

ENVIRONMENTAL PROTECTION COMMISSION  
REGULAR MEETING/PUBLIC HEARING  
DRAFT MINUTES  
May 16, 2007

Wednesday, May 16, 2007

7:30 p.m.

Room 206  
Town Hall

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Commission Members Present: Peter Hillman, Reese Hutchison, Pete Kenyon, Craig Flaherty and Susan Cameron (at 8:30p.m.).

Staff Present: David Keating

Court Reporter: Bonnie Syat

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**GENERAL MEETING**

**Old Business:**

Chairman Hillman called the meeting to order at 7:35 P.M. , and read the first agenda item:

EPC-91-2005, J.J. Boca Land Development, 473 Hollow Tree Ridge Road, requesting a permit amendment to change patio area and provide additional plantings.

John Cappiello, project developer, and Donald Strait explained that the proposed changes to the terrace and landscape area are adjacent to the swimming pool on the south side of the house. The result would be slightly less landscaped area on the terrace elevation, which is separated from the wetland area by a vertical retaining wall, and they will be adding rain garden area and storm water infiltrators to make up for the increase in impervious surface. Commission members commented that these changes are in accordance with previous *instructions* that the applicant has had with the Commission. The following motion was made: That the Commission authorize the slight amendment to the previously approved plan to allow the slight increase in terrace area adjacent to the pool and the addition of the rain gardens and infiltrators. The motion was made by Mr. Hillman, seconded by Mr. Flaherty and unanimously approved.

Chairman Hillman read the following agenda item:

EPC-11-2006, Charles and Brook McIlvane, 57 Nearwater Lane, requesting an amendment to expand patio area.

Attorney Wilder Gleason represented the applicant and noted that the addition to the house has been designed to avoid any impacts to the huge Beech tree on the southeast portion of the house. The current proposal is to expand slightly the terrace area on the rear portion of the house. The elevated terrace is approximately eight feet above ground level, but is very close to the inland wetland rear portion of the property. Attorney Gleason explained that they are adding approximately 118 square feet of impervious surface area, but it is not in the wetland area but in the regulated area. He noted that much of the wetland area is existing lawn area that had been created many years ago.

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Attorney Gleason explained that the mitigation measures proposed by the applicant include the removal of many invasive species and replanting the rear portion of the property to enhance the wetland. He discussed the plan as drawn by Karen Shopis. He said that much of the wetlands is already lawn, and this increase in the elevated terrace area is so that the use of the wetlands will be minimized. The landscaping plan was discussed. Mr. Flaherty noted that some of the lawn area is being extended in the wetland area. He said that was not good. Mr. Gleason said that the plan could be revised to keep the lawn edge where it is and to allow the proposed plantings to be spread out a little bit more.

After further discussion, the following motion was made: That the Commission approve the expansion of the terrace area subject to the mitigation plan prepared by Karen Shopis with the following changes: That the lawn area not be extended and that the wetland plantings be spread out to make sure that the lawn area is not extended in the future. The revised mitigation plan is to be submitted for staff review and action. The motion was made by Mr. Hillman, seconded by Mr. Kenyon and unanimously approved.

Mr. Hillman read the following agenda item:

EPC-25-2007 Sanford and Nicole Ewing, 110 Stephen Mather Road, proposing drainage pipe installation and landscaping within a regulated area. The site is located on the southwest corner of the intersection of Stephen Mather Road and Maplewood Road and is shown on Assessor's Map #1 as Lot #36.

No one was present to discuss the project. The Commission will discuss the matter at a subsequent meeting.

Chairman Hillman read the following agenda item:

EPC-30-2007 John and Kristine Kaufman, 30 St. Nicholas Road, proposing a house addition, porch, and related construction within an upland review area. The site is located on the south side of St. Nicholas Road approximately 800 feet west of the intersection of St. Nicholas Road and Mansfield Avenue and is shown on Assessor's Map #6 as Lot #82.

Jeffrey McDougal, Land Surveyor, reviewed the plans and proposed work. He said that the lawn already extends to the brook, and the proposed work includes the installation of a rain garden in the southeast corner of the property near the pond. He discussed the proposed additions to the house and said that the installation of the rain garden will mitigate the proposed work. He submitted detailed information about the rain garden that was obtained from the University of Connecticut Extension Services website. Mr. Flaherty said that the rain garden is shown very close to some large trees, and noted that the shape of the rain garden will need to be adjusted in the field to avoid any disturbance of the tree roots.

After further discussion, the following motion was made: That the Commission approve the application subject to the implementation of the rain garden mitigation work and with the condition that the large trees on the site are to be preserved by the reshaping of the rain garden basin so as not to affect the root structure of any of the nearby trees. The size and/or capacity of the rain garden must remain as large or larger as originally designed.

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The motion was made by Mr. Flaherty, seconded by Mr. Kenyon and unanimously approved.

Chairman Hillman read the following agenda item:

EPC-31-2007 Charles L. Stone, 68 Salem Straits, proposing installation of underground utilities within an upland review area. The site is located on the north side of Salem Straits approximately 400 feet east of the intersection of Candlewood Lane and Salem Straits and is shown on Assessor's Map #62 as Lot #66.

Jeffrey McDougal, Land Surveyor, explained that the proposed work is very temporary in nature and would just allow for the construction activity through the regulated area. Commission members reviewed the plans and noted that there are no particular concerns with the project.

After further discussion, the following motion was made: That the Commission approve the application for the temporary disturbance within the regulated area. The motion was made by Mr. Flaherty, seconded by Mr. Hutchison and unanimously approved.

Chairman Hillman read the following agenda item:

EPC-2-2006 Richard Windels on behalf of Laurie Stuek, 22 Driftway Lane, requesting permit amendment to allow maintenance dredging of pond.

Richard Windels represented the applicant because he would be directly involved in the pond dredging activity. Mr. Windels thanked the Commission for dealing with this request as an amendment to the previously approved permit for the house construction and related site work. He noted that the pond dredging is really a maintenance activity, and the work will take place as soon as the site conditions allow and the water is at a low level. He said that the material to be dredged out of the pond is primarily organic material (in some cases the dredged material is primarily road sand). He said that the excavated material is contaminated with invasive plant species, so the material will not be spread out on the site. Rather, it will be removed from the site and properly disposed of.

After further discussion, the following motion was made: That the Commission approve the amendment of the previous permit to allow for the pond dredging/maintenance activity subject to the condition that the excavated material, which contains invasive plant species is to be removed from the site and no filling or regrading of the site is to take place as part of or in conjunctions with this pond dredging activity. The motion was made by Mr. Flaherty, seconded by Mr. Hutchison and unanimously approved.

Mr. Hillman read the following agenda item:

EPC-06-2007 Joseph and Maria Teresa Criscuolo, 95 Hoyt Street, proposing driveway construction within a regulated area. The site is located on the east side of Hoyt Street approximately 80 feet north of the intersection of Hoyt Street and Miller Road and is shown on Assessor's Map #29 Lot # 47. (Public hearing closed April 11, 2007, decision required by May 16).

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Commission members noted that Commission member Susan Cameron wishes to take part in the discussion regarding this application, and she is currently representing the Commission at a different meeting elsewhere in the Town Hall. They decided to postpone discussion of this matter until later in the meeting.

Chairman Hillman read the following agenda item:

EPC-12-2007 Thomas and Lynne Mercein, 29 Sunswyck Road, proposing construction of a pool within an upland review area. The property is located on the south side of Sunswyck Road at the southwest intersection of Sunswyck Road and Tory Hole Road and is shown on Assessor's Map #62 as Lot #27. (decision required by June 8)

The Commission members reviewed the draft resolution that had been prepared by the staff. They felt that a new paragraph, "D" needs to be added about the nature of the prior approval for the site. Mr. Hillman also had several typos that needed to be corrected.

The following motion was made: Subject to the correction of the typos and the inclusion of additional information about the nature of the prior approval on the site, the motion was made to adopt the draft resolution, and therefore approve the project. The motion was made by Mr. Hutchison and seconded by Mr. Hillman. Mr. Hutchison, Mr. Hillman and Mr. Flaherty voted in favor of the motion. Mr. Kenyon abstained. The motion passed by a vote of 3-0-1, and the application was approved. The adopted resolution read as follows:

**CONDITIONAL APPROVAL**  
**PERMIT TO CONDUCT A REGULATED ACTIVITY**

EFFECTIVE DATE: May 16, 2007  
EXPIRATION DATE: May 16, 2012

Application Number: EPC-12-2007

Applicant's Name and Address: Thomas & Lynn Mercein  
29 Sunswyck Road  
Darien, CT 06820

Property Owner: same as applicant

Property Address of Proposed Activity: 29 Sunswyck Road

Proposed Activity: Construction of walkway, grading and planting

Shown on: Assessor's Map #62 as Lot #27

Approved Plans: "Alternate Plan One" by Stearns and Wheler dated April 2007

The Environmental Protection Commission has considered the application with due regard to the matters enumerated in Section 22a-41 of the Connecticut General Statutes as amended and in

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accordance with Section 10 of the Inland Wetlands and Watercourse Regulations of the Town of Darien, and has found that an approval is in conformance with the purposes and provisions of said sections.

This authorization refers to the application to conduct regulated activities within and adjacent to inland wetlands within the Town of Darien. The Commission has conducted its review and findings on the bases that:

- In issuing this permit, the Commission has relied on the applicant's assurances, and makes no warranties and assumes no liability as to the structural integrity of the design or any structures, nor to the engineering feasibility or efficacy of such design.
- In evaluating this application, the Environmental Protection Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete, and/or inaccurate, after interested parties have had an opportunity to be heard at a duly noticed public hearing this permit shall be modified, suspended or revoked by the Commission.

The Environmental Protection Commission determined that the proposed activity may have a significant impact on wetlands or watercourses and met for a public hearing on April 4, and May 2, 2007. During the Commission's hearing the applicant's representatives presented information explaining the project and provided answers to concerns and questions raised by the Commission and Commission staff. The general public was provided an opportunity to express their opinions and comment regarding the proposed work activity.

Following careful review of the submitted application materials and related analysis, the Commission, all of whose members that participated in the deliberation are fully familiar with the site

A. PROJECT DESCRIPTION:

The proposal includes the construction of a pool within the upland review area and temporary disturbance of wetland soils within the lawn. A portion of the lawn area was previously a paddle tennis court which was removed and restored under a previous approval in 2005.

The closest point of the pool to the wetland will be 27 feet. The applicant has proposed mitigation plantings to enhance the wetland and buffer functions.

B. SITE DESCRIPTION:

The site is 2.2 acre residential lot with an existing house and driveway and lawn area. The site contains wetland soils associated with a poorly drained area within the lawn adjacent to an off-site wooded swamp. The wetlands provide stormwater renovation and some limited flood storage capacity. The upland review area contains a portion of the house, driveway, and lawn.

C. HEARING PRESENTATIONS AND RECORD:

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The applicant and his representatives provided materials to the EPC as part of the record in this matter. These materials were presented and discussed during the Public Hearing on April 4, and May 2, 2007 and during their deliberations on May 2 and May 16, 2007.

C. ANTICIPATED IMPACTS AND PROPOSED MITIGATION

The Commission was concerned with the close proximity of the proposed pool to the wetland and the disturbance required to gain access to the pool. The applicant provided alternatives during the public hearing process which increased the distance of the pool to the wetland. Mitigation plantings were also proposed to enhance the wetland and upland review area.

D. REVIEW OF FEASIBLE AND PRUDENT ALTERNATIVES:

The approved plan will provide mitigation measures which will prevent significant impacts to the regulated area. The alternative design provides an adequate vegetated buffer and stone walls between the pool and the wetland.

The Commission finds that the proposed regulated activity does not pose a significant impact to the wetlands. Pursuant to 22a-41(b) of the CT general statutes and Section 10.3 of the Town's Inland Wetlands and Watercourses Regulations the Commission finds that a feasible and prudent alternative does not exist.

E. DECISION:

The Commission hereby approves Wetlands Permit Application #EPC-12-2007 with the following stipulations:

Standard Conditions:

**1. Submit a \$100.00 inspection fee payable to the Town of Darien to cover the cost of inspections during construction. Work may not begin until this fee is paid. Our office will have a number of brief, unannounced site inspections throughout your project, and those will generally occur on weekdays between the hours of 8:30 A.M. and 4:30 P.M. This permit does not relieve the applicant of their responsibility to comply with all other applicable rules, regulations, and codes of other Town agencies or other regulating agencies. A copy of these other permits and approvals shall be submitted to the EPC to complete the file.**

**Please maintain this document for your records and be sure to bring it to the attention of any new owners, as the obligations hereunder continue even if the ownership changes.**

2. This is a conditional approval. Each and all of the conditions herein are an integral part of the Commission's decision.

3. All areas disturbed by work activity associated with the development project shall be restored to pre-existing conditions.

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4. The permittee shall notify the Environmental Protection Commission prior to commencement of work activity, and after the sediment and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and as per plan. All sediment and erosion control measures should be maintained until all disturbed areas are stabilized and re-vegetated.

5. Any increase in the extent of regrading, development, disturbance, or impacts within the wetlands or watercourse, or regulated area around the wetlands, or other significant amendments to the approved plan will require prior submission to and review by the Commission in accordance with Section 7.8 of the Inland Wetlands and Watercourses Regulations of the Town of Darien. Any structures, excavation, fill, obstructions, encroachment, or regulated activities not specifically identified and authorized herein shall constitute a violation of this permit and may result in its modification, suspension or revocation. Upon the initiation of the activities authorized herein, the permittee would thereby accept and agree to comply with the terms and conditions of this permits

6. No equipment or material, including, without limitation, fill, construction materials, debris, or other items shall be deposited, placed, or stored in any wetland or watercourse on or offsite unless specifically authorized by this permit.

Modifications and Specific Conditions

1. Provide a survey as-built plan of the pool location.
2. The applicant shall request an inspection of the proposed mitigation plantings and rain garden prior to the issuance of a Certificate of Occupancy. In the event the time of year prevents planting when the C.O. is requested, the applicant may elect to provide a performance bond after submitting a bond estimate for staff approval. The bond will be returned after the plants are installed and inspected.

Chairman Hillman read the following agenda item:

EPC-13-2007 Kai Young, GPG Builders, 19 Greenwood Avenue, proposing to demolish an existing house and construct new dwelling within an upland review area. The property is located on the west side of Greenwood Avenue approximately 600 feet north of the intersection of Greenwood Avenue and Camp Avenue and is shown on Assessor's Map #8 as Lot #147. (decision required by June 8)

The Commission reviewed the draft resolution that had been prepared by the staff. After a brief discussion, the following motion was made: That the Commission adopt the resolution to approve the project. The motion was made by Mr. Hillman, seconded by Mr. Flaherty and unanimously approved. The adopted resolution read as follows:

**CONDITIONAL APPROVAL**  
**PERMIT TO CONDUCT A REGULATED ACTIVITY**

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EXPIRATION DATE: May 16, 2012

Application Number: EPC-13-2007

Applicant's Name and Address: Kai Uwe Young  
81 Pine Hill Avenue  
Stamford, CT 06906

Property Owner: same as applicant

Property Address of Proposed Activity: 19 Greenwood Avenue

Proposed Activity: House replacement and associated grading activity within 100 foot upland review area.

Shown on: Assessor's Map #8 as Lot #147

Approved Plans: "Environmental/Wetland Evaluation Enhancement Plan" By Stearns & Wheler, LLC and dated March 5, 2007 revised to 4/27/07.

The Environmental Protection Commission has considered the application with due regard to the matters enumerated in Section 22a-41 of the Connecticut General Statutes as amended and in accordance with Section 10 of the Inland Wetlands and Watercourse Regulations of the Town of Darien, and has found that an approval is in conformance with the purposes and provisions of said sections.

This authorization refers to the application to conduct regulated activities within and adjacent to inland wetlands within the Town of Darien. The Commission has conducted its review and findings on the bases that:

- In issuing this permit, the Commission has relied on the applicant's assurances, and makes no warranties and assumes no liability as to the structural integrity of the design or any structures, nor to the engineering feasibility or efficacy of such design.
- In evaluating this application, the Environmental Protection Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete, and/or inaccurate, after interested parties have had an opportunity to be heard at a duly noticed public hearing this permit shall be modified, suspended or revoked by the Commission.

The Environmental Protection Commission determined that the proposed activity may have a significant impact on wetlands or watercourses and met for a public hearing on April 4, 2007 and May 2, 2007. During the Commission's hearing the applicant's representatives presented information explaining the project and provided answers to concerns and questions raised by the Commission and Commission staff. The general public was provided an opportunity to express their opinions and comment regarding the proposed work activity.

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Following careful review of the submitted application materials and related analysis, the Commission, all of whose members that participated in the deliberation are fully familiar with the site and its surroundings, finds:

F. PROJECT DESCRIPTION:

The property is located on the Noroton River with an existing residence and lawn area. The site slopes more steeply beyond the lawn area to a wetland adjacent to the river. The new house construction proposed is within the 100 foot upland review area but still within the developed portion of the property. The existing lawn area is not proposed to be expanded. The applicant has offered mitigation by installing native plantings adjacent to the wetland. Stormwater management will be provided by directing roof and driveway runoff to underground galleries and rain gardens.

G. HEARING PRESENTATIONS AND RECORD:

The applicant and his representatives provided materials to the EPC as part of the record in this matter. These materials were presented and discussed during the Public Hearing of April 4, 2007, May 2, 2007 and during their deliberations on May 2, 2007 and May 16, 2007.

H. ANTICIPATED IMPACTS AND PROPOSED MITIGATION

The Commission was concerned with the potential increase in stormwater runoff from the site due to an increase in impervious surface area. The applicant proposes to provide on-site stormwater detention for the increase in runoff due to development through the use of underground storage and above ground rain gardens.

The Commission also considered revised plans during the course of the hearing process which will create a stone wall barrier within the upland review area and just outside the flood limit line. The applicant has also proposed extensive mitigation plantings within a buffer area adjacent to the river.

I. REVIEW OF FEASIBLE AND PRUDENT ALTERNATIVES:

The approved plan will provide stormwater management and other mitigation measures which would not be required if the applicant added to the existing home outside of the upland review area. The alternative design for a new residence, as modified also provides enhancements in the buffer area which would not be required if the applicant expanded the existing home.

The Commission finds that the proposed regulated activity does not pose a significant impact to the wetlands. Pursuant to 22a-41(b) of the CT general statutes and Section 10.3 of the Town's Inland Wetlands and Watercourses Regulations the Commission finds that a feasible and prudent alternative does not exist.

J. DECISION:

The Commission hereby approves Wetlands Permit Application #EPC-13-2006 with the following conditions and specific stipulations.

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Standard Conditions:

**7. Submit a 100.00 inspection fee payable to the Town of Darien to cover the cost of inspections during construction. Work may not begin until this fee is paid. Our office will make a number of brief, unannounced site inspections throughout your project, and those will generally occur on weekdays between the hours of 8:30 A.M. and 4:30 P.M.**

**This permit does not relieve the applicant of their responsibility to comply with all other applicable rules, regulations, and codes of other Town agencies or other regulating agencies. A copy of these other permits and approvals shall be submitted to the EPC to complete the file.**

**Please maintain this document for your records and be sure to bring it to the attention of any new owners, as the obligations hereunder continue even if the ownership changes.**

8. This is a conditional approval. Each and all of the conditions herein are an integral part of the Commission's decision.

9. Sediment and erosion controls shown on the plans shall be maintained throughout the construction process and shall only be removed when the disturbed areas have been adequately re-stabilized with suitable vegetation.

10. All areas disturbed by work activity associated with the development project shall be restored to pre-existing conditions.

11. The permittee shall notify the Environmental Protection Commission prior to commencement of work activity, and after the sediment and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and as per plan. All sediment and erosion control measures should be maintained until all disturbed areas are stabilized and re-vegetated.

12. Any increase in the extent of regrading, development, disturbance, or impacts within the wetlands or watercourse, or regulated area around the wetlands, or other significant amendments to the approved plan will require prior submission to and review by the Commission in accordance with Section 7.8 of the Inland Wetlands and Watercourses Regulations of the Town of Darien. Any structures, excavation, fill, obstructions, encroachment, or regulated activities not specifically identified and authorized herein shall constitute a violation of this permit and may result in its modification, suspension or revocation. Upon the initiation of the activities authorized herein, the permittee would thereby accept and agree to comply with the terms and conditions of this permits

13. No equipment or material, including without limitation, fill, construction materials, debris, or other items shall be deposited, placed, or stored in any wetland or watercourse on or offsite unless specifically authorized by this permit.

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14. All equipment and storage of materials during construction shall be maintained outside the regulated areas, to ensure that the wetlands on the eastern portion of the site will be undisturbed.

15. The duration of this permit shall be five (5) years and shall expire on the date specified above. All proposed activities must be completed and all conditions of this permit must be met within one year from the commencement of the proposed activity. Any request for renewal must be received prior to the expiration date.

Specific Conditions and Modifications:

1. The design engineer shall provide a letter to the Commission certifying that the stormwater retention system has been installed in accordance with the approved plan
2. The applicant shall request an inspection of the proposed mitigation plantings and rain garden prior to the issuance of a Certificate of Occupancy. In the event the time of year prevents planting when the C.O. is requested, the applicant may elect to provide a performance bond after submitting a bond estimate for staff approval. The bond will be returned after the plants are installed and inspected.

Chairman Hillman read the following agenda item:

EPC-16-2007 Patrick Goulding and Anna Zaranski, 5 Holly Lane, proposing to demolish an existing house and construct new dwelling within an upland review area. The site is located on the east side of Holly Lane approximately 300 feet west of the intersection of Holly Lane and Middlesex Road and is shown on Assessor's Map #9 as Lot #147. (decision required by June 8)

The Commission reviewed the resolution that had been drafted by the staff. After a brief discussion the following motion was made: That the Commission adopt the following resolution to approve the project. The motion was made by Mr. Hutchison, seconded by Mr. Hillman and unanimously approved. The adopted resolution read as follows:

**CONDITIONAL APPROVAL**

**PERMIT TO CONDUCT A REGULATED ACTIVITY**

EFFECTIVE DATE: May 16, 2007  
EXPIRATION DATE: May 16, 2012

Application Number: EPC-16-2007

Applicant's Name and Address: Patrick Goulding and Anna Zaranski  
5 Holly Lane  
Darien, CT 06820

Property Owner: same as applicant

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Property Address of Proposed Activity: 5 Holly Lane

Proposed Activity: Demolish existing dwelling and build new home

Shown on: Assessor's Map #9 as Lot #147

Approved Plan: "Site Plan Goulding Zaranski" prepared by Environmental Land Solutions dated 3/15/06 (to be revised)

The Environmental Protection Commission has considered the application with due regard to the matters enumerated in Section 22a-41 of the Connecticut General Statutes as amended and in accordance with Section 10 of the Inland Wetlands and Watercourse Regulations of the Town of Darien, and has found that an approval is in conformance with the purposes and provisions of said sections.

This authorization refers to the application to conduct regulated activities within and adjacent to inland wetlands within the Town of Darien. The Commission has conducted its review and findings on the bases that:

- In issuing this permit, the Commission has relied on the applicant's assurances, and makes no warranties and assumes no liability as to the structural integrity of the design or any structures, nor to the engineering feasibility or efficacy of such design.
- In evaluating this application, the Environmental Protection Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete, and/or inaccurate, after interested parties have had an opportunity to be heard at a duly noticed public hearing this permit shall be modified, suspended, or revoked by the Commission.

The Environmental Protection Commission determined that the proposed activity may have a significant impact on wetlands or watercourses and met for a public hearing on May 2, 2007. During the Commission's hearing the applicant's representatives presented information explaining the project and provided answers to concerns and questions raised by the Commission and Commission staff. The general public was provided an opportunity to express their opinions and comment regarding the proposed work activity.

Following careful review of the submitted application materials and related analysis, the Commission, all of whose members that participated in the deliberation are fully familiar with the site and its surroundings, finds:

**K. PROJECT DESCRIPTION:**

The proposal includes the demolition of the existing structure and construction of a replacement house which will result in a reduction of approximately 50% of impervious surface within the upland review area. The proposed disturbance within the upland review area includes a portion of the new residence, the removal of a paved driveway, and construction of a rain garden. The new gravel driveway will be located outside of the upland review area. The applicant proposes to plant native vegetation within the area of pavement to be removed in the upland review area and within

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the rain garden.

L. SITE DESCRIPTION:

The site is 1.0 acre residential lot with an existing house and driveway and lawn area. The site contains wetland soils associated within a wooded swamp at the rear and east side of the property. The wetlands provide stormwater renovation, some limited flood storage capacity, and good wildlife habitat potential. The upland review area contains a portion of the house, driveway, and lawn.

M. HEARING PRESENTATIONS AND RECORD:

The applicant and his representatives provided materials to the EPC as part of the record in this matter. These materials were presented and discussed during the Public Hearing on May 2, 2007 and during their deliberations on May 2 and May 16, 2007.

N. ANTICIPATED IMPACTS AND PROPOSED MITIGATION

The Commission was concerned with the potential increase in stormwater runoff from the site. The applicant proposes to provide on-site stormwater detention which will reduce runoff due to development through the use of underground storage and an above ground rain garden. The proposed development will reduce the amount of development in the upland review area. The applicant also proposes to remove the driveway from the upland review area and provide mitigation plantings in the restored area.

O. REVIEW OF FEASIBLE AND PRUDENT ALTERNATIVES:

The approved plan will provide stormwater management and other mitigation measures which would not be required if the applicant added to the existing home on the second story. The alternative design for a new residence, as modified, provides a reduction in building and pavement area within the upland review area.

The Commission finds that the proposed regulated activity does not pose a significant impact to the wetlands. Pursuant to 22a-41(b) of the CT general statutes and Section 10.3 of the Town's Inland Wetlands and Watercourses Regulations the Commission finds that a feasible and prudent alternative does not exist.

P. DECISION:

The Commission hereby approves Wetlands Permit Application #EPC-16-2007 with the following stipulations:

Standard Conditions:

1. **Submit a \$100.00 inspection fee payable to the Town of Darien to cover the cost of inspections during construction. Work may not begin until this fee is paid. Our office will**

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**make a number of brief, unannounced site inspections throughout your project, and those will generally occur on weekdays between the hours of 8:30 A.M. and 4:30 P.M.**

**This permit does not relieve the applicant of their responsibility to comply with all other applicable rules, regulations, and codes of other Town agencies or other regulating agencies. A copy of these other permits and approvals shall be submitted to the EPC to complete the file.**

**Please maintain this document for your records and be sure to bring it to the attention of any new owners, as the obligations hereunder continue even if the ownership changes.**

2. This is a conditional approval. Each and all of the conditions herein are an integral part of the Commission's decision.
3. Sediment and erosion controls shown on the plans shall be maintained throughout the construction process and shall only be removed when the disturbed areas have been adequately re-stabilized with suitable vegetation as determined by the EPC staff.
4. All areas disturbed by work activity associated with the development project shall be restored to pre-existing conditions.
5. The permittee shall notify the Environmental Protection Commission prior to commencement of work activity, and after the sediment and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and as per plan. All sediment and erosion control measures should be maintained until all disturbed areas are stabilized and re-vegetated.
6. Any increase in the extent of regrading, development, disturbance, or impacts within the wetlands or watercourse, or regulated area around the wetlands, or other significant amendments to the approved plan will require prior submission to and review by the Commission in accordance with Section 7.8 of the Inland Wetlands and Watercourses Regulations of the Town of Darien. Any structures, excavation, fill, obstructions, encroachment, or regulated activities not specifically identified and authorized herein shall constitute a violation of this permit and may result in its modification, suspension, or revocation. Upon the initiation of the activities authorized herein, the permittee would thereby accept and agree to comply with the terms and conditions of this permits
7. No equipment or material, including, without limitation, fill, construction materials, debris, or other items shall be deposited, placed, or stored in any wetland or watercourse on or offsite unless specifically authorized by this permit.
8. All equipment and storage of materials during construction shall be maintained outside the regulated areas, to ensure that the wetlands on the eastern portion of the site will be undisturbed.
9. The duration of this permit shall be five (5) years and shall expire on the date specified above. All proposed activities must be completed and all conditions of this permit must be met

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within one year from the commencement of the proposed activity. Any request for renewal must be received prior to the expiration date.

Specific Conditions and Modifications

1. The final construction drawings shall include the proposed Cul-tech units proposed by the project engineer.
2. The project designer or engineer shall inspect the construction as necessary to witness the installation of the rain gardens and drainage system components and shall certify in writing to the Commission that the installation conforms with the approved plans. The certification will be required prior to the Planning and Zoning Departments endorsement of the Certificate of Occupancy.
3. The applicant shall request an inspection of the proposed mitigation plantings and rain garden prior to the issuance of a Certificate of Occupancy. In the event the time of year prevents planting when the C.O. is requested, the applicant may elect to provide a performance bond after submitting a bond estimate for staff approval. The bond will be returned after the plants are installed and inspected.

At 8:25 p.m., the Commission decided to take a five minute recess. When the meeting was resumed at 8:30 p.m., Susan Cameron arrived from the other meeting that she had attended.

Chairman Hillman read the following agenda item:

**Other Business:**

Darien High School baseball field – Update on Erosion and Sediment Controls

Joseph Canas, Consulting Engineer, said that he had stopped by the High School field on the way into the meeting. He noted that the concrete trucks were still driving over part of the ball field disturbed area, and that it would take another few weeks to finish up the ball field portion of the project.

The Commission members had reviewed the written correspondence regarding the recent rain storms and the problems that had been experienced. Mr. Canas said that the contractor's intentions to pump out the water from the storm water basin before it overflowed was good, but in retrospect the contractor should have installed a hay and stone filter area to discharge the water from the basin rather than directly discharging the water from the pumping operation.

The Commission expressed their thanks to Mr. Canas for keeping an eye on the situation, and that they look forward to his report at the next meeting.

Chairman Hillman read the following agenda item:

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Rodger Smith, 19 Butlers Island Road, requesting modification of conservation easement to allow lights and sprinkler head.

Chairman Hillman said that he has discussed this request with the staff and with Town Counsel. It is not an application under the Inland Wetlands and Watercourses Regulations. This is a request to the Commission as the holder of a conservation easement. He said that he does not want to conduct a full-blown Public Hearing, but it would be good to hear from the applicant and from any other persons that may be interested in the project in order to get some questions answered and any issues resolved. He said that the Commission has had an opportunity to review the May 15<sup>th</sup> letter from Attorney Campbell and the May 16<sup>th</sup> letter from Attorney Zabetakis. He briefly recessed the meeting so that the Commission could review these letters. Upon resumption of the meeting, he asked Attorney Campbell to explain the project.

Attorney Campbell represented Mr. Smith, and said that everyone agreed that the work that is outside the conservation easement is not within the jurisdiction of the Environmental Protection Commission. Mrs. Cameron said that the work within the conservation easement, even the renovation work, should have been submitted to the EPC for review before it was undertaken. Mr. Campbell said that property owner can maintain and use the walkways that are clearly man-made (not natural), and lights on the walkway are not specifically excluded. He said that the lights are proposed for the safe and reasonable use of the walkways. Mr. Hillman questioned how the lights could be considered leaving the area natural. Mr. Campbell said that it is a balance between the owner's reasonable use of their property, which is subject to the conservation easement, and the easement that prohibits buildings, structures, roadways, and similar items. He said that if an item is not prohibited by the easement, then it is allowed. He said any change to the man-made (not natural) walkway is not a change to the natural state of the conservation easement area. He said that including the lighting fixtures is one form of maintaining the use of the walkway. He said that some lights would only be turned on by a switch in the house. Others would be on a sensor so that they would not be on unless somebody was walking in the area. He said that the Commission as the holder of the easement needs to examine the potential impact of the light. Attorney Campbell said that it would not change the natural condition. Mr. Flaherty said that darkness is a natural state that would be negatively impacted by the installation of lights.

Attorney Campbell said that the proposed irrigation system is needed to maintain the plantings. He said that the area used to be a garden portion of the estate, and in 1985 when the Planning and Zoning Commission approved the subdivision of the adjacent properties to create this lot, they wanted to make sure that the plants were maintained. He said that there were some sort of sprinklers in some areas in or near the conservation easement. He said this was evidenced by finding a sprinkler head, although it was no longer in working order. He said that the law of easements such as this construes any ambiguity in favor of the property owner. He said that anything that it not expressly prohibited is allowed.

Attorney Amy Zabetakis represented the owners to the east so that when the Smiths bought the property in 1985, they were fully aware of the limitations including the local regulations, the existence of the conservation easement over the shoreline area, and some private restrictions between neighboring property owners. He said that Dean Telfer, Mr. Smith's consulting architect at this time, was the consulting architect when the house was originally constructed. He, too, was aware of these restrictions. She said that there is no ambiguity in the language of the conservation

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easement. Everything is to be kept natural. There is no mention of an irrigation system being allowed in the conservation easement, and there is no mention of an irrigation system in any of the 1985 information about the area in question. She said that her client is concerned that adding lights to the area would be a noticeable and negative impact on the natural condition. They are fearful that the lights might be left on all night long, or that the motion sensors might fail, or detect slight movement of animals, or flash on or off through the night. She said that a plain reading of the conservation easement is to leave it natural. Installing an irrigation or lighting system is not a natural condition. She, too, agreed that this is not a wetlands violation (which would be easier to enforce).

Mr. Hutchison noticed that the conservation easement contemplates returning to the EPC (the holder of the easement) for any changes that the property owner wishes to make within the conservation easement area. Attorney Campbell said that even if there were no sprinklers there before, the EPC could consent to that change in order to maintain the plants in the area. He said that there is a liability that the property owner is subject to, that the property owner may need to shut down the walkway if he is not able to get insurance due to lack of safety, and the lack of lights may lead to a lack of safety. This would be contrary to the property owner's right to use the walkway. He said that reasonable accommodation needs to be made. He said that the conservation easement grants some rights and it reserves some rights.

Mr. Hillman noted that the Commission is not going to decide this matter until it thoroughly examines all the aspects. He asked that the staff provide a summary of the Planning and Zoning Commission's actions relative to this matter (the minutes of their meetings,) and said that he (Mr. Hillman) will contact Town Counsel. He asked both of the attorneys involved to submit a brief (no more than two pages) listing of any court cases or facts that they feel are pertinent for the Commission to consider. The Commission will discuss this matter at its next meeting on June 6, 2007.

Chairman Hillman read the following agenda item:

EPC-06-2007 Joseph and Maria Teresa Criscuolo, 95 Hoyt Street, proposing driveway construction within a regulated area. The site is located on the east side of Hoyt Street approximately 80 feet north of the intersection of Hoyt Street and Miller Road and is shown on Assessor's Map #29 Lot # 47. (Public hearing closed April 11, 2007, decision required by May 16).

Mr. Hillman said that he wants more protection of the buffer area, and he also questioned what happens to the existing driveway. Mr. Hutchison said that the date of when the easement was created should be referenced in the EPC's resolution. Mr. Hillman said that a maintenance plan for the new driveway through the wetlands would be appropriate.

Mrs. Cameron said that the actual impact to the wetlands has to be weighed against the safety of the driveway on Hoyt Street. She said that no one has said that the driveway on Hoyt Street is unsafe. Many property owners deal with driveways on Hoyt Street. She said that there have been anecdotal stories about traffic and safety problems on Hoyt Street, but there have been no facts submitted. She said that she does not think that the proposed driveway is motivated by safety.

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Mrs. Cameron said that if the driveway is to be approved, then the Commission should make sure that the new driveway is in lieu of the existing driveway, and that the existing driveway is closed off to traffic within six months. She said it would also be important to make sure that the gravel from the new driveway not be allowed to be spread or dragged or washed into the street or onto the neighbor's property. She said that additional plantings along the driveway need to be included, and the size of the proposed plants needs to be increased. The Commission members agreed with all the recommendations of Mrs. Cameron relative to the new driveway.

The following motion was made: That the Commission incorporate Mr. Hillman's suggestions about the need for a maintenance plan for the driveway, and Mr. Hutchison's suggestion about referencing the date of the easement, and Mrs. Cameron's suggestions about closing off the existing driveway within six months and preventing the gravel from being spread nearby and increasing the size and number of plantings, and to adopt the revised resolution to approve the project. The motion was made by Mr. Hillman and seconded by Mr. Hutchison. Voting in favor of the motion were Messrs. Hillman, Hutchison, Kenyon and Flaherty. Opposed was Mrs. Cameron. The motion passed by a vote of 4-1.

The staff is to revise the resolution accordingly, and to make sure that the revised plans are submitted by the applicant to reflect the conditions and stipulations of the approval.

**Public Hearing**

EPC-21-2007 Katherine Kidder, 43 Blueberry Lane, proposing wetland restoration plantings to correct a violation. The property is located on the west side of Blueberry Lane approximately 1100 feet south of the intersection of Blueberry Lane and Ox Ridge Lane and is shown on Assessor's Map #7 as Lot #34.

At the applicant's request, the Public Hearing regarding this matter will be continued at the meeting scheduled for June 6, 2007.

There being no further business, the meeting was adjourned at 10:20 p.m.

Respectfully submitted,

David J. Keating  
Wetlands Enforcement Officer