



**UNAPPROVED MINUTES**

**Thursday, December 14, 2017 7:30 PM**  
**Canoe Brook Senior Center**  
**11 Cherry Hill Road, Branford, CT**

**RECEIVED**  
 2017 DEC 21 A 9:56  
 TOWN CLERK'S OFFICE  
 BRANFORD, CONNECTICUT

Present: Peter Bassermann, Suzanne Botta, Richard Greenalch and James Sette.  
 Absent: Jim Goggin, Sandra Kraus, Eric Rose, Rick Ross and Mark June-Wells.  
 Staff present: IW Agent Diana Ross & IW Assistant Jaymie Frederick

Chairman Bassermann called the meeting to order at 7:34 pm.  
 All Commissioners present were seated.

**APPROVAL OF MINUTES:**

Comm. Greenalch motioned to approve the minutes of the regular meeting of November 9<sup>th</sup>, 2017.  
 Comm. Sette seconded. Motion passed (3-0-1). Comm. Botta abstained.

Comm. Greenalch motioned to approve the minutes of the Special meeting site walk of November 15<sup>th</sup>, 2017.  
 Comm. Sette seconded. Motion passed (3-0-1). Comm. Botta abstained.

**APPLICATIONS FOR RECEIPT:**

**IW#17.12.01 – 10 Howard Ave – residential addition**

EO Ross stated this is for an addition, she was wondering if the Commission would be ok with her handling the application administratively. There is a retaining wall surrounding a stoned area where the addition is proposed. The wetland is about 25ft away.

Tom Vining, general contractor, stated nothing beyond the wall will be disturbed aside from three piers for a deck. There will not be any equipment or material stored beyond the wall.

EO Ross stated she would like to have the contractor identify storage location on a GIS map.

Commission determined if no equipment or storage of material is beyond the retaining wall that EO Ross can handle the application administratively.

**OLD BUSINESS:**

**IW#17.11.02 – 288 Pine Orchard Rd – driveway and garage expansion, walkway and associated grading**

Request received from applicant's representative to table until January meeting

**IW#17.11.01 – 529 Leetes Island Rd – remove 36 trees from south edge of lawn to allow more sunlight**

Chairman Bassermann stated that this is where the Commission had the site walk.

Commission discussed concerns with how trees would be removed, what impact would occur and whether any replacement planting should occur. Some of the trees are located further back, what damage will occur when trees are dragged out.

Chairman Bassermann stated that the area is rather extensive in terms of the number of trees being removed and he doesn't know that the Commission has entertained something like this in the past. The Commission doesn't know what the impact will be, thinks they need a professional opinion.

Carl Weis, owner stated things will grow back so rapidly. He is trying to restore the property to the way the property was when he bought it 40 years ago.

Comm. Botta stated that she thinks that it is very likely that it would have some impact on the wetland. The Commission's function as a regulated body is to think about the impacts to the functions of wetlands. It is difficult for them to make an informed decision without details as to the impact. The commission is obligated by law to consider impact to render a legal decision. Commission determined that a wetland scientist would be appropriate to look at what impact removal of trees will have on the wetland, how to minimize impact during removal and what plantings would be recommend to protect the function.

#### **PUBLIC HEARING (continued):**

##### **IW#17.07.05 – 250 & 244 North Main St – proposed retail development and driveway connection**

John Schmitz, BL Companies overviewed the newest materials submitted. Updates to the plans were fairly minor. Added details on how they will handle temporary runoff. They responded to the concern about emergent wetlands along the retaining wall by shifting the swale over 5ft to add an emergent shelf area. The wetland mitigation plan identifies two areas where there were wetland impacts from Phase I of construction; the areas will be restored with plantings. There were minor landscape changes per staff comments and an invasive species removal plan has been provided.

EO Ross stated that they have done a lot of clean up of the plans. Followed up that she wanted to be sure any changes in plants need to be approved by the wetland scientist.

Comm. Botta asked if perhaps after the first year the mowing schedule should be reduced.

EO Ross stated that she thinks the intent is to knock the invasives down.

BL Companies Schmitz stated that they wouldn't mow if it wasn't necessary; because there is a 5 year monitoring period they can modify as they go based on what is appropriate.

Chairman Bassermann asked if there were any stormwater changes.

BL Companies Schmitz stated there are not really changes from what was previously proposed.

Comm. Greenalch asked if the proposal is still to fill the central wetland.

BL Companies Schmitz stated that it is.

Chairman Bassermann asked if peer reviewer has any comments.

Robert Whewey stated that pretty much all comments from the original review have been addressed. It is their recommendation, as the performance is unproven, that a performance bond be posted for basins 1 and 2. In regards to the operations and maintenance plan, recommend a maintenance bond to ensure all ongoing maintenance operations take place. Codespoti doesn't take exception to the argument of prudence, ultimately that is up to the Commission. Mitigation looks good, they are providing over 2:1. Design of mitigation was reviewed by Matt Popp.

Comm. Botta stated the Commission needs to determine what is legally required to make a determination before closing the public hearing to make sure that they have what they need.

Commission reviewed section 10.2 of the Regulations.

Comm. Botta asked for BL Companies Schmitz to, in general terms, go over the relationship of short term and long term impacts of the proposed project.

BL Companies Schmitz referenced the wetland mitigation plan. Wetland removal would be permanent, temporary impacts including shifting the watercourse north along the road, there will be short term impacts to wetland areas that were impacted during Phase I that they are replanting, the big long term impact is the construction of the new mitigation area that will be 2:1 and create a larger ecosystem. Wetland creation from Phase I has been very successful so far. They additionally are removing invasives which will have short term to the areas and long term impacts of eradicating invasives.

Chairman Bassermann asked for a summarization of the alternatives considered.

BL Companies Schmitz stated that there are three areas of proposed impact. One is the sewer line area, they have tried to locate that to minimize impacts to wetland areas; determined there wasn't another feasible route to connect to the sewers on route 1. Another impact is along Route 1; it is their

experience that the state will likely require widening of the road. Anything done to widen the road will impact the wetland. The proposed wall is the feasible and prudent alternative to grading out which would result in more impact. The third area is the central wetland; two alternatives were presented that showed 1) partially and 2) completely saving the central wetland. Parking was a concern with these alternatives. They were able to determine that these alternatives are feasible; the question is whether it would be prudent to save the isolated pocket wetland that is low functioning. It is their opinion that it is not.

Comm. Botta asked if keeping that wetland would have any impact elsewhere on the site.

BL Companies Schmitz stated there would be 10,000 less feet of mitigation.

Chairman Bassermann re-affirmed that there wasn't another location for the building that would save the pocket wetland.

BL Companies Schmitz stated that there are site constraints with cutting the site down. They looked at other options and there really isn't another place to put the building.

Chairman Bassermann asked if the applicant was ok with the two bonds that were mentioned.

BL Companies Schmitz stated that he can see that a performance bond is reasonable. He doesn't know if it is Commission practice for OM bonds, asks that they are treated the same as any other applicant. The Enforcement Officer has enforcement authority to bring violations if stuff isn't done. If it is standard practice then ok.

Comm. Botta stated that historically when there is something this significant the Commission would close the hearing, discuss and have staff draft and do the decision with the draft in hand.

Comm. Greenalch motioned to close the public hearing, Comm. Sette seconded. Motion passed unanimously (4-0-0).

## **ENFORCEMENT:**

### **NOV – 19 Milo Dr – filling of wetland – progress update**

EO Ross stated that she went out there a couple weeks ago and the owner had made significant progress removing the Styrofoam containers. At that point EO asked the owner to start removing the plastic. A little bit of the plastic has been removed but it got too cold to continue. EO also informed the owner about a beetle option for controlling purple loosestrife.

## **CONTINUED:**

### **IW#17.07.05 – 250 & 244 North Main St – proposed retail development and driveway connection**

Commission reviewed that they have to make a decision within 35 days.

Commission determined to start drafting and finalizing determination at the next meeting.

Commission reviewed the impacts to the central wetland and the feasibility and prudence of leaving the wetland.

Commission discussed that they think they are moving in the direction of approving with conditions. Reviewed Alt-96, Alt-96B and GD-1. Commission doesn't have an issue with the impact along the road. Discussed that the elevational difference of the pocket wetland makes it impossible to connect with other wetland areas. Discussed whether pocket wetland could remain and still have the full mitigation occur; concluded they cannot pick and choose and create new options without having suggested such on the record and provided the applicant the opportunity to respond.

EO Ross stated that the site has been highly disturbed over the years. All the topsoil was removed.

Comm. Botta encouraged everyone to be cautious about "high functioning" wetlands, it is not within their charge.

Commission discussed that benefits of the creation include that the creation is contiguous to the other wetlands, therefore might preserve itself better than the existing Wetland 5 area that could disappear; and that you get twice as much wetland area. Commission needs to review in terms of what function(s), not level of function.

EO Ross read section 10.3 of the Regulations regarding what the Commission must consider for prudent and feasible alternatives.

Commission discussed that there is a good chance that the pocket wetland could dry up.

EO Ross stated that in her experience a wetland that has that much disturbance doesn't survive.

Comm. Botta stated that it would be helpful to look back at other decisions that had these requirements the Commission had to meet.

Commission discussed that it is a value judgment.

EO Ross read the definition of prudent from the Regulations.

Commission reviewed "otherwise reasonable" in the definition of prudent and the need to consider long term impacts and whether the wetland will persist after construction is done. Asked for staff to look back at the record and review what the applicant has stated in reference to the long term viability of the pocket wetland.

Commission outlined some points for the draft resolution.

**The finding that it is not prudent is because it is not otherwise reasonable, because they do not expect the pocket wetland to remain as a functioning wetland in the long term.**

EO Ross read section from Ecological and Wetland Assessment report (p.16)

Commission asked to have some of that language added to the draft decision as well as anything from the recordings about long term outcome of that wetland based on section 10.3 of the Regulations.

**The Commission finds that the application would have an impact on wetlands and watercourses. Also find that while there is a feasible, there is not a prudent alternative to filling of Wetland 5.**

**There is no alternative to the filling of the wetlands where the sewer is going and where the roadway is.**

**If the State doesn't require widening of the road, they need to come back with a revised plan for the Commission to review.**

**There is a finding that the long term impact on the full site outweighs the short term function. Based on the applicant's plan to enhance existing wetland and create new wetland to mitigate the loss of function provided by impacted wetlands.**

**The proposed impact does not impact the safety, health etc.**

**Determined that hydrological evidence on the record suggests that there would be no worsening of the hydrological effects offsite.**

Comm. Botta stated that there is boiler plate information that can be put in.

Commission discussed bonds that Codespoti proposed in their report. Performance bond seems appropriate, not as sure about the maintenance bond. Discussed overlap of a maintenance bond with EO duties. Discussed bonding including other things, i.e. plantings and erosion controls. Staff will contact Codespoti for clarification on the maintenance bond.

## **CORRESPONDENCE & ANNOUNCEMENTS:**

1. CACIWC – "The Habitat" Fall Newsletter
2. CAWS Annual Meeting – date announced 3/8/18; details to be release in the new year

**ADJOURNMENT:** Comm. Greenalch motioned to adjourn at 9:30pm. Comm. Botta seconded.  
Motion passed unanimously (4-0-0).

Respectfully Submitted,



Jaymie Frederick, IW Assistant