

CONSERVATION COMMISSION
REGULAR MEETING JULY 19, 2011
TOWN COUNCIL CHAMBERS

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 Pappa called the roll call at 7:05 p.m. and noted Commissioners Byer, Igielski and Shapiro were present. Also present were Alternates Harlow, Turgeon and Zelek, Mr. Anthony Ferraro, Town Engineer and Mr. Chris Greenlaw, Assistant Town Engineer.

NOTE: Chairman Pappa designated that Alternate Zelek would vote for Commissioner Longo, Alternate Harlow would vote for Commissioner Forte and Alternate Turgeon would vote for Commissioner Block.

ITEM III
ACCEPTANCE OF MINUTES

Regular Meeting of June 21, 2011

Commissioner Igielski noted the following corrections:

- A. Middle of page 1---He noted under the "ACCEPTANCE OF MINUTES" meeting date should read May 17 (16), 2011.
- B. Top of Page 2---He noted that (ITEM VI A) should read ITEM VII C.
- C. Bottom of Page 2---He noted in Remark "C" the spelling of Mr. (Loagan) should be Logan.
- D. Top of Page 3--- He noted in Remark "F" the spelling of Mr. (Loagan) should be Logan.
- E. Bottom of Page 6---He noted that remark by Attorney Regan should read "Attorney Regan noted that a 65 day extension....at next month's meeting."
- F. Middle of Page 11---He noted that remark by Mr. Bruce Winchell should read "Mr. Winchel., 48 Tinsmithxing.....If Toll (Tool) Brothers submitsat next month's meeting."

- G. Top of Page 14....He noted that action on ITEM VII A should read “The Public Hearing was closed (remained open).”
- H. Middle of Page 14....He noted that action on ITEM VII B should read “The Public Hearing remained open (was closed).”

Mr. Ferraro noted the following corrections:

- A. Top of Page 9---He noted that remark should read Ms. Myra Cohen, 42 Jeffrey Lane suggested....people should not have to listen to tape to find out what was said.”
- B. Bottom of Page 13---He noted that remark by Alternate Harlow should read “Alternate Harlow said that never....Unfriendly Acquisition”? Mr. Quigley (Cunningham) responded in our situation,....an example of an “Unfriendly Acquisition”.
- C. Bottom of Page 13---He noted that remark by Chairman Pappa should read “Chairman Pappa asked if only....Conservation Easement”? Mr. Quigley (Cunningham) responded yes. There was a follow up....details of the remarks”).
- D. Bottom of Page 13---He noted that remark should read “Commissioner Igielski noted the agenda package....by the Town? Mr. Quigley (Cunningham) (responded yes) explained that the easement document to be signed by the property owner, Fennwyck Estates Condominiums, which was included in the package provided to the Commission, was included for informational purposes. DOT is seeking the Commission’s execution of consent to easement”. NOTE: The expansion of the remark was requested by DOT.

Motion made by Commissioner Igielski to accept the minutes as corrected and was seconded by Commissioner Shapiro. There was no discussion. Vote was 7 yes, 0 no and the motion was carried.

ITEM IV

PUBLIC PARTICIPATION ON NON-AGENDA ITEMS: NONE

Motion made by Commissioner Byer to move ITEM VII C and ITEM VII A to the top of the Agenda and was seconded by Commissioner Shapiro. There was no discussion. Vote was 7 yes, 0 no and the motion was carried.

NOTE: Mr. Anthony Ferraro noted that a copy of the suggested reasons for the ITEM VII A had been included in the agenda package. During the interim, some changes have been made and were inadvertently left in his office. **A short recess was taken.**

ITEM VII C

Application 2011-07, Fenn Road, Willard Avenue, Dacosta Drive

Mr. James Quigley, Property Agent for ConnDOT noted that he was available to answer any questions from Commission members.

Chairman Pappa asked if the application was complete? Mr. Ferraro responded yes.

Motion made by Commissioner Igielski that based on the information before it, the Commission make a finding of fact that a public hearing is not necessary for Application 2011-07 because the proposed activities would not have a major impact or significant effect on the regulated areas. Motion seconded by Alternate Turgeon.

Commissioner Igielski entered a letter from DEP into the record (relative to the application).

Vote was 7 yes, 0 no and the motion was carried.

Mr. Ferraro passed out a list of suggested conditions for consideration by Commission members. He noted that under this application, you are not approving a conservation easement but the execution of consent (to conduct activities within) the (conservation) easement in the name of the Town.

Mr. Quigley requested that the Commission approve the consent for the easement that it holds in the name of the Town.

Mr. Ferraro noted that Special Condition "A" be added to the list.

There was a general review of the suggested conditions by Commission members.

Motion made by Commissioner Igielski to grant a permit by Summary Ruling for Application 2011-07 and subject to conditions. Motion was seconded by Commissioner Byer. There was no discussion. Vote was 7 yes, 0 no and the motion was carried.

NOTE: Refer to audio tape or "Official Notification of Action" for conditions of the permit.

A short recess was taken.

ITEM VII A

Application 2011-03, Russell Road, North of Old Highway, Map Amendment

Mr. Ferraro noted that since the parcel has no formal address to define the property, he has included the Town property land record numbers into the suggested reasons to clarify the location. In addition, the name of the Town Property Map was included.

Mr. Ferraro noted the applicant's soil scientist (Ms. Cynthia Rabinowitz) using the Town Map as a reference went out into the field to define the actual boundary limits of all wetlands found in the field. The new boundary limits were subsequently verified in the field by Mr. George Logan, soil scientist retained by the Town (and accompanied by Ms. Rabinowitz).

Mr. Harlow noted that there is no reference made to any change in size and/or location of the wetlands (during the public hearing)

Mr. Ferraro responded there was a slight gain in size but it was not measured.

Alternate Harlow asked if mitigation is done, would the (Town) Map have to be revised (amended)? Mr. Ferraro responded if a wetland is added in mitigation or removed (as part of implementing an approved plan) a Map change (amendment) would not be required.

Chairman Pappa asked if the application was complete? Mr. Ferraro responded yes.

Motion made by Commissioner Igielski that the Commission after a review of the application and supporting documentation, Public Hearing held May 17,2011 and closed on June 21,2011, and subsequent discussion by Commission members, make a finding in Application 2011-03 and issue a permit by Plenary Ruling for reasons stated in the record (audio tape) or “Official Notification of Action”. Motion was seconded by Alternate Turgeon.

Commissioner Igielski noted that the Town Map was found to be inaccurate. The applicant (retained Ms. Cynthia Rabinowicz, a soil scientist who) found minor differences of existing wetland boundary limits in the field (and wetland boundary limits shown on the Town Map). In addition, a (small) new wetland was identified in the field. The Town retained Mr. George Logan to verify the wetland boundary limits found in the field. Mr. Logan and Ms. Rabinowicz worked out that were differences (that were found in the field).

Vote was 7 yes, 0 no and the motion was carried.

ITEM VA (Continuation of Public Hearing)

Application 2011-02, Russell Road, North of Old Highway

Attorney Tom Regan, representing the applicant Toll Brothers, said a presentation would be made by Mr. Ray Bradwell, who would review some of the changes noted at last month’s meeting to be followed by Dr. Ron Abrams, who will present the Dru Report.

Mr. Raymond Bradwell, PE, Project Engineer, BL Companies said that he would run through a progress report with respect to what has transpired over the past three meetings. Last month we presented a 64 lot subdivision. We are in the process of preparing design plans and we met with the CERT Team twice in the field. He entered the following remarks into the record:

- A. The Commission approved a “Map Amendment” per a plan with wetland boundary limits determined in the field by Ms. Cynthia Rabinowicz, soil scientist, and reviewed and updated through collaboration with Mr. George Logan, soil scientist, who had been retained by the Town.
- B. The plan we are currently working on is for a 64 lot subdivision. We are making some changes based on information from the Dru Report prepared Dr. Abrams. A copy of the report would be passed out to Commission members tonight.

- C. The first part of the application would call for the mitigation of the 1700 square foot wetland (located in the northeast corner of the property).
- D. The second part of the application affects the “Central Wetland” where a storm water detention basin would be installed.
- E. The original mitigation plan being recommended to replace the existing 1700 square foot wetland (located in the northeast corner of the property) was to be located in the northern part of the “Central Wetland”. Working with Dr. Abrams, we have decided to relocate the mitigation area to an area defined as Basin 4, a deep pond area, formerly excavated and located south of the project site and shown on Figure 6, Site Aerial Map Showing Wetlands and Ponds, Page 21 of the Dru Report.
- F. .The storm water Management Plan calls for the construction of five (5) storm water detention basins. One of the basins would be located in the Central Wetland. He reviewed the location and function of each basin (listed to audio tape for details of his remarks).
- G. The applicant would give back to the Town, 44 acres of open space land as part of the open space subdivision.

Alternate Harlow asked if the detention would be wet or dry? Mr. Bradwell responded dry.

Dr. Ron Abrams passed out a copy of the Dru Report (Herpetological Assessment) to Commission members.

Dr. Abrams noted that he has a Phd. in Ecology, a Masters in Biology, teaches Environmental Science and Biology at Long Island University, is a certified Environmental Professional with the National Society of Environmental Professionals, 25 years of experience in this field and 15 years of experience in making presentations in a meeting environment and entered the following remarks into the record:

- A. We went out into the field when there was ice and snow cover to sample the adult migration. As the ice cover came off of the ponds, we started trapping using minnow traps and checking them every day. When we established adult migration, we then started a search for and counting of egg masses. Egg masses are the most reliable method to assess population in this kind of condition. We continued over the next three (3) to six (6) weeks using nets to catch, observe and release the larvae.
- B. For reference purposes to future remarks in his presentation, he referred to Figure 6 in his report to describe the areas under discussion. The area described were Basin 1--- Western watercourse draining south to north, Basin 2---Central wetland-pond system, horseshoe shaped, Basin 3---Small woodland depression and Basin 4---Deep pond, formerly excavated and located south of the project site (proposed mitigation area).

- C. He noted that the spotted salamander would be used as the key stone species. This species was reflective of the health of the ego system. Therefore, the focus of the presentation would be on the spotted salamander. We did observe other wild life during our investigation so that we could have a feeling for the entire ego system.
- D. It was noted that there was no activity observed in Basin1. There was no evidence of water storage to support salamander growth.
- E. Photos were presented to manifest the water level in Basins 2 and 3 that were observed at various times during the period of the study (March through July).
- F. He referred to a list of 39 salamanders (Table 1, Pages 12 and 13 of the report) that were caught on the night of April 13th during what was considered to be during the period of primary migration. Most activity was observed taking place in Basin 2 where all of the salamanders were caught.
- G. Reference was made to Table 2A that showed the “Spotted Salamander Mass Egg Counts and Captures”. NOTE: Refer to Table in report for numbers of egg masses in each Basin and on Page 6 of the report under section entitled “Results of Field Research” for details of the process.
- H. Reference was made to Table 2B that showed the Wood Frog Mass Egg Counts and Captures”. NOTE: Refer to Table in report for numbers of egg masses in each Basin and on Page 6 of the report under section entitled “Results of Field Research” for details of the process.
- I. Reference was made to Table 3 that showed “Population Estimates for Conservation of Spotted Salamanders”. NOTE: Refer to Table in the report for estimation of total adults in Basins 1, 2, 3 and 4 and Pages 7, 8 and 9 of the report under section entitled “Population Ecology at Newington Walk” for details of the process to determine numbers.
- J. Reference was made to Table 4 that showed “Estimates of Modeled Conservation Needs (area requirement) for Spotted Salamanders at Newington Walk, CT”. Refer to Pages 8 and 9 of the report entitled “Population Conservation” for details of the process to determine the numbers.
- K. Dr. Abrams noted that the recent change in the subdivision layout opens the (open space) area and marks an improvement for maintaining the existing (herpetofauna) population.
- L. The conclusion section of the report states” The field study in 2011 showed that aquatic breeding herpetofauna can successfully breed in the large central wetland-pond complex (Basin 2). It is in the opinion of this report that a small depression basin to the east of this pond complex (Basin 3) does not serve an important role in the breeding or support of herpetofauna on the site. The proposed Newington Walk

64 lot open space residential subdivision is on a 73 acre site, of which 50% would be designated permanent open space, never to be developed. If the management of storm water and other potential human impacts is carefully designed, then the placement of this development, with > 35 contiguous acres of conserved woodland surrounding the western watercourse will provide more than enough habitat for the persistence of the herpetofauna populations observed and reported by this study.”

M. Dr. Abrams described the process that was used in determining the location of the mitigation area (Basin 4) being proposed if approval is granted to fill in the 1700 square foot wetland (listen to audio tape for details of his remarks).

N. Dr. Abrams noted it is your (the Commission) decision to determine if the herpetofauna population in the area (of development) would be preserved with the implementation of the subdivision plan that we have here.

Alternate Harlow noted that the wetland in the northeast corner (Basin 3) seems to be like an island. Would you consider it to have its own micro climate? Dr. Abrams responded that micro climate is a matter of subjective definition and is not unique to the area. There are similar ones all over the region. The population there has probably specifically adapted to the area. The population is isolated and self-sustaining. NOTE” There was a follow up discussion (listen to audio tape for details of the discussion).

Alternate Zelek asked the following questions:

- A. For an explanation of what is meant by salamander migration? Dr. Abrams responded salamanders spend most of the year under ground. They live by burrowing or using other animal burrows or natural ones such as cracks in the rocks. He noted that salamanders will normally stay within 300 to 400 feet of the breeding area. Approximately 5 to 10% may try to go beyond these limits.
- B. Per Harper, salamanders would stay within 100 to 300 feet of the body of water? Dr. Abrams noted that Harper calculates the area necessary to support life. In this situation 6.5 acres is required. There is no fixed answer to your question.
- C. Is a 100 foot buffer in your opinion a satisfactory distance or should it be expanded? Dr. Abrams said that he looks at the site (and based on his experience) would determine where the animals would go. He does not deal in circles or straight lines. In this basin (Basin 2), he feels the animals would leave the basin, move down hill and spread out and return back the following season to the Basin.

Chairman Pappa asked the following questions:

- A. What is the life span of the wood frog and the spotted salamander? Dr. Abrams responded the wood frog is from 4 to 8 years and the spotted salamander is from 18 to 22 years.

- B. You are proposing to recreate a new wetland as mitigation for Wetland 3 (Basin 3) at a new location. How large would it be? Dr. Abrams responded size of the mitigation area would be determined by location and field conditions. I try to make them as big as the land allows.
- C. What is the actual population of Basin (3)? Dr. Abrams responded initially there was one small egg mass. When he returned to the site later, the original egg mass was gone and two (2) new ones were found. The new finding was not an indication of robust activity in the area. No animals (salamanders) were caught. Animals (salamanders) were caught where there was activity. Most activity was observed in Basins 2 and 4.
- D. Would the new (proposed) mitigation area thrive? Dr. Abrams responded yes, if it is done right.

Alternate Harlow asked the following questions:

- A. By definition is Basin 3 considered to be a vernal pool? Dr. Abrams responded yes by the commonly accepted definition in Connecticut. However, DEP does not have a formal definition but uses the previously noted definition for internal guidance. He noted the word vernal means “spring”. He noted that many of the vernal pools that comply with the “commonly accepted definition” fill up with rain in the late summer and fall.
- B. Does the (U.S.) EPA consider Basin 3 to be a vernal pool? Dr. Abrams responded no, it (vernal pool) has no regulatory status at all.
- C. Would you consider Basin 2 to be of high value? Dr. Abrams responded yes. It is shown on the U.S. National Wetland and Inventory Mapping.
- D. What in your opinion what would be the impact of the development on Basin 2, taking into account there would be a storm water detention basin constructed to the north that would pick up run off from the development that would contain fertilizers, herbicides and pesticides that would outlet into the wetland? Dr. Abrams responded a function of the storm water basin is to protect water quality .He and Ray (Bradwell) talked about it. There are a number of techniques available. The idea is to design (and construct) it correctly. If the water is recharged into the soil and there is adequate natural vegetation, the environment would cleanse the water.

Alternate Zelek asked what about run off that would flow directly into the wetland (Basin2)? Dr. Abrams responded that he does not want to see any uncontrolled run off entering directly into the wetland. Mr. Bradwell reviewed the storm water management for the affected area (referring to a plan). There was additional conversation on addressing the potential impact (listed to audio tape for details of the conversation).

Alternate Harlow asked what about back yards at the top of the horse shoe that would flow directly into the wetland? Dr. Abrams responded this could be addressed by various techniques to add a buffer as well an enhanced vegetative buffer. There was additional conversation on how to protect the resource (listed to audio tape for details of the conversation).

Commissioner Byer asked what animals would feed on the salamanders? Dr. Abrams responded shrews, domestic dogs and cats, birds and raccoons. None of the animals go into the water. There was additional conversation on how the salamanders protect themselves (listed to audio tape for details of the conversation).

Chairman Pappa asked the following questions:

- A. What is the relationship between linear distance and wetland quality taking into account the slope of the property and assuming people are using fertilizers, herbicides, wash outs, etc.? Dr. Abrams responded that urban studies provide guide lines and good landscaping (barriers and/or good buffers) reduces flow.
- B. What percentage of fertilizers, herbicides, etc. would reach the wetland? Mr. Abrams responded if you do it right, nitrogen can be controlled. There was additional conversation relating to a study he did on nitrogen in Long Island (listed to audio tape for details of the conversation).

Alternate Zelek asked the following questions:

- A. He noted a study was done that was limited to salamanders. Were any other types observed? Dr. Abrams responded that a couple of hawks were observed. He said Jodi's report reflects what he saw.
- B. What impact would blasting have on the habitat? Dr. Abrams responded the rock in this case is already fractured. Hydrology is dependent on soil not cracks in the rocks. If a wetland is supported on rock, it would lose water. I do not think this is the case here.

Commissioner Igielski asked if the mitigated wetland would be connected or isolated to Basin 2? Dr. Abrams responded it would be isolated and would emulate Basin 3 conditions. There were additional remarks relating to his response (listed to audio tape for details of the remarks).

Attorney Regan noted that the size of the open space area has increased in size from 36 plus acres to 44 acres. At next month's meeting, we plan to submit a mitigation plan and geology report and hopefully comments in reply to the CERT report.

Mr. Ferraro said the Commission must close the Public Hearing next month (August) and the CERT Report should be available.

REMARKS FROM PUBLIC

NOTE: Remarks in this section represent a summary of comments related to the Inland Wetland and Watercourses Regulations of the Town under which the application will be evaluated by the Commission (listen to audio tape for complete details of each individual response).

Mr. Rick Spring, 47 Deepwood Road wondered if activity in Basin 3 would fluctuate from year to year. For example one year might be a surplus year and the next year a down one. Dr. Abrams noted that water would percolate through the soil in the new basin (Basin 4). Blasting would create new cracks. There is no guarantee that water would not be lost. Dr. Abrams noted that salamanders travel underground. Is there a time during the development of the site when there may occur a more adverse impact to the ego system? If yes what is the time. Will the proposed new wetland (mitigation area) provide the same results as the original one (Basin 3)? What penalties if any can be imposed if a wetland drains as a result of blasting?

Ms. Holly Harlow, 11 Edmund Street said she was late and her discussion would be relative to the detention ponds (basins). What I heard was if constructed perfectly, if maintained properly and they require a high degree of maintenance. She said there must be experts who specialize in detention basins. I do not know if BL Companies is qualified in this field. Commission should consider the retention of an expert in this field to be assured the work is done right.

Mr. Roy Zartarian, 25 Stuart Street said that he took issue with a statement as to the absence of xxxx fauna (I assume birds) He submitted a list (off the top of his head) of birds nesting in the area to include the indigo bunting, scarlet harbinger, wood thrush and several others.

Ms. Myra Cohen, 42 Jeffrey Lane noted the presentation looks at the 44 acres (open space area) not the 29 acres where development would take place. There is no vernal pool (Basin 3). There are no details on filling where houses would be built. In addition what would be the affect (impacts) from road construction, utilities and blasting activities to the surrounding areas?

Ms. Rose Lyons, 46 Elton Drive asked where would the mitigation basin be built: will it be put on Town property and who would have maintenance responsibility for it.

Ms. Mady Kenny, 53 Crestview Drive complemented the applicant for using a power point presentation tonight. It was easy to see and follow. She noted that the other animals living on the mountain have not been addressed. People will move into the area with their pet cats and dogs. The fox and coyotes would be displaced. They eventually would end up attacking the pets for food. The end result would be their demise.

Mr. Bernard Cohen, 98 Whitewood Road read a narrative about the trails of Cedar Mountain into the record that he had found on the Town of Newington, Parks and Recreation webb site.

Attorney Regan noted for the record that BL Companies was not involved in the Berlin or Newington Projects.

Dr. Abrams provided a response to the following remarks:

- A. Year to year change in activity---Not every salamander comes out in a given year. Experience has shown at an active site, the numbers are approximately the same each year. This year has been an active one.
- B. Water percolation in proposed wetland and the affects from blasting---Blasting might increase the percolation. Therefore, pick a site that would be less affected.
- C. The affects of construction activities on animals in the area---There are techniques when coordinated with the first cutting or earth work when they would be less subjective to the activity. I could talk with Ray (Bradwell) as to the time(s) of year for doing this kind of work.
- D. Would the mitigated wetland provide the same benefits as the one being replaced?--- It is incumbent in writing the mitigation plan. (A rule was issued by the EPA in2008. He was one of the first consultants to write an approved plan under the new rule.) The rule requires a functional assessment. A functional assessment answers this question. When we submit a plan, there would be a detailed and specific discussion to include what functional benefits might be lost by the filling in of Basin 3 and what we intend and how we intend to replace or enhance those with mitigation wetland
- E. Clear cutting Operation.--- I don't know if that is something were in a position to address. Something should be done and I presume that the Commission and Planning Board will think about it.
- F. A party implied that there was an absence of birds in my remarks---I did acknowledge there was the presence of a bird community. I also noted that the Jodi Chase's Report did a representative study in her report on the subject.

Attorney Regan said the mitigation plan and blasting report would be ready for next month's meeting.

Motion made by Commissioner Igielski to carry over the public hearing to the August meeting and was seconded by Alternate Harlow. There was no discussion. Vote was 7 yes, 0 no and the motion was carried.

ITEM VII B Application 2011-02, Russell Road, North of Old Highway

The Public Hearing remained open.

ITEM VIII

PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

Ms. Rose Lyons, 46 Elton Drive noted the need to secure better microphones.

ITEM IX

COMMUNICATIONS AND REPORTS: NONE

Motion made by Commissioner Byer to adjourn meeting at 8:55 p.m. and was seconded by Commissioner Shapiro. There was no discussion. Vote was 7 yes, 0 no and motion was carried.

Peter M. Arburr, Recording Secretary

Commission Members

Tayna Lane, Town Clerk

Town Manager John Salamone

Edmund Meehan, Town Planner

Councilor Myra Cohen

Chairperson, Town Plan and Zoning

Ben Ancona Jr., Town Attorney

Anthony Ferraro, Town Engineer

Lucy Robbins Wells Library (2)