AGENDA

PUBLIC HEARING:

1. **JON KEANE** – To construct a berm to divert water runoff at 4 Fir Grove Road.
   - Inland Wetlands Permit (2019-096)

NEW BUSINESS:

1. **JON KEANE** – To construct a berm to divert water runoff at 4 Fir Grove Road.
   - Inland Wetlands Permit (2019-096)
2. **MANCHESTER COUNTRY CLUB** – To selectively remove trees to the south of the 13th hole, remove stumps, and plant fescue grass blend and understory flowering trees at 535 South Main Street.
   - Inland Wetlands Permit – Determination of Significance (2019-114)
   - Inland Wetlands Permit (2019-114)
3. **BSC GENERAL CONTRACTORS** – To allow a vinyl dumpster enclosure in lieu of the approved HardiePlank material at an approved gas station/convenience store at 176 Tolland Turnpike.
   - Special Exception Modification (2019-118)
4. **ADOPTION OF 2020 MEETING SCHEDULE**
5. **ADMINISTRATIVE REPORTS**
6. **APPROVAL OF MINUTES**
   - November 4, 2019 – Business Meeting
7. **RECEIPT OF NEW APPLICATIONS**
TOWN OF MANCHESTER
LEGAL NOTICE

The Planning and Zoning Commission will hold a public hearing on November 18, 2019, at 7:00 P.M. in the Lincoln Center Hearing Room, 494 Main Street, Manchester, Connecticut to hear and consider the following petition:

JON KEANE – Inland Wetlands Permit (2019-096) – To construct a berm to divert water runoff at 4 Fir Grove Road, Rural Residence zone.

At this hearing interested persons may be heard and written communications received. A copy of this petition is in the Planning Department, Lincoln Center Building, 494 Main Street, and may be inspected during regular business hours (8:30 a.m. – 4:30 p.m., Monday through Friday).

Planning and Zoning Commission
Eric Prause, Chair
TO: Planning and Zoning Commission / Inland Wetlands Agency

FROM: David Laiuppa, Environmental Planner / Wetlands Agent

DATE: November 13, 2019

RE: Jon Keane – 4 Fir Grove Road
Inland Wetlands Permit (2019-096)

Introduction

The applicant is requesting an approval to keep in place a recently constructed, unpermitted earthen berm within a regulated area in the rear portion of his property. The intent of this berm, as described in the permit application, is to “divert water runoff”. The applicant noted that, during times of high flow, the stream located to the southwest of his house floods portions of his back yard. He is hopeful that the berm will prevent the stream from flooding his property.

The parcel does contain wetlands, which are adjacent to an unnamed perennial watercourse at the southwestern end of the impact area. The work on the parcel is situated mostly within the wetland area with a small portion of the berm located outside of the delineated wetland but still within the 100-foot upland review area for the wetlands at the southwestern end of the parcel. Additionally, there are Town of Manchester drainage easements on the northern and eastern portions of the parcel.

At its November 4, 2019 meeting the Planning and Zoning Commission (acting in its role as the Inland Wetlands Agency) made a determination that this project may have significant impacts on a regulated wetland. That determination requires that a public hearing is held on the inland wetlands permit application, which has been scheduled for November 18, 2019.

Project Description

The activities, which included the deposition of material, berm construction, and planting trees on top of the berm, are entirely within either the wetland area or the regulated upland review area. It is unclear from the application if any trees or shrubs were removed within the regulated areas. It is also unclear if any land grading occurred for this project.

The submitted plan indicates that the berm is approximately 178 feet long. The plans do not indicate the width of the berm or the structural composition of the berm. The applicant submitted calculations after application submittal that indicated that the width of the berm is approximately 6 feet wide. According to the applicant’s account during the November 4, 2019 meeting, the berm is approximately 3 feet high. Based on calculations of submitted material from the applicant, the berm occupies approximately 1,152 cubic feet within the upland review area and approximately 2,286 cubic feet within the wetland.
Inland Wetlands Permit

The activity has occurred in the wetland area and the upland review area located on the site. The activity appears to have a direct impact on the wetland resource.

The total area of permanent project disturbance is approximately 3,438 cubic feet, with a square foot impact of approximately 1,146 square feet. The applicant has not provided information about temporary impacts. The total disturbance should include those areas which have been temporarily or permanently impacted by this project and should include all areas within a regulated resource which are associated with activities that include the deposition or removal of material, ground disturbing activities, cutting and/or stumping trees, and any other activity which may substantially alter the values or functionality of those impacted resources.

Although a wetland description was not provided by the applicant, it was observed by the Manchester Wetlands Agent that the wetland consists of an open understory dominated by native hardwoods. The principal functions and values of the wetland include floodflow alteration from the adjacent stream, wildlife habitat, and nutrient retention from the surrounding developed lands. Because a formal description of the existing wetlands and their functions was not provided, any impact analysis would be speculative.

As defined in the Inland Wetlands and Watercourses Regulations, a "Regulated Activity means any operation within or use of a wetland or watercourse or within 100 feet of a wetland or watercourse, involving any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging of stormwater.” The construction of an earthen berm within a wetland and an upland review area is considered fill and would, by definition, be considered a regulated activity. The act of conducting a regulated activity is considered to be a violation of the Inland Wetlands and Watercourses Regulations.

According to the application, material, and discussion presented to this Commission, the following points are pertinent to this discussion:

1. There has been a direct and permanent impact to roughly 762 square feet (2,286 cubic feet when including the height) of wetlands as a result of this project.

2. The temporary impact to the wetland has not been provided.

3. There has been a direct and permanent impact to roughly 384 square feet (1,152 cubic feet when including the height) of upland review area as a result of this project.

4. The temporary impact to the upland review area has not been provided.

Because the Planning and Zoning Commission has determined that this application contains proposed elements that may have a significant impact to wetland resources, there are certain elements that are required to be included in the application as it is presented at the Public Hearing. These requirements are, in some cases, more detailed levels of information than those required for applications that are not presented at a public hearing.
As outlined in Section 4.4 of the Regulations, it is a requirement that “if the Agency finds the activity applied for involves or may involve a significant impact or major effect on the wetland or watercourse, the applicant shall submit additional information including, but not limited to:

(a) Soil Sample Data if the parcel lies within or partly within an area believed to contain poorly drained, alluvial and/or floodplain soils. The data shall show precisely where each specific soil type is found. Soil types identified shall be consistent with the categories established by the National Cooperative Soils survey of the U.S. Natural Resources Conservation Service.

(b) Description of the ecological communities and functions and values of the wetlands or watercourses involved with the application and the effects of the proposed regulated activities on these communities and wetland functions.

(c) Description of any alternatives considered which would cause less or no environmental impact to wetlands or watercourses, and a description of how the proposed activity and each of the alternate scenarios would change, diminish, or enhance the ecological communities and functions of the wetlands or watercourses involved in the application. Applicant shall also provide a description of why each alternative considered was deemed neither feasible nor prudent.

(d) Analysis of chemical or physical characteristics of any fill material.”

Staff Review

Town staff has reviewed all versions of the plans and supporting documents submitted with the application. The applicant has received all outstanding staff comments and questions. Any unaddressed outstanding comments from staff will be discussed during the meeting.

Criteria for a Decision

In carrying out the purposes of Sections 22a-36 to 22a-45 of the General Statutes, including matters relating to regulating, licensing and enforcing of the provisions thereof, the agency shall take into consideration all relevant facts and circumstances, including but not limited to:

(a) The environmental impact of the proposed regulated activity on wetlands or watercourses including aquatic plant or animal life and habitats in wetlands and watercourses;

(b) The applicant’s purpose for, and any feasible and prudent alternatives to, the proposed regulated activity which alternatives would cause less or no environmental impact to wetlands or watercourses;

(c) The relationship between the short-term and long-term impacts of the proposed regulated activity on wetlands or watercourses and the maintenance and enhancement of long-term productivity of such wetlands or watercourses;
(d) Irreversible and irretrievable loss of wetland or watercourse resources which would be caused by the proposed regulated activity, including the extent to which such activity would foreclose a future ability to protect, enhance or restore such resources, and any mitigation measures which may be considered as a condition of issuing a permit for such activity including, but not limited to, measures to (1) prevent or minimize pollution or other environmental damage, (2) maintain or enhance existing environmental quality, or (3) in the following order of priority: restore, enhance and create productive wetland or watercourse resources;

(e) The character and degree of injury to or interference with safety, health or the reasonable use of property which is caused or threatened by the proposed regulated activity; and

(f) Impacts of the proposed regulated activity on wetlands or watercourses outside the area for which the activity is proposed and future activities associated with, or reasonably related to, the proposed regulated activity which are made inevitable by the proposed regulated activity and which may have an impact on wetlands or watercourses;

(g) The availability of preferable alternative locations on the subject parcel or, in the case of activity of sufficient magnitude, the availability of other reasonable locations;

(h) The availability of further technical improvements or safeguards which could feasibly be added to the plan or action;

(i) The possibility of further avoiding reduction of the wetland's or watercourse's natural capacity to support desirable biological life, prevent flooding, supply water, control sedimentation and/or prevent erosion, assimilate wastes, facilitate drainage, and provide recreation and open space;

(j) The extent to which the exercise of property rights and public benefit derived from such use may or may not outweigh or justify the possible degradation of the inland wetland or watercourse, the interference with the exercise of other property rights, and the impairments or endangerment of public health, safety or welfare;

(k) Measures which would mitigate the impact of any aspect of the proposed regulated activity(ies). Such measures include, but are not limited to, actions which would avoid adverse impacts or lessen impacts to wetlands and watercourses and which could be feasibly carried out by the applicant and would protect or enhance the wetland's or watercourse's natural capacity to support fish and wildlife, prevent flooding, supply water, control sedimentation, prevent erosion, assimilate wastes, facilitate drainage, and to provide recreation and open space.

As a measure to mitigate the impact and effect of any aspect of the proposed regulated activity(ies), and to protect and enhance the wetland’s capacity to successfully support the above listed aims, the applicant may propose, and after consideration, the Agency may accept as a condition to approval of the plan, a Restrictive Conservation Easement (RCE) as a way to ensure the proposed plan will not disrupt or inhibit the ability of any wetlands area to support the above. The applicant may also propose that an RCE be established to
maintain, protect, enhance, or create wetland recreational or open space, as may be determined to be necessary or desirable by the Agency.

**Issuance of Wetlands Permit**

As outlined above, there are several unaddressed outstanding comments from staff, regarding a more detailed wetland description and discussion of proposed mitigation for impacts. There are also several outstanding submittal requirements, regarding Section 4.4 requirements of wetland applications that have been determined to potentially have a significant impact on wetlands or watercourses (detailed above).

After considering all relevant facts and circumstances, and in accordance with Section 5.3 of the Inland Wetlands and Watercourses Regulations, the Commission may approve this application as filed; grant it upon other terms, conditions, limitation, or modifications of the regulated activities as they deem appropriate; or deny it. Because the work has already occurred a denial would require the applicant to remove the berm and bring the property back to its original state.
TO: Planning and Zoning Commission / Inland Wetlands Agency
FROM: David Laiuppa, Environmental Planner / Wetlands Agent
DATE: November 12, 2019
RE: Manchester Country Club – 535 South Main Street
Inland Wetlands Permit and Determination of Significance (2019-114)

Introduction

The applicant, the Manchester Country Club, is proposing to remove trees along the southern border of the 13th fairway and green. The subject parcel is located at 535 South Main Street, on Town of Manchester leased land, and is located within a Rural Residence zone. The proposed project work also falls within land designated as Watershed Land. According to the Town’s Tax Assessor’s records, 535 South Main Street is 263.89 acres.

The parcel contains mapped wetlands, watercourses, and waterbodies throughout. A portion of the proposed tree removal work will fall within the 100-foot upland review area on one of the mapped waterbodies on the parcel.

Project Description

The proposed activities, which include cutting 121 trees, stump removal, and removal of previously fallen trees and branches, are partially within the upland review area of a mapped waterbody. No work is proposed within the waterbody. It is important to note that a formal wetland delineation was not conducted on site, although the flagged boundary was reviewed by the Town Wetlands Agent. The proposed activities will not result in a direct impact to the mapped waterbody.

Inland Wetlands Permit

The proposed activity will partially occur in the 100-foot upland review area of a mapped waterbody located on the property. The waterbody on site appears to be a seasonal waterbody. In the fall of 2019, there was no standing water in the pond but it was reported by the applicant that there is water in it during other times of the year. Although the waterbody exhibits hydrological indicators that are consistent with a vernal pool, a formal study was not conducted (such a study is also not required for this proposed work). Regardless of the presence or absence of water within the pond, the wetland edge of the pond defines the outer limits of the regulated area and is depicted on the submitted plans.

The proposed impacts to the upland review area, associated with the removal of trees and roots, would be considered permanent impacts because it is the intention of the applicant to maintain
the newly planted grass and shade tolerant flowering trees and to not allow the regrowth of the larger tree species. The proposed impact of the entire project is estimated to be 0.42 acres in total. The estimated impact to the upland review area is estimated to be just under 5,000 square feet. There are no proposed direct impacts to the wetland/waterbody. The applicant has proposed to install a silt fence between the active work area and the wetland/waterbody.

**Determination of Significance**

The Inland Wetlands Agency is required to make a determination of the significance of the impact of the proposed activities on the wetlands, watercourses, and/or water bodies. In making its determination, the Commission should be guided by the definition of "Significant Impact Activity" as found in the Inland Wetlands and Watercourses Regulations, which means any activity including, but not limited to, the following activities which may have a major effect or significant impact:

a. Any activity involving a deposition or removal of material which will or may have a substantial effect on the wetland or watercourse or on wetlands or watercourses outside the area for which the activity is proposed; or

b. Any activity which substantially changes the natural channel or may inhibit the natural dynamics of a watercourse system; or

c. Any activity which substantially diminishes the natural capacity of an inland wetland or watercourse to support aquatic, plant or animal life, prevent flooding, supply water, assimilate waste, facilitate drainage, provide recreation or open space or perform other functions; or

d. Any activity which is likely to cause or has the potential to cause substantial turbidity, siltation or sedimentation in a wetland or watercourse; or

e. Any activity which causes a substantial diminution of flow of a natural watercourse or groundwater levels of the wetland or watercourse; or

f. Any activity which is likely to cause or has the potential to cause pollution of a wetland or watercourse; or

g. Any activity which damages or destroys unique wetland or watercourse areas or such areas having demonstrable scientific or educational value.

If the Agency finds the proposed activity will have a significant impact on the wetlands, a public hearing is required. Should the Agency find this activity will not create a significant impact, then no public hearing is required.

**Staff Review**

Town staff has reviewed all versions of the plans and supporting documents submitted with the application. The applicant and/or the applicant’s agent has adequately responded to all staff comments and questions pertaining to the wetlands permit.
If approved, this project, like any other project on Town-owned land, is subject to the jurisdiction of the Tree Warden. Any trees that are proposed to be removed from Town land must be individually tagged. Tagged trees will be reviewed by the Tree Warden and must remain tagged for a minimum of 10 days. If there are public comments on the removal of the trees then a public hearing will be held. The applicant is aware of this and has agreed to work directly with the Tree Warden.

**Issuance of Wetlands Permit**

All comments from staff relating to the wetlands permit have been addressed by the applicant and all submittal requirements have been satisfied.

After considering all relevant facts and circumstances, and in accordance with Section 5.3 of the Inland Wetlands and Watercourses Regulations, the Commission may approve this application as filed; grant it upon other terms, conditions, limitation, or modifications of the regulated activities as they deem appropriate; or deny it.

In evaluating applications in which the Agency relied in whole or in part on information provided by the applicant, if such information subsequently proves to be false, deceptive, incomplete or inaccurate, the permit may be modified, suspended or revoked.

**DWL**

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Attachments
13 fairway

proposed tree work

100 ft upland review boundary

seasonal wet area

12 green

NORTH
Manchester Country Club

Sheet 1 of 1
Work Limits

Total Disturbance within 100 ft Upland Review Area ~ 5,000 sf
Total Disturbance within Wetland/Waterbody Area ~ 0 sf

- Rivers, Streams, Ponds & Reservoirs
- Official Town Wetlands
- CT DEEP NDBB 2019
- Approximate Proposed Disturbed Area
- 100ft Upland Review Area
TO: Planning and Zoning Commission

FROM: Gary Anderson, Director of Planning and Economic Development

DATE: November 8, 2019

RE: BSC General Contractors – 176 Tolland Tpk
Big Y Gas Station and Convenience Store
Special Exception Modification (2019-118)

The applicant is requesting a change in the approved material for a dumpster enclosure as part of the approved Special Exception Modification for a gasoline station and convenience store at 176 Tolland Turnpike. The applicant requested administrative approval of a minor change to the approved plan, requesting that the HardiePlank-sided enclosure approved by the Commission be changed to a white vinyl enclosure. The administrative application was denied by the Director and Chairman. As per the approved plan, the HardiePlank material is intended to reflect the material and look of the primary building. The applicant has requested the proposed change go before the full Commission.

GAA

Attach.
TO: Joseph V. Camposeo, Town Clerk
FROM: Planning and Zoning Commission
DATE: TBD
RE: Scheduled Meetings for the Planning & Zoning Commission
     February 2020 through January 2021

The following is a schedule of meetings to be held by the Planning and Zoning Commission. Meetings take place on Mondays unless otherwise noted, and will be held at 7:00 p.m. in the Lincoln Center Hearing Room, 494 Main Street, Manchester, Connecticut. At combined Public Hearing and Business meetings, the Public Hearing portion will begin at 7:00 p.m. and the Business Meeting will follow immediately after the hearings are closed.

**MEETING DATES**

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The Planning and Zoning Commission approved this schedule on ________________________.

__________________________, Chair
Planning & Zoning Commission

cc: Planning and Zoning Commission
    Customer Service
ROLL CALL:

Members Present: Eric Prause, Chairman
Patrick Kennedy, Vice Chairman
Michael Stebe, Secretary
Timothy Bergin
Jessica Scorso

Alternates: Teresa Ike
Bonnie Potocki

Absent: Julian Stoppelman

Also Present: Gary Anderson, Director of Planning
David Laiuppa, Environmental Planner/Wetlands Agent
Kyle Shiel, Senior Planner
Nancy Martel, Recording Secretary

The Chairman opened the Business Meeting at 7:00 P.M.

REVISED AGENDA

MOTION: Mr. Kennedy moved to accept the revised agenda with a correction to item #2. Ms. Scorso seconded the motion and all members voted in favor.

JON KEANE – To build a berm to divert water runoff at 4 Fir Grove Road. – Inland Wetlands Permit – Determination of Significance (2019-096); Inland Wetlands Permit (2019-096)

Mr. Jon Keane, 4 Fir Grove Road, introduced himself. Mr. Keane displayed the section of his property on which he created a 6 ft. wide x 3 ft. tall berm with trees to separate the brush on the wetlands area from his grassed yard.

Mr. Prause asked for clarification of the displayed map and questioned the impact to the wetlands.

Mr. Keane explained that the berm is for aesthetics to separate the woods from his yard. Prior to the berm’s construction, water washed through his yard during heavy rainstorms, he stated. Mr. Keane stated that he does not see any impact to the wetlands, as the water is trapped behind the berm.
Mr. Laiuppa reported that a description of the resources of the wetlands must be included as part of the inland wetlands permit application. He noted that Mr. Keane is neither a soil nor wetlands scientist and, therefore, is unable to give the required description. The wetland delineation was prepared in the past for the subdivision. Mr. Laiuppa explained that the functions and values assessment is to assess the functions that may have been impacted by the activity. On a cursory evaluation, he noted that flood storage capacity is a principle function and loss of flood storage capacity must be examined. In his opinion, there may need to be a more detailed examination of the impacts.

Mr. Kennedy commented that it appears that there has not been a full review of the application and questioned whether there is enough information for the Commission to act upon.

Mr. Laiuppa reported that he has reviewed the application fully and some elements of the application are not included. He noted that he has been in discussions with Mr. Keane.

Mr. Kennedy questioned whether there is any information about the amount of fill in the area. He also asked when the berm was constructed.

Mr. Keane stated that the berm was completed about three months ago.

Mr. Laiuppa reported that, based on the length and width of the berm provided in Mr. Keane’s account, there are 384 sq. ft. of fill in the upland review area and 762 sq. ft. in the wetland area.

Mr. Prause reviewed the background of the application. Originally, there was an application for a wetlands permit in January 2019 that was approved administratively. Mr. Laiuppa reported that was done by Matt Bordeaux, the Senior Planner at the time, and the application was for a deck built by Mr. Keane that was not part of the original plan for the house. The only impacts within the upland review area were the piers at that time. Additionally, Mr. Laiuppa stated, there was a stockpile of soil that he spoke with Mr. Keane about, which Mr. Keane planned to grade underneath the deck.

Mr. Prause questioned whether there was a drainage easement on the site.

Mr. Laiuppa detailed the two drainage easements on the property, which are not impacted by the current activity. He also pointed out the stockpile on the site.

Mr. Prause acknowledged that the Planning Department is missing information about the type of material in the fill and the exact volume. There is also no information on the formal description of the wetlands and the functions they provide.

Mr. Keane stated that the stockpile was from the original builder and was comprised of topsoil.

Mr. Prause noted that there is no formal description of the wetlands and the functions they provide. He questioned whether that would need to be done by a soil scientist.
Mr. Laiuppa stated that the delineation must be done by a soil scientist, though the wetland functions value assessment can be done by someone who is knowledgeable about wetlands, not necessarily a soil scientist.

Mr. Stebe stated that the permit for construction of the home was in 2017, with the entire house being in the upland review area. He noted that normally, after a permit is granted, an applicant must complete the work within one year, and asked Staff where this falls on the timeline.

Mr. Keane stated that, when the approval was granted, there was a 50 ft. wetlands buffer zone, which was subsequently changed to 100 ft. He reported that, when applying for the deck permit, he was referred to staff.

Mr. Stebe questioned whether Mr. Keane spoke with Staff prior to the landscaping.

Mr. Keane stated that he left it up to his landscaper. He said he was not aware that he needed a permit and he doubted the landscaper was aware.

Mr. Stebe asked whether Staff knew where Mr. Keane is on the timeline.

Mr. Anderson stated that the original work approved by the permit was completed.

Mr. Kennedy questioned whether the berm has affected the watercourse. He asked whether the application for the permit is ready to be acted upon if the Commission decides there has not been a significant impact that would require a public hearing.

Mr. Laiuppa reported that there appears to be no direct impact to the watercourse. He detailed the outstanding items required for the permit.

Mr. Stebe asked if the berm is within the area of the topsoil that was moved for construction, which Mr. Keane confirmed.

Mr. Anderson commented that, if the Commission voted that there is not a significant impact, the members could vote on the permit itself.

A discussion was held between Mr. Laiuppa and Mr. Kennedy regarding the amount of information received thus far, the definition of significant impact, and the fact that the plans show there has been material added.

Mr. Prause stated that Connecticut has the Inland Wetlands and Watercourses Act, and before any work is done in wetlands or the upland review area, a permit must be granted. He noted that the applicant has not followed that process.

Mr. Prause and Mr. Laiuppa engaged in a discussion about the square footage of the berm, the fact that there is no functions report, and the fact that the stream in the applicant’s yard floods at times. Mr. Prause, Mr. Laiuppa, and Mr. Keane also discussed the area, which includes Buckland Pond, and the course of the stream.
Inland Wetlands Permit – Determination of Significance (2019-096)

MOTION: Mr. Kennedy moved to find the proposed activity at the above-referenced location as shown on the inland wetlands permit application 2019-096 may have a significant impact on the wetlands and will therefore require a public hearing. Ms. Scorso seconded the motion and all members voted in favor.

MANCHESTER HISTORICAL SOCIETY – For air conditioning of existing office and display spaces, requiring up to 16 condenser units on the roof at 175 Pine Street. – Historic Zone Site Development Plan Modification (2019-104)

Mr. Jack Prior, President of the Manchester Historical Society, introduced himself. He informed the Commission that there is currently no air conditioning in the building, and they are seeking to install air conditioning and upgrade the heating system. They have received a grant from the State for these items. The Cheney Brothers National Historic District Commission reviewed the upgrades and recommended approval.

Mr. Gerry Gallo, Operations Director for the Manchester Historical Society, projected the site plan for the Commission and described the locations of the planned condenser units. He noted that the plan is to replace all the heating units inside the building with air handlers that are gas-fired and to have air conditioning coils so that the building is usable throughout the year. The Historical Society applied for and received a bond allocation to replace the units, based on engineering provided along with cost estimates. He noted that, in the past, bids were much higher than the current engineering.

Mr. Gallo reported that the State Historic Preservation Office (SHPO) was satisfied with the current plan. The low roof was deemed to be too visible from Pine Street and the units were relocated. Mr. Gallo explained the units’ locations and specifications in detail.

Mr. Prior stated that, from a historical standpoint, they are opting for the smaller units. He described the locations and the impact on the view from surrounding roads.

Mr. Prause noted that there were recommendations from the SHPO regarding the installation. He questioned whether those were mentioned in the presentation.

Mr. Prior explained that SHPO originally recommended that large tractor-trailer units should be placed on the ground. Subsequently, the organization has visited and they accepted these units, he noted.

Mr. Kyle Shiel reported that he had consulted with the Building Department staff regarding the dimensions, and they had no concerns about the size or the units being visible from the street.

Historic Zone Site Development Plan Modification (2019-104)

MOTION: Mr. Kennedy moved to approve the application for the installation of sixteen (16) air conditioning units for office and display spaces at the existing Manchester History Center at 175 Pine Street. Mr. Bergin seconded the motion and all members voted in favor.
WILLIAM GUINAN – Request a 5-year extension of the previously-approved subdivision 2014-065 at 424 and 436 Middle Turnpike East. – Extension of Previously-Approved Subdivision (2019-108)

Mr. Guinan reported that he had received a letter from the Planning Department several months ago reminding him that he needed to obtain an extension for a subdivision that was approved in 2014. He noted that he would like to sell the lot in the future.

Mr. Prause, referring to the map, asked for clarification on the subdivision.

Mr. Guinan described the lot and pointed it out as well as the surrounding area. He stated that he has no plans to develop the property, though he would like to sell the lot in the future.

Mr. Anderson explained that a special exception for a rear lot was granted in the past, which has since expired. Therefore, an application for a special exception would follow this extension, but it has not yet been submitted.

Extension of Previously Approved Subdivision (2019-108)

MOTION: Mr. Kennedy moved to approve the extension of the previously approved subdivision at 424 and 436 Middle Turnpike East for a period of five (5) years, until November 17, 2024. Mr. Bergin seconded the motion and all members voted in favor.

ADMINISTRATIVE REPORTS:

Mr. Laiuppa said that, at the last meeting, there was a request for updates on enforcement and inspections by the Planning Department. He proceeded to give a detailed quarterly overview. Mr. Laiuppa noted that there was a meeting regarding Marsh Pond with the interested parties. The Land Trust owns a portion of the pond and Mr. Brian Pelletier also owns a portion of the pond. Mr. Pelletier has expressed concern about sediment entering the pond during the spring of 2012, Mr. Laiuppa said, noting that the sediment entered on the Land Trust portion of the pond. He noted that there was a brief conversation about the source of the sediment and ways to prevent such a situation in the future. The group discussed informing the Town when sediment is observed building up in the catch basins, Mr. Laiuppa said.

Mr. Laiuppa stated that there was a discussion about the Town’s MS4 permit and the prioritization required by DEEP of certain areas over others. The Town Engineer had explained that the Marsh Pond area, based on DEEP criteria, is considered a low priority area and is near the bottom of the list.

Mr. Laiuppa also reported that Center Springs Pond was discussed. He explained that the area is stabilized.
Ms. Potocki, referring to the MS4 permit for the Town, dated 2017, asked how frequently the catch basins are being cleaned. She asked if the MS4 permit requires more frequent cleaning for priority areas.

Mr. Laiuppa explained that the catch basin cleaning schedule is annual, regardless of the MS4 permit requirements. He stated that the MS4 permit requires more frequent cleaning, but also includes improvements to outfalls if needed. It is a more thorough inspection of the system on the priority sites.

Ms. Potocki stated that she was not able to find the phone number to report sediment-laden storm water being discharged. Mr. Anderson replied that any catch basin concerns can be reported to Public Works. He explained that, on the front page of the Public Works Department website, there is something called “Mark-It,” which is a citizen reporting tool for all platforms.

Mr. Stebe also reported that the Town homepage has a link to “Report A Problem.”

Ms. Potocki surmised that Planning and Zoning is involved in the MS4 process, which Mr. Anderson confirmed. She asked whether the Commission should be involved. Mr. Anderson informed Ms. Potocki that staff will provide her with an update at the next meeting.

**APPROVAL OF MINUTES:**

October 21, 2019 – Public Hearing/Business Meeting

**MOTION:** Mr. Kennedy moved to approve the minutes as written. Ms. Scorso seconded the motion and all members voted in favor.

**RECEIPT OF NEW APPLICATIONS:**

**MANCHESTER COUNTRY CLUB** – Inland Wetlands Permit (2019-114) – To selectively remove trees to the south of the 13th hole, remove stumps, and plant fescue grass blend and understory flowering trees at 535 South Main Street.

The Chairman closed the business meeting at 8:10 P.M.

I certify these minutes were adopted on the following date:

___________________________  ____________________________
Date                     Eric Prause, Chairman

**NOTICE:** A DIGITAL RECORDING OF THIS BUSINESS MEETING CAN BE HEARD IN THE PLANNING DEPARTMENT.
SPECULATION OVER FIRE SAFETY
NO REASON TO DENY
AFFORDABLE HOUSING

An application to construct 95 apartments on 3 acres of land was submitted as an affordable housing application. The application was denied by the Commission due to concerns over access to the proposed development for firefighting equipment. The apartment complex would be served by one access road only 20 feet wide and this road had an inadequate turnaround where it ended at the complex. In response to the concerns over the inadequate turnaround area, the developer submitted an improved plan which provided additional travel space by eliminating several parking spaces.

The commission denied the plan without considering the proposed modifications. This denial was appealed to court, whereupon it remanded the matter back to the commission to consider the modified plan. The commission denied this plan as well, leading to a second appeal.

The court again ruled in favor of the developer. In sustaining the appeal, the court found the commission’s reasons to be speculative in nature. Regarding the concerns over the width of the access road as well as the turnaround, since these features met the design minimums as required by national fire protection standards, the commission’s concerns were merely speculative. Another factor weighing against the commission’s decision was the dire need for affordable housing which outweighed any of the commission’s reasons for denial. Garden Homes Management Corp. v. Plan & Zoning Commission, 191 Conn. App. 736 (2019).

A GATHERING OF PUBLIC OFFICIALS IS NOT ALWAYS A MEETING

In this decision, the State Appellate Court clarified what is a public meeting subject to the Freedom of Information Act by explaining what is a gathering versus what is a hearing or proceeding. In this case, the City of Meriden challenged whether a gathering of its leadership group was a meeting and thus subject to the Freedom of Information Act. The leadership group consisted of the mayor, the town manager, and 4 members of the 9-member town council. Because a quorum of the town council was not present, the city argued that no meeting had taken place and this was instead just a gathering of public officials. The Freedom of Information Commission disagreed, finding that this was a meeting because the leadership group actually was a hearing and thus no quorum was necessary for this to be a meeting.

The distinction between a gathering of public officials and a hearing involving them is important. The reason is that for a gathering to be a meeting, a quorum of the government body must be present.
while for a hearing, it is still a meeting even without a quorum of members present.

In reaching its decision, the court set forth what constitutes a hearing or other proceeding. A hearing refers to a process of adjudication, such as where evidence is taken and issues of fact and law are decided. In this case, the court found that the activities of the leadership group did not encompass these characteristics, and thus was a gathering. Since a quorum of the town council was not present, it was not a meeting under the Freedom of Information Act. City of Meriden v. Freedom of Information Commission, 191 Conn. App. 648 (2019).

**PUBLIC HEARING REQUIRED FOR AUTO REPAIR FACILITY APPROVAL OF LOCATION**

An application was filed with a zoning board of appeals seeking approval of a certificate of location for an automobile repair facility. In processing the application, no public hearing was held and the Board applied the standards applicable for a variance application. An appeal of the approval of the application was taken by an abutting property owner.

In regard to whether a public hearing was required, the court analyzed the legislative history of Connecticut General Statutes Sec. 14-55. In 2003, the State legislature approved three bills which applied to this state law. The first bill that was passed repealed Sec. 14-55.

The next two bills revised it. Following long established rules of statutory construction, the court found that the last bill to be approved was the one that controlled – thus, Connecticut General Statutes Sec. 14-55 is not repealed. Because Sec. 14-55 remains in effect, a zoning board of appeals must hold a public hearing on an application for approval of location of an automobile repair facility.

As for what standards to apply to such an application, a board should not apply a hardship analysis. Instead, the board must apply the suitability factors stated in Sec. 14-55, such as the proximity of the proposed location to schools, churches and theaters. Since this was not done, the matter was remanded back to the board for a proper hearing in accordance with this state law.

It should be noted that the Court addressed the issue of who is a proper applicant. In this case, the applicant was an individual owner of the business while the certificate of location application listed a business name. In finding that the business had standing, the court noted that in land use applications, a relaxed standard for standing is followed. One Elmcroft Stamford LLC v. Zoning Board of Appeals, 192 Conn. App. 275 (2019).

**PERSONAL INTEREST REQUIRES RECUSAL**

A court sustained an appeal of a planning and zoning commission’s decision to approve an application to
amend the zoning regulations. The proposed amendment would change requirements in the regulations which applied to contractor storage yards in a particular zone. An alternate member on the commission owned property where he operated a contracting business. The alternate member’s daughter was a partner in this business and helped draft the proposed amendment.

During the public hearing on the proposed amendment, the alternate member spoke in favor of the amendment and spoke against those who were opposed. Despite requests to do so, this member did not recuse himself.

On appeal to the Superior Court, the issue was raised as to whether this member should have recused himself. Referencing the obvious personal and financial interest of this member in the application, the court found his refusal to recuse troubling and in direct violation of long-established rules regarding conflict of interest. This member’s private interest in the approval of the amendment violated the public trust placed in him to perform his duty as an impartial member of a public body. As such, the decision of the Commission was found to be tainted, and the appeal sustained.

It made little difference that this involved an alternate member of the commission and not a regular member. *MJM Self Storage of Clinton LLC v. Planning & Zoning Commission*, 68 Conn. L. Rptr. 519 (2019).

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**ANNOUNCEMENTS**

**Membership Dues**

The second invoice for members’ annual dues will be sent out soon. While many of you have paid, some have not. The Federation is a nonprofit organization which operates solely on the funds provided by its membership. By being a member, you get:

- This newsletter 4 times each year
- Discounts on our publications *Planning and Zoning in Connecticut* and *Connecticut Zoning Boards of Appeal.*
- Discounted Workshops for land use agencies
- Length of Service Awards for qualifying individuals serving in member agencies.

It should be noted that a membership cannot be shared among land use agencies in the same municipality.

**Workshops**

If your land use agency recently had an influx of new members or could use a refresher course in land use law, contact us to arrange for a workshop to be held at your next meeting. At the price of $180.00 per session for each agency attending, it is an affordable way for your commission or board to keep informed. The price for these workshops includes a booklet for each agency member.

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