moch asked if the Commission could modify the Cease & Desist to allow for the driveway in the front of the site completed prior to winter.

Mr. Lee MOVED to MODIFY the Cease & Desist to allow the original site plan, including the driveway, to be completed and all other site work in the back will be handled under the newly submitted "corrective action" application, SECONDED by Ms. Mandel and CARRIED 7-0-0.

Mr. Lee MOVED to ACCEPT WET#2544, the "corrective action" application for this applicant,

SECONDED by Mr. Fischer and CARRIED 7-0-0.

Mr. Lee MOVED to ISSUE a Notice of Violation to Michael Lato for this property,
SECONDED by Ms. Craig and CARRIED 7-0-0.

IV. PUBLIC HEARINGS

**A. WET#2531(S) WILTON HEIGHTS, LLC - 300 Danbury Road, Whitewood Lane
(Assessor's Map#58 Lot#37), Whitewood Lane (Assessor's Map#58 Lot#39), 3, 7, & 11
Whitewood Lane – redevelopment of the properties with two buildings that still consist of
retail space and residential units within a wetland with a watercourse crossing, an upland
review area, and an extended upland review area**

Mr. Healy confirmed responses were submitted from the discussions at the last hearing. The
submission includes a letter referencing his position on the upland review as a matter of law.
Mr. Healy stated that the team has successfully addressed the comments and suggestions from
the Third Party Consultant for the Commission, Land Tech. He confirmed Wilton Heights will
not remove the six units that were questioned and the board cannot deny the application based on
the impact to the wetlands with no evidence of harming the wetlands or watercourse. He pointed
to the sections in the Regulations that state the regulations are not based on building locations,
but to regulate the activities that may negatively affect the wetlands and watercourse. Mr. Healy
stated they have met this criterion by providing a substantial improvement to the wetlands and
watercourse with no adverse impacts which makes it an unsuitable request.

Ms. Throckmorton displayed her revised planting plan and noted they have refocused on the
mitigation areas and added more perennial plantings. She confirmed she can expand the invasive
removal area and replant the area. She noted she added yellow birch trees to the stream side of
the wetland because the area is stony which limits the types of plantings that will succeed. Ms.
Throckmorton also reported that she has added groupings of deer resistant shrubs along the
stream. She added that she reviewed and increased the sizes of proposed plantings. She also
reiterated that she believes the non-native plants she is proposing will be the best choice, but will
trade them out with natives if the Commission deems it necessary.

Ms. Craig reiterated her position that the loss of 13 trees in the rear of building #1 will impact the
wetlands due to proximity. Ms. Throckmorton countered that 50 trees, 350 shrubs, and 800
perennials are proposed to be added to the site.

Ms. Silverberg questioned Mr. Flaherty's statement from a previous hearing that he was
previously a member of the Wetlands Commission in his home town of Darien. Mr. Flaherty
responded that he was a member of the Environmental Protection Agency for seven years which
is Darien's equivalent to this board.

Mr. Flaherty explained the drainage with the permeable pavers and crushed stone reservoirs and
how they connect to the rain garden with a perforated pipe. Mr. Conklin confirmed that the
proposed pavilion will be covered and the applicant does not get credit from the permeable
pavers under the pavilion.

Mr. Bartos stated that Redniss & Mead has answered all of his concerns by noting that they have

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gone above and beyond with their planning and this project will be a substantial improvement from the current conditions at the site. Ms. Craig asked him about the loss of highly functioning wetlands, the loss of tree canopy and channelizing the watercourse. Mr. Bartos responded that he is an engineer and from this perspective, the proposal has met and exceeded the water quality volume for 1 inch storms.

Ms. Silverberg questioned where the water is coming from on the site and asked Mr. Bartos to explain the hydrology. Mr. Bartos responded that any runoff will raise and intersect the water table. He added that the hydrology issue is solved but he is not an expert in biological science. Mr. Conklin reminded the Commission that he holds a Master's Degree in Environmental Science and he is a Qualified Soil Scientist. Mr. Conklin stated in order to confirm a watercourse is must have at least two of the following: 1. established banks, 2. it must flow longer that a period of one storm, 3. there must be hydrophytic vegetation. Based on this criterion, Mr. Conklin witnessed the banks and the flow and it is his opinion that the area receives water from storms, ground water and larger upland area. Mr. Flaherty added that the water will disburse as the fissures form as there is not a lot of overbank flow.

With reference to Attorney Healy's initial comments regarding the need for any denial of the application to be based upon evidence that the activity might have a negative effect on the wetland, Mr. Hall reiterated that the applicant should maintain the area where 13 trees are proposed to be removed. Mr. Flaherty provided two alternate plans to the board. The first alternative changes the shape of the buildings and rotates the units. This has allowed for a larger distance to the buffer and the second alternative calls for moving two of the units from the north building to the south building which would save some trees. Mr. Flaherty confirmed the first alternative creates a two-way entrance and exit, instead of one way through. This allows for the air conditioning units to be dropped down and moves the disturbance away from the eastern side of the site.

Mr. Kinol stated they debated plans and showed ideas they have that may not be approved with another one of the boards that has oversight over this proposal. He noted that they are allowed 76 units, but are asking for 74 units and stated the initial plan, not the alternatives, are more costly, but this is what he thinks is best for the site.

Ms. Mandel asked for Mr. Conklin's professional opinion for the biological piece of this application. Mr. Conklin stated alternatives need to be feasible and prudent. He stated this board is required to protect the watercourse. Once there is a loss of buffer, this buffer does not come back. Mr. Conklin suggested requesting details of the alternatives so that LandTech can review them for compliance with the Stormwater Manual. The Commission agreed that the plan titled, "40FT" is the preferred plan as they will have less blasting for building two and more mitigation.

Mr. Healy granted approval to continue the Public Hearing until the next meeting on December 13, 2018 to allow for the alternate plan to be provided with details for the Engineer to review. Mr. Lee MOVED to direct Staff to generate a Resolution of Approval based on discussions, SECONDED by Mr. Fischer and CARRIED 7-0-0.

With no further questions or comments, the Public Hearing was continued.

V. APPLICATIONS READY TO BE REVIEWED

A. WET#2533(I) MCFARLAND – 14 Patrick Lane – “corrective action” to address unauthorized tree removal in a regulated area

Mr. Conklin stated that he met with Mrs. McFarland earlier in the day and they are working in a positive direction. The meeting today required them to provide a planting plan which they could not complete in one afternoon. Mr. Conklin confirmed the owner is working under the auspices that 28 trees were removed even though they dispute this number. Mr. Conklin noted they may request more shrubs than trees. The owners are expected at the December 13, 2018 Meeting.

VI. APPROVED MINOR ACTIVITIES

A. WET#2535(M) CHAMBERS – 95 Seir Hill Road – rebuild and expand wood deck 20 ft. from wetlands

B. WET#2537(M) 48 WEST NORWALK ROAD, LLC – 33 Lovers Lane – proposed generator within a regulated area

C. WET#2538(M) COLE/DICONZA – 14 Old Belden Hill Road – “after-the-fact” patio extension

D. WET#2540(M) CHANDRA – 32 Crosswicks Ridge Road – proposed underground propane tank and gas line to the generator

Mr. Conklin provided a brief description of the Minor Permits that have been issued since the last meeting.

VII. CORRESPONDENCE - None

VIII. OTHER APPROPRIATE BUSINESS

A. VIOLATIONS

i. CROWTHER – 515 Belden Hill Road – clearing of a stream buffer

Mr. Conklin explained the owner has hired Hoffman Landscapes to install silt fence and hay so that the material does not run off in the rain.

B. Approval of Minutes – October 25, 2018 Meeting Minutes

Ms. Craig MOVED to APPROVE the October 25, 2018 Meeting Minutes as drafted, SECONDED by Ms. Mandel and CARRIED 7-0-0.

IX. ADJOURN

Mr. Lee MOVED to ADJOURN at 9:47 pm, SECONDED by Mr. Fischer and CARRIED 7-0-0.

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Respectfully Submitted,

Liz Larkin

Recording Secretary, Environmental Affairs

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