

**PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
NOVEMBER 15, 2011**

Place: Room 206, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:
Conze, Cameron, Spain, Hutchison, Voigt, Cunningham

STAFF ATTENDING: Ginsberg, Keating
RECORDER: Syat
Channel 79

Chairman Conze called the meeting to order at 8:00 P.M. and read the first agenda item:

GENERAL MEETING

Election of Officers (Chairman, Vice-Chairman, Secretary)

Mr. Spain made a motion to nominate Mr. Conze as Chairman. That motion was seconded by Mr. Hutchison. There were no other nominations. Mr. Conze was unanimously selected to serve as Chairman.

Mr. Hutchison made a motion to nominate Mr. Spain as Vice Chairman. That motion was second by Mrs. Cameron. There were no other nominations. Mr. Spain was unanimously selected to serve as Vice Chairman.

Mrs. Cameron made a motion to nominate Mr. Hutchison as Secretary. That motion was second by Mr. Spain. There were no other nominations. Mr. Hutchison was unanimously selected to serve as Secretary.

Mr. Conze then read the next agenda item:

Adoption of Year 2012 meeting schedule

Mrs. Cameron made a motion to approve the 2012 meeting schedule as drafted. That motion was seconded by Mr. Hutchison and unanimously approved.

Mr. Conze read the next agenda item:

Land Filling & Regrading Application #262, Kelly Banner, 11 Archer Lane.

Request for extension of time to comply with Condition F of the Adopted Resolution, which requires inspection and maintenance of existing cultec units on the property.

Mr. Ginsberg explained the email submitted by Kelly Banner of 11 Archer Lane. The Planning and Zoning Commission approval for her project required inspection and cleaning of her existing Cultec units in her front yard. Her project did not proceed in calendar year 2011, so Ms. Banner is requesting an extension of time until April 15, 2012, to inspect and maintain that drainage system.

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Mr. Spain made a motion to grant that extension of time. That motion was seconded by Mr. Hutchison and unanimously approved.

Mr. Conze then read the next agenda item:

Discussion, deliberation and possible decision regarding the following:

Land Filling & Regrading Application #264, Lot Line Adjustment/Amendment of Subdivision #370-B, William Storrs Morehouse, 21 Morehouse Drive. Proposing to fill and regrade in association with a new residence and driveway, install associated stormwater management, adjust a shared lot line with Lot #12 (15 Morehouse Drive) and perform related site development activities. *PUBLIC HEARING CLOSED ON 11/1/2011. DECISION DEADLINE: 1/3/2012.*

Mr. Hutchison made a motion to waive the reading of the draft resolution aloud. That motion was seconded by Mr. Spain and unanimously approved.

Mrs. Cameron had comments on page three of the resolution regarding the conservation easement. Mr. Hutchison also had comments regarding that provision. Minor clarifications were discussed and agreed upon. It was noted that the bonding will be in an amount to be specified by the Environmental Protection Commission to cover the cost of the rain garden and other improvements. Mr. Voigt noted that although he wasn't at the public hearing on this matter, he did watch the DVD of the meeting and is familiar with the application. Mr. Hutchison made a motion to adopt the resolution as modified. That motion was seconded by Mr. Spain and approved by a vote of 5-0 with Mr. Cunningham abstaining since he was not at the public hearing on this matter. The adopted resolution reads as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
November 15, 2011**

Application Numbers: Land Filling & Regrading Application #264
Lot Line Adjustment/Amendment of Subdivision #370-B

Addresses of Subject Property: 21 Morehouse Drive
Assessor's Map #15 Lot #11

Name and Address of Applicant & Property Owner: William Storrs Morehouse
5 Morehouse Drive
Darien, CT 06820

Name and Address of Applicant's Representative: Teodoro Milone, PE
Redniss & Mead, Inc.
22 First Street
Stamford, CT 06905

Activity Being Applied For: Proposing to fill and regrade in association with a new residence and driveway, install associated stormwater management, adjust a shared lot line with Lot #12 (15 Morehouse Drive) on the filed subdivision map and perform related site development activities.

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Property Location: The subject property is on the northeast side of Morehouse Drive, approximately 525 feet north of its intersection with Prospect Avenue.

Zones: R-1/2

Date of Public Hearing: September 27, 2011 continued to November 1, 2011

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices

Dates: September 16 & 23, 2011

Newspaper: Darien News

Date of Action: November 15, 2011

Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Action:
November 25, 2011

Newspaper: Darien News

The Commission has conducted its review and findings on the bases that:

- the proposed activities must comply with all provisions of Sections 400, 850 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed activities are described in detail in the application, the submitted plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The application is to fill and regrade in association with a new residence and driveway, install associated stormwater management, adjust a shared lot line with Lot #12 on the subdivision map (15 Morehouse Drive) and perform related site development activities. The subject properties at 15 Morehouse and 21 Morehouse were established as part of a 1967 subdivision, approved by the Planning and Zoning Commission before the adoption of inland wetlands and watercourses protection regulations. This lot has remained vacant since that time. The proposed residence will be served by public water and sewer.
2. The purpose of the lot line adjustment is to give slightly more land in the northwest corner of the property at 15 Morehouse Drive to the adjacent property to the north (21 Morehouse Drive, the subject of this pending application). A separate application to develop 15 Morehouse Drive has recently been approved by the EPC and Planning and Zoning Commission.

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3. The Zoning Board of Appeals (ZBA) has approved variances for the development of a single-family residence on this property as part of ZBA Calendar #40-2011 on October 12, 2011. That approval is hereby incorporated by reference.
4. Staff of the Environmental Protection Commission (EPC) sent a memo dated October 25, 2011 to the Planning and Zoning Commission, noting that they anticipate approval of the application on November 2, 2011, with a specific provision for a conservation easement to protect an area of undisturbed wetland to the east of the proposed stone wall.
5. A letter dated September 16, 2011 was received for the record from James and Patricia Bogie—neighbors to the east of this property, who own 30 Granaston Lane. The Bogies also spoke at the November 1, 2011 public hearing on this matter. Their concerns focused on the wetlands in the rear of the property; the size and location of the proposed residence; existing and proposed runoff from the site; and the proposed drainage system to be installed as part of the application.
6. The Commission notes the need for the applicant or property owner(s) to file a Notice of Drainage Maintenance Plan in the Darien Land Records. This will alert future property owners of the on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts.
7. The site plan has been reviewed by the Commission and is in general compliance with the intent and purposes of Sections 850 and 1000.
8. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Land Filling & Regrading Application #264, Lot Line Adjustment/Amendment of Subdivision #370-B are hereby approved subject to the foregoing and following stipulations, modifications and understandings:

- A. The filling and regrading and associated work shall be in accordance with the plans submitted to the Commission entitled:
 - Site Development Plan depicting #21 Morehouse Drive prepared for William Storrs Morehouse, by Redniss & Mead, dated 6/15/2011, and last revised 9/22/11, Drawing No. SE-1.
 - Sediment & Erosion Control Plan depicting #21 Morehouse Drive prepared for William Storrs Morehouse, by Redniss & Mead, dated 6/15/2011, and last revised 9/22/11, Drawing No. SE-2.
 - Soils Data & Details depicting #21 Morehouse Drive prepared for William Storrs Morehouse, by Redniss & Mead, dated 6/15/2011, and last revised 9/22/11, Drawing No. SE-3.
 - Environmental Planting Plan 21 Morehouse Drive, Lot 4, Darien CT, by Environmental Land Solutions, LLC, last revised September 22, 2011.
 - The lot line revision shall be in accordance with the plans filed with the Commission entitled:
 - Zoning Location Survey depicting Proposed Residence Lot 4 Map 3440 DLR, prepared for Polly Miles Morehouse, by Redniss & Mead, dated 05/18/2011, and last revised 10/6/2011.

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- B. The map of the Conservation Easement shall be shown on a revised plan and filed in the Darien Land Records prior to the issuance of a Zoning or Building Permit for 21 Morehouse Drive.
- C. During the project, the applicant shall utilize sediment and erosion controls shown on the plans and any additional anti-tracking pads, temporary sediment basins, and/or other sediment and erosion control measures as may be necessary due to site conditions. These sediment and erosion controls shall be installed and maintained to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. All erosion control measures must be maintained until the disturbed areas are stabilized.
- D. Due to the scope of the proposed work, the provision of a Performance Bond is hereby waived.
- E. By January 15, 2012 (within the next 60 days) a Drainage Maintenance Plan shall be submitted to the Planning and Zoning Office for review and action by the Director of Public Works and the Planning and Zoning Director. After approval by the two Directors, it shall be filed in the Planning & Zoning Department. The Drainage Maintenance Plan shall require the property owner and all subsequent property owners of 21 Morehouse Drive to maintain the on-site drainage facilities, and will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts. A Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records within the next 60 days of this approval and prior to the start of any filling or regrading work around the house.
- F. A detailed regrading design and storm water drainage system design have been incorporated into the plans to avoid potential impacts of runoff on the adjacent properties. Prior to the request for the Certificate of Occupancy for the new house, the applicant shall submit verification from the project engineer that all aspects of the site regrading and storm drainage system installation have been completed in compliance with the approved plans.
- G. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- H. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. This includes, but is not limited to, a Street Opening Permit from the Darien Public Works Department.
- I. This permit shall be subject to the provisions of Sections 858 and 1009 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of this action (November 15, 2012). This may be extended as per Sections 858 and 1009.

All provisions and details of the plan shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. A Special Permit form and Notice of Drainage Maintenance Plan shall also be filed in the Darien Land Records within 60 days of this action or this approval shall become null and void. A Conservation Easement mylar and associated Conservation Easement shall also be filed in the Darien Land Records if required by the Environmental Protection Commission.

Mr. Conze then read the next agenda item:

Approval of Minutes

October 25, 2011 General Meeting/Public Hearing

Both Mr. Spain and Mr. Voigt had comments on the October 25, 2011 draft minutes. Mr. Hutchison made a motion to approve the minutes with the modifications suggested by Mr. Spain and Mr. Voigt. Mr. Voigt seconded that motion. The minutes were thus approved by a vote of 4-0 with 2 abstentions (Mrs. Cameron and Mr. Cunningham were not at the October 25, 2011 meeting).

Any Other Business (Requires two-thirds vote of Commission)

Mr. Conze asked Mr. Ginsberg if there was any “Other Business” and he noted that there was none. At 8:10 P.M., Mr. Conze then read the first public hearing agenda item:

PUBLIC HEARING

By Order dated October 6, 2011 in the matter of Christopher Stefanoni, et. al. v. The Darien Planning and Zoning Commission – Docket No.: HHB-CV-08-4019546 S (the “Appeal”), Judge Henry Cohn remanded the Appeal so that the Darien Planning & Zoning Commission can obtain the plaintiffs’ completed phase II environmental report for 77 Leroy Avenue (the “Subject Property”) for its action thereon. The legal notice for the original application read as follows:

Proposed Amendment to the Darien Zoning Map and Zoning Regulations, Affordable Housing Application, Site Plan Application #261, Land Filling & Regrading Application #208, Christopher & Margaret Stefanoni, 77 Leroy Avenue. Proposing to construct 16 units of age-restricted housing (30% of which are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes) in a new building with associated parking and regrading, and to perform related site development activities. The subject property is located on the west side of Leroy Avenue at the southwest corner formed by the intersection of West Avenue and Leroy Avenue, and is shown on Assessor’s Map #39 as Lots #74-1 and #74-2, R-1/5 Zone.

Mrs. Stefanoni noted that three Planning and Zoning Commission members present tonight were on the Planning and Zoning Commission when this application was first submitted in 2008. She noted that the property at the corner of Leroy Avenue and West Avenue was previously owned at one time by Connecticut Light & Power (CL&P). CL&P then sold it to the Darien Library who then sold it to developers. The Stefanonis bought the property from those developers. She submitted information about Phase I and Phase II studies and other information.

Mrs. Stefanoni explained that CL&P performed a Phase I study and she had previously distributed that document to the Commission. She said that they submitted that Phase I report as part of the original public hearing on this matter in 2008. She said that the Phase I cited no recognized environmental hazards or conditions. Mrs. Stefanoni said that to summarize, a Phase I study is “a gateway”. She explained that CL&P also did some soil sampling for PCBs and all were below DEP established criteria.

Mrs. Stefanoni explained that more recently they hired Leggette, Brashears & Graham, Inc. (LBG) to test for PCBs at the Leroy/West site. The Town then hired Art Morris of Hygenix, Inc. to review

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that LBG study. Mrs. Stefanoni said that Mr. Morris noted that they did not test for herbicides and pesticides and Mrs. Stefanoni said that she then wrote to the State of Connecticut DEP. She said that LBG then did 25 soil samples for pesticides and herbicides and there is no indication of a contamination problem.

Mrs. Cameron then asked where the soil samples were done. Mrs. Stefanoni responded that they sampled by the transformers. She explained that there were 25 PCB samples taken; 8 by LBG and 17 by CL&P.

Mr. Conze mentioned that the Planning and Zoning Commission would want independent verification of these results as CL&P has a vested interest in the results. Mrs. Stefanoni reiterated that no samples indicate contamination. Mr. Spain noted that the Phase I report said that there are no reported events that might indicate a spill or other polluting event. Mrs. Stefanoni noted that at this point there are three experts who have reviewed the situation, including CL&P. She mentioned that on the front page of the CL&P Phase II study, they show the sampling locations.

Mr. Hutchison noted that Mrs. Stefanoni could have resubmitted to the Planning and Zoning Commission under CGS8-30g as part of their application process and he asked why they did not do that. Mrs. Stefanoni responded that there were other issues in the Commission's decision as well. She said one aspect in the Commission's decision was the denial based on the fact that there was no Phase II study. She said that Judge Cohn has not ruled on the Phase II issue and said that Phase II has to be part of the record. Mr. Hutchison expressed concern that this lack of information may have been critical in a choice for denial.

Mr. Hutchison noted that the Judge obviously felt that a proper Phase II was appropriate and that this is new information that was not previously submitted to the Commission as part of the application. Mrs. Stefanoni disagreed, noting that this is part of the Judge's effort to eliminate an issue that was part of the Planning and Zoning Commission's reason for denial and this is the only issue to be decided as part of this remand the Judge said. The Planning and Zoning Commission is to determine if the Phase II study is adequate, and if so, that reason for denial will be dropped. If it is not acceptable, then the Commission needs to say why not. The Judge will then rule on it. The way this now comes before the Commission is due to the Judge's remand order.

Mr. Hutchison noted that, as a local realtor, there is need to disclose known former potentially negative uses on the property as part of the selling process. Substations are not automatically included in the list of potentially hazardous or contaminated sites covered under the Transfer Act. Mrs. Stefanoni noted that the Phase II is one piece of the entire puzzle.

Mr. Voigt asked why Mrs. Stefanoni was submitting additional information tonight when the Judge's order states that the Appeal is remanded only so that the Darien Planning & Zoning Commission can "obtain the plaintiffs' completed phase II report for its action thereon." Mrs. Stefanoni responded that what she submitted is definitional. This includes the response to what is a Phase I study and background material, including the fact that the Town's consultant, Hygenix, reviewed the Phase II study as part of the settlement process, plus her back and forth emails with the State of Connecticut DEP.

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Mr. Spain noted that the issues are 1) whether the Commission should admit the LBG report; 2) whether they should admit the new material received tonight; and 3) decide whether they are satisfied with the issue of possible site contamination.

Mrs. Stefanoni noted that the Commission needs to determine whether they have satisfied their concerns about potential contamination at the site. Mrs. Cameron said that the Phase Two refers to a report that does not exist. She said that the excerpt on page six from Attorney Louizos refers to the Hygenix report and she asked whether the Hygenix report will be made part of the record. Mrs. Stefanoni responded that it is her belief that any information gathered from Hygenix was received verbally and not in written form.

Mr. Voigt believes that the information submitted by Mrs. Stefanoni tonight is an attempt to get additional information on the record and in front of the Judge. He does not understand why Mrs. Stefanoni is arguing that a Phase II was not necessary. He believes that the Commission's hands are somewhat tied at this point as tonight's meeting on the remand is solely about the Phase II report, not the additional information that Mrs. Stefanoni has submitted. Mrs. Stefanoni responded that the additional information submitted tonight is highly pertinent to give definition and context.

Mr. Spain then referred to the part of the new document submitted tonight that was part of the settlement discussions between the Commission and Mrs. Stefanoni and is limited to that context. He believes that Mrs. Stefanoni is expanding the record beyond the scope of the Judge's order. Mrs. Stefanoni disagreed, noting the additional information submitted tonight is all appropriate. She said that it was submitted to point out why there was a gap in time and to note part of the context of the report. The letter from DEP, she believes, explains the gap in time.

Mr. Spain noted that there is an important difference between what the Judge now has ordered the parties to do and what might have been done as part of the original hearing process. He said that the Commission could have benefited from a proper and complete Phase II study submitted as part of the original public hearing process and that they would have benefited from keeping the record open to receive such a report as part of that hearing. He believed that tonight the focus is on somewhat of a stand-alone issue.

Mrs. Stefanoni said that her position is that a Phase II is not necessary for Planning and Zoning Commission purposes. She said the Commission could have approved her project with the condition of a satisfactory Phase II study being submitted at a later time. The question tonight is whether what was later submitted is good enough. Mr. Hutchison said it is unclear why there is a time gap between the Planning and Zoning Commission action and the completion of the Phase II study and its submission.

At about 9 P.M., Mr. Conze then asked if there was anyone from the general public who wishes to speak on this matter. Mrs. Dot Kelly of 6 Lake Drive then spoke. She said she is a former Director of Energy and Environment for a major corporation and has experience with environmental clean-up. Mrs. Kelly referred to the ASTM Standard, which notes that as part of a Phase I Study, one has to try to talk to the prior owner, which here was CL&P. She said one key thing is to talk to the people who might know what occurred on the property or to learn that they were unwilling to talk. The "Phase I" submitted at the hearing noted that the Phase I-type Study was only for CL&P use and not to inform others.

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Mrs. Kelly mentioned that the soil samples taken were of shallow depth and may indicate that a full Phase II study was not done. A Phase I study should have covered why and how CL&P removed the first substation yard in the southwest corner. Mr. Conze noted that there was no test hole in the southwest corner of the site. Mrs. Cameron confirmed that LBG only tested in the new substation equipment location. Mrs. Kelly noted that the historical use of the site shows that the 1946 Sanborn map had the equipment in the southwest corner and the 1976 Sanborn map showed the substation equipment in the southeast quadrant. She asked why the old substation was removed and how it was removed and noted that at that time, there was little consideration for clean-up on spills. She said overall this property is in need of a harder look and she did not believe that the LBG report was an acceptable Phase II Study. Mr. Hutchison noted that Mrs. Kelly is a friend of his but they did not speak about this matter. Mrs. Cameron confirmed that she too knows Mrs. Kelly and that Mrs. Kelly did participate in the remediation efforts of Darien Library, which was constructed on a former gas station property.

There being no further comments or questions from Commission members or the general public, Mr. Spain noted that the procedure would now be to close the public hearing on this matter and deliberate on what the Judge told the Commission to do. Mr. Spain made a motion to close the public hearing on this matter. That motion was seconded by Mr. Hutchison and unanimously approved.

At about 9:15 P.M., Brian McKay, the owner of 551 Boston Post Road, noted that he was in the audience tonight to discuss his concerns about Flair Fitness at the same address. Mr. Conze noted that that item was not on the agenda tonight and the Commission would not address that in Other Business this evening. Mr. Conze told Mr. McKay to prepare a request for the Commission to be considered at a subsequent meeting. Mr. McKay noted that he wishes to set aside or modify the Commission's previous decision to allow Flair Fitness to expand the number of clients allowed at any one time, and to sublease to Kempo Martial Arts. Mr. Spain cautioned that the Commission does not wish to decide any landlord-tenant disputes. Mr. Conze told Mr. McKay to work closely with Mr. Ginsberg on preparing such a request, so the Commission can properly consider it with notice to all interested parties at an upcoming meeting.

There being no further matters to discuss, Mrs. Cameron made a motion to adjourn the meeting. That motion was seconded by Mr. Voigt and unanimously approved. The meeting was the adjourned at 9:20 P.M.

Respectfully submitted,

Jeremy B. Ginsberg
Planning & Zoning Director