

ENVIRONMENTAL PROTECTION COMMISSION
REGULAR MEETING
September 5, 2012
7:30 P.M.
Room 206, Town Hall

Chairman Tone called the meeting to order at 7:30 P.M

Commission Members Present: Mike Tone, Wynne Shapiro, Ed Sweeney, Pete Kenyon, Rick Rohr, and Keith Kearney

Staff : Jacobson

Court Reporter: Syat

Channel 79 recorded the meeting

Mr. Tone called the first agenda item:

James & Hallie Palen, 45 Brookside Road, violation of Conservation Easement conditions. The site is shown on Assessor's Map #15 as Lot #17.

Matt Popp, L.A, PWS, represented the applicant. He said the meadow area within the easement is floodplain soils and not an apparent wetland. He said the boulders defining the easement have not changed. He provided photos from 2008. Mr. Popp said the meadow was cut in May, before it was supposed to be. He provided a planting plan with additional plantings.

Mr. Palen said the prior owners received the bond release after they sold the property. He said the easement was mowed by mistake.

Mr. Rohr made a motion to approve the planting plan and revise the mowing schedule to twice a year, after July 1 and after October 1. The Commission's resolution will be filed on the land records. Ms. Shapiro seconded the motion and it passed 6-0.

Mr. Tone called the next agenda item:

EPC-30-2012, Sumi & Dan Ebrahimi, 16 Arrowhead Way, proposing house additions in an upland review area. The site is shown on Assessor's Map #64 as Lot #25

Sara McCool, Landscape Designer represented the applicant. She said they are proposing two additions within the upland review area. She said they are proposing shrubs and perennials in the wetland and upland review area. They are to convert 1,500 square feet of grass to plantings.

Mr. Tone asked where the roof leaders would be discharged. Ms. McCool said onto the grass.

Mr. Kenyon asked about tree removal. Ms. McCool said 10 trees will be removed. They are adding 10 trees.

Mr. Kenyon asked about a 1.5 or 2 to one replacement ratio. Ms. McCool said they are also adding at least 30 shrubs.

Mr. Rohr asked why the trees were being removed. Ms. McCool said the trees proposed to be removed are in poor shape with basal cavities, one oak is leaning severely and two of the maples have split trunks. Mr. Jacobson said the owners had previously asked for administrative approval to remove the trees but he said, since there were so many, he suggested the owner incorporate them into the landscape plan with the proposed addition.

Mr. Tone asked the Commission if they would want additional water quality treatment. Mr. Rohr said they should provide treatment.

The Commission decided to require either one rain garden or two smaller ones to treat the first flush of runoff.

Isabelle Berlet, 1 Dogwood Lane asked to have the drainage and runoff explained. Ms. McCool provided an explanation of the project and said Mrs. Berlet's property is higher than their subject property.

Mr. Tone asked Ms. McCool to answer Ms. Berlet's additional questions while the Commission began the first public hearing.

Mr. Tone called the first public hearing item:

PC-20-2012, J. Baron Land Corporation, 0 Shagbark Road, proposing new house construction, septic system, and related grading within an upland review area. The site is shown on Assessor's Map #2 as Lot #21. (Continued from August 1)

Steve McAllister, P.E. represented the applicant. He introduced Mark Andriuk, builder. He said he would respond to the Commission's questions and the questions raised by Doug DiVesta, P.E., DiVesta Associates.

Mr. McAllister said the soil scientist's map was an approximate location of the wetland. The surveyor then located the wetland boundary in the field. He said they raised the Cul-tech elevation by using a shallower unit. He said the basement elevation is four feet below the surface and the test hole showed ground water at 4.5 feet and mottling at 20 inches.

Mr. Rohr asked how they sized the Cul-tech for the footing drain. Mr. McAllister said, based on his experience, the flow will be minimal. Mr. Rohr said he does not want to inundate the downstream neighbor. Mr. McAllister said they are confident the drain will work by gravity without a sump pump.

Mr. McAllister said he believed they have addressed the comments in the letter from Doug DiVesta. He said he would address the comments in the new letter just received.

Mr. McAllister said that they did not include the pool site in the drainage calculations as suggested by Mr. DiVesta. He said they would be required to come back to the Commission for a pool.

Doug DiVesta, P.E. said he was representing the Shands who are the adjoining property owner. He said the Commission should require the pool location be removed from the plan if it is not proposed at this time.

Attorney Wilder Gleason, representing Mr. and Mrs. Shand, said the plan should reflect the wetlands on his client's property. He said their stream had a 100 foot upland review area for the Stony Brook. He provided a portion of his client's survey. He said the Stony Brook was on the opposite side of Shagbark Road and has a 200 foot upland review area for subsurface sewage systems and 100 feet for other activity.

He said the applicant needs to resolve the runoff calculations. He said the lawn area will increase with future owners. He said a construction sequence should be provided for the stream crossing.

Mr. Tone asked Mr. Andriuk if he would consent to an extension of time to continue the hearing until October 3. Mr. Andriuk said yes. The Commission continued the hearing until October 3.

Mr. Tone recalled EPC-30-2012, Sumi & Dan Ebrahimi, 16 Arrowhead Way

Sara McCool said she explained the project drainage to the satisfaction of Mrs. Berlet.

Mr. Kenyon made a motion to approve the application with the requirement that the rain gardens be provided. Mr. Sweeney seconded the motion and it passed 6-0.

Mr. Tone called the next public hearing item:

EPC-29-2012, Beatrice Richards, et.al. (formerly Kaali-Nagy), 123 Five Mile River Road, proposing construction of two residences within an upland review area. The site is shown on Assessor's Map #67 as Lot #2.

Rob Frangione, P.E. represented the applicant. He described the existing site conditions and said there are no inland wetlands on the site. He said the Five Mile River is tidal. He said there is an existing septic system and existing untreated surface runoff which are potential sources of pollution to be removed. He said they are proposing to remove 5,000 cubic yards of ledge. He said the runoff will be pre-treated prior to the discharge to the river and he described the storm water system. He said the proposed water quality treatment will be sized in accordance with the CT DEEP manual. He said there will be no adverse impact to the river and there will be a net benefit.

Mr. Tone asked if there would be a likely impact to the physical characteristics of wetlands, or a significant activity, as defined by section 2.1 cc of the regulations. Mr. Frangione said no.

Mr. Tone said the impact cannot be speculative. There would need to be hard facts and conclusions.

Mr. Rohr asked if the rock would stay on site. Mr. Frangione said no.

Mr. Tone asked him to explain the blasting process. Mr. Frangione described the pre-blast survey, erosion and sediment controls, drilling and the use of blast mats to prevent debris from flying.

Mr. Tone said he would like more detail regarding effects on the rock substructure and possible effects on the river. Mr. Frangione said he could not provide that tonight. Mr. Tone said he would also like him to consider any effect of siltation or material that might reach the river from blasting.

Mr. Kearny asked him about any effect truck traffic would have on the river. Mr. Frangione said he did not see that as an environmental problem because there would be no physical impact to the river. He said there is truck traffic all the time and their use of trucks would be temporary.

Mr. Kenyon asked if they could find home designs which would fit the property better. Mr. Frangione said they designed the site to allow for cars under the home and basements.

Mr. Kenyon said he would like more information on dust and effects on wildlife, and an environmental impact assessment. Mr. Tone said Planning & Zoning will request comments under the CAM permit process and the EPC will be able to comment on those issues as a conservation commission.

Mr. Kenyon asked why the name was changed on the application. Mr. Frangione said the owner has taken on the burden of gaining approvals rather than the contract purchaser.

Mr. Tone asked for comments from the public.

Marian Castell, Town Historian discussed her concern that the house be documented before demolition because of its potential historic significance. She provided copies of famous paintings of Darien landscapes. She read a statement regarding the historic significance of the site and the historic views.

Attorney Wilder Gleason said he represents a group of neighbors on Five Mile River Road. He said Barry Hammons, P.E. will provide testimony that the project will impact inland wetlands and watercourses. He said there is activity within 100 feet of the Five Mile River. He said he will ask the neighbors to address concerns related to the CAM process because he wants the Commission to have that record when the P&Z Commission refers the application to them. He said there have been effects on flooding from adjacent development. He said the application does not provide enough information on the building and construction process.

Mr. Tone asked Mr. Gleason who he represented. Mr. Gleason said he represents approximately 12 families comprising the Five Mile River Road Protection Association.

Mr. Gleason introduced Barry Hammons, P.E.

Mr. Hammons provided the Commission with a handout with exhibits for his presentation. He said the pre- and post-development watersheds will change the flow to a wetland off-site and will result in untreated water going to the wetlands. He said the property cannot support two houses. He said more information is needed on the site soils and borings should be provided to determine the depth of the rock. He said the plan creates a water diversion that will need CT DEEP approval.

Mr. Tone asked if, in his opinion, the project will inhibit the natural dynamics of the watercourse. Mr. Hammons said yes.

Mr. Hammons reviewed the design of the storm water system and sand filters and said the system as designed will not provide treatment. Mr. Tone asked if there will be an adverse impact on the off-site wetland. Mr. Hammons said yes, but he cannot quantify the impact. Mr. Tone asked if there are design changes he would recommend. Mr. Hammons said more galleries and a grit chamber. He said the system will not treat the first inch of runoff or provide 80% removal of TSS. Mr. Tone asked if the drainage would have an adverse impact on the Five Mile River. Mr. Hammons said no.

Mr. Hammons said the calculation of impervious surface area by Mr. Frangione is 14,000 sq. ft. He said his calculation is 17,400 sq. ft. He said the tree protection detail indicates fencing at the drip lines but one notable tree next to the pool does not have adequate protection. He said the detail of the rain garden is unclear.

Mr. Tone asked if he was qualified to discuss blasting. Mr. Hammons said no.

Callie Sullivan, 118 Five Mile River Road, provided her written statement and a copy of questions posed to Mr. Kaali-Nagy by the neighbors and her comments.

Bob Gadsden provided photos and exhibits showing the site and the extent of construction, blasting and coverage. He said his calculation of the impervious surface was different than the applicant's and close to Barry Hammons'. He questioned the methodology of the applicants calculations.

Sean Burke, 128 Five Mile River Road said he had concerns about the basting and then re-blasting that took place with the adjacent project. He said the previous projects on the adjacent property resulted in his property having standing water. He said he questioned having shared systems between two properties. He said the applicant must be required to live up to the commitments made.

Attorney Gleason said there should be bonding and a two year trial period.

Mike Catano, 120 Five Mile 120 River Road, said the property is not approved for two lots. He said the project will involve a substantial alteration of coastal resources. He said the property is suitable for one home.

Win Jessup 122 Five Mile River Road said the project will have an impact on coastal resources as described in the CAM regulations. He said there will be habitat destruction and an inventory of plants and wildlife should be provided.

Mr. Gleason said there should be more testimony on the blasting impacts. Mr. Tone said both sides should address blasting.

Mr. Tone said section 22a.14.6 of the Connecticut General Statues regarding impacts on wetlands from areas outside where the activity is proposed needs to be addressed.

Attorney Gleason said the applicant should provide additional information on construction sequencing and wall construction. Mr. Tone said he would not require that information but Mr. Gleason could make a case why it is necessary.

Mr. Rohr asked for a cross section on the northern house perpendicular to section AA.

Barry Hammons said he would like to see borings, storm water routing and information on the effect on flooding on the Five Mile River.

The Commission continued the hearing until October 3.

Other Business:

Discussion of Enforcement of the proposed Plastic Bag Ordinance

Mr. Tone said the Commission was requested to respond to the Board of Selectmen regarding the proposed ordinance and the EPC taking on the responsibility of enforcing it. Mr. Tone said he does not think the ordinance is a well written regulation but he said he would say that, if it passes the EPC would do its best.

Mr. Kearney said he does not see what the ordinance has to do with the Commission's charge and he said he would not want to use staff time for enforcement.

Mr. Kenyon said the EPC is not the appropriate agency for enforcement and finds difficulty with the regulation and using EPC staff for enforcement.

Mr. Sweeney agreed with Mr. Kearny and Mr. Kenyon. Ms. Shapiro said if there was minimal effort required to enforce, as described by proponent, she would be amenable. Mr. Rohr said he did not have a strong opinion either way.

Update on Flood Mitigation Strategy Committee Recommendations

Mr. Tone informed the Commission that the RTM will not be proceeding to create a separate Flood & Erosion Control Board. He said there is no budgetary priority to provide more staff to the EPC. He said he would suggest the EPC re-endorse the Flood Mitigation Strategy recommendations to the BOS, RTM and BOF with a request that they establish a funding for professional staff and endorse a comprehensive flood program with a separate board. Staff will prepare a draft resolution for October 3.

Mr. Kenyon made a motion to adjourn. Mr. Tone seconded the motion and it passed 5-0. The meeting adjourned at 12:00 a.m.

Respectfully submitted,

Richard Jacobson
Environmental Protection Officer