

**Seymour Inlands Wetlands Commission
Regular Meeting 11-25-2019
Minutes**

Members Present: Tim Connors, Michael Flynn, Jim Forsyth

Members Absent: Brian Koskelowski, PJ Wetzler

Others Present: Jim Baldwin, Mike Marganski, Bryan Nesteriak, and Counsel Pat Sullivan

1. Call to Order

The meeting was called to order at 7:00pm.

2. Pledge of Allegiance

All stood for the pledge of allegiance.

3. Public Comment

No public comment.

4. Minutes acceptance Regular Meeting October 28th 2019

Motion to table by Michael Flynn.

Seconded by Tim Connors.

5. Bladen's Ridge Project

Attorney Lisa Feinberg from Carmody Torrance Sandak & Hennessey LLP stated that she is here tonight to discuss the proposed redevelopment of 16 Smith Street and 20 Spring Street. They are proposing to develop according to the affordable housing statute (8 30 G of CT General Statutes). She reminded the Commission that the last time they were in front of the Commission in November they discussed two requests.

1. For the Commission to make a finding for the 2015 approval for this property could be applied and relied upon in connection with the revised site plan.
2. If they did not agree, she asked that you accept a new application from that morning.

The Commission accepted that application and in the interim they worked with the staff and met with them on October 24th, but did not have sufficient time to react to staff's comments, so they asked for a postponement until this meeting. They have received some comments from Mr. Nesteriak late this afternoon, and have not had time to react to it or modify anything, but would still like to discuss tonight.

In the Commission's packet there was a memorandum from Feinberg's office, which analyzed the criteria in Seymour's regulations related to whether or not there is a significant impact, and there was not a significant impact based on their analysis. She asked Mr. John Paul Garcia to speak to the Commission on his how they came to that conclusion.

John Paul Garcia from John Paul Garcia & Associates stated that he was there to discuss the 10.5 acres on the south side of Smith Street. In 2015, a plan was approved and he showed the plan to the Commission discussing where the discharge storm water drains were let off into. He pointed out the snow shelves on the plan and where the 2 wetlands adjacent to the site are. Garcia showed the plan that is before the Commission now, the plan is basically the same as the plan that was approved before. They have moved the snow shelf like Bryan Nesteriak had asked, the storage area is going to be on the top of the green area, the road will be a one way in and out with an area for emergency access only, and they have eliminated the direct discharge of the water going directly across Smith Street and into Bladen's River instead to run it down Smith Street into an existing catch basin. This adds about 400 feet of additional piping and catch basins but it no longer causes a significant impact.

The storm water management system was designed to retain and treat storm events and this is shown in the packet that was submitted to the committee. The pre development flows versus the post development flows are 3 to 10% less than the pre development flows. The treatment chain is from catch basin into a particle separator, into a underground storm water management system and then via another series of pipes into catch basins into the second systems and then through another series of pipes before finally discharging. The amount of material they get is relatively insignificant. He shows how about 1/3 of the water coming off the buildings and impervious surfaces is totally clean because it comes off the buildings. The entire treatment system is relatively compact compared to developments larger than this, but a lot of water is not being treated because of the amount of impervious surface. These storm water drainage/ treatment systems are designed for 1 to 100 year storm events.

Garcia went through the comments that Mr. Nesteriak asked for

- More survey information which they updated the map with extensive survey on Smith and Spring Street. They feel as though they have completed this.
- Make a computer generated path for moving, refuge and collection trucks which is a P and Z issue and will be submitted.
- Add a detailed striping and signage plan which was done.
- A detailed writing plan which was submitted as part of the landscaping plan.
- A detailed landscaping plan which was submitted.
- The main sign that is proposed by the entrances, they need to submit size, location and appearance.
- A grading plan shows regrading on Smith Street, please clarify. Garcia says they are not proposing regrading they just want to run a line down Smith Street to tie into the existing catch basin.
- Parking spaces- provide excavation statistics which they did. They are proposing 130,000 yards of cut and approx 1,300 yards of fill. Blasting in the area around station 400 and 600 is anticipated. There are 7 test pits dug around the property which all went down approximately 16 to 17 feet but in a specific area there is the possibility that they will hit ledge when they start to excavate for utilities

Garcia stated the average cut going into Smith St. is about 15 feet and the proposed road and the proposed utilities. On top of this there will another 4 to 8 feet of excavation for utilities. For the lower areas they are not concerned that they will need to blast, but on top of the hill they might have to blast, but they are not sure until they begin excavation. Garcia noted that Nesteriak mentioned a general permit for discharge of storm water and waste water, but explained that DEEP does not want to see this until it is approved from the Town to start construction. DEEP will not entertain the application for the permit until there is an approved set

of plans.

The existing catch basins located on Spring Street will require replacement and they call for that in their plans. All the roof drains are tied into the storm system so there will not be any fugitive water from any of the impervious surfaces. The entrance at Spring Street requires proper radius which in the plan is regraded and changed to a one way.

Garcia read Mr. Nesteriak's comment on the storm water quality treatment design should be revised in accordance with recommendations 2004 CT stormwater quality manual, particularly primary and secondary treatment facilities should be implemented including vegetation aspects such as bioretention, hydrodynamic separators which are the only treatment which this project is proposing should only be used in conjunction with other treatment practices. Garcia's comment back was that proposed development design is in accordance with the 2004 CT stormwater quality manual, while some of the methods listed above are recommended, they are not mandated, notably post-development flows and pre-development flows, the property lacks sufficient area to add swales and open rain guards. In addition, given the recent issues with eastern equine encephalitis and other mosquito borne diseases, we recommend any prevention methods that could end up with open stagnated water. Garcia says he believes they have addressed this but they will address it again as they go farther.

Snow storage has been moved because Mr. Nesteriak was concerned about the run off from the snow storage getting into the wetland and causing possible pollution, so they have moved it to the top of Bladen's Circle. All detention systems are proposed to be perforated pipe which is assumed to allow infiltration, some of the systems are designed to 15 to 30 feet deep in the current soil and area. Garcia stated that the reason for putting perforated piping in those cuts is because no matter what there is for tested data, a lot of the times groundwater will be encountered or seams will open up as they construct. The perforated pipes are a cheap solution to preventing a future groundwater problem. If there is any fugitive groundwater, the perforated pipe will pick it up and carry it away rather than causing issues.

Mike Flynn asked if perforated pipe was pipes with small holes in it. Garcia answered yes.

Garcia stated perforated pipe does not have any issues with the loading because the pipes are not under 30 feet of material, they are under 6 to 8 feet of material. He believes it's a great idea and he does this a lot. It's a great idea that does not cost anymore.

Garcia read Nesteriak's comments that stated if infiltration is ultimately proposed for systems 4 and 5, Nesteriak recommends that ground water analysis be performed in that area due to the concerned raised from the residents on Spring Street. As designated these systems will be at least 60 feet from the existing homes and could create a groundwater issue for basements. Garcia stated that it was his team's professional opinion that there are test pits around the site, and every single one of them was consistent with the results. It was all a uniform sand and gravel, with no ledge no water and no restrictive layers. The infiltration basins will drain but for the most part there should be no adverse impact to the surrounding neighbors. The buildings will act as curtain drains and when you install the buildings, if there is a groundwater flow that might be affecting a neighbor's basement, the pipes will pick them up and carry them away, fixing the neighbors existing problem. This is true for drainage basins as well. It has been his experience on a number of projects that there is no adverse impact on either the wetlands or the adjoining neighbors.

Garcia read the letter sent to Mr. Baldwin on November 25. From Mr. Nesteriak into the record. He read the letter into the record. He responded back saying:

- Almost everything you will do in the Valley is within 3,000 feet of Naugatuck river.
- Any project will be within close proximity to an existing storm water collection system or tie into an existing wetlands, so what he is proposing is not unusual.
- The maximum depth that Garcia could find is about 22 to 24 feet and then another 6 to 8 feet for pipe or anything, but the idea of digging 38 feet is not realistic.
- This is not a quarry, this is a housing development.

Mike Flynn stated that Mr. Nesteriak must've had conclusive evidence to convey that in order to conduct this operation, you're going to take materials out of the ground to create a quarry?

Garcia responded no they are not making a quarry they are making a housing development. They are addressing this project in 6 phases. The first phase will be to start the excavation on the entrance and he went through the details of how that will be done. The second phase will be starting about halfway through the first phase and showed the details of how that will be done.

Mike Flynn asked if there was blasting required.

Garcia said that at this point in time they do not know the answer to that. They are assuming it will be required when they get to phase 3 but they don't know yet. The tests that have been done so far have all gone down 16 to 18 feet and has been all sand and gravel. They are guessing if there is blasting needed, they will find it when they start to dig pipe, not when they are doing mass excavation.

Mike Flynn said they mentioned a rock crusher.

Garcia responded that they were asked to show the location of any processing equipment and a phasing plan, if the rock crusher is needed he points out the areas where the equipment will go.

Nesteriak's letter stated that they did not show the location of temporary measures that will be needed in any quarry operations. Garcia responds to that saying that this is not a quarry and therefore the approach is different. The whole project should be done within a year and the intent is not to run it as a quarry operation. The intent is to use basic soil erosion which is what they would do for any excavation operation which is relatively simple. They would also ask for a bond to be put in place so if there were any issues there is protection. Nesteriak also made a comment about regulations requiring to be 30 feet from the property line, which comes from the earth portion of the quarry regulations and this is not a quarry.

Garcia submitted the second page of the storm water quality manual for the record and highlighted the portion he read. He reminds the Commission that the manual was written in 2004 by 50 people including town engineers and DEEP engineers. This is 20 year old technology that is still the recommended not required. He reminds the Commission that he has had 20 years of new experiences since the manual was published which is filled with opportunities to see how some things work and how some things do not work. Garcia goes over the differences of the technology from 20 years ago versus today. When the manual was designed, 2/3rds of the water going into the storm water management system could be classified as polluted, but not in the sense of today. We are no longer applying grits, lawn chemicals, or pesticides in the same manner that they were doing so about 20 years ago. He stated in a masters program at Yale University was instituted to check the design of infiltration

ponds and detention basins. Yale checked 15 or 20 throughout New Haven County and only 5 were still operational, 2 of which being his in Woodbridge. The reason they were still operational was because they approached it very conservatively. For the purposes of this design, they have not accounted for this into the ground. When an infiltration system is designed, it can be approached in a number of ways, one being accounting for infiltration. The reason is if it is not maintained for 20 years, in 21 years it will not function correctly. So by not accounting for infiltration it designs it in a way that is less than what you are accounting for, because you know for a fact the 2 basins have a high inflation rate because of the material they are in. No matter what they say for the purpose of a number, those basins will work. It is a conservative approach which means they he doubts they will ever see the basins back up.

Garcia stated that what Mr. Nesteriak is suggesting with the swales and bioretention is good to a point but because this project has limited lawn area and limited planting areas they are not looking for the same outcome as say a golf course would be. He says it is a good idea in theory to be following the manual, however the manual has no regulatory statutes. Garcia reminds the Commission that they have looked this over many times and have come to the conclusion that the water leaving the site after this construction will be in much better shape than the water that is leaving there now.

Garcia reminds the Commission that protecting the nearby resources is a priority of his and what they are proposing is meeting the spirit of what the 2004 manual wanted and with the intended outcome. He read the comments from Mr. Nesteriak that stated there will be a negative impact from the earth work operation and the construction. Garcia says they do not agree with that comment at all. He stated that they have attempted to address the issues in the manner they arose.

Jim Forsyth stated he would like to hear from Bryan Nesteriak on his comments.

Bryan Nesteriak, the town engineer, reminded the applicant that this is not a complete review it was just more information for the Commission to make a determination on significant impact. He stated that the largest thing he would like to point out is that even though no one would like to call it a quarry and obviously if it was a "quarry" there would be a different permit but the essence of it is that there is a 130,000 cubic yards of material at a minimum that is going to be coming off of this property at an expeditious manner. When regulated area is talked about (the 2 offsite wetlands shown on the map), what was not shown is that across from Smith Street is another regulated area that is a flagged wetland. All of the work being proposed on Smith Street and some of it on Spring Street falls within the regulated area. The new work being proposed on Smith Street, there is no erosion control being shown.

Nesteriak is mostly concerned about the earth work excavation than anything else. Garcia did say he put together a 6 part phasing plan which is a good start but during the phases there should be very detailed measurers showing what an operator needs to do in order to protect those resources. This is in Nesteriak's opinion. There is a 15 foot cut coming into the main entrance which is directly across the street from a 40 foot cliff that goes down to Bladen's River. There is no plan on how the transport will occur during this operation.

John Paul Garcia pointed out the details in the plan to Nesteriak.

Nesteriak stated that he still does not understand how in phase 1 they will be treating stormwater without an outlet and it is not shown on the plan. He wants to ensure there is a plan that shows how they are going to protect the resources. He states there is a difference of

opinion between himself and Mr. Garcia when it comes to the stormwater system. Mr. Garcia has proposed a basic conventional stormwater system and in his opinion that is not sufficient for a development of this size. He states there are many options out there that would increase the amount of storm water quality for this development. Nesteriak spoke to him about this a few days ago when they met and Garcia disagreed with him then and Nesteriak disagrees with Garcia now.

Nesteriak pointed out where he found the 38 foot cut that Garcia had said did not exist. He states it goes from the existing grade to the bottom of the existing system itself. Garcia disagrees with Nesteriak's view on the groundwater. Nesteriak states anything he has done over the past 20 years has always factored in ground water and the fact that Garcia's opinion says that they should allow the base flow to flow through is not a responsible way to determine whether or not the storm water design is functioning the way the calculations have been given.

Nesteriak stated that Garcia had pointed out that the stormwater systems are about 10 to 12 feet into the ground, but the systems are 10 to 12 feet into the finished ground but its 38 feet below the ground that it is today. He says that by the end of the letter he defines what a significant impact is and the different meanings of the regulations for the Commission. He did not state if this was a significant impact and leaves that in the Commission's hands completely.

Mike Flynn stated that before the Commission can make a conclusion on this, they should have a thorough analysis in a report by Mr. Nesteriak and Mr. Garcia so they can compare and contrast as this is a huge responsibility.

Nesteriak responded that he believes that has already occurred. Both engineers have spoken their opinions so now it comes down to whether or not the Commission believes this will be a significant activity or not.

Mike Flynn says that Mr. Garcia claims that the engineering manual is 20 years old.

Nesteriak says that Mr. Garcia is perfectly correct in saying it is a guidance document that was put together 20 years ago, but there are many good design elements in it. He is right in saying that professional opinion should always be taken into consideration and it is his professional opinion that his design is sufficient. It is Nesteriak's professional opinion that it is not and there are plenty of more opportunities to provide a vegetative option to ensure stormwater quality management.

Mike Flynn asked if the construction had started yet.

Nesteriak said no, that is why they are here tonight.

Mike Flynn said they are going to have to table this for further study because it is an awful lot of information.

Nesteriak stated that they do not have the time to do that but all the professionals in the room are there to answer any questions that the Commission has in order to make an informed decision tonight.

Mike Flynn asked if there was a 38 foot cut.

Nesteriak said yes that is what he calculated at its deepest. There were a variety of cuts made, 38 feet was the worst and it was 0 in some places.

Mike Flynn asked when they say 38 foot cut, do they mean that when the excavation starts they will cut down to 38 feet?

John Paul Garcia said that when the construction begins, they will not cut to 38 feet. They cut to finished grade and then you are constructing. There are no cuts that are more than 20 to 22 feet deep and that is just for the road. 38 feet is technically correct, but really it's a structure that's 20 feet deep and a structure that is 10 feet in the ground, but you do not see this when you're done. He also notes that Nesteriak has a valid point about groundwater. He points on the map where the east and west flowing groundwater come from, but the odds of encountering groundwater with no upstream capability is relatively minor. If groundwater is encountered in a detention facility, it is usually designed with a low outlet exit so that if there is groundwater, it trickles out and will not stay as a bathtub. Garcia doubts very much that there will be a lot of groundwater encountered at all because of the way the groundwater is flowing. The bottom line is the basins will work as intended.

Bryan Nesteriak stated that he has designed hundreds of infiltration systems but he has never designed an infiltration system without knowing where the groundwater is first. His only point on that is that they have no idea right now where the groundwater is in certain spots, they do in other areas but there have been no attempts to find out if there is ledge or there is groundwater. When Nesteriak designs something, he wants a set of documents that he can hand to a contractor that are as clear as possible. He never wants to expect a contractor to assume that the attempt is there. The majority of Smith Street has no curb and flows directly over the edge of the pavement. Because this is on town property he is very concerned that these are drafting plans that should be clarified, but as they are revised right now in Nesteriak's opinion they do not protect the wetlands.

Lisa Feinberg stated that there seemed to be multiple changes that Mr. Nesteriak wanted to make to the plans and some of them are pretty simple, including adding soil and erosion controls in and around Smith Street. She also knows that the reason they are going down Smith Street that way is because that is what Mr. Nesteriak asked. In terms of the phasing plan, they would be more than happy to accept a condition of approval that they provide a more robust phasing plan to ensure that contractors know exactly what they need to do. In terms of the difference of opinion of the storm water, Feinberg reminds the Commission that it comes down to what they think. She believes that Mr. Garcia feels confident that the plan he has designed will adequately treat the storm water and reminds them that post development flows are superior to pre development flows. She points out that on the plan you can see that the site is very green and it will be 57% open space which proves their commitment to the environment.

Matthew Popp landscaping architect from Environmental Land Solutions, shows the landscaping plan and points out the wetland areas on the map. He stated that he thought it was important that they screen the wetland areas with evergreen trees, they act as a wetland buffer to the southwest. There are 35 evergreen trees that consist of native species. He listed more of the types of trees that would be grown on the property. He pointed to a spot on the plan and stated that it was not grass, it was a shortgrass meadow. The property is dark sky compliant so the lighting is kept out of the wetland areas.

Lisa Fienberg told the Commission that this project will be required to obtain a permit from the State of Connecticut in connection to the storm water discharge so no matter what is approved by this Commission and the Planning and Zoning Commission, if the state does not like it, the applicant will be forced to modify it. She has noted a few times that there is an existing approval and reminds the Commission about the law around similar applications. The law states that an agency cannot reverse its prior decision unless a change of conditions have occurred since its prior decision or other considerations materially affecting the merits of the subject matter have intervened and no vested rights have arisen. The existing approval was for 11 buildings and so is current application. The existing approval was for 36.9% of impervious surface and the current proposal is for 36.5% of impervious surface. Building distance to wetlands was 92 feet previously, now it is just over 94 feet. The most distinguishing difference between the existing approval and the current proposal is the change in discharge from 17 Smith Street. Fienberg stated that she believes this is the superior proposal with regard to impact on the regulated area and for those reasons she hopes that the Commission will determine that there is no significant impact. She prepared a memo on the standards of the criteria of decision that she submitted for the record. She also prepared a list of municipal benefits that was handed out.

Tim Connors asked in regards to the wetlands, and the back and forth between Bryan Nesteriak and John Paul Garcia, what proposal could be put in place?

John Paul Garcia stated that they are working on the road not on the gutter, so nothing should be coming across to Smith Street. As a precautionary measure, he recommends a hay bail backed cill fence because it has a fairly substantial resistance to water and cill and it works very well. Normally what would be done is when construction begins, at night hay bails would be put back across the entrance of the road so that if there is a rain event it does not wash out.

Bryan Nesteriak stated that the suggestion from Garcia is one good option that is a valid measure but he should see a detailed set of plans for each phase. The water needs to settle somewhere before it gets pushed to an off site location and there has been no details as to how this is going to be done for each phase. In his opinion, they're great ideas but they should be on a detailed set of plans so that an operator knows exactly what to do.

Tim Connors asked that if it would be possible for Garcia to do another deep hole test.

John Paul Garcia stated that you cannot get down further than 16 or 18 feet and would need to bring in a test. He said he has done 20 foot tests before but he is not going to send an operator to the bottom of the hole. They would have to have the one on one slopes and they cannot violate OSHA regulations so if they are down 38 feet and they have excavation 150 feet wide it would not work. He said can do more test warrants and also include a more detailed phasing plan if that is what the Commission needs.

The Chair asked what phase was the Smith Street work.

John Paul Garcia stated that it was the last phase, phase 6. But this could change, there is nothing that says that something cannot be done first depending on site specific concerns.

The Chair responded that he understands but if they run into issues on site what can they do to immediately correct what is going on. It takes time to excavate Smith Street and while that time is passing the wetlands are being affected. Maybe they need to relook at when Smith Street

work is done so they can prepare for the excavation.

Garcia says that they have a bond, but they can move it to phase 1 if that is a big problem for them.

Bryan Nesteriak said to agree with the Chair, he is not sure how there could be 15 or 16 foot cuts with no outlet for stormwater. If the water is coming off of the hill, it's not gonna go down Smith Street it is going to be going directly into Bladen's River.

Garcia stated that he was happy to revise it.

Lisa Fienberg stated the conditions if the Commission would deem it appropriate were;

- Modification of the phasing plan so that the Smith Street would be a part of the Phase One A in conjunction with making the phasing plan more detailed
- The bond
- The extent that they would like reporting from the applicant in terms of their approvals from DEEP and the monitoring of the SNE controls
- Conduct borings tests and modify the plans based on anything they find in consultation with the staff

The Chair said the first step the Commission must make a decision on whether or not this is a different plan and a different set of circumstances from the other already approved plan.

Bryan Nesteriak stated in his opinion, this is a new plan and he has always viewed it as such. He does believe it should be considered a different plan from the 2015 approval. The Chair stated that they needed to make a determination on whether there is significant impact.

Jim Baldwin stated that last meeting they accepted the application on the grounds that is a new application so the process has started all over again. The Commission is now making a vote on if there is significant impact or not.

Counsel Pat Sullivan directed the Commission to the third page of Bryan Nesteriak's report it gives the standard. The Commission must make a determination of if there is significant impact, if there is not they must grant a permit and they can put conditions on it. Or if they determine it is a significant impact, they must schedule a public meeting.

Mike Flynn made a motion that this is a significant impact to the wetlands and they should hold a public meeting.

Second by the Chair.

Tim Connors asked what the conditions for approval were in regards to the previous application.

Bryan Nesteriak stated that it was an approved application, and was subsequently denied by the Planning and Zoning Commission, but the building layout and the roadway layout were very similar.

Tim Connors asked if they wanted to, could they use the previously approved application and they would be done with the Inland and Wetlands Commission.

They said yes with the old application.

The Chair asked for a vote, all in favor of a significant impact.

Mike Flynn- yes
Jim Forsyth- yes
Tim Connors no.

Motion is approved for a significant impact.

Tentative hearing December 16th for a public hearing.

6. IWE Officer's Report

No report.

7. Public Comment

No public comment

8. Correspondence

There was no correspondence.

9. Adjournment

Motioned by Mike Flynn
Second by Tim Connors

Submitted by,

Malia McCool