



MINUTES

September 10, 2015

PRESENT: John Hall (Chair), Liz Craig, Tom Burgess, Nick Lee, Dan Falta

ALSO PRESENT: Mike Conklin, Environmental Analyst; Liz Larkin, Recording Secretary; Phil Pires, Cohen & Wolf; Steven Levy, Esq.; Fred English, Property Owner

ABSENT: Rick Stow (notified of intended absence)

I. CALL TO ORDER

Mr. Hall called the meeting to order at 7:30 p.m.

II. CORRESPONDENCE

A. **WET#2329(I) – DEVITO – 40 Honey Hill Road** – “corrective action” for unauthorized site work

Mr. Conklin reminded the commission that this violation was addressed with a corrective action permit in June with a deadline to complete the mitigation work by August 16th. Mr. DeVito’s attorney, Mr. Levy, had submitted a letter requesting an extension for the mitigation work to be completed by October 15th.

Mr. Levy confirmed that he posted the requested bond and the landscaper had suggested that the plantings be installed after the heat of August is over. Mr. Conklin and Mr. Lee agreed that the plantings would be best planted in the fall.

Mr. Falta **MOVED** to extend the deadline for plantings to October 15, 2015, as requested, **SECONDED** by Ms. Craig and **CARRIED** 5-0-0.

III. EXECUTIVE SESSION

Mr. Hall asked that the public leave the room until called back.

Mr. Lee **MOVED** to enter into Executive Session to discuss the ongoing litigation matter of Inland Wetlands Commission of the Town of Wilton and Town of Wilton v. James DeVito, **SECONDED** by Mr. Burgess and **CARRIED** 5-0-0.

Mr. Lee MOVED to invite Phil Pires, Mike Conklin and Liz Larkin to the executive session, SECONDED by Mr. Burgess and CARRIED 5-0-0.

Mr. Lee MOVED to come out of executive session, SECONDED by Mr. Burgess and CARRIED 5-0-0.

IV. OTHER APPROPRIATE BUSINESS

A. VIOLATIONS

1. English – 189 Westport Road

Mr. Conklin reminded the commission that this property has had a violation which has had no forward movement since January. The homeowner received a Notice of Violation with deadlines for topping trees and installing an above-ground pool. Mr. Conklin noted that this was his second wetlands violation for clearing trees in a regulated area.

Mr. English stated that the trees were topped, but are growing back and stated anyone is invited to take a look at these trees. He indicated he was surprised that this would be considered a Significant level activity and did not want to pay the corrective action fee for a significant which is \$2,460. He stated he is a retired school teacher and this fee would bring the total cost of the project over \$8,000. He stated some of the trees fell from storms and a few were not in the regulated area. He did not agree that the area in question was wetlands.

Mr. Hall noted that the commission does not have sufficient information to make a decision as Mr. English has not submitted anything to date. He also noted that Mr. English should have known this was wetlands based on his previous violation. Mr. Lee added that the burden is always on the property owner to prove their case and staff is always available to assist. Mr. English stated he spoke to Ms. Sesto many times prior to her departure. Mr. Hall then noted speaking is fine, but the commission needs an application. Mr. English stated he did not know what to do. Mr. Conklin confirmed he has had the application for many months.

Mr. Lee confirmed he was asked by Ms. Sesto to take a look at the trees as he is a Deputy Tree Warden for the town. He stated some of the trees were storm damaged indicative of the broken limbs, and some were clearly topped. Ms. Craig confirmed the trees were poplars, not pine and this type of topping can cause significant damage to the tree. Mr. Conklin explained the removal of the tree canopy can change the ecology of the wetland as the area will now receive full sun. Mr. Falta asked for the contractor name which Mr. English refused to provide. Mr. Lee stated that any tree professional would know this work would not be healthy for the wetland, especially a vernal pool. Mr. English countered that the trees he topped were on the north side of the vernal pool so the sunlight on this area would not change. Mr. Lee agreed with this statement.

Mr. Conklin noted there is a stone wall on the site that provides a hard demarcation between the lawn and the wetland and he completed work on the wetland side of the wall. Mr. English stated he cut one tree on the border of the regulated area around 98 ft. from the wetland. Mr. English asked Mr. Lee how many trees he thought he topped. Mr. Lee responded that he did not get an accurate count, but noted not all the trees were topped. Mr. Lee asked if the deposited materials have been removed from the wetland. Mr. English confirmed that he completed this piece.

Mr. Conklin referred to the previous wetland violation file and indicated that work was done without permits on the edge of wetlands which is about 51 ft. to the house. Mr. English stated the vernal pool was marked in 1997, right before he took ownership of the property. Mr. English confirmed he was working with a surveyor, which he said was required by Ms. Sesto, and that surveyor had a fall in the yard which has kept him from moving forward.

Mr. Hall summarized the situation as being nine months in violation with no forward movement. Ecologically, he confirmed he may as well have cut the trees to stumps as this would be the same violation. He also stated that based on the previous violation and knowledge of the presence of wetlands, he knew that he needed a permit and chose to complete the work without one and now he is asking for a reduced application fee.

Ms. Craig stated that Mr. English should appreciate his vernal pool. She said that it is disturbing that this happened after the first violation. She wants the area to be remediated and wants to make sure this does not happen again. She added that he had enough money to install the pool and pay an arborist to remove the tree tops. Mr. Lee noted that the pruning completed was done very poorly and he would not consider this clear-cutting. Ms. Craig stated it is preliminarily killing a tree to top it in this manner.

Mr. Falta asked how serious the violation is at this time as the property owner stated the limbs are growing back. Mr. English stated that any of the commissioners are welcome to come on the property to see this new growth. Ms. Craig asked for the current height of the stumps. Mr. Conklin stated they probably look like telephone poles and Mr. Lee confirmed they are approximately 30' to 40' tall. Ms. Craig stated that it is customary to prune no more than 1/3 of the tree for survival. The commissioners agreed that the owner should have known this work would require a permit based on his previous violation. Mr. Falta added that he crossed the wetland wall but he does not think it necessary to charge excessive fees but the town needs to be paid.

Mr. Hall asked that Mr. English take photos and obtain re-growth information. Mr. English stated that the previous violation was far away, but the commissioners showed him that this current violation is closer to the resource and told him this would not help his case. Ms. Craig stated that if this is the second violation, the system failed.

Mr. Hall told Mr. English to get the photos, hire someone to help with the application and submit it with all required documents. Once the commission has the pictures and the application at a Significant level, the commission will re-visit the fee discussion based on actual information that the commission does not have yet. He added that if the pictures are not completed within 2 weeks time, the application will remain at the \$2,460 fee without the possibility of a reduction. The Significant application is due for the October 8th meeting of the commission.

V. PUBLIC HEARINGS

A. WET#2341(S) – LEVI – 135 Olmstead Hill Road – remove existing septic system and install new system 86 ft. from wetlands and construct pool and spa partially within an upland review area

Mr. Conklin noted that this applicant has requested an extension for the public hearing and read

the documents into the record. Ms. Craig, Mr. Burgess and Mr. Lee indicated they visited the site.

Mr. Lee MOVED to allow the Levi's to continue their public hearing and confirmed the commission would grant an additional 60 days to act on the application, SECONDED by Mr. Burgess and CARRIED 5-0-0.

VI. APPLICATIONS READY TO BE ACCEPTED

A. WET#2343(S) – HOLMDIN – 17 Greenbriar Lane – “emergency” septic replacement

B. WET#2344(S) – EVERSOURCE – 658 Danbury Road – remediation of environmentally impacted soils

Mr. Lee MOVED to ACCEPT these new applications, SECONDED by Mr. Falta and CARRIED 5-0-0.

VII. CORRESPONDENCE

A. Review of Activity Fees per Casey Healy's Letter

Mr. Conklin confirmed Casey Healy, from Gregory & Adams, had sent a letter asking if the fees that were being imposed for the Lindquist application were against state statutes as the town charges for disturbed land project-wide, and not just the regulated areas. Mr. Conklin stated he spoke to town counsel and they stated the fees were approved and adopted by the Board of Selectmen prior to being in place on September 2013.

The commissioners reviewed the table that was created with surrounding towns fees for wetlands applications and Wilton is not the most expensive. Mr. Conklin reiterated that the “project wide” scenario is due to the fact that the commission does not only look at the activity in the wetland, but the entire site. He used siltation fence as an example of this as the soil and erosion measures he is required to inspect which can be outside of the regulated area.

Mr. Hall asked the commission if they feel the fee structure reasonably allocates the time and expertise of staff. Mr. Falta noted that the fee has been in place for two years and has been published so he does not believe this applicant should get a reduced fee. Mr. Hall agreed that the fee is not unreasonable but if Mr. Healy wants to come before the board and explain why this project should have a lesser fee, he can do so.

Mr. Burgess MOVED to keep the fee schedule as is and retain the fee for the Lindquist application, SECONDED by Ms. Craig and CARRIED 4-0-1 with Nick Lee abstaining as he did not wish to vote on this matter.

B. APPROVAL OF MINUTES – July 23, 2015

Mr. Lee MOVED to APPROVE the minutes as drafted, SECONDED by Mr. Falta, and CARRIED 5-0-0.

VIII. ADJOURN

Mr. Lee MOVED to ADJOURN at 9:18 pm, SECONDED by Mr. Falta and CARRIED 5-0-0.

Respectfully Submitted,
Liz Larkin
Recording Secretary, Environmental Affairs