

**MINUTES OF BUSINESS MEETING  
HELD BY THE PLANNING AND ZONING COMMISSION  
FEBRUARY 1, 2021**

**MEETING HELD VIA ZOOM**

**ROLL CALL:**

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

Alternates Present: Julian Stoppelman  
Teresa Ike  
Bonnie Potocki

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

The Chairman opened the Business Meeting at 8:30 P.M. The Secretary read the legal notice when the call was made.

VOLTA CHARGING LLC – To revise the zoning regulations at Art. I, Sec. 2 to add definitions for “Electric Vehicle Charging Station” and “Operator” and to add a new Article IV, Section 24: Electric Vehicle Charging Station. – Zoning Regulation Amendment (2020-081)

**MOTION:** Mr. Kennedy moved to continue the public hearing until February 17, 2021. Mr. Stebe seconded the motion and all members voted in favor.

KENNETH BOYNTON – Show Cause Hearing – Cease and Correct Order for violations to the Inland Wetlands and Watercourses Regulations at 426 Wetherell Street (Bayberry Crossing subdivision)

Mr. David Laiuppa gave a review of the proceedings which are a statutory requirement when there is a violation of either a permit or wetland regulations. He explained how the violation is handled and that, currently, a cease and correct order has been issued and the hearing has to occur within 10 days of the issuance.

Mr. Laiuppa proceeded to enumerate the steps that had occurred which caused this action. The dates and breaches were displayed through pictures which were explained in detail. Mr. Laiuppa reported the various dates that he observed the violations, i.e., December 8, 2020 and December 11, 2020, which were traced back to the Bayberry Crossing project storm water discharge. There was a subsequent field meeting on December 16, 2020, and there was an agreement that corrective action would be taken

before the next storm. Mr. Laiuppa noted that the next major storm was on December 25, which resulted in too much for the system to handle. On December 28, he sent a notice of violation to Mr. Boynton. He reported that he had provided a suggested list of steps which could be utilized by Mr. Boynton's team.

Mr. Laiuppa reported that his regulatory authority is related to the natural resources. The list he provided was a suggested list which might help prevent further discharge on the site. Mr. Laiuppa noted that Mr. Boynton put in a great effort to make corrections. On January 16, 2021 there was another storm and he went out to the site, resulting in the cease and correct order. There was not an adequate correction from the notice of violation that prevented more sediment from entering the system, he explained.

Subsequently, according to Mr. Laiuppa, he and Mr. Boynton discussed those operations that could continue, which included anything on site either done to correct the situation or any activities that did not directly contribute to the points of violation. Mr. Laiuppa displayed and described photos, pointing out and detailing each violation.

Mr. Prause sought clarification of the different groups of pictures, and questioned the weather conditions on those dates. He inquired whether anyone was present when Mr. Laiuppa took the pictures on various dates, as well as how many occasions he met with Mr. Boynton.

Mr. Laiuppa explained the various dates of each picture and reported that there were significant rain events on all three. He detailed who took the pictures and whether anyone accompanied him. The dates he and Mr. Boynton met were discussed, as well as the e-mails and phone calls.

To summarize, Mr. Prause and Mr. Laiuppa went through the various meetings as follows: December 16<sup>th</sup> was the field meeting to discuss the observations made on December 8<sup>th</sup> and December 11<sup>th</sup> to discuss corrections; December 28<sup>th</sup> was the Notice of Violation issued by e-mail; the Cease and Correct order was issued by Certified Mail and e-mail.

After a request from Mr. Prause, Mr. Laiuppa clarified what the violation is in this situation: In Town regulations, any activities which deposit material in, discharge to, or pollute a wetland, watercourse or upland review area. The order pertains to those three areas. He enumerated each area's violations.

Mr. Prause inquired whether Mr. Laiuppa considers the order clear enough and whether it offers deadlines for completion.

Mr. Laiuppa responded that it is his opinion that the orders are clear and are not intended to stop the project, only to protect resources. If all measures are in place and there continues to be discharge from the site, something else must be in place. He noted that it is hard to put a deadline on the order because the measure is related to storm events. Referring to the order, Mr. Laiuppa read, "The measurement of the adherence or violation to the order shall be determined by Town enforcement staff during and/or following subsequent storm events with a magnitude capable of producing discharge from the site."

In an e-mail from January 26<sup>th</sup> (after the order, and after a phone call with Mr. Boynton), Mr. Laiuppa stated, there was a discussion about the types of activities that could be done going forward. He stressed

that the priority is to fix the controls of the site; control and elimination of the turbid discharge; any activity directly related to the maintenance/improvement of the erosion and sedimentation control is allowed and encouraged; work not related to erosion and sedimentation control is allowable as long as it does not contribute to any additional ground disturbance that has potential to enter the existing storm water system; and vehicular traffic should be minimized or eliminated in the direct vicinity of the detention basin on the Bayberry side. Additionally, the land on the Bayberry side should be stabilized, Mr. Laiuppa said, and he provided examples of how to best accomplish that. Mr. Laiuppa stated that Mr. Boynton has put forth the effort to correct the issue.

Mr. Prause noted that there was a discussion in the memo regarding the December 16<sup>th</sup> field meeting, which stated that it was discovered that a barrier had been intentionally breached to prevent overflow.

Mr. Laiuppa acknowledged that was brought up in the discussion. The reality is that it does not matter how material got into the system at this point, but it should not have happened. Purposely breaching the barrier directly contributed to significant discharge of sediment into the natural system.

Mr. Boynton did inform Mr. Laiuppa that there is an additional lower level tier outlet that was apparently open. He stated that Town Engineering informed him that there is a large gated chamber within the storm water system that had been filled with years of sediment. The Town cleaned that out prior to at least one event, if not two.

Mr. Ken Boynton, owner of Bayberry Developers, LLC, introduced himself. He reported that he has been working very hard with Mr. Laiuppa and informed the Commission that the Town cleaned the spiral chamber prior to the January 16<sup>th</sup> storm, after the two December storms. At the sedimentation chamber where the water exited the pond, at the lower elevation, it was going through 2 ft. of stone and through filter fabric, still discharging with turbidity. He explained that filter fabric is not designed to take a small micron of silt in this type of soil, according to his soil scientist.

Mr. Boynton directed the Commission's attention to the pictures and showed the washout on the power lines. That was during a heavy event and there are 3 or 4 layers of silt fencing off a very steep bank in a challenging area. He added that they stabilized what they could during the growing season and will continue to do so. Mr. Boynton reported that, after earlier storms, they walked the woods several days after the event and there was no residue left on the leaves, just a fine material that continues to flush through. He noted that there was no washout on the East Hartford line after the January 16<sup>th</sup> storm.

Mr. Boynton stated that they have been attentive to Mr. Laiuppa and have gone above and beyond what was expected without any regret. According to Mr. Boynton, they are doing everything possible to alleviate the situation: attending meetings and consulting with the engineer, and he believes they are gaining on it. He informed the Commission that, over the last two weeks, they have worked solely on the detention pond, excavating it to its full size, and topsoiled, as well as Janice Drive and other high slopes.

Mr. Mark Peterson, Engineer, Gardner and Peterson Associates, introduced himself and explained that they have worked hard to provide temporary measures to maintain the area and avoid the turbid discharge. Regarding the outlet structure, he said the original design had three orifices on the inside to meter out the water at a reduced rate. Unfortunately, according to Mr. Peterson, they have plugged

some of the lower orifices to get more depth for storage to encourage settling of particles, still allowing particles to settle in the basin. He reported that there are a number of other temporary basin upgrades of that which were recommended and implemented. They added another temporary basin on the south side of Bayberry Road, put in stone and packed with hay bales and silt fence. He stated that Mr. Boynton is working every day with inspection, maintenance, and walking the perimeter to ensure things are in place and it is his opinion they have a better approach.

Mr. Laiuppa noted that, when looking at discharges in regulated resources, he does not necessarily need to look at the extent, so if there is discharge into a wetland that is 3 ft. from the site but not half a mile from a site, it is still a discharge into a regulated resource. He acknowledged that what occurs on a regulated site contributes to any issue we are seeing.

Mr. Prause acknowledged that the agency itself must provide the burden of proof and it appears there is enough evidence provided for proof of a violation. It appears that the Cease and Correct order is appropriate.

Mr. Laiuppa reiterated that Mr. Boynton has put effort and work into the issue, though if there is something in the regulated resource that should not be there, he must report it. In this particular case, the watercourse is habitat for listed endangered species according to DEEP, and suspended sediment in the water column will directly affect those species living in that watercourse.

Mr. Prause understood Mr. Laiuppa's position working with the developer, and that he engaged and gave constructive feedback in the process. He stated that he is personally concerned that even the wetlands the Commission did not want impacted are being infiltrated, as well as several locations on the site.

Mr. Prause questioned whether there is a point where the Commission should either suspend or revoke the permit for a period of time until there is a better plan.

Mr. Laiuppa replied that the Commission must consider (1) violations of our regulations and (2) violations of the permit. When there are discharges to wetland systems beyond the permitted area, that is a violation of the regulations. When there are discharges or sedimentation to wetlands that are specifically called out on the permit, then there is a violation of the permit. In this case, both violations are in place. Mr. Laiuppa noted that the discharge location of the storm water system is not covered in the wetlands permit. The discharge from the basin on Bayberry exits into wetland systems that were not included in the wetland permit for the project and would be considered violations to the regulations. The sedimentation and discharge to the two wetlands shown on the permit are both shown on the permit as wetlands that will not be impacted by the project and, in those cases, that would be a violation of the permit. Mr. Laiuppa continued that, by suspending or revoking the wetlands permit, it potentially would be left wide open unless there are other measures stating it must be fixed, which then leads to violation of regulations. He believed in this case it may not be advisable to suspend the wetlands permit, but it may be worth reviewing the erosion and sedimentation control permits for the project to ensure they are adequate to protect the resources they are designed to protect. He informed the Commission that, in their packets, there are references to the requirements for permits as well as the 2002 guidelines for erosion and sedimentation control, which must be followed for the permit.

Mr. Kennedy questioned whether Mr. Laiuppa would withdraw the Cease and Correct order once the violations have been corrected.

Mr. Laiuppa referred to the paragraph about confirmation of adherence to or violation of the order. If there is a significant storm event that would produce discharge from the site and it is noted that there is no turbid discharge, the order can be lifted. However, another order could be issued if the violation recurs.

Mr. Kennedy assumed Mr. Boynton was not disputing anything Mr. Laiuppa has reported, but has been doing his best to correct the problem, which Mr. Boynton confirmed.

Mr. Boynton went on to reiterate what steps he has taken and that he believes they can control the outflow under normal circumstances. He added that they have put all their efforts into the corrections and they will continue.

Mr. Stebe reiterated that the PZC is going through the process and he noted that the Christmas Day storm was a high water event. He acknowledged that, with the current snowfall, there will be a melt following shortly. In his opinion, the Commission must follow the process and the items that have been pointed out, while they have been addressed, are still in the process. His hope is that after the upcoming rain there will be clear streams.

Mr. Kennedy observed that the Commission has a limited role and there is a factual basis for the Cease and Correct order that has been proven by Mr. Laiuppa.

Mr. Prause questioned Mr. Laiuppa about any action that could be done regarding the erosion and sedimentation control plan on the Bayberry project.

Mr. Laiuppa stated his concern is that the punch list he sent as a suggestion to help on site went into a lot of detail to be both in compliance with the Town permit and the State permit and to protect the resources in general. In his opinion, correcting the problem is the best course and following the punch list would put them in line with the permits.

Ms. Potocki stated that it is disconcerting and alarming that there have been discharges from the project site leaving the Town of Manchester, impacting watercourses, and she would like to know if there is third party monitoring the applicant could put in place. Ms. Potocki noted that it is early in the year and reminded the Commission that they have a bond which could be taken if the developer is not proactive in a reasonable amount of time. In her opinion, those actions may need to be considered if the problem continues.

Mr. Laiuppa reported that the State is fully aware, stating that he has had discussions with DEEP about the situation. He said he has talked to Fisheries, the Inland Wetlands group and the Storm Water group. Because it is a local permit, they would defer to the Town, but if support is needed they will provide it. He reiterated that Mr. Boynton is working with the Town on the Wetlands permit. The question is whether he will continue working on the erosion and sedimentation control permit.

Show Cause Hearing

**MOTION:** Mr. Kennedy moved to uphold the Cease and Correct Order issued by Wetlands Agent David Laiuppa on January 22, 2021. Ms. Poland seconded the motion and all members voted in favor.

**ADMINISTRATIVE REPORTS**

Ms. Pilla reminded the Commission about the Land Use Law Seminar on March 6<sup>th</sup>. It is held every two years in the State of Connecticut. She asked anyone who is interested to please let Staff know.

Mr. Anderson added that the Planning Department would cover the cost of the session.

Mr. Laiuppa stated that it was brought to his attention by Conservation Commissioners that Eversource was tree clearing as part of their maintenance program along the Hockanum. There was a concern over potential erosion problems caused by their clearing efforts and leaving material in the flood plain, which then washed downstream causing a blockage. Mr. Laiuppa reported that he had a field meeting with Eversource and they gave him information about their maintenance program and their permits from the State, and they discussed trying to remove material to the extent it is practical. He reminded Eversource to keep these things in mind – the Town does not want, if possible, bank erosion or material in flood-prone areas. He acknowledged that a line of communication has been established.

**APPROVAL OF MINUTES**

January 20, 2021 – Business Meeting

**MOTION:** Mr. Kennedy moved to approve the minutes from the January 20, 2021 Business Meeting. Ms. Scorso seconded the motion and all members voted in favor.

**RECEIPT OF NEW APPLICATIONS**

**MANCHESTER PARKADE I, LLC – Erosion & Sedimentation Control Plan (2021-007)** – For the proposed Silk City Green development at 296, 324, 330, 334 & 340 Broad Street; 418 Middle Turnpike West; and a portion of Green Manor Boulevard.

**MOTION:** Mr. Kennedy moved to adjourn the business meeting. Ms. Scorso seconded the motion and all members voted in favor.

The Chairman closed the business meeting at 9:50 P.M.

I certify these minutes were adopted on the following date:

2/17/21  
Date

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Eric Prause, Chairman

**NOTICE: A DIGITAL RECORDING OF THIS BUSINESS MEETING CAN BE HEARD IN THE PLANNING DEPARTMENT.**