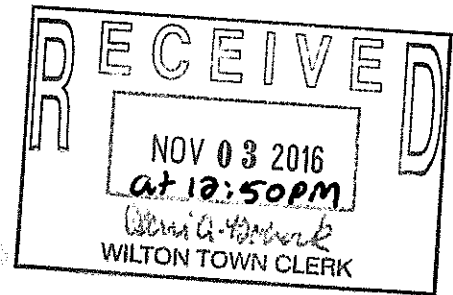


INLAND WETLANDS  
COMMISSION  
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TOWN HALL  
238 Danbury Road  
Wilton, Connecticut 06897



**DRAFT MINUTES**

**October 27, 2016**

**PRESENT:** John Hall (Chair), Liz Craig, Tom Burgess, Nick Lee, Rick Stow, Mark Andrews

**ALSO PRESENT:** Mike Conklin, Director of Environmental Affairs; Liz Larkin, Recording Secretary; Casey Healy, Gregory & Adams; Holt McChord, McChord Engineering; Kate Throckmorton, Environmental Land Solutions, LLC; Marjorie Shansky, Attorney; James Cowen, Environmental Planning Services; Jeffrey Shamas, Dewberry Engineers; Richard Peters, Property Owner; Barbara Wilson, Barbara Wilson Landscape Architect, LLC; Jackie Algon, Conservation Commissioner

**ABSENT:** Dan Falta (notified of intended absence)

**I. CALL TO ORDER**

Mr. Hall called the meeting to order at 7:32 p.m.

**II. PUBLIC HEARINGS**

**A. WET#2394 (S) LTWJ, LLC – Cannon Road – proposed 8-lot subdivision (cont.)**

Mr. Conklin read a letter from Gregory & Adams stating the application is being withdrawn.

**B. WET#2396 (S) BRUBECK TRUST – 221 Millstone Road & 67, 69, 73, 85, & 87 Hickory Hill Road – access and development of six lots (cont.)**

Mr. Hall and Mr. Lee left the meeting room as they have recused themselves from the Brubeck Trust application.

Mr. Healy confirmed the Public Hearing was continued from the last meeting to provide an opportunity for the applicant's team to respond to the new documents that were received from Dewberry Engineers and Trinkaus Engineering. He stated new plans and reports have been created and the agent met with Trout Unlimited to address their concerns with the proposal. Mr. Healy noted new information was submitted to them today and the team will attempt to address these comments and concerns during this hearing.

Mr. McChord confirmed he submitted a summary letter and drainage reports that relate to the large changes they are proposing from the original plans for the wetland crossings. He indicated the previous proposal included a pipe arch with a 10 ft. stand with a natural bottom to flow south and down the driveway. Dewberry asked that this is lengthened and Mr. McChord confirmed they will look into this option. He stated they had considered a 36 in. RCP pipe in place of the existing two 12 in. pipes for the Millstone driveway that has existing problem with wetlands but, as Dewberry has suggested no solid pipe, they have added a 5 ft. x 6 ft. culvert. This allows a clear area to pass the flow which is a more natural solution. Mr. McChord noted there is an under drain pipe near Water Quality Basin 5 which will allow rain to flow out after treatment. He also noted Water Quality Basin 1 has a similar under drain that includes a level spreader above the pond. Mr. McChord stated Dewberry has suggested moving this further from the pond. He mentioned the water would already be filtered, but they will look into this option as well as making the arch wider. Mr. McChord confirmed the alternative to build bridges is not feasible due to the costs exceeding \$200,000 for just two lots. He confirmed the cost for the pipe arch they propose is \$22,000. He added the second bridge, which is 15 ft. in length, has no natural flow path so one would be created which is \$71,000, and a box culvert with infill will be another \$26,000.

Mr. McChord confirmed the house designs are conceptual only as there are many possibilities once the lots are sold. He stated that Dewberry's request for details on the temporary sediment basins is not necessary as the designs will change. He added that each home site will need to come through for wetland approval with relevant sizing. Mr. Andrews stated it is difficult for him to approve something when he does not know these details. Mr. McChord stated the soil and erosion measures and the lot lines will be the same. Mr. Conklin added that if the house plan is the same, he may not have the opportunity to see the site plan in detail and have the authority to make any changes based on the new details. Mr. McChord responded that this approval is at a different level and he would be happy to have a condition that each site be required to come back through the commission for approval. Mr. Healy added that the plan before the board is not site specific, rather the approval to adjust the boundary lines and construct two wetland crossings. Mr. Healy also noted subdivision applications are for feasibility to build a home with a driveway, a septic system and a reserve system. Mr. Conklin countered that he needs to know the sequence of which property will be built first as having them completed piecemeal can make it difficult to know how the activities are managed and enforced. Mr. Healy confirmed they have submitted a sequence for the mitigation plan ELS created that can be tightened up per Dewberry's comment. He reiterated this hearing is to gain permission to build within the envelope. A discussion ensued relating to what goes into a subdivision application and why the details will not be known until a parcel is sold. Mr. McChord stated the future engineer the new property owner hires will create the site specific plans based on the owner's preferences and the calculations will be revised at that time.

Mr. Conklin stated that at this time the commission should be examining feasibility, but to know that granting approval will allow someone to come in and build the property out as shown. He stated this commission requires site specific information and an as-built will be required. Mr. Healy added that this as-built will be recorded on the land records. Mr. Burgess confirmed that the request for temporary sediment traps and diversions are an undue burden as the level of specificity is too high. Mr. McChord responded that it is not a burden, but the sequencing allows the lot to be built and then the driveway is built which means the sediment trap may move. Mr. Burgess suggested a special condition that a level of safeguards is mandated. Mr. Andrews added that each lot needs to deal with specifics. Mr. Conklin provided the Warncke Road

subdivision as an example as how the new owners wanted a different site design then the original approval and had to apply for a new wetland permit. Conklin noted this is the time to get the details worked out. Mr. Healy responded that this is not how subdivision approvals have historically worked in Wilton. Mr. Conklin then used the Vollmer subdivision as an example and Mr. Healy and Mr. McChord confirmed they worked on that application and there were no site specific details until the owners came through with their plans that were substantially changed from the subdivision approval.

Ms. Craig asked for the distance of the buffer closest to the Comstock Brook. Mr. McChord noted that it was close but they wanted to utilize the existing jeep road as the land is already benched and will require less disturbance. Ms. Craig confirmed they will widen the Jeep road and noted this is a narrow buffer with a tremendously important wetland. Mr. McChord stated if they widen the road too much, the home sites will be pushed farther into the sensitive wetland area. He added the driveway design keeps it benched into the hillside. Ms. Craig stated there seems to be a lot of clearing and a 25 ft. buffer to the Comstock Brook that she would prefer not to disturb at all. Mr. McChord countered that there is a balance and Trout Unlimited is pleased with the handling of the Comstock Brook, one of their most valued assets. Ms. Craig asked if there is a loss of shading. Mr. McChord responded the east side is steep and they will keep the large trees while adding plantings. He then provided distances from 35 ft. to 55ft. from the water to the road, and from 20 ft. to 55 ft. from the wall. Ms. Craig stated she would like to see a 100 ft. buffer from that resource. Mr. McChord again stated this would push the development closer to other wetlands.

Ms. Throckmorton confirmed she prepared responses, inventories, test pits, updated mitigation plans and a stream survey, but there are no substantial changes from her original proposal. She stated the plan labeled MP3 has the most updates. Ms. Throckmorton confirmed they found topsoil 20 – 30 inches down so they will just excavate to this and not bring any on site. She indicated the plantings have been slightly reconfigured, and they targeted the jeep road, which is already piped and disturbed for the least amount of disturbance for the driveway. Ms. Throckmorton confirmed there will be a retaining wall at the edge of the jeep road with special instructions not to disturb the existing trees.

Ms. Throckmorton noted the sequence of her proposal as beginning with the retaining wall and all soil is contained as they rise up. She confirmed the lawns are on placed on the far side of the houses so any water is being collected on the opposite side of the wetland. Ms. Craig stated the homes are close to the resource and she is concerned about the buffer. Ms. Throckmorton confirmed South Norwalk Electric & Water suggested an additional 30 ft. buffer, which she stated they can do, but they originally wanted to keep the meadow.

Mr. Shamas confirmed the plans have been much improved from the original submission. He stated the applicant responded accordingly and made headway. He noted that policy is getting in the way of the technicals as, in his experience, commissions need to review site specific details. In this case, Mr. Shamas stated it is not feasible to build a road and fill a wetland without understanding how each piece impacts the environment. He added that the town would have no jurisdiction to force a future homeowner to comply with anything additional. In addition, the commission needs to look at the septic systems and water quality features as this is how the lot is sold, with an approved design. In this instance, the details are needed to make sure the design meets code, there is no pollution, and it is set back from wells and surface waters. Mr. Shamas recommended the decision by the commission needs to be approving the impact in a logical

sequence as the infrastructure needs to be built first.

Mr. Shamas spoke to the wetland creation proposal. He stated he would like to see the wetland and grassy area forested next to the Comstock Brook. He noted it should be reestablished with a riparian buffer, which Ms. Throckmorton confirmed she would consider. Ms. Craig asked for the values of the wetlands as she thinks a few more feet will make a large difference. Mr. Shamas agreed that any additional space is good at the top of a steep slope. Ms. Craig asked if this area would be subject to erosion. Mr. Shamas responded that it would be during construction as this is when it is most susceptible. To answer the values question, Mr. Shamas responded the unnamed watercourse is a tributary with some invasives and is overgrown but has a productive habitat. He encountered some sediment coming down to a pinch point which overtops and comes into the River. Ms. Craig asked if the septic systems are large for the area. Mr. Shamas responded they are sized for 5-bedroom homes. He went further to confirm that lots 8 and 9 require additional testing for flooding to a level of detail needed to approve these lots.

Ms. Shansky, who represents three of the neighbors, stated that the law gets in the way of the technical details and this application should get a hard stop at this juncture. She stated the proposal is eligible for denial for lack of information, and failure to establish alternatives. Ms. Shansky quoted sections of the regulations marshalling evidence for inadequacy of what is required for an approval. She went further to state the level of detail required is critical to ensure there is no adverse impact so she encouraged the commission to refrain from approval. Ms. Shansky noted there needs to be a seasonal survey for vernal pools and this high intensity development requires infrastructure where there is no margin for error. She added that the six lots were reconfigured from a subdivision and a re-subdivision prior to wetland regulations. If sedimentation is not currently clear on the plan, it must be shown. She noted that the prudent and feasible alternative may be fewer lots but the plan as is should not be eligible for a permit.

Mr. Cowen, of Environmental Planning Services, confirmed he submitted a letter and has reviewed all the application materials. He stated the East Branch of the Comstock Brook has an AA rating, is within a watershed and a fishery so these are significant and sensitive resources. He stated the activities that are being proposed will result in direct and indirect impacts, which will be adverse impacts. He also confirmed the biological and wetland surveys are not complete, the mitigation plan is inadequate and incomplete, and he is concerned about direct impacts to a vernal pool and a wood frog population. He noted that the demise of this species has great impacts to the environment. He commented that the biological report was completed in August which was not ideal. Mr. Cowen added that there needs to be monitoring and invasive management but that the crossings are not required; adding that there is no alternative provided for these. He stated the extensive tree removal and new proximity to the road and the brook can be harmful. Mr. Cowen suggested the corridor be wider, and noted the jeep road may not be the best alternative.

Mr. Cowen established that this riparian corridor is a significant resource and any changes should include under and over-story trees with a density and layering format. He confirmed the water quality depends on the infiltration; if the infiltration is low, there will be an increase in peak flows which leads to contamination. He noted that de-icing salts that will get into the resource are difficult to mitigate so there should be a groundwater discharge system to reverse the impact to the trout and other organisms.

Mr. Cowen commented that the proposed plants are not suitable due to their optimal growth

requirement to keep them saturated. He estimates the 25 year storm flow will be overland as there is no stable outlet. He reiterated that calculations should be completed to ensure flows. Mr. Cowen noted construction of lot 6 shows drainage toward the pond which is likely to concentrate. If this overtops, it could erode and go into the wetlands and when water goes down a steep slope it goes fast and picks up sediment.

Mr. Cowen addressed the vernal pools that are questionable on the plans. He confirmed there are vernal pools in the area and stated these need extra protection as they are special. He would like to see a 100 ft. setback from vernal pools as this is what is needed for growth and mating. He asked that depths are confirmed for these areas. Cowen stated that the wildlife inventory has an expected species including the spotted salamander and northern spring peeper. He confirmed there may be a second pool near Hickory Hill. He stated the Army Corps standards have not been met with the crossings and this will create adverse impacts. Mr. Cowen noted there is a reason for these standards and there is no room for error here with the significant resources and mistakes could be made.

Mr. Cowen commented that the lower portion of the watercourse has trout and culverting in this area will adversely affect them. He confirmed the industry standard for this type of activity carries a 5-year monitoring program as the wetland creation and mitigation can fail. Mr. Cowen stated it is critical for a single entity to be in charge as some things fall on two lots and with this piecemeal, he wants to know who is the responsible party. He noted the annual mowing is not required and asked if the existing culvert can handle the heavy machinery that will be used for construction.

Mr. Cowen stated the number of woody plants is not adequate and the river birch is not appropriate for restoration mitigation. He confirmed Otto Theall's Soil Report has test-hole data reproduced because it is critical that no ground water is found in these holes to ensure there is no reduced matrix in the soil. He did confirm no water came up from the holes but he was not convinced that the hydrology would work. Mr. Cowen suggested that a cost analysis is needed for this and added that alternative mitigation should be prepared to achieve the hydrology they wish to create to enhance the existing resources. He agreed with Mr. Shamas' point that a riparian woodland buffer would have the best outcome. He did not recommend mowing the wetlands as the machine would sink and reiterated that the Army Corps of Engineers criteria has not been met so a permit should not be granted. He added that if the Army Corps changes the plans, the applicant will need to come back to this commission for those changes.

Mr. Cowen stated the wildlife inventory is incomplete as there are no qualifications of the field team, the dates, and conditions noted during the inspection and across the entire growing season. He stated that evidence of the northern leopard frog was found. As this is a state protected species, plans need to be submitted on how these will be protected and preserved. He added that the last paragraph states this species was not observed so there are two differing statements which need to be clarified.

Mr. Cowen noted that the location of the property in the watershed means it is a source of drinking water for residents. He stated there are a lot of thresholds in this instance and the water could be treated for improvement. The level of sensitivity is based on weight and age. Mr. Cowen stated the Comstock Brook is the southern-most native brook trout found in Connecticut and the commission should require more complete information to make this decision. Ms. Shansky noted the sections of the regulations relative to Mr. Cowen's comments. Mr. Cowen

finished by stating the enforcement would be difficult with many owners and a responsible party should be obtained for bonding.

Mr. Burgess MOVED to CONTINUE the Public Hearing, SECONDED by Mr. Stow and CARRIED 4-0-0.

Mr. Hall and Mr. Lee were reseated.

**C. WET#2407 (S) STEVENSON – 417 Belden Hill Road – construction of an in-ground pool**

Mr. Conklin read a letter from Gregory & Adams into the record which asks for the hearing to be continued.

### **III. APPLICATIONS TO BE REVIEWED**

**A. WET#2421(I) MARCEAU – 763 Danbury Road - proposed new patio, expand existing gravel driveway, new gravel walkway, small asphalt parking area, and new code compliant septic**

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

Mr. McChord confirmed his client would like to have a dog daycare facility in this location and are asking for permission to make some improvements to the property. He explained the Happy Stays Dog Care Facility is a different model where dogs remain on the property and live there. The maximum number of dogs at one time will be eight and some minor site improvements are being requested to help with their business. The owner would like to keep the existing gravel driveway but widening it to provide four parking spaces with one handicapped spot that will be paved. He noted there is a patio in the back of the home with a fenced yard to keep the dogs contained.

Mr. McChord explained there is a small pocket of wetlands at the mouth of a drain pipe with two intermittent watercourses that go into the ground. He stated the property is currently vacant and under-utilized. The proposal includes upgrading the septic system with a tank and pump chambers and he confirmed all trees will remain. He described the wetland as being uphill of development and to the north of the development which drains to the natural rain garden in the front yard. Mr. McChord also noted there is an intermittent watercourse with good soil close to the river so the water dissipates into the ground. Ms. Craig asked if this creates a waterfall situation. Mr. McChord confirmed it does, but it is not very large and goes into the porous soil.

Mr. McChord confirmed the application will build a dog waste receptacle that will be covered. He also confirmed the swale to the south will not push runoff to the neighboring property.

Ms. Craig MOVED to APPROVE WET#2421 with the normal Conditions, SECONDED by Mr. Stow and CARRIED 6-0-0.

**B. WET#2422(I) PETERS – 30 Old Driftway – “corrective action” to address unauthorized fill in a regulated area by the neighbor’s contractor**

Mr. Peters reported that his neighbor did some grading which spilled over onto his property as

there were no stakes in place to show the contractor where the property lines were. He confirmed he will remove the fill from his property for use elsewhere.

Mr. Burgess MOVED to APPROVE WET#2422 with the normal Conditions, and a Special Condition that the fill will be removed by November 30, 2016, SECONDED by Mr. Stow and CARRIED 6-0-0.

**C. WET#2423(I) AMERICAN HINDU RCO, INC. – 74 Westport Road – “corrective action” to remediate unpermitted clearing of vegetation and grading in a regulated area**

Barbara Wilson explained that this application is in response to some unauthorized clearing that was completed by the previous property owner. She confirmed there was a Norway Spruce and some vegetation below it removed.

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

Ms. Wilson confirmed there was some grading done along Westport Road and a pile of brush which includes the cut tree was placed in the wetland. The corrective action request includes removing the brush and replanting the area with ferns and larger shrubs to reestablish the cleared area. She mentioned they would stabilize the island with lawn as this is not a good area to plant, and there may be a small lawn area on the edge. She confirmed the activities would take about two weeks to complete.

Ms. Wilson noted there are some other dead or dying ornamental trees on the site as well. Mr. Conklin suggested adding these removals to this application so the applicant does not have to re-apply to remove the trees. He confirmed they are ornamental and near power lines.

Mr. Lee MOVED to APPROVE WET#2423 with the normal Conditions, the normal Special Conditions and the special Conditions that the removal of the ornamental trees in the front lawn is approved and the mitigation for the violation must be completed by November 30, 2016, SECONDED by Mr. Andrews and CARRIED 6-0-0.

**IV. APPLICATIONS READY TO BE ACCEPTED**

**A. WET#2424 (I) MIROTA – 21 Edith Lane – proposed single-family residence and associates improvements**

**B. WET#2425(I) ETZBACH – 119 Ruscoe Road – enclose screened porch for an all-season sunroom and extend deck**

Mr. Lee MOVED to ACCEPT the above applications, SECONDED by Mr. Burgess and CARRIED 6-0-0.

**V. APPROVED MINOR ACTIVITIES - None**

**VI. CORRESPONDENCE – None**

**VII. OTHER APPROPRIATE BUSINESS**

**A. Violations**

**1. CROSS – 105 Old Belden Hill Road – Town Counsel**

Mr. Conklin confirmed there was a site meeting where Wilton Town Counsel and the Cross' counsel were present as they are hoping to make some headway prior to the court proceedings.

**2. MITCHELL – 152 Hurlbutt Street**

Mr. Conklin stated this property owner received a Notice of Warning in April and did not comply with the directives so a Notice of Violation was issued.

**B. Approval of Minutes – October 13, 2016 Meeting Minutes**

Ms. Craig MOVED to APPROVE the meeting minutes as drafted, SECONDED by Mr. Stow, and CARRIED 6-0-0.

**VIII. ADJOURN**

Mr. Andrews MOVED to ADJOURN at 10:24 pm, SECONDED by Mr. Stow and CARRIED 6-0-0.

Respectfully Submitted,  
Liz Larkin  
Recording Secretary, Environmental Affairs