

CONSERVATION COMMISSION
REGULAR MEETING JUNE 18, 2013
CONFERENCE ROOM L 101

These minutes are not verbatim, but represent a summary of major statements and comments. For minutes verbatim, refer to audiotapes on file in the Office of the Town Clerk. Audiotapes are retained for the minimum period required under the retention schedule as provided under Connecticut Law.

Chairman Block called the roll call at 7:02 p.m. and noted Commissioners Clark, Igielski, Sadil and Zelek were present. Also present were Alternates Krawiec and Paskewich and Mr. Chris Greenlaw, Town Engineer.

Chairman noted that Alternate Krawiec would vote for Commissioner Shapiro and Alternate Paskewich would vote for Commissioner Ancona.

ITEM III
ACCEPTANCE OF MINUTES

Regular Meeting of May 21, 2013

Motion made by Commissioner Igielski to accept the minutes as presented and was seconded by Commissioner Sadil. There was no discussion. Vote was 7 yes, 0 no and the motion was passed.

ITEM IV
PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

Ms. Rose Lyons, 46 Elton Drive noted that she is here for her annual appearance to express her concern on the flooding of Mill Brook and Piper Brook. She is especially concern about the flooding of the Main Street and Dowd Street intersection almost anytime there is a heavy rain event. She is still unable to find out if the State or Town is responsible to address the problem. She recently spoke with Representative Nafis and Senator Doyle on the matter.

Ms. Lyons also noted that it would be most helpful if the Commission put a brief description of each application on the Town web site.

ITEM V
PUBLIC HEARING

Application 2013-07A, 129 Main Street

Mr. Chris Greenlaw, Town Engineer, read the public notice into the record that appeared in the Hartford Courant dated May 24, 2013.

Commissioner Zelek noted that the Soil Scientist Report was attached to Application 2013-06 in the agenda package. There was a brief discussion. Chairman Block concluded that the report was intended to be part of Application 2013-07A.

Mr. Michael Zarotney, the applicant, introduced Mr. Tom Pietras, Soil Scientist.

Mr. Thomas Pietras, a professional Soil Scientist with Soil Science and Environmental Services Inc., referring to a map entered the following remarks into the record:

- A. The sight was visited on March 22, 2013 when there was no snow on the ground or frost in the ground. The area was fairly wet for the time of the year.
- B. The blue line on the map marks the wetland boundary limits found in the field.
- C. Soil samples were taken with an auger throughout the property.
- D. The soil samples taken by auger within the designated wetland area had been altered in all probability when Piper Brook in the area was reconstructed (by the Soil Conservation Service).
- E. The soil samples taken by auger, which were three (3) to four (4) feet in depth south of the blue line found no native material (wetland).

Commissioner Zelek asked if it was possible that the Town Map was correct at one time, but the area had been filled in at one time? Mr. Pietras responded the Town Map was prepared from the Hartford County Soil Conservation Maps that were prepared in the 1950's when a soil scientist at that time mapped approximately 50 to 100 acres a day. He would blow up an aerial photograph and transfer the data to it. These maps are considered to be historic in nature and not meant to be used as wetland maps.

Mr. Pietras noted that he did a high intensity soil mapping of the subject area. Numerous soil samples were taken on either side of the wetland in a zigzag manner.

Commissioner Sadil asked how many core samples were taken? Mr. Pietras responded more than 50.

Commissioner Sadil asked for an explanation of the lines shown on map? Mr. Pietras responded the blue line is the flagged wetland, the red line is the 100 foot upland review line and the far southerly line is from the Town Map.

Commissioner Clark asked how long could the fill material have been in place? Mr. Pietras responded that a guess would be 20 to 30 years or more.

Commissioner Zelek noted that if it is your estimate that this occurred over the last 20 to 30 years; then that of filling would have required a permit (for an activity) within a wetland. Mr. Pietras noted that he did not do any research on the matter.

Chairman Block asked if there was any way to determine the age of the fill material? There was a general discussion about a note on a map dated 1983 for a proposed building lot which has expired indicating the lot was in a wetland per the Town Map (listen to audio tape for the details of the full discussion).

Commissioner Zelek asked Mr. Greenlaw if he had been out to the site and observed any filling? Mr. Greenlaw responded yes and observed that mulch from chipping had been used as a buffer to control evasive plants, but did not observe any recent filling.

Chairman Block noted that during the review process for a previously issued permit for the property included a number of photographs. He noted that a number of large caliper trees were on the property which would indicate no recent filling activity.

There was further general discussion (listen to audio tape for details of the discussion)

Attorney Robin Pearson, Alter & Pearson, and representing the applicant noted that for this particular application, looking back at something that has happened in regards to an enforcement action is not relative to this particular application tonight. All we are here for this particular proceeding is to adjust the boundary line to represent what the actual (field) conditions are out there.

Attorney Pearson noted that there is an application pending (Application 2013-06) for activities on our property; but again all of the work or the information that you are seeking with regard to a prior action that might have been taken with regard to the owner of the property. A permit was issued for that action together with strict conditions. There is nothing in the record to indicate that there have been any problem in complying with those restrictions. It is not an issue for the boundary change. I am trying to make things easier for you. It is not truly relevant to whether or not Mr. Pietras has correctly identified where the wetland (line) falls on the property.

Mr. Greenlaw asked Attorney Pearson if there was a regulation or statute limitation if a property has been filled in for an indeterminate period of time; is there a depth a soil scientist would go to determine the depth of a wetland soil? Attorney Pearson responded that there is nothing in the statutes that would address that issue. If there was a violation in the past with regard to those disturbed areas and are outside of the inland wetland line, I do not see what relevance that also has for your consideration. Mr. Pietras is a soil scientist who has gone out and investigated (the site). He has indicated that there are not any recent disturbances that would cause that line to be any different to what is being showed now. The installation of the (MDC sanitary) sewer line is probably the most recent disturbance that has taken place in the area. The issue is the concern that the disturbed soils that Mr. Pietras has located would in any way affect his current analysis for the location of his inland wetland.

Attorney Pearson asked Mr. Pietras how he would you determine a disturbance at this time? Mr. Pietras responded if the disturbance was recent, he would test the soil to a deeper depth. If the disturbance was not recent in nature, he would evaluate the disturbed soil as is.

Commissioner Zelek noted that in the soil scientist report, he sees the word "fill" at least four (4) times on the map. He is concerned that some wetlands historically may have been filled in to make the property more saleable. He would like to know when that fill did occur and did the work occur with a permit.

Chairman Block noted that if there is no statute of limitation in regards to the violation of the wetland statutes and regulations at the time they went into effect in the 1970's. It should be noted that prior mapping shows the entire parcel to be in wetlands in the 1980's while that statutes and regulations were in place. Therefore, for us to ignore the fact a violation did occur would be compounding an error. On the other hand, it might be historic in nature and represent an activity prior to the statutes. At this juncture, I suggest the argument would tend to fall on the side that this would tend to fall on the side that this would be a prior historic fill due to the vegetation on site and the fact that Town records since the 1980's show no record of disturbance in the area in 30 years.

Attorney Pearson noted that she would like to clarify that the statute is not clear or does not have a bright line test on how far one could look back.

Attorney Pearson noted that the owner of the property is present and that she can testify before you. She purchased the property in 1983, over 30 years ago, and that there has been no filling since 1983. She did appear before the Agency and was issued a permit to conduct activities to clean up the property. You did investigate this property at that time -2years ago. There was a brief discussion. It was agreed that the permit was issued one year ago.

Chairman Block asked Mr. Pietras if there is any testing that he could do to determine the age of the fill material? Mr. Pieras responded if the material was a few years old, yes. If the material is 10, 20 or 30 years old, no.

Commissioner Zelek asked if there is any way to determine the original soils that exists under the fill material? Mr. Pietras responded by digging deep test holes (pits).

Commissioner Zelek noted that if it could be determined that the filling was done prior to 1972, there would be no violation. However, if the filling was done after 1972 then a violation would exist unless it could be shown there was a permit for the work.

Chairman Block noted that he has been in town since 1966. He has driven that road many times each year and could not remember any activity in the area. It is his opinion that he would consider the area to be historic in nature (relative to filling).

Ms. Adrian Brown, 14 Francis Avenue, the owner of the property, noted that the property was purchased in September, 1977. She rented out the property and made visits to the property. She noted that from 1977 (to today) there was no filling or any activity of any sort except for the channel work done by the State. She moved in in 1983.

Attorney Pearson noted that Ms. Brown had clarified for the record that no filling has occurred on the property since 1977 except for the work the State did on the property.

PUBLIC COMMENT

Mr. Peter Hoffman, 32 Francis Avenue, noted that his property abuts the subject property on the west (property line). If the lot is approved, he requested that all drainage (surface run off) be directed northerly to the brook.

Chairman Block noted that his (Mr. Hoffman) concern could not be addressed by the Commission.

Mr. Greenlaw noted that the application is only for a Map Amendment. The drainage issue entered into the record under public input would be addressed when a permit would sought to construct a new house on the property (listen to audio tape for the full details of his remark).

Commissioner Zelek noted that the next door neighbor (Mr. Hoffman) during public input referred to fill material being placed on the property. Since he is a witness, can he elaborate on what he saw? Mr. Hoffman responded that only mulch material was put down after trees were the cut down and removed from the property. He did not witness any dirt material being placed on the property during the past 20 years.

Attorney Pearson noted that she would like to put on the record that application is for a Map Amended only. However, the applicant will keep in mind the drainage issue that was raised (under public input) and that there will be no additional water directed onto the (abutting) property. All we are here for at this proceeding is to adjust the boundary line to represent what the actual conditions are out there.

Motion made by Commissioner Sadil to close the public hearing for Application 2013-07A and was seconded by Alternate Paskewich. There was no discussion. Vote was 7 yes, 0 no and the motion was carried.

ITEM VI

NEW BUSINESS: NONE

ITEM VII A

Application 2013-03, 40 Commerce Court

Mr. Greenlaw noted that he received an e-mail from Mr. Alan Bongiovanni (agent for the applicant) requesting time extension for the application.

Commission Igielski noted that he did not believe there was a need at this time for a motion to grant a time extension, He asked Mr. Greenlaw to review the time schedule for the application? Mr. Greenlaw, after reviewing the time line from the date of acceptance to the present date concluded that a time extension was not needed.

It was the consensus of Commission members to carry the application over to the July meeting.

ITEM VII B

Application 2013-05, 851 Willard Avenue

Mr. Greenlaw noted that following last month's meeting, he worked with the applicant in preparing a revised map showing the boundary limits of the regulated areas (wetlands, upland review area and watercourse). Copies of the map showing the area under discussion were passed out to Commission members.

Mr. Andy Billipp, 272 Cedar Street, the applicant, referring to the revised map reviewed the location of the two (2) proposed signs. He also noted a total of four (4) posts holes (two {2} per sign location) would be required.

Chairman Block asked what is the distance of the proposed signs to the edge of the watercourse (edge of culvert pipe)? Mr. Billipp responded five (5) to six (6) feet. He also noted that the signs would be next to the pavement and outside of the State road (Willard Avenue) right of way.

Chairman Block asked if the application was complete? Mr. Greenlaw responded yes.

Commissioner Igielski made a motion that based on the evidence before it, the Commission make a finding of fact that a public hearing is not necessary for Application 21013-05 because the proposed activities will not have a major impact or significant effect on the regulated area. Motion was seconded by Commissioner Zelek. There was no discussion. Vote was 7 yes, 0 no and the motion was carried.

Mr. Greenlaw passed a list of suggested (standard) conditions to Commission members (listen to audio tape for the details of the discussion).

Commissioner Igielski made a motion to issue permit by Summary Ruling for Application 2013-05 and subject to conditions (listen to audio tape for conditions). Motion was seconded by Commissioner Zelek. There was no discussion. Vote was 7 yes, 0 no and the motion was carried.

ITEM VII C

Application 2013-07A, 129 Main Street

Commissioner Zelek noted that after hearing from Mr. Hoffman, who has lived on his property for 20 years and has observed no filling of the parcel of land under discussion plus the testimony by the land owner, he feels comfortable that the filling was historic.

Commission went into recess at 8:13 p.m.

Commission came out of recess at 8:30 p.m.

Motion made by Commissioner Igielski that the Commission, after a review of the application and supporting documentation, Public Hearing held on June 18, 2013 and closed on June 18, 2013, and

subsequent discussion by Commission members, make a finding of fact to approve a proposed map amendment to redefine wetland limits for Land Parcel located at 129 Main Street as shown on map entitled "Dependent Resurvey Prepared for Connecticut Real Estate Properties LLC, 129 Main Street, Newington, Connecticut, Dated April 26, 2013" Application 2013-07A and issue a permit by Plenary Ruling and subject to reasons (listen to audio tape or contained in Certificate of Action). Motion seconded by Commissioner Zelek.

Chairman Block noted that based on (State) statute and our Regulations, the information to be considered in voting is what has been presented by the applicant and what has been raised during the public hearing.

Commissioner Igielski noted that during the public hearing, there was a question about part of the property being filled and that he could support the fact that the filling would have been so long ago that it would be considered to be natural.

Commissioner Zelek noted that he disagreed that the filling was natural. It (the filling) was definitely man made.

Chairman Block noted that in his opinion the filling would be considered to be historic in nature.

Chairman Block called for a voice vote on the motion. It was his determination that all Commissioner members did not vote on the motion and asked for a roll call vote. The roll call vote was Igielski-yes, Clark-abstain, Zelek- abstain, Sadil-abstain, Paskewich-abstain, Krawiec-abstain and Block-yes. Vote was 2 yes (Block and Igielski), 0 no and 5 abstentions (Clark, Krawiec, Paskewich, Sadil and Zelek) and the motion failed (NOTE: 4 yes votes were required to pass the motion) .

Mr. Greenlaw noted that per Section 11.3 of the Regulations, the Agency shall state on the record the reason(s) and basis for its decision.

Mr. Greenlaw asked if any of the Commission members, who voted to "Abstain" wish to state their reason(s) for abstention.

Chairman Block noted that he was going to recharge Commission members again. He noted that your decision and vote should only be based upon what is a matter of record and has been presented by the applicant, what has been raised at the public hearing and what is common (inaudible) and he believes it is inappropriate for anyone to go beyond these boundaries.

Chairman Block asked if there was anyone who would like entertain a revote? There was no response.

Commissioner Igielski noted that a motion was made, seconded and voted upon by the Commission. He does not know if it would be appropriate to take a second vote (at this time). He feels that the matter (take a second vote) should be discussed with the Town Attorney to if the Commission is acting within established procedures.

Chairman Block noted that he is not happy with this situation and he would be raising this question with the Town Attorney as to how to proceed.

Chairman Block noted that he is not prohibiting any action that the applicant might want to take at this time. He also suggested that it might be helpful (if the applicant would) give us some time to work out this dilemma.

Mr. Greenlaw noted that the applicant has several options available to him relative to the second application (to construct a new house on the property) to include a request to table the application, withdraw the application or proceed with the application using the current Town Map wetland boundaries.

Attorney Pearson noted that she is deeply troubled by the action of the Commission. Any applicant coming before you deserves a fair hearing; a fair vote based on the evidence that is put into the record and certainly look to you to provide that. If you see an application that is not worthy of approval, then you vote that way. If all the evidence indicates that the application should be approved, then that should be the vote taken. If people were planning on abstaining, it might have been courteous to advise us before we proceeded. I assume that there may be a basis the abstention; perhaps a conflict of interest. I do not know and you have not told us. We can only conjecture as to what it might be. Given the vote that was taken, I think the only thing we can do at this time is ask you to table our application to conduct regulated activities (Application 2013-06). Clearly, if the map amendment is not approved, that changes the circumstances on which we present our application to you and we have to decide on how to proceed. We ask that you allow this (Application 2013-06) to be carried over to the next meeting.

Commissioner Igielski asked if the applicant would consider granting a time extension on the application? Attorney Pearson responded that she has no problem granting an extension and is writing it out now for the applicant to grant a time extension to one day past the next meeting of the Commission.

Mr. Greenlaw noted that the Commission can table the Application 2013-06 over to the July meeting without a time extension.

Attorney Pearson noted then there would be no need for the applicant to grant an extension. There is no operation of law with regards to a wetland application. I feel comfortable that we can wait till the next meeting.

ITEM VII D

Application 2013-06, 129 Main Street

Motion made by Commissioner Igielski to table Application 2013-06 over to the July meeting and was seconded by Commissioner Sadil. There was no discussion. Vote was 7 yes, 0 no and the motion was carried.

ITEM VII E

New Initiative - Vernal Pools

Commissioner Zelek passed out a hand out to Commission members. He noted that during his research on vernal pools, he found that the Town of Old Lyme Inland Wetland Regulations have adopted some regulations regarding vernal pools to include a 400 foot buffer zone and a survey form for vernal pools. They also have a 100 foot lateral distance upland review area. When the Commission looks to update our Regulations, we could consider the Old Lyme Regulations as a model for vernal pools. He also noted that he is still awaiting a response to the letter he previously sent to the Connecticut Association of Inland Wetland Commissions.

Commissioner Zelek noted that he is a current member of the Trust for Public Lands. He noted that the organization was involved in helping to protect the Eddy Farm in 2005 and would be willing to come before the Commission to explain how they may be of help to the Commission. It was the consensus of Commission members to have the organization appear at the July meeting of the Commission.

ITEM VIII

PUBLIC PARTICIPATION ON NON-AGENDA ITEMS: NONE

ITEM IX

COMMUNICATIONS AND REPORTS

Commissioner Clark noted that there is a "For Sale Sign" on the Bonefish property on the Berlin Turnpike.

Alternate Kwawiec noted that she visited a site and noted debris in the wetland areas. Who would be responsible to remove the debris? Chairman Block responded the property owner.

Internal Rules and Procedures

Mr. Greenlaw entered the following remarks into the record:

- A. He was advised by a representative of DEEP that the Agency's "Model Regulations" and therefore our Regulations allow for multiple Duly Authorized Agents.
- B. The Commission's existing "Internal Rules and Procedures" do not include a provision for a duly Authorized Agent.

There was a general discussion among Commission members on how to modify its' "Internal Rules and Procedures to include a provision for a "Primary Duly Authorized Agent and an Alternate Duly Authorized Agent" (listen to audio tape for the details of the discussion)".

Mr. Greenlaw noted that the incorporation of the previously noted provision into the Commission's "Internal Rules and Procedures" would make them consistent with the state and local regulations.

Motion made by Commissioner Sadil to adjourn the meeting at 9:20 p.m. and was seconded by Commissioner Clark. There was no discussion. Vote was 6 yes, 0 no, 1 abstention (Zelek) and the motion was carried.

Sincerely;



Peter M. Arburr
Recording Secretary

Commission members
Tanya Lane, Town Clerk
John Salamone, Town Manager
Town Planner
Councilor Myra Cohen
Councilor David Nagel
Chairperson, Town Plan and Zoning Commission
Peter M. Boorman, esquire, Town attorney
Chris Greenlaw, Town Engineer
Lucy Robbins Wells Library (2)