BOROUGH OF FENWICK
PLANNING AND ZONING COMMISSION
INLAND WETLANDS AGENCY
SPECIAL MEETING
VIRTUAL MEETING, JULY 20, 2020

MINUTES

Present: Chuck Chadwick – Chair, Sallie Boody, Art Wright, T. Van Itallie, Rick Neely Bill Christensen (Alternate), Ralph Keeney (Alternate), Marilyn Ozols – ZEO.

Absent: None.

Members of Public: Steve Lecco (GZA), Dan Stapleton (GZA), Andy Fisk (CT River Conservancy), Frank Gilhool, Bruce and Laurie Goldsmith.

1. **Call to Order**.

C. Chadwick called the meeting to order at 4:00 p.m. and seated Alternate B. Christensen for the first application. A quorum was established (Chadwick, Boody, Wright, Neely, Christensen).

2. **Public Hearing: ZSpP20-001, Hepburn Family Preserve (east of Mohegan Avenue and south of Agawam/Neponset Avenues), map 11, lot 6 and portions of adjacent lots**, Lynde Point Land Trust, applicant and primary owner. Special Permit and Coastal Site Plan Review application to relocate creek and create living shoreline.

D. Stapleton and S. Lecco presented.

They stated that

- This is a cobble beach that transitions to a stone beach with a small dune, which creates an opportunity for a living shoreline – something DEEP has been promoting in Connecticut.
- The purposes of the project are to maintain the hydraulic connection between the pond and the creek, maintain the road, and mitigate long term shoreline erosion.
- The design was financed with a grant from CIRCA as a pilot project and when constructed, this will be the second living shoreline permitted by the state.
- Starting from the water, it will include granite sills, a small area of new fill and tidal marsh creation, a cobble beach similar to the existing beach, and a restored dune with plantings.
- The existing dune has overwashed into the creek multiple times during storm events and this will be addressed by relocating a section of the Crab Creek channel and installing a new open bottom culvert.
- The sills have been designed to recreate a fisheries habitat.

T. Van Itallie noted that along the shoreline to the east, there is scouring to the immediate east of each pier and asked if that situation has contributed to the indentation in this area, if it is likely to continue, and if the hardening proposed will create a similar situation to the west of this site. Additionally, he asked about the ability of the proposal to withstand storms.

S. Lecco and D. Stapleton utilized slides from a previous PowerPoint presentation (**Exhibit E**) to show the historical shoreline and the erosion over time, noting that the structures have changed the wave action and the long term transport of sand but it is not feasible to remove them so this proposal looks at alternatives; that the sills should help to mitigate the wave action; that nothing is risk free but they have attempted to reduce this risk through due diligence in design and extensive wave modeling; that the design addresses the predominant conditions; that under storm conditions, the dune will be better but will

still be vulnerable although the sills will provide wave attenuation; that damage may be visible in a 2 – 10 year storm, but will definitely occur in a 100 year storm; that moving the creek helps maintain the hydraulics even with dune washover; and that ongoing maintenance and reinforcement will be necessary.

Members discussed the cost of construction and the various funding sources which include a relatively small local match with some indirect and volunteer contribution; the cost to the LPLT for maintenance for which GZA has assigned probability and cost for various level storms; and the fact that the construction contract includes a provision of maintenance for the first year. Relative to maintenance, GZA noted that except for a major storm, it will likely consist of importing new sand for the dune with replanting plus perhaps some scraping back of overwash, but moving the creek will prevent it from becoming blocked and the project should mitigate the currently ongoing erosion.

Relative to the sills, GZA explained that within the spectrum of living shorelines, this location has an energetic shoreline so a robust sill is necessary; this type of design has been used a great deal in other locations but is relatively new to Connecticut; a current project in Westport has shown sills to be effective, but GZA has learned from the Westport project and modified the sill design to be more natural looking.

Relative to the timeframe for construction, it was stated that there are some schedule restraints imposed by the Borough and the permits but it should be a single season project; the plan is to execute the contract the first week in August and begin construction after Labor Day.

C. Chadwick asked for public comment.

> Laurie and Bruce Goldsmith, 2 Neponset Avenue, stated that they support the dune restoration project but have concerns over the height of the dune and vegetation as this is their view of the ocean; they requested more specifics on the heights noting that bayberry can grow to 8 – 14 feet in height and they would appreciate a species that does not grow this tall.

GZA noted that they had responded to this same question as part of the Army Corps permit; that the peak of the dune is at elevation 10 which ties into the existing dune to the east; that bayberry will only grow to about 2 to 4 feet in height in a dune environment; that the plants selected will grow laterally, not erect, in this environment; that they had followed Connecticut coastal guidance in selecting plantings and they had consulted with Juliana Barrett; that beach grass will not sufficiently stop erosion; and that the plantings selected are intended to introduce diversity and help keep invasives away.

Members reviewed the species list and R. Neely recommended that the Virginia Rose be used on the crest of the dune since it does not get as tall as bayberry. S. Lecco stated that in this environment both plants are sprawling, shrouding species, but the bayberry could be restricted to the lower level of the back dune. C. Chadwick stated that the plantings need to be the ones that make the project work, but they should be ones that grow to no more than 3 to 4 feet if feasible.

There being no further public or Commission comment, **R. Neely moved to close the public hearing at 5:14 pm. S. Boody seconded the motion and it was approved unanimously.**
Approved 5-0-0

For:	Chadwick, Boody, Wright, Neely, Christensen.
Against:	None.
Abstain:	None.

Possible Action on ZSpP20-001, Hepburn Family Preserve.

C. Chadwick questioned whether the cost/funding or likelihood of success should affect a P&Z approval. R. Neely stated that the project is worth of going forward and is worth the risk involved; the Borough should be willing to support it. S. Boody agreed, stating that it will enhance the Borough. R. Keeney added that it is a viable project and the lion's share of the funds committed to it have not been Borough money and the Borough should take advantage of this support. T. Van Itallie stated that the out of pocket cost to the Borough is unclear but P&Z does not have jurisdiction to base its decision on funding. B.

Christensen noted that the situation could get much worse if this is not done; it will save a lot of properties, maybe not for the 100 year storm, but for lesser storms.

Relative to the plantings S. Boody stated that they should be the ones that will make the project work; it is not a huge cement wall and she is satisfied with Juliana Barrett's recommendations; the Commission should approve it as written to address the problem. R. Neely stated that he would support a stipulation that the barberry be planted at the lowest elevation possible of the back dune. A. Wright reminded the Commission that P&Z's purview is whether or not the application meets the regulations, but view line is addressed in the regulations so the Commission can request some mitigation if height is a concern.

Based on the discussion in and after the hearing, R. Neely moved to approve the application with the stipulations discussed. The motion failed for lack of a second.

Based on the discussion in and after the hearing**, S. Boody moved that the Commission finds that the application for Site Plan and Coastal Site Plan Review to relocate Crab Creek and create a living shoreline at the Hepburn Family Preserve, with the stipulations noted, is consistent with the goals and policies of the CT Coastal Management Act and that it complies with the review standards in the Borough of Fenwick Zoning Regulations, and approves the application based on the plans and documents submitted with the following stipulations:**

1. **All work shall be consistent with the permits issued by the CT DEEP and the Army Corps of Engineers.**
2. **The applicant shall coordinate work schedules with affected property owners.**
3. **Bayberry shall be planted at the lowest possible level of the back dune so as not to impede view.**

A. Wright seconded the motion and it was approved unanimously.

Approved 5-0-0

For: Chadwick, Boody, Wright, Neely, Christensen.
Against: None.
Abstain: None.

The record plans for this application are:
Hepburn Preserve Living Shoreline Project, Lynde Point Land Trust, Inc., Old Saybrook, Connecticut, November 2019 Permit Plan Set with the following drawings*:*

- *1 Cover, Locus and Index of Drawings,* 11/19
- *V-1 Existing Conditions Plan,* 11/19
- *V1-A USACE Jurisdictional Areas*, 2/20
- *V-2 Existing Condition Plan Cross-Sections,* 11/19
- *V-3 Existing Vegetation Plan,*11/19
- *V3-A Proposed Vegetation Plan,* 2/20
- *C-1 Relocation of Crab Creek and New Culvert Plan,* 11/19
- *C-2 Relocation of Crab Creek and New Culvert Plan Cross-Sections,* 11/19
- *C-3 Living Shoreline Proposed Conditions,* 3/20
- *C-4 Living Shoreline Cross-Sections,* 11/19
- *C-5Marsh Sill Plan, and Details,* 2/20
- *C-6 Erosion and Sedimentation Control Plan - Proposed Culvert Work,* 11/19
- *C-7 Erosion and Sedimentation Control Plan - Living Shoreline Work,* 11/19
- *G-1 Details - Erosion Control / Construction Entrance,* 11/19
- *G-2 Notes - General /Construction / Sequence,* 11/19

T. Van Itallie was seated for the remainder of the meeting.

3. **Public Hearing: ZSpP20-002, Nibang Avenue, map 10, lot 1,** Borough of Fenwick, owner and applicant. Special Permit and Coastal Site Plan Review application to realign and reconstruct Nibang Avenue at the intersection with Maple Avenue.

M. Ozols stated that the engineer is on vacation and could not attend this meeting and she would present on behalf of the Borough. If there are questions that require the engineer's input, the hearing can be continued but the application has been reviewed multiple times by staff and also by CT DOT. She stated that

- The primary intent is to raise the road to reduce the incidence of flooding during storm events. The current elevation is about 4 or 5 and the new elevation will be 10 or higher, which puts it at flood elevation. Additionally, two new culverts will be installed to improve water flow under the road.
- The second purpose is to improve the turning radius and line of sight at the intersection with Maple Avenue.
- Both the turning radius and the path around the island have been designed to accommodate large trucks and reduce the incidence of travel on the grass or into an incoming lane.
- Some of the boulders in the state right of way have been removed at their direction but will be replaced with no parking signs close to the intersection.
- Some grading is proposed at the Patterson driveway, which will not be paved as part of this project but the Patterson's will have the opportunity to coordinate work for cost savings if they desire.
- Landscaping other than planting grass has not been included as part of this project since the Borough will be asking for donations and/or funding that separately. It's hoped that P&Z will not require the Borough to return to P&Z for the landscaping.
- Early conversations with DEEP indicated a concern with work extending into their jurisdiction, so the contractor will be asked to mark the tidal wetland line and install silt fencing at that location, similar to what was done at the last Nibang construction project.
- The contractor will be asked to keep one travel lane open at all times and work will be coordinated with other Fenwick projects in order to accommodate large trucks.
- We are anticipating that the project can go out to bid shortly in order to allow construction this fall.

In response to questions she stated that the line of sight improvement is at the intersection; Nibang will now meet Maple Avenue at a right angle and will come in level with Maple Avenue; the existing road is shown more lightly on the plan but the change can be seen; Freeman Avenue will be regraded to meet the higher elevation of Nibang Avenue, but only the regraded part will be paved as part of the project; the culverts will help to divert flood waters under the road rather than over as is currently the case; water will flow off Freeman Avenue differently so should no longer flow directly onto Nibang; access to the Borough will be maintained during construction but the method will be determined once a contractor is selected; there will be four streetlights; the light locations are shown on the plan and the lights were purchased previously by the Borough and will be the same as the other street lights.

B. Christensen expressed concern that the new height will change the character of the Borough and wondered whether the new road will increase traffic. S. Boody stated that the new design will be safer than what is there now. R. Keeney added that we need to raise it to flood level to make the project worthwhile.

C. Chadwick asked for public comment or any additional Commission comment. There was none.

S. Boody moved to close the public hearing. R. Neely seconded the motion and it was approved unanimously.
Approved 5-0-0
For: Chadwick, Boody, Wright, Neely, Van Itallie.

Against: None.
Abstain: None.

4. **Possible Action on ZSpP20-002, Nibang Avenue.**

Based on the discussion in the hearing**, S. Boody moved that the Commission finds that the application for Site Plan and Coastal Site Plan Review to raise and realign Nibang Avenue at its intersection with Maple Avenue, with the stipulations noted, is consistent with the goals and policies of the CT Coastal Management Act and that it complies with the review standards in the Borough of Fenwick Zoning Regulations, and approves the application based on the plans and documents submitted with the following stipulations:**

1. **The Coastal Jurisdiction Line shall be staked prior to the start of construction. Silt fence shall be placed landward of this line and shall remain in place until vegetation sufficient to control soil erosion is established.**
2. **All materials shall be stored, and equipment staged, landward of the Coastal Jurisdiction Line. No demolition debris shall be stored onsite.**
3. **Work shall be scheduled so as not to prohibit access to the Borough.**
4. **Future landscaping shall be at the discretion of the Borough and shall not require application to the Planning and Zoning Commission.**

A. Wright seconded the motion and it was approved unanimously.
Approved 5-0-0
For: Chadwick, Boody, Wright, Neely, Van Itallie.
Against: None.
Abstain: None.

The record plans for this application are:
Realignment of Nibang Avenue at Intersection with Maple Avenue (Route 154) by Nathan L Jacobson & Associates, Inc., Final Design April 2020:

- *Topographic Survey,* Sheet 2
- *Demolition Plan,* Sheet 3
- *Layout Plan,* Sheet 4
- *Grading, Utility, and Erosion & Sediment Control Plan,* Sheet 5
- *Centerline Profiles,* Sheet 6
- *Erosion & Sediment Control Notes,* Sheet 7
- *Erosion & Sediment Control Details,* Sheet 8
- *Details,* Sheet 9
- *Intersection Sight Distance Plan*

5. **Proposed Regulation Amendments:** definitions and regulations relative to front yard and walls as structures.

M. Ozols stated that she has not had time to reorganize this work and get it to Commission members prior to this meeting so it will be carried on the next agenda.

6. **Approval of Minutes** of previous meeting: Planning & Zoning/Inland Wetlands – January 21, 2020.

A. Wright moved to accept the Borough of Fenwick Planning and Zoning Commission minutes for the January 21, 2020 meeting as presented. S. Boody seconded the motion and it was approved unanimously.
Approved 5-0-0
For: Chadwick, Boody, Wright, Neely, Van Itallie.
Against: None.
Abstain: None.

7. **Staff Report**.

M. Ozols reported that:

- Applications are anticipated for 6 Pettipaug (Robyn and Chip Gengras) to winterize and renovate; 20 Fenwick (Robertson) to do the full restoration which was reduced in the last application; 104 Sequassen (Keller) to add decks and porches; 15 Agawam (Bush) for a pool; and perhaps others.

8. **Other Business**.

C. Chadwick asked if the discussion of the Hammer Law scheduled for the Burgess meeting impacted P&Z in any way. M. Ozols stated that it was essentially to clarify the wording and it should not impact P&Z.

9. **Pending Litigation**: 9 Pettipaug, LLC and Eniotna, LLP v Planning & Zoning Commission for the Borough of Fenwick. Executive Session anticipated.

M. Ozols stated that an Executive Session is not necessary. The case is proceeding in the Land Use Court. Attorney Zizka has filed a motion to dismiss on behalf of the Commission and the opposing attorneys have objected. Both C. Chadwick and M. Ozols have submitted affidavits relative to the issue of publication. This information is all public knowledge. If the Commission wishes to discuss further, they should go into Executive Session.

No Executive Session was called.

10. **Adjournment**.

At 5:54 p.m., it was moved by B. Christensen and seconded by S. Boody to adjourn the meeting. The motion passed unanimously.

Respectfully submitted,
Marilyn Ozols, Acting Secretary