

8-12-09

MINUTES: THE INLAND WETLANDS COMMISSION, Town of Hamden, held a Regular Meeting on Wednesday, August 5, 2009 at 7:00 p.m. in Thornton Wilder Hall, Miller Memorial Library Complex, 2901 Dixwell Avenue, Hamden, CT and the following was reviewed:

Commissioners in attendance:

Nancy Rosenbaum, Chairperson
Mike Montgomery
Andrew Brand
Joan Lakin
Bob Anastasio
Bill Tito
Mike Stone
Annalisa Zinn, sitting for vacancy, arrived at 7:09 p.m.

Staff in attendance:

Dan Kops, Assistant Town Planner
Tom Vocelli, IW Enforcement Officer
Stacy Shellard, Commission Clerk
Tim Lee, Assistant Town Attorney

Ms. Rosenbaum called the meeting to order at 7:05 p.m. and reviewed the meeting procedures. Mr. Montgomery called the roll and there was a quorum.

I. Applications

A. New applications & amendments – site inspection TBA

Request to amend previously-approved S & E remediation plan - 14 & 24 Raccio Park Road

Ms. Rosenbaum advised the commissioners that this matter would be tabled until the September 2, 2009 meeting, and a site visit would be scheduled prior to the meeting.

Ms. Lakin made a motion that this item be tabled until the September 2, 2009 meeting pending a site inspection to be conducted during the month of August. Mr. Anastasio seconded the motion. The motion passed unanimously.

B. Pending applications

09-1150 345 West Woods Road – Replacement of a storm pipe - Town of Hamden, Applicant

Ms. Rosenbaum advised the commissioners that a request to table this application until the September 2, 2009 meeting was received from the applicant.

Mr. Anastasio made a motion that this item be tabled until the September 2, 2009 meeting at the request of the applicant. Ms. Lakin seconded the motion. The motion passed unanimously.

09-1148 50 Farmington Drive – Construction of a single-family home – Mike Cavallaro, Applicant
Michael Rosenthal, Intervener

Mr. Tim Lee, Assistant Town Attorney, addressed the Commission and explained that Mr. Rosenthal filed a Notice of Intervention under CT General Statute 22a-19 which allows the intervener to participate in the hearing or meeting. He explained that an Intervener is allowed to participate with full party status. Mr. Lee explained that this would not be a public hearing and explained the procedures that should be used.

Mr. Dan Kroeber, Professional Engineer from Milone and MacBroom, addressed the Commission. He stated that Ms. Rosenbaum and Mr. Montgomery went to the site on July 27th and that the rain gardens, house and driveway have been staked out. The revised plans dated 7/30/09 incorporated the comments that were made at the field visit, as well as the comments from the 7/1/09 IWC meeting. Mr. Kroeber referred to his letter dated 7/31/09. He stated that the house was relocated 22 feet away from where the house was originally proposed. It will be approximately 20 feet away from the ridgeline. The conservation restriction boundary was relocated to the ridgeline, between the house and the wetlands, and is a straight line that follows the contour of the ridgeline. The proposed plantings will be outside the conservation restriction area. A driveway turnaround has been added to the plans. The cross section A-A was modified to reduce the area of disturbance. He reviewed the plans for the driveway and he explained where it would be reduced to 10 feet. The split rail fence and some wetland plantings have been removed from the plans as recommended by the commission. The disturbance area that goes through the wetland area is being reduced from 23½ feet to 18 feet. The rain garden at the edge of the turnaround was moved approximately 25 feet to the west. Volume in the rain garden was retained by widening the rain garden to the north. The rain garden detail is four inches of topsoil or on-site loamy material that can be used for the herbaceous growth. The hemlocks and white pines were removed from the plans. The driveway grading alternate has a 2:1 graded slope and will use on-site boulders to lessen the impact. A note was added to the plans, stating that the landscape contractor must contact Town staff for Commission or member approval if the planting schedule is to be changed.

Mr. Montgomery stated that he had visited the site after it was staked out. He said that the house would've come closer to the wetlands than was previously shown on the plans. During the site visit, applicant Mike Cavallaro had stated how far back the basin went in at the southern end of the property, and stated that the agreement was to pull the house back. Mr. Kroeber clarified that the house is being moved back 22 feet and it must be 50 feet down gradient because of the septic system. Mr. Montgomery said that the house is now 40 feet from the wetlands which is important. The easement line is now 25 feet from the wetlands. There is one area where the grading is being done up slope between the driveway and wetlands and the plan shows cross hatching there. Mr. Montgomery asked Mr. Kroeber to review the detail of the area. Mr. Kroeber reviewed the plans of the driveway with the commissioners and discussed where changes can be made between wetland flags 19 to 21 to limit the area of disturbance. Mr. Montgomery said the owner may want to plant evergreens in the area of the rock wall.

Mr. Brand asked if the utilities will run under the driveway. Mr. Kroeber stated that the electric would be 18 to 24 inches under the surface and the water service would be approximately 3 feet deep. Mr. Anastasio asked if electrical transformers are needed every two hundred feet. Mr. Kroeber advised that they need to speak with the electric company to determine what would be required.

Mr. Montgomery asked what net removal or addition of fill would be necessary. Mr. Kroeber stated that the majority of the area would be at grade. The driveway will have some removal of material where it is steep, and the driveway will be at 10 percent. The back porch of the house will have some material removed. He does not have a definite answer to the amount being removed. Mr. Kroeber feels it would be less than 100 cubic yards of fill that will be removed from the premises. Mr. Montgomery discussed with Mr. Kroeber the location to be used for a stockpile. Mr. Kroeber advised the Commission that the septic system area may not be a good location to place the stockpile. He would not want a lot of truck traffic near the septic system area. He explained that there may be a need for a temporary berm near the proposed stockpile area.

Mr. Seth Rosenthal, speaking on behalf of Michael Rosenthal who is an intervener addressed the Commission and submitted his statement to the clerk:

While the property at 50 Farmington Drive of course contains significant wetlands and is home to vast varieties of plants and animals, we can probably almost all agree that it's the stream that runs through the property, and then down onto my father's property and eventually into the local water supply, that's the main reason this is an unusually complicated situation for the Commission. In fact, Mr. Montgomery even commented in the notes from the June 15 site inspection that "the stream is one of the most pristine 1st-order watercourses in Hamden." At least for now, it's a "living stream"...as we have noted to the Commission before, as the stream passes through our yard, it hosts numerous plant, insect, and animal species. We believe that we, and you, need to do everything possible to make sure it stays "alive" in that way--that it doesn't end up going from green to grey, as an environmentalist might say. And keeping it alive is a long-term project, not just a short-term consideration that ends after construction on the site.

The reason the long-term prognosis for the stream is a matter to consider thoroughly tonight in making your determination is that Hamden's Inland Wetlands and Watercourses regulations, and the Connecticut State Statutes that they're based on both state, flat out, that among the tasks of the Wetlands Commission is to "protect [the] environment and ecology in order to *forever* guarantee the people of the state, the safety of [their] natural resources for their benefit and enjoyment and for the benefit and enjoyment of *generations yet unborn*." That language about forever guaranteeing for generations unborn isn't fluffy hyperbole from me, it's the mission that the town and the state have entrusted to you.

Because of that, we ask that the Commission reject the application for 50 Farmington Drive. Because of the stream, and the proximity of the proposed long driveway and house to both the stream itself and the wetlands that are tributaries to the stream, we believe that this is the wrong location for this project, or for any similar project. No matter how much care is taken during construction and in the year or so that follows, as outlined on the application, there's simply no way to ensure the sustainability of the stream for the next 5, 10, 20, 50 years and so on with this project on the site. And if this is built, it's there to stay. Even if this project looks good on short-term indicators, the wetlands regulations entreat you to reject any project that has a poor long-term outlook. We know that it may be possible to make future appeals after-the-fact if there are problems, but it is difficult if not impossible to un-ring a bell when it comes to environmental damage. We believe that a vote to reject this application is a proper exercise of your authority, and is within both the spirit and the letter of the wetlands regulations you have been charged with upholding.

We are particularly concerned about two threats to the long-term sustainability of the stream. First, lack of specifics, strategies, contingency plans, and lack of written accountability to the town for the long-term care and maintenance of the rain gardens, both by the applicant, and by any and all future owners and occupants of the property. And second, there's a similar lack of specifics, strategies, and written accountability to the town for treating the driveway and walkways around the house for snow and ice. I have handed out a list of specific questions addressing these concerns, and would like to go over them with the applicant. To the best of my ability, I looked for the answers in the current set of plans, and I apologize if some of these questions are already answered in them. But to the extent that they are not, we believe that it is imperative for any Commission members who might be thinking of voting in favor of the application, to seek answers and solutions to them, with the long-term scope of the project, and the long-term need to keep the stream "green," in mind:

RAIN GARDENS:

- 1) The rain garden planting notes appear to contain instructions that extend one "year" or "season." What happens after that? Are long-term contingency plans, enforceable by the town and transferable to future owners and occupants, going to be included in the plans?
- 2) What is the expected life-span of the rain gardens?
- 3) Direct impact to the stream:
 - a) What chemicals (herbicides, pesticides, fertilizers, and/or mulches) will and will not be used to start and to maintain the rain gardens? How often will they be applied?
 - b) What is the potential negative impact to the stream of their application?
 - c) Are there long-term contingency plans in the application, enforceable by the town, to ensure that chemicals detrimental to the stream are not used to start or maintain the rain gardens, either by the applicant, or by future owners or occupants? If not, why not?
 - d) What steps have been taken to ensure that the rain gardens will continue to function optimally, without chemical enhancements harmful to the stream, even in extreme weather (hot, cold, dry, and wet).
- 4) According to the UConn sustainability website to which Wetlands Commission members referred us, rain gardens are typically used and sized to "collect runoff from a roof, driveway, or yard." A picture of a typically sized rain garden is attached. The proposed rain garden is clearly larger than a typical rain garden by many magnitudes:
 - a) Was an expert in rain garden technology and design consulted to calculate the functionality and size of the proposed rain gardens?
 - b) Are there any current examples of functioning rain gardens of the size proposed for the site?
 - c) How were calculations about the size of the rain garden made?
 - d) How was the total environmental impact of the proposed system calculated? What is the total environmental impact?
- 5) Who will determine whether the rain gardens are working effectively? Who will determine whether the plant life they're composed of is thriving? What criteria will that person or group use to make those determinations? What will the professional credentials be? How often will this be done? Will the responsibility to do this on a regular schedule be transferred to any future owners or occupants?
- 6) Is there a long-term maintenance schedule and designation of maintenance responsibilities, which extend to the applicant, transferable to future owners and occupants and enforceable by the town, included in the plan? If not, why not?

- a) Who will maintain the rain gardens?
 - b) How will weeding, removal of dead plant material, and/or replacement of mulch be handled?
 - c) Will there be a regular long-term maintenance schedule for the rain gardens that applies to the applicant and all future owners and occupants and is enforceable by the town?
- 7) What pollutants, specifically, are the rain gardens designed to remove, hold, or treat? Are there any pollutants expected on the site that are not mitigated by the design of the rain gardens?

DRIVEWAY, WALKWAYS, ETC.

Given the proximity of portions of the driveway to the stream, and the possibility that naturally occurring snow and ice (a) could be plowed directly into the stream (as was discussed during the June 15, 2009 site inspection) and/or (b) could melt and run off into the stream, are there any restrictions on the use of salt and chemical ice melt for treating the driveway and/or walkways? If not, why not? Can restrictions on agents used to melt snow and ice be put into place, in writing, and in a manner that makes them automatically transferable to future owners and occupants?

CONSERVATION AREA

Conservation area restrictions will be “included in the deed for the property.” Does this mean that they are automatically transferred to any and all future owners in a manner that makes them fully enforceable by the town?

Mr. Kroeber stated that great care has been taken to design a plan that takes environmental concerns into consideration. The plan has been sent to the RWA and they made minor comments regarding protection of the water supply. The long term care of the rain gardens would be the responsibility of the property owner. He explained the function of the rain garden and reviewed the proposed plan. The driveway will be graded, and is pitched away from the stream. A note was added to the plan explaining that the pitch is 4 inches from the left side of the driveway and goes to the right side towards a grass swale.

Mr. Rosenthal asked if pesticides are used for the rain gardens will they leach out. Mr. Kroeber advised that pesticides are not proposed in the plans. The rain gardens will use materials that already exist on site and will function without pesticides. The rain gardens collect water and they will be using wetland type species. The rain garden is designed for the first 1 inch of rain during a rain event. The Connecticut studies for rain gardens are to be used as a guideline, and it is his job as a professional engineer to use his professional judgment.

Mr. Kroeber was asked if his client would be opposed to a limit being placed on the use of pesticides on the property. Mr. Kroeber advised he would have no objections. Mr. Kroeber asked Mr. Rosenthal if his father used pesticides on his property. Mr. Rosenthal stated that there is an agreement with the lawn service to keep any pesticides used away from the stream. Mr. Kroeber stated that the use of chemicals in the winter would be for driveway safety purposes.

Mr. Montgomery asked Mr. Lee if the deed restriction should be filed before the zoning permit is issued. Mr. Lee stated that it should be filed before the zoning permit is issued.

Mr. Montgomery made a motion to approve Application 08-1148 based on the July 30, 2009 revised plans with conditions. He stated that the applicant has basically selected and revised the plan so that it minimizes the impacts on the wetlands. The applicant has shown the best & most suitable location for the placement of the house on the property. What is shown on the plans minimizes impact and provides some mitigation, especially in the proposed wall along the southern end of the stream. This will prevent the stream from over topping and causing erosion onto Farmington Drive and along the stream. The deed restriction will offer a permanent protection to the wetlands from future development. There was discussion among the members and the following conditions were then incorporated into the motion:

- 1) *Deed restriction as proposed on the revised plan-page 2, will be filed on the land records prior to the granting of the zoning permit and must be approved by the Town Attorney's office.*
- 2) *The limit of disturbance will be no closer than 25 feet from wetland flags 19 to 21.*
- 3) *No fertilizer or pesticides will be used in the rain gardens. The rain gardens will be planted with native perennials. The applicant will provide a listing of species to be planted for approval by the Commission or its agent. The selected species should not require mowing. The non-native species on the Connecticut Invasive Plant List will be removed from the rain garden. To the extent possible, species already on the site shall be used in the rain gardens.*
- 4) *No fertilizers or pesticides will be used on the perimeter plantings adjacent to the conservation area.*

Mr. Anastasio seconded the motion to approve with conditions as amended. The motion passed unanimously.

II. Notices-of-Violation, Cease & Desist & Restore Orders, Notices-to-Appear & Other Business

- a. **C.&D.** 186 and 196 Denslow Hill Rd - Dumping & deposition of fill in or near wetlands

Ms. Rosenbaum advised the Commission that a request to table this item until the September 2, 2009 meeting was received from owners' representative John Paul Garcia, Professional Engineer & Land Surveyor

Mr. Brand made the motion to table this item until the September 2, 2009 meeting. Mr. Tito seconded the motion. The motion passed unanimously.

Mr. Anastasio made a motion to enter into Executive Session at 8:34 p.m. Ms. Lakin seconded the motion. The motion passed unanimously. Mr. Montgomery made a motion to end the Executive Session. Ms. Lakin seconded the motion. The motion passed unanimously. The Commission emerged from Executive Session at 8:49 p.m.

- b. **N.O.V.** 64 Rocky Top – clearing of trees & removal of vegetation

No action taken.

III. Review Site Inspection Schedule

Mr. Vocelli will schedule the Commission site inspection for 14 & 24 Raccio Park Road

IV. Review July 1, 2009 meeting minutes

Ms. Lakin stated that she was not at the July 1, 2009 meeting and did not vote on application 09-1149, and the last sentence on page 2 should read: The motion passed 6-0-1. Ms. Rosenbaum stated that on page 2, under application 09-1149, the second paragraph, 9th line, 1st word “tub” should be “tube”. Also, on page 7, Application 09-1146, 4th paragraph, the end of the 1st sentence should read that Ms. Rosenbaum “is not certain what the significance of the findings was.”

Mr. Anastasio made a motion to accept the minutes as amended. Mr. Brand seconded the motion. Mr. Anastasio, Mr. Brand, Mr. Montgomery, Mr. Tito, Mr. Stone, voted in favor of the motion. Ms. Zinn and Ms. Lakin abstained. The motion passed 5-0-2.

V. Adjournment

A motion to adjourn was made by Ms. Lakin and seconded by Mr. Brand. It passed with no dissenting votes. The meeting ended at 8:57 p.m

Submitted by: _____
Stacy Shellard - Clerk of the Commissions