

a. **11-1171** 170 Birchwood Drive –driveway culvert-crossing

Chairwoman Rosenbaum called for a motion regarding the pending application, 11-1171 170 Birchwood Drive – driveway culvert-crossing. Commissioner Gnida motioned to deny the application, and read ~~the following~~ his motion. The motion was seconded by Commissioner Lakin.

Commissioner Montgomery read two additional clauses to be added to the motion. These were discussed and accepted by Commissioners Gnida and Lakin. Commissioner Annes asked that two additional clauses be added. After discussion, these were also accepted by Commissioners Gnida and Lakin.

Mr. Annes said the Applicant has not complied with Regulation 4.4 in asking for a finding on its farming activity. He added that the applicant, in asking the Commission to make a decision on the effect on the wetlands never stated what would be farmed. He said the regulations require that the commission make a finding that the person making the application provide sufficient information with specific details. He added that the applicant has come forward with a formal request, and needs to provide what they are going to do. Mr. Annes said this is too vague. There was a discussion regarding this. Commissioner Milazzo said since he did not meet the other thresholds this just complicates the issue. Mr. Annes withdrew that suggestion.

Commissioner Montgomery made a correction to the motion regarding the length of the driveway and how much crossed the wetlands. He also proposed that the questions in the third paragraph be omitted. These suggestions were accepted by Commissioners Gnida and Lakin.

The revised motion is as follows.

Motion to Deny Application #11-1171, 170 Birchwood Drive

This application presented by Mr. Alberto Dichello, for the purpose of gaining access to a usable portion of this property on 170 Birchwood Drive for a garden area, should not be construed as an “as of right activity”. This application is for the building of a 518 foot long roadway, with 288 feet crossing the wetlands, requiring the filling in of 5700 ft² wetlands with 482 cubic yards of earth materials, to access a 6600 ft² area. The garden is an “as of right activity”, while the roadway is not, per Section 4.1.a of the Hamden Inland Wetland Commission (IWC) Regulations:

Regulation 4.1 The following operations and uses shall be permitted within regulated areas, as of right, after notification to the Inland Wetland and Watercourses Commission:
(4.1.a (i). grazing, farming, nurseries, gardening and harvesting of crops, and farm ponds of three acres or less essential to the farming operation, and (ii) activities conducted by, or under the authority of, the Department of Environmental Protection for the purposes of wetland or watercourse restoration or enhancement or mosquito control. The provisions of this subdivision shall NOT be construed to include road construction or the erection of buildings not directly related to the farming operation, relocation of watercourses with continual flow, filling or reclamation of wetlands or watercourses with continual flow, clear cutting of timber except for the expansion of agricultural cropland, the mining of top soil, peat, sand, gravel, or similar material from wetlands or watercourses for the purpose of sale:

The road has been downgraded from a 15 foot wide road to a 12 foot wide road at the surface with a 30+ foot width at the base, with no less proposed. The wide road width is said to be for safety reasons (emergency vehicles). Fire trucks and large trucks should not have to access a garden area of this size

The Commission feels that the width and height of the road exceeds what is needed for a garden. The 4+foot high road would act as a dike altering hydraulics, destroying wildlife habitat, and impeding the migration of wildlife such as salamanders and box turtles through the wetlands.

I hereby make this motion to deny Application #11-1171 based on the following Hamden Inland Wetland Commission Regulations:

Regulation 7.5 All applications shall include the following information in writing or on maps or in drawings: (7.5.e) the purpose and proposed description of the proposed activity and proposed erosion and sedimentation controls and other management practices and mitigation measures which may be considered as a condition as issuing a permit for the proposed regulated activity including, but not limited to, measures to (1) prevent or minimize pollution or other environmental damage, (2) maintain or enhance existing environmental quality, or (3) in the following order of priority: restore, enhance, and create productive wetland or watercourse recourses;

- 1) The applicant failed to comply with Hamden Inland Wetland Commission (IWC) Regulation 7.5.e by not addressing the Town Engineer's (Robert H. Brinton, Jr., P.E) requests for the following information:
 - A Details of the flared end of the culvert pipes to be put on the site plans (requested 5/25/11, 6/30/11, and 10/3/11 by Mr. Brinton), were not submitted on any revised site plans.
 - B The silt fence should be shown at the limits of disturbance on the site plan, OUTSIDE of the flared end riprap.
 - C Details of the location and length of the anti-tracking pad at the entrance to Birchwood Drive should be on the site plan (requested 5/25/11, 6/30/11, and 10/3/11 by Mr. Brinton), were not submitted on any revised site plans.

(7.5.f) alternatives, which would cause less or no environmental impact to wetlands or watercourses and why the original design as set forth in the application was chosen; all such alternatives shall be diagrammed on a site plan or drawing.

- 2) The applicant failed to comply with IWC Regulation 7.5.f by not submitting the feasible alternatives on the site plan that might mitigate and minimize any adverse environmental impact to this wetland area. In particular, as stated above, the applicant's explanation regarding the width of the road was not credible as there is no need for emergency vehicles.

(7.5.g) a site plan showing the proposed activity, the proposed limit of disturbance, and existing and proposed conditions, (including contours), including all Non-Disturbance Buffer Zones and Upland Review Areas, in relation to wetlands and watercourses, the boundaries of which shall be clearly marked and color coded and identifying any further activities associated with, or reasonably related to, the proposed regulated activity which are made inevitable by the proposed regulated activity and which may have an impact on wetlands or watercourses. Flagging of wetlands and watercourses identified on such site shall be performed by a certified soil scientist, and shall be concurrent with the application. The site plan shall depict a line showing the boundary of the two hundred (200) foot upland review area and the one hundred (100) foot non-disturbance buffer.

- 3) The applicant failed to include all the contours in the Non-Disturbance Buffer Zone and Upland Review Area, specifically on the abutter's properties to the north, downstream side of the proposed activity. These properties are going to be impacted by the proposed activity and their contours needed to be included in the site plan.
- 4) The flagging of the wetlands and watercourses are incomplete and confusing on the site plan (i.e. two wetland flags #14). Watercourses are not flagged on the site plan. Wetlands and watercourses are not flagged in the one hundred (100) foot Non-Disturbance Buffer Zone to the north and in the two hundred (200) foot Upland Review Area to the north.
- 5) The initial wetland map presented at the June 1, 2011 Inland wetland Commission meeting is dated August 30, 2004 (received by the Hamden Planning & Zoning office May 2, 2011). The letter attached to the map is also dated August 30, 2004. This map shows two houses with septic system sites, not current with the present application.

Regulation 7.6 At the discretion of the Agency or its designated agent, or when the proposed activity involves a significant impact, additional information, based on the nature and anticipated effects of the activity, including but not limited to the following, is required:

(7.6.b) engineering reports and analyses and additional drawings to fully describe the proposed activity including any filling, excavation, drainage or hydraulic modifications to watercourses and the proposed erosion and sedimentation control plan;

6) The applicant failed to comply with IWC Regulation 7.6.b by not addressing the Town Engineer's repeated requests for the following information:

A Hydrology and hydraulics calculations should be provided to verify that the pipes were appropriately sized to convey the flow of water under the proposed driveway in the wetlands/watercourse, (requested 5/25/11, 6/30/11, and 10/3/11 by Mr. Brinton). Also this information was requested by members of the Hamden Inland Wetlands Commission during the course of the public hearings.

B Details of the flared end of the culvert pipes to be put on the site plans were not submitted on any revised plans.

C Details of the silt fence in the areas of the flared end riprap at the outflow points along the proposed pipes have never been submitted.

D Topographic relief, wetlands, and stream channels on the abutter's properties, which are on the downstream side of the proposed activity (north of the proposed driveway), are not delineated on the site plan. This large wetland area will be affected by the proposal and needs to be analyzed for potential adverse impacts this proposal may cause to these wetlands to the north.

Regulation 10.2 Criteria for Decision. In carrying out the purposes and policies of sections 22.a-36 to 22a-45, inclusive, of the Connecticut General Statutes, including matters relating to regulating, licensing and enforcing of the provisions thereof, the Agency shall take into consideration all relevant facts and circumstances, including but not limited to:

- 7)** (10.2.a) The applicant has not shown that the proposed regulated activity will prevent flooding, or to protect surface and ground water. (i.e. incomplete mapping of topographic relief, wetlands, streams, riprap, flared pipe ends, adequate silt fencing, and a failure to provide a hydrologic analysis on this wetland area before and after regulated activities commence.
- 8)** (10.2.b) The applicant has not fully addressed feasible and prudent alternatives which would cause less environmental impact to these wetlands and watercourses (i.e. making the footprint of the garden driveway smaller, building a bridge, etc. and cost comparisons of each) considering what the purpose is for this project.
- 9)** (10.2.d) The applicant has not shown that the irreversible and irretrievable loss of the 5700 ft² of wetland area to be filled with 482 cubic yards of material will not foreclose a future ability to protect, enhance, or restore the remaining resources to the north and south of the proposed wetland filling. It is required that the inland wetlands and watercourses of the State of Connecticut be recognized as an indispensable, irreplaceable, and fragile natural resource, and that these areas may be irreversibly destroyed by deposition, filling, and removal of material, by the diversion, diminution, or obstruction of water flow including low flows, and by the erection of structures and other uses.
- 10)** (10.2.e) The applicant has not shown the character and degree of injury to, or interference with, safety, health or the reasonable use of property including abutting or downstream property, which is caused or threatened by the proposed regulated activity. Indeed the applicant doesn't even include the downstream abutter's property attributes on the site plans, even though these property attributes, including wetlands, are within 5 feet of the proposed project (see area near

wetland flag #23). An applicant representative has said the five proposed pipes will concentrate flow into the channeled streams and out of the discharge points from the 5 pipes (one existing) into the stream beds. The applicant simply says this will not cause any future flooding to downstream abutters' properties, without the benefit of a hydrologic study requested several times from the town engineer, the commission, and the public.

- 11) (10.2.g) The applicant has not proven the suitability of the proposed activity to the area for which it is proposed. The loss of 5700 ft² of valuable wetlands by filling with 482 cubic yards of material, and the altering of surface water flows (sheet flow) by the filling in of these wetlands, effectively bisecting a contiguous wetland with rock and dirt for the purpose of accessing 6400 ft² of land within the applicant's property, does not seem suitable.
- 12) (10.2.h) The applicant has not fulfilled measures which would mitigate the impact of any aspect of the proposed regulated activity. Such measures include, but are not limited to, actions which would avoid adverse impacts or lessen adverse impacts to wetlands and watercourses and which would be feasibly carried out by the applicant and would protect the wetland's or watercourses' natural capacity to support fish and wildlife, to prevent flooding, to supply and protect surface and ground waters, to control sedimentation, to prevent erosion, to assimilate wastes, to facilitate drainage, to control pollution, to support recreational activities and open space, and to promote public health and safety. The site plan does not include the flared ends of the pipes and accompanying riprap which would mitigate erosion and sedimentation in the discharge areas of the proposed activity. Silt fencing is inadequate on the site-plan, especially in the discharge end areas of the pipes and down slope from the proposed activity at the end of the driveway (turnaround area). No details of the location and length of the anti-tracking pad at the cul-de-sac end of Birchwood Drive construction site entrance, which would prevent sedimentation in other, more distant watercourses and wetlands through runoff into catch basins, streams, wetlands, and low lying areas of other properties.
- 13) In addition, the Commission found the expert testimony in Dr. Orson's comments to be more credible than those presented by the applicant's consultants.
- 14) We concur with the Town Engineer that overtopping of the roadway during a storm may be permitted as the garden should not be in use during heavy rainfall; thus, a high road is not necessary. The height of the road should be based on a design storm appropriate for a roadway to access a garden (memo Town Engineer, May 25, 2011). The applicant cannot claim to have made a plan that has the least impact on the wetlands without considering the flow hydraulics of a design storm.
- 15) We share the Regional Water Authority's concern about the extent of the disturbance and the impact of the proposed activity on the wetlands' function to renovate water quality and concur with the RWA that the applicant should consider reducing the driveway to what is necessary to serve the proposed agricultural use.
- 16) ~~That a severability clause be added stating that~~ Each of the fifteen reasons are grounds for denial, and if any reasons are found not appropriate under state regulation the other grounds survive and remain independent reasons for denial.
- 17) ~~That~~ the Commission finds that the proposed action will have an immediate impact on the wetlands and watercourses.

~~Mr. Montgomery said it should be verified that the pipes are correctly sized. He also said that the hydrology and the hydrology calculations should be provided to show that the pipes are appropriately sized to convey the flow of water.~~

~~Commissioners Gnida and Lakin accepted this.~~

~~Next, there was a discussion regarding the removal of 36 trees believed to include the garden area. It was noted that the Commission was not told how many trees would be removed across the wetlands.~~

~~Mr. Montgomery noted that the issue is not the removal of trees but the effect on the wetlands.~~

~~Commissioners Gnida and Lakin accepted.~~

~~It was noted that it should be mentioned that we share the Regional Water Authority's concerns about the extent of displacement and the impact of the proposed action on the wetlands function and concur with the Water Authority the applicant should amend the application. The Commission also shares the Water Authority's concern and concurs that the applicant should consider reducing the driveway to what is necessary to serve the proposed use.~~

~~Commissioners Gnida and Lakin agreed.~~

~~Commissioner Annes suggested that a severability clause be added stating that each of the fifteen reasons are grounds for denial, and if any reasons are found not appropriate under state regulation the other grounds survive and remain independent reasons for denial.~~

~~Commissioners Gnida and Lakin agreed.~~

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~~Mr. Annes said the Commission should favor the motion that the Commission finds that the proposed action will have an immediate impact on the wetlands and watercourses. He said this could be placed at the top or bottom of the motion.~~

~~Commissioners Gnida and Lakin agreed.~~

~~Mr. Montgomery said he is concerned about the draft, and suggested omitting under 4.1 where it began by asking questions about how much road width is needed for a garden. Mr. Montgomery asked to delete up to "why not cultivate a garden" and just state the commission feels that the width and height of the road exceeds that necessary for access to the garden.~~

~~Commissioners Gnida and Lakin agreed.~~

Chairman Rosenbaum called for a vote on the revised motion.

The vote was unanimously in favor of the motion. The motion passed.