

ENVIRONMENTAL PROTECTION COMMISSION
REGULAR MEETING/PUBLIC HEARING
MINUTES
August 3, 2011
7:30 P.M.
Room 206, Town Hall

Chairman Tone called the meeting to order at 7:35 P.M

Commission Members Present: Michael Tone, Craig Flaherty, Wynne Shapiro, Ed Sweeney, and Rick Rohr (7:50 p.m)

Staff : Jacobson

Court Reporter: Syat

Recorded by Channel 79

Mr. Tone called the following agenda item:

EPC-19-2011, Daniel & Melanie McNulty, 299 Hollow Tree Ridge Road, proposing tree removal in an upland review area. The site is shown on Assessor's Map #26 as Lot #59 & 60.

Roger Knoop, Arborist, represented the applicant.

Mr. Tone said the Commission just received the revised plan showing the trees proposed to be removed. He said he was ready to proceed to review the application.

Mr. Knoop described the trees that are adjacent to the pool that was constructed in the 1960's and have grown too close to the pool.

Mr. Tone asked about the significance of the trees at 45 degree angles and the large Tulip tree. Mr. Knoop said the trees are at a significant risk of failure. Some of the trees have basal decay and rot. He said the Tulip is in fair condition but is forked. It may have been struck by lightning in the past.

The Commission discussed the need for multiple replacements for trees removed. Mr. Jacobson recommended at least three large shrubs of the species on the list provided for each tree, or two medium variety trees, for a total of 4 trees and 24 shrubs.

Mr. Tone made a motion to approve the application with the recommended planting plan. Mr. Flaherty seconded the motion and it passes 4-0. Mr. Rohr abstained.

Mr. Tone called the next agenda item:

EPC-28-2011, Spencer Segura, 24 Tokeneke Trail, proposing a pool cabana and septic system within an upland review area. The site is shown on Assessor's Map #69 as Lot #24. (Continued from July 6).

Ted Milone, P.E. represented the applicant. He said the Commission requested that he research if there is a deed restriction on the property which would prevent the planting from being implemented. He said the conservation area shows the wetland and 50 foot review area and there is no deed restriction.

Mr. Sweeney made a motion to approve the application. Mr. Rohr seconded the motion and it passed 5-0.

EPC-30-2011, Urstadt Biddle Properties, 25 Old Kings Highway North, proposing to maintain irrigation system installed in an upland review area, and remove sediment from the Goodwives River. The site is shown on Assessor's Map #71 as Lot #19.

John Grillo, Asst. Vice President of Operations represented the applicant. He described the irrigation system that was installed without a permit. The system is operate by solar power does not use electricity. He described the accumulated sediment they are proposing to remove from the river. They are proposing to remove 25 cubic yards forming a sandbar at bridge.

Mr. Flaherty said he would like to walk the property with Mr. Grillo, staff and someone from DPW.

Mr. Rohr asked that they provide for stabilization of the exposed bank after the material is removed.

The Commission continued this item to September 7.

EPC-31-2011, Norman Amnott and Hedyatt Mansour, 17 Brushy Hill Road, proposing landscaping activities within an upland review area. The site is shown on Assessor's Map # 63 as Lot #69.

Justin Quinn, L.A., represented the applicant. He described the proposal to provide a gravel access path along the rear of the house and the proposed stone terrace on a gravel base. He described the proposed plantings along the slope to stabilize the area.

Mr. Tone asked if they would be re-grading. Mr. Quinn said the grading would be limited to within 10-12 feet of the house. All grading would be by hand and they would use the material adjacent to the wall.

Ms. Shapiro asked if the proposed wall was to replace the existing lattice. Mr. Quinn said yes.

Mr. Rohr asked about permanent stabilization. Mr. Quinn said they would a mix of woody and herbaceous material.

The Commission asked about the proposed lighting. Mr. Quinn said the lighting will be oriented downward toward the path. They will eliminate the existing flood lights.

Mr. Flaherty asked them to consider night sky compliant light fixtures. Mr. Quinn said they would.

Ms. Shapiro asked if he thought the proposal would make the slope more stabile then it is currently. Mr. Quinn said he thought it would.

Mr. Flaherty made a motion to approve the application with strong recommendations to use night sky compliant light fixtures and relocate the oil tank in the basement. Mr. Tone seconded the application and it passed 5-0.

EPC-32-2011, William D. Corcoran, Jr., 327 Middlesex Road, proposing house addition and driveway within an upland review area. The site is shown on Assessor's Map #9 as Lot #75.

Thomas Nelson, P.E., represented the applicant. He provided an overview of the proposed garage addition, removal of a portion of the existing drive, new drive and storm water detention.

Mr. Tone asked that he show the 100 foot regulated area from Stony brook.

Mr. Flaherty made a motion to hold a public hearing because it would be in the public interest due the location of the property on Stony Brook. Mr. Rohr seconded the motion and it passed 5-0. The public hearing was scheduled for September 7.

Mr. Flaherty asked them to show the flood plain on the property by elevation. He said the applicant is a steward to a major portion of the Stony Brook and should consider enhancements.

Mr. Rohr asked them to be prepared to explain why the garage is not proposed on the other side.

Mr. Flaherty said there is a current approval for an alternative garage location.

Mr. Rohr asked them to provide information about the existing yard drain and if there is an outlet.

EPC-33-2011, Todd Gjervold, 138 Mansfield Avenue, proposing drainage improvements in a regulated area. The site is shown on Assessor's Map #15 Parcel 50.

James McManus, Soil Scientist, was present for the applicant. He said he expected Peter Finkbeiner, P.E. to be at the meeting.

The Commission had numerous questions related to the engineering on this project and decided to table the item until September 7.

Mr. Tone called the following public hearing item:

EPC-9-2011, John & Mary Keene, 30 Hamilton Lane, proposing a pool within a regulated area and upland review area. The site is shown on Assessor's Map #10 as Lot #28. (Continued from July 6).

Matt Popp, Wetland Scientist, represented the applicant. He said the Commission left the hearing open for specific information. He said they have shown a basin to account for runoff if there is a hard pool cover. They have also shown a boulder demarcation. They previously provided an alternated pool location to protect the trees along the property boundary. He said his client would prefer not to install the boulders since there is a dense line of hemlocks already there.

Mr. Tone asked if there were any members of the public who wished to speak regarding this application. There were none.

Mr. Flaherty made a motion to close the public hearing. Ms. Shapiro seconded the motion and it passed 5-0.

The Commission proceeded to deliberate on the application.

Mr. Rohr said he prefers the alternate pool location. Ms. Shapiro agreed.

Mr. Tone made a motion to approve the application with modifications and the alternative pool location. Mr. Flaherty seconded the motion and it passed 5-0.

Mr. Flaherty left the meeting at 8:35 p.m.

Mr. Tone called the following public hearing item:

EPC-20-2011, Dale & Hillary Miller, 5 Tokeneke Beach Drive, proposing to amend the Regulated Inland Wetlands and Watercourses Map. The site is shown on Assessor's Map #62 as Lot #67. (Continued from July 6).

Attorney Robert Maslan represented the applicant. He introduced Todd Ritchie, P.E. and John Roberge, P.E.

Mr. Maslan said he has addressed the issue of his client's standing to submit an application in his letter to the Commission. He said there is no definitive case law re dual jurisdiction over watercourses.

Mr. Maslan submitted additional information including a map of the general area, tide data prepared by Roberge Associates, a report from wildlife biologist Michelle Ford, and additional salinity tests results. He also provided resumes for Todd Ritchie and Michelle Ford and minutes from a preliminary application meeting with the DEP.

Mr. Tone said he did not address the issue of the pond ownership. Mr. Maslan said the pond is owned by more than one owner including the Millers. He referred to the property survey showing small portions of the lagoon are owned by the Millers. He said the Martindales are the owners of record for the remainder of the lagoon. Mr. Maslan said no one can own the water but they can own the bottom.

Mr. Tone asked if the application is to delete the entire lagoon. Mr. Maslan said yes because the Miller property is subject to regulation as an upland review area. If there are no inland wetlands there can be no regulation of the upland.

Mr. Tone asked when the lagoon first appeared on the wetland map. Mr. Maslan said he believed when the Town first went to a digital map in 2006.

Mr. Maslan submitted a history of other similar properties not having been required to submit inland wetland applications for activities. Mr. Tone said the mere fact that of whether other properties are regulated is not necessarily relevant.

Mr. Maslan said the regulations in 1992 included Holly Pond and Gorham's Pond which are tidal portions of the rivers. He provided a 2004 resolution for a CAM resolution approving a fence along the edge of the pond which did not have an EPC application.

Todd Ritchie, P.E. described the biological assessment prepared by Michelle Ford and the salinity report. He said additional salinity samples were taken in the lagoon and in Pound Gut.

Mr. Ritchie said the lagoon meets the Coastal Water definition. He said the lagoon is listed on the National Wetland Map as estuarine and tidal waters. He said that their conclusion is that the waters are highly saline and, therefore, a marine environment.

John Roberge said he did not have the qualitative data he had first thought. He said they have provided new observations based on observations from August 2. He described the data provided for water surface elevations over a five hour period. He said the video evidence provided shows water turbulence in the lagoon as a result of tidal action in Pond Gut. He said that his conclusion is that there is a connection between the lagoon and Pond Gut and that the lagoon is tidal.

Mr. Maslan addressed a letter to the Commission from Sally Knowlton Keene. He said the letter acknowledges the tidal action in the lagoon

Mr. Maslan said that his conclusion is that the lagoon is tidal not inland and it must be one or the other but not both.

Mr. Maslan asked Mr. Maslan if the applicant would consent to a continuation of the public hearing based on their submittal of a significant amount of data. Mr. Maslan said he would confer with his client.

Mr. Tone asked for public comment.

Attorney Wilder Gleason provided material related to the ownership of the property.

Mr. Maslan said his client consented to an extension to continue the hearing until September 7.

Mr. Gleason said the Martindales have owned the lagoon for over ten years. He said a copy of the deed is included in his submittal. He provided a map of the lagoon showing a sliver of the lagoon owned by Miller. He provided records of the watercourse as a tax parcel since at least 1958.

Mr. Gleason said that Darien regulations, Section 14, require the owner's consent to submit an application. He said the Martindales have not provided consent.

Mr. Tone asked if the application would be complete if it only requested a map change for the sliver of the lagoon owned by the Millers. Mr. Gleason said yes.

Mr. Gleason said he concurs with Mr. Tone's statement that the absence of applications to EPC for other properties does not mean the EPC does not regulate the Miller property.

Todd Ritchie said that all of the maps of the property say “tidal waters”. He provided a copy of a site plan for 2 Tokeneke Beach Drive. He said the purpose of providing the plan is to represent their consistency with respect to the work adjacent to the water body.

Mr. Maslan said the original survey shows the boundary of the Miller property extending into the lagoon. He said the Commission never asked owners for their permission when the wetland map was first created.

Mr. Gleason said there is a difference in regulations put forth by the Commission versus a request from a property owner.

The Commission continued the public hearing on this application until September 7.

EPC-26-2011, William Morehouse, 15 Morehouse Drive, proposing new house construction, and related activities in an upland review area. The site is shown on Assessor’s Map #15 as Lot #12.

Ted Milone, P.E. represented the applicant. He introduced Matt Popp, L.A. and Wetland Scientist, and property owner Polly Morehouse.

Mr. Milone said the lot was created in 1957. He showed the preliminary designs which led to the current proposal. He described the proposed development and stormwater management. He said they provided an analysis of the stormwater runoff in accordance with section 880 of the Town stormwater regulations. He said there will be no increase in runoff for all storms 2-50 year. They are decreasing runoff for all storms.

Mr. Popp provided a summary of his report and landscape plan. He described the wetland functions and values, the invasive species to be removed and the proposed native plantings.

Mr. Tone asked him to explain a groundwater discharge wetland and if there is a watercourse on site. Mr. Popp said there is no watercourse. He described the definition of a groundwater discharge wetland as a wetland that receives groundwater, particularly during low flow periods, in contrast to recharge wetlands such as those over aquifers.

Mr. Tone asked if the project would affect the wetland functions. Mr. Popp said there would be a minor impact on the discharge function but no diversion of water to a different watershed. He said there would be no adverse impact on other wetland functions.

Mr. Sweeney asked the house dimensions. Mr. Milone said 70 x 45.

Ms. Shapiro asked if there will be a basement. Mr. Milone said yes.

Mr. Rohr asked if there were test pits in the basement area. Mr. Milone described test pit #2 as having water at 6 feet and mottling at 32” He said he believes there is a restricted layer causing the mottling. He said the test results are from March in a wet year.

Mr. Rohr asked about the depth of the basement at 10 feet. Mr. Milone said the basement would be about one half foot below the water table and would drain by gravity to the corner of the property.

Mr. Rohr said the volume of the basement water should count toward the required storage.

Mr. Tone asked if they considered a pervious driveway. Mr. Milone said the applicant would prefer an asphalt driveway, but would consider pervious pavers.

Mr. Tone asked if there is a test pit in the rain garden area. Mr. Milone said yes, test pit #1.

Ms. Shapiro asked if it was a full basement. Mr. Milone said yes. It will include mechanicals and storage.

Mr. Tone asked for public comment.

Jim Bogie, 30 Granaston Lane said they have lived in their home for 20 years. He said the wetlands have been degraded over the years. A reduction in wetlands should send an alarm off. He asked if wetlands are not considered vital to the Town. He was unaware that homes could be built on regulated areas. He asked if a water retention system should be substituted for wetlands. He is concerned that the wetlands could shift toward his property. He asked what happens to the trees and wildlife. He said there has been tree removal and dumping on the property.

Mrs. Morehouse said the only tree cutting that has occurred is dead ashes which she received permission to remove from Dave Keating.

Mr. Rohr asked them to identify the trees to be removed between the back of the house and the boulder line and identify trees to be saved. He asked the percentage of the upland review area to be converted to lawn.

Peter Carroll, 17 Roland Drive said he thought that, although there was a lot of snow, he did not think it was a very rainy year. He asked if they could provide data on the rainfall.

The Commission continued the public hearing on this application until September 7.

Mr. Tone called the following public hearing item:

EPC-27-2011, William Morehouse, 21 Morehouse Drive, proposing new house construction and related activities in a regulated area and upland review area. The site is shown on Assessor's Map # 15 as Lot #11.

The Commission opened the public hearing on this application, and immediately continued it until September 7.

Mr. Sweeney made a motion to adjourn. Ms. Shapiro seconded the motion and it passed 4-0. The meeting adjourned at 11:05 P.M.

Respectfully submitted,

Richard Jacobson
Environmental Protection Officer