

INLAND WETLANDS
COMMISSION
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TOWN HALL
238 Danbury Road
Wilton, Connecticut 06897

WILTON INLAND WETLANDS COMMISSION

DATE: June 25, 2009
PLACE: Town Hall Meeting Room A
TIME: 7:30 P.M.

Present: Richard Ziegler; Phil Verdi; Sydney Gordon; John Hall; Joe Fiteni; Jill Alibrandi;

Also Present: Patricia Sesto, Director of Environmental Affairs; Robert Fuller, Esq.; Kate Throckmorton, Environmental Land Solutions; Murray Martin; Mitchell Kosh; Chad Nearing; Dick Lewis, EnviroShield

Not Present: Frank Wong

A. CALL TO ORDER

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

B. PUBLIC HEARINGS

- 1. WET#1898(S) – LUNG** – construction of a new dwelling, with associated development within an upland review area at 20 Riding Club Road – cont.

John Hall recused himself.

Ms. Sesto read the list of documents into the record.

Robert Fuller, Esq., agent, requested that the application be continued to the next meeting to address the comments and reports that have been received. He submitted a letter granting an extension of time, as the 35 days will run out.

Chairman Zeigler asked if there were any questions from the public.

Mr. Murray Martin, 24 Riding Club, said he will wait until the next meeting to provide a more detailed response after he has had time to review the letter from SNEW.

Paul Verdi MOTIONED to extend the public hearing, SECONDED by Syd Gordon, and carried 5-0-0.

Chairman Zeigler continued the public hearing for WET#1898(S) to July 9, 2009.

John Hall was reseated.

2. WET#1905(S) – KOSH– “after the fact” installation of a walkway, patio and dock and request to construct an addition, shed and associated site development at 14 Hemmelskamp Road

Mitchell Kosh, applicant, said he, his wife and son David, who are present, have great respect for the work the Commission does and will abide by its decisions, but thinks it is important for concerned citizens to comment on the process in order to provide valuable feedback to the Commission.

He said they were stunned with the way the process transpired at the last meeting. Their architect, Chad Nehring, together with their engineer, Jay Keillor, and Kate Throckmorton worked diligently with staff for over a month and at great expense to put together a plan that they thought was in keeping with the direction and feedback they were getting from the Town.

One of the points that was consistently made was the issue of precedent setting and overarching decisions and what it would mean to retrace those decisions and possibly come up with another conclusion. He is an executive officer of a public company listed on the New York Stock Exchange and is faced with having to deal with changes in circumstances all over the world on a daily basis, and the challenge for them is how to maintain guiding principles in a way that does not create new precedence or send the wrong messages.

The engineer made a presentation on new technologies that had been developed over the past six years and new facts were presented, so he was stunned with the apparent intransigence of the Commission to even consider that there could be new facts worthy of consideration, if not an ultimate change of course, and they were disappointed with what appeared to be a lack of willingness on the part of the Commission to even look at them.

He said that during the course of the discussion, Mr. Hall made a comment in response to something their architect said to the effect that it is easy to throw the evil builder under the bus. The builder, John Heggland, is a wonderful man and has built them a wonderful home. He sincerely believed that builders and owners had different latitude in the interpretation of Inland Wetlands regulations, which obviously was a misinterpretation, but he never meant to

mislead anybody. He was offended by Mr. Hall's comment and he was embarrassed for his architect and for his family, because they don't throw people under buses. There are no evil builders, there are just well intentioned people trying to do the right thing.

The third point he would like to make is one of the Commissioners made a comment that their architect suggested that there wasn't a playbook to follow, and the Commissioner said there is a playbook and they should have read the regulations knowing that they had an Inlands Wetlands obligation. Mr. Kosh said while people try to exercise common sense and good judgment, they sometimes make mistakes, and he would suggest that when people are checking out properties that have wetlands associated with them that it might be a good idea to tell them to come to the office and familiarize themselves with the various restrictions.

Mr. Kosh said they are going to withdraw their application for the addition, as it appears it is in their best interest and the best interest of the Town to do so. They are not looking to have a contentious relationship with the Commission or the Town. He said he has been called many things, but he has never been called naive before, and it was a little surprising to hear that kind of comment. He was also surprised at the vitriolic comments made by one of their neighbors who they had never met before and never talked to before. Certainly the last thing they want is to offend anyone, and he would be happy to meet or talk with anyone to explain their decision making in more detail.

Mr. Kosh said they are not withdrawing their application for the shed as they need the storage. There may be a better location for it, and they would be willing to work with the Town to see if they could relocate it to a more appropriate spot. They would like to have their architect speak to the proposed plans for the shed. Ms. Sesto noted that they will ultimately need a revised site plan before the hearing is closed.

Mr. Chad Nearing, architect, said he would default to what Kate Throckmorton stated in her report regarding the shed location and the alternatives to the shed location. She stated that "due to deed restrictions of development and the envelope in upland review areas, site expansion to any other side of the house was not considered feasible. All other areas for development would involve further infringement into upland review areas close to wetlands and watercourses and would require additional tree removal." In view of the report from their landscape architect, it is difficult to pick a better spot for the shed, although they would be happy to meet with Ms. Sesto and go through alternate locations. The site is incredibly constrained on all sides. They are not planning to remove any trees, only some minor bushes. If they were to move the shed closer to the house, it would be in the yard area and closer to both the pond and the front watershed area. If it is located on the other side of the property near the driveway, they are faced with the pond in the back and also the zoning setbacks on that side of the house, as well as the driveway, so they have some serious constraints.

Ms. Sesto said she suspects Kate's comments were made in consideration of the proposed

addition, and were made looking at the total proposed site plan.

Kate Throckmorton said she doesn't have her report in front of her, but, in general, it did apply to the addition. The shed is on the high point and is not affecting any trees, there are no footings or foundation associated with the shed, so it is just sitting on top of the ridge.

Chairman Zeigler asked if there were any questions from the public. There being none, the hearing was continued to July 9, 2009.

3. WET#1910(S) – THROCKMORTON/PARISOT – construction of a new dwelling and associated development within an upland review area at 294 Nod Hill Road

Ms. Sesto read the list of documents into the record.

Site Visit Attendees: Joe Fiteni, John Hall, Richard Ziegler, Jill Alibrandi, Phil Verdi and Syd Gordon.

Caitlin Murphy, intern at Environmental Land Solutions, explained that the proposal is to renew a permit that has already been issued but has expired. The current application provides for a 2,000 square foot house as opposed to 1,800 square feet previously approved, a detached garage, and a cistern that will drain to a rain garden. There are wetlands that are fed by drainage from Branch Brook Road, and then drain into the intermittent watercourse. There is a sump that is proposed to control the erosion.

In response to a question by Mr. Zeigler, Ms. Throckmorton said the footprint is increased by approximately 200 square feet for the house and 400 square feet for the detached garage. There is a conservation easement to the Wilton Land Trust which runs 50' along that entire frontage and is to remain wooded. Referring to the letter from Casey Cordes, SNEW, she said there will be no substantial change in the drainage. There are going to be cuts and fills for the house setting into the slope, and a walk-out basement.

Ms. Throckmorton explained that a number of trees were removed over ten years ago, and there was a planting schedule that was incorporated into the original application. That planting was done in the fall of 2007 when the septic system was put in.

Chairman Zeigler asked if there were any questions from the public. There being none, the hearing was closed.

C. APPLICATIONS READY TO BE REVIEWED

1. WET#1909(I) – SHAVEL, ESTATE OF – remove underground oil tank and replace with above ground oil tank in a regulated area at 134 Ridgefield Road.

Site Visit Attendees: Joe Fiteni, John Hall, Richard Ziegler, Jill Alibrandi, Phil Verdi and Syd

Gordon.

Dick Lewis, representing Nancy Gable, executrix of the estate of Roberta J. Shavel, said there are two oil tanks that need to be dealt with and he proposes that they be removed as opposed to being abandoned in place. If you start the abandonment process and find that there was a leak, you have wasted all that time and money and will have to dig them up anyway to abate the dirt. There is nothing oozing into the river now, so he thinks they are in good shape. They will take soil samples whether they find contaminated soil or not, but if they pull the tanks and they are clean, they won't wait for the lab report to come back to do the backfill.

A silt fence will be installed, and a couple of oil absorbent booms will be laid in the river on the off chance that there is leakage. The concrete patio that sits above the tanks will be taken out in pieces, put into a wheel barrow, and wheeled out. He will take responsibility to do whatever needs to be done to secure the area. If a leak is discovered, they will do the excavation to the extent possible before doing the backfill process, in which case the hole might be open overnight, but he wouldn't expect it to be open for more than one night.

Ms. Sesto said the DEP has a fairly prompt turnaround time. If a problem is found and they are called, the DEP will come out immediately. DEP is only involved if a leak is found, but once they are called, DEP supercedes Inland Wetlands at that point.

Mr. Lewis said the property is on the market now and they hope to find a buyer soon, so they would like to go with a smaller temporary tank for a period of time. If the house doesn't sell, they will put in the permanent installation as listed in the permit, but they don't want to go through that expense only to find that the new owners decide to completely redo the house.

Ms. Sesto reiterated that a silt fence or other appropriate sediment barrier is to be placed around the work areas and that seed and stabilization will occur over the work areas.

Chairman Zeigler asked if there were any questions from the public.

Phil Verdi MOTIONED to approve WET#1909 with the General and normal Special Conditions, including the conditions Ms. Sesto just referred to, SECONDED by Mr. Hall, and carried 6-0-0.

2. WET#1911(I) – FORTIN – “emergency” septic repair in a regulated area at 14 St. John’s Road.

Ms. Sesto noted that this is formalizing an emergency temporary permit that was already issued.

Phil Verdi MOTIONED to approve WET#1911(I) with the General and any normal Special Conditions, SECONDED by Syd Gordon, and carried 6-0-0.

D. APPLICATIONS READY TO BE ACCEPTED –

1. WET#1913(I) – BOEPPLE – “emergency” septic replacement 50 feet from a

wetland at 34 Ambler Lane.

2. 1915

3. 1916

Phil Verdi MOTIONED for their acceptance, SECONDED by Syd Gordon, and carried 6-0-0.

E. APPROVED MINOR ACTIVITIES –

F. CORRESPONDENCE –

Ms. Sesto said Mr. Lupinski of 10 Heathstone Lane is present and wanted to discuss the citation that was issued to his contractor, Michael Lato. The Commission had directed her to issue a citation since they have had issues with Mr. Lato in the past.

Tom Lupinski said before he goes any further, he wanted to make sure that the Commission will grant him immunity from any fines. Ms. Sesto said her understanding is he does not have any previous violations, and she doesn't think a notice of violation was actually issued, so he is not eligible for a fine.

Mr. Lupinski said Mr. Lato did not determine where the chips were to be placed on his property. When his foreman asked where he should put the chips, Mr. Lupinski told him to put them further down and closer to the wetlands.

Mr. Lato performed all the work they had contracted him to do and then some, and although he suggested a higher price, his wife negotiated a very small increase over the original estimate. This no doubt contributed to Mr. Lato's reluctance to respond to his two calls which might have averted the violation. He said it is also relevant to his decision not to press Mr. Lato for the cleanup and removal, for which he has incurred additional costs and has rectified the situation to the Commission's satisfaction. He felt the cost of having Mr. Lato come to the property would be higher than having his landscaper remove the chips, so he did not call him after placing the original two calls. Therefore, the citation very likely was a shock to him.

Mr. Lupinski said he takes responsibility for what occurred, and he thinks it would be penalizing a small business man whose margin was already small. Mr. Lato gave them a very competitive bid and did his best to do a good job, and he doesn't feel Mr. Lato should be punished for his actions.

Ms. Sesto said she spoke with Mr. Lato shortly after he received the citation. He has been a violator in the past and has appealed his citations, so he is aware of the process to appeal this one. She thinks Mr. Lupinski's information would be of interest to the Hearing Officer, although Mr. Lato has not asked for that hearing. His fine is a \$1,000 and this actually marks his 4th violation. His citation was issued on May 27th, so it is up on Monday. She said if the

Commission is in agreement, she will attend the hearing to say Mr. Lupisnki has explained the situation, the violation is very small, and the Commission is not interested in pursuing it.

Mr. Verdi said he thinks someone should call Mr. Lato to remind him that he is at the end of his time period, there is a hearing process and it sounds like there is a case to be made in his favor, so it is likely the Hearing Officer will sustain his appeal.

Chairman Zeigler said he doesn't think there is any problem with giving him a call to remind him he has until Monday and it is in his best interest to show up.

G. OTHER APPROPRIATE BUSINESS –

1. Violations: NONE

H. APPROVAL OF MINUTES – May 28, 2009, June 11, 2009

Syd Gordon MOTIONED to approve the minutes of June 11, 2009, SECONDED by Richard Ziegler, and carried 6-0-0.

Wet#1910(S) – THROCKMORTON/PARISOT

Paul Verdi MOTIONED to approve WET#1910(S) with the General and any Special Conditions, SECONDED by Syd Gordon, and carried 6-0-0.

I. ADJOURN

Chairman Zeigler MOTIONED to adjourn at 8:40 pm, SECONDED by John Hall, and carried 6-0-0.

Respectfully submitted,

Karen Pacchiana
Recording Secretary