

ENVIRONMENTAL PROTECTION COMMISSION  
REGULAR MEETING/PUBLIC HEARING  
MINUTES

January 3, 2007

Room 206

Town Hall

Wednesday, January 3, 2007 7:30 p.m.

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Chairman Hillman called the meeting to order at 7:30 P.M. Commission Members Present: Peter Hillman, Reese Hutchison, Susan Cameron, Pete Kenyon, Ellen Kirby, Ned Lewis and Craig Flaherty.

Staff Present: Richard Jacobson

Court Reporter: Bonnie Syat

Mr. Hillman read the first agenda item:

EPC-75-2006 Anthony and Lisa Britton, 50 Inwood Road, Requesting modification of permit to include a portion of a terrace within the upland review area.

Robert Sherwood, Landscape Architect, represented the applicant. He said a detailed planting plan has been provided. He requested that the application add a portion of a terrace near the house. Mr. Hillman asked him to review the regulated activities. Mr. Sherwood said they are adding 800 square feet of terrace and removing 1800 square feet of lawn. Ms. Cameron said she thought the planting plan looked appropriate. Mr. Hillman made a motion to approve the application. Ms. Cameron seconded the motion and added a condition that the location of the fence be submitted for approval by staff and the bottom of the fence shall have a 3" gap to the ground. The motion passed 6-1 with Mr. Kenyon opposed.

EPC-82-2006 Scott and Charlotte Sabbagh, 35 Plymouth Road, proposing house additions and stone terrace within the upland review area.

Roger Bartells, Architect, represented the applicant. He said the issue at the previous meeting was the amount of impervious surface. He said the revised plan shows gravel instead of some of the pavement. There will be a reduction in impervious surface of 54 square feet. They are proposing to install Cul-tech units in accordance with the drainage plan prepared by Grumman Engineering. Ms. Cameron asked if they were proposing above ground detention. Mr. Bartells said they only proposed in-ground detention. Ms. Cameron asked them to consider a rain garden. The Commission continued this application until January 17, 2007.

EPC-83-2006 Marianne Cirillo, 11 Blueberry Lane, proposing a house addition, driveway and pool within the upland review area.

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Ms. Cirillo represented herself. Mr. Hillman said the plan reflects the Commission's request to eliminate the pool. Mr. Flaherty said he listened to the tapes of the previous meeting. He asked if there was grading still proposed for the pool area. Ms. Cirillo said the area is existing mowed lawn which will be maintained. Mr. Hillman made a motion to approve the application. Mr. Hutchison seconded the motion and it passed unanimously.

EPC-86-2006, Laurie Stuek, 22 Driftway Lane, proposing to replace existing culverts with box culvert.

John Martucci, P.E. represented the applicant. He provided photos which show the cracks in the wall on the upstream side and the deterioration of the pipes. He said they are proposing to replace the pipes with a 48" x 36" box culvert. Mr. Hillman asked if there is potential for impacts to the stream. Mr. Martucci said they will minimize potential impacts by doing the work during the low flow period. Mr. Flaherty asked if the invert of the pipe will be lower than high tide. Mr. Martucci said yes, it will be at approximately elevation 7. Mr. Flaherty said the excavation will be between elevation 5 and 6 which will be above mean high tide. Mr. Lewis asked about increased sediment to the pond. Mr. Flaherty asked if there would be increased scour downstream. Mr. Martucci said the channel is well armored. Mr. Kenyon asked about downstream protection during the removal of the pipes. Mr. Martucci said they could install a turbidity curtain. Mr. Hillman asked why they did not include the pipe replacement in the original application for the house. Mr. Martucci said they did not consider the condition of the existing pipes before construction. The Commission requested staff draft a resolution to approve the application.

EPC-87-2006 Sean and Beth Stevens, 17 Oak Park Avenue, proposing a porch, deck and patio within the upland review area.

Charlie Schaffer, builder represented the applicant. He said the proposed porch was added after the original house was approved. Mr. Hillman asked why it was not proposed at the time of the first application. Mr. Schaffer said the owners decided to add an outdoor area for a special needs child. Mr. Hillman asked about the additional impervious surface area. Mr. Schaffer said the flagstone area will have gravel spaces to allow for some infiltration. Ms. Cameron said the project is aggressive for the property. Mr. Flaherty suggested creating more usable space near the house should involve an increase in the buffer area. Mr. Hutchison suggested restricting the porch to construction on piers. Mr. Hillman asked the applicant to return at the next meeting with alternatives which are less aggressive and with more buffer plantings.

EPC-88-2006 Coastal Home Investors Inc., 43 Stony Brook Road, proposing a stone wall within the upland review area.

John Sweeny, Landscape contractor, represented the applicant. He said they would like to add to the wall to prevent erosion and provide better safety. Mr. Hutchison asked about the height of the wall above the drop off and whether a fence would be required. Mr.

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Flaherty said the building code is vague. A 30" wall would require a rail but the location is not specified. There must be adequate separation distance between the walkway and the wall. Mr. Hutchison made a motion to approve the application. Mr. Lewis seconded the motion and it passed unanimously.

EPC-89-2006 Tom and Julie Gentile, 15 Tulip Tree Lane, proposing a garage addition within the upland review area.

Dan Baughman, project manager, represented the applicant. He said the Town wetland map shows the work to be in a regulated area. He said the soil scientist's report and the survey show the work to be outside the 50 foot upland review area. Mr. Hillman said the Town map would be amended. Mr. Hillman made a motion to approve the application. Mr. Kenyon seconded the motion and it passed unanimously.

EPC-90-2006, Patrick Donaghy, 10 North Road, proposing to construct a stone wall within the upland review area.

Jeff MacDougal, L.S. represented the applicant. Mr. Kenyon asked about the jurisdiction of the Commission. He said the map does not show the whole site. Mr. Hillman said the Commission could approve the application as having no significant impact and defer the question of jurisdiction. Mr. Hillman made a motion to approve the application. Mr. Flaherty seconded the motion and added the stipulation that weep holes or scuppers be added along portions of the wall. The motion as amended passed unanimously.

EPC-91-2006, Friends of Goodwives River, 81 Brookside Road, proposing stream dredging and wall repair.

Richard Windels of Friends of Goodwives River represented the applicant. He said the pond is more of a widening of the river with a dam. He said erosion is occurring on the upland side of the wall. Mr. Flaherty said the repairs and restoration may be performed in vain because there is an obvious restriction of flood flow. He will meet with Mr. Windels on the property to discuss improvements to the plans. The Commission continued this item until January 17.

Mr. Hillman read the first public hearing item at 8:50 p.m.

EPC-80-2006 Ilene B. Grimes, 16 Park Lane, proposing to maintain a drainage ditch and adjacent wetland floodplain by hand excavation.

The public hearing was opened and continued until January 17, 2007.

EPC-85-2006 John P. Gallagher and Tricia Gallagher, 49 Deepwood Road, proposing to construct a replacement house and related construction activities within the upland review area.

The public hearing was opened and continued until January 17, 2007.

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Mr. Hillman read the next hearing item.

EPC-61-2006, Joseph and Maria Teresa Criscuolo, 95 Hoyt Street, proposing driveway construction within a regulated area.

Attorney Arthur Engle represented the applicant. Mr. Hillman said he had listened to the tapes of the previous hearing. Ms. Cameron said she is acquainted with the neighbor opposing the application but believes she can be impartial. Mr. Engle said he had no objection to Ms. Cameron sitting on the application.

Mr. Hillman complimented both parties on the written material submitted. He noted that Robert Oley and Tom Ryder from Land-Tech were present on behalf of the Town. He said he had visited the property since the previous hearing and met Mr. and Mrs. Criscuolo. He said they did not discuss the merits of the application. Mr. Flaherty said he had listened to the tapes of the previous hearing.

Mr. Engle said there is a safety issue which the applicant hopes to address with the new driveway. He said the portion of the new driveway which is at 10% grade does not go out to the street. He said the sight lines for the new driveway were not an issue. He said Hoyt Street is a State Highway with greater speeds than Miller Road. He said the Criscuolos are concerned because they have a teen driver. Mr. Hillman said the Commission cannot be swayed by the presence of a teen driver. He said the driveway is still dangerous in his opinion.

Mr. Engle said the Land-Tech recommendations were implemented in the revised plans. He said Don Ferlow had concluded there was no significant impact. Mr. Hillman said he disagrees with the conclusion of no significant impact. The issue must be whether the impacts will be mitigated and whether there are alternatives.

The Commission discussed the sight lines of various roads onto Hoyt Street and the perceptions of the safety of various intersections. Mr. Flaherty said there are methods of getting empirical data on the grade of Miller Road. Mr. Hillman said the Commission may need to deny the application without prejudice in order to get more data.

Mr. Engle said the Criscuolos should have the right to use the easement. Mr. Criscuolo said the discussion was moving away from the issue. He said they would like to improve their property and their driveway. He said they have approached the neighbors regarding plantings. He said they are only proposing a 9' wide driveway in a 25 foot easement. He said the trees in the front yard provide a sound barrier. Mr. Flaherty said he would like empirical evidence that Miller Road would be a safer alternative. Mr. Hillman said that the Commission is obliged to get additional facts if a Commission member needs additional information.

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Don Ferlow said it is not necessarily true that any wetland crossing is significant. The potential for significant impact is enough to require a public hearing. He said the wetland has hydric soils which define it as a wetland in Connecticut but it does not mean the wetland has other wetland characteristics. He said the vegetation is mixed. He said Matt Popp described the wetland briefly. He said the Land-Tech Report stated that the proposal will not compromise the wetland function. Mr. Hillman asked if the gravel would become compacted. Mr. Ferlow said it would not compact below the surface layer where flow would continue. He said Land-Tech questioned what would happen if the stone voids become clogged. He said they suggested piping. The revised design added a level spreader.

Mr. Flaherty asked if the system is designed to handle the entire catchment area. Gary Dufel, P.E. said the analysis was done in accordance with sound engineering principle. He said Land-Tech concurred with the design. He provided a description of how the drainage system will work and said the flow will pass through without a problem. Mr. Lewis asked if the porosity would be harmed by sediment buildup. Mr. Dufel said the stone will be separated by a filter fabric. He said the Commission should require that an engineer observe the construction to avoid impacts to neighbors.

Attorney Coates represented Mr. and Mrs. Bussey. He said a denial without prejudice would be appropriate since they have just received comments from Land-Tech and Mr. Engle. He said he feels uneasy about the Chairman meeting with Mrs. Criscuolo on the property. Mr. Hillman said he described everything germane that he spoke to Mr. Criscuolo about. Mr. Lewis said that site walks are critical to the Commission's process and they sometimes encounter the applicant during their inspections. Mr. Hillman asked if Mr. Coates was objecting to him sitting on the application. Mr. Coates said he had no objection.

Mr. Coates said that according to Mr. Engle and Mr. Ferlow there is no adverse impact. He said that after filling the wetland it will no longer be a wetland. He said it is the most extreme thing to do to a wetland. He said the proposal will involve 3210 square feet of driveway of which 1/3 will be paved and 2/3 will be gravel. He said Matt Popp confirmed there will be an increase in runoff. He said there must be an increase from the pavement. The gravel drive only considers subsurface flow while the surface becomes impervious. Mr. Hillman said there is engineering testimony to dispute that. Mr. Coates said Kate Throckmorton will testify regarding runoff. Mr. Hillman said that she is not a professional engineer.

Mr. Coates said that further details should be provided. He said there are feasible and prudent alternatives. The applicant should not be able to fill wetlands. A hardship case must be made if the first driveway is suitable. He provided sketches of alternative driveways which he said do not require extensive walls. He said the garage was built in 2005 and the applicant could have lowered the grade at that time. Mr. Flaherty asked the Busseys about their experience with blasting when they built their house. Mrs. Bussey said there was some ledge deep in the basement excavation.

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Mr. Coates said the Commission must find there are no feasible and prudent alternatives. He said the alternatives are feasible according to Land-Tech. He said, according to the State statutes, cost is a factor but a mere showing of expense is not a consideration. He said the cost estimates are based on bad information.

Kate Throckmorton, Landscape Architect, said the driveway does increase the impervious area. She said the gravel driveway will increase imperviousness over time. She said there will be a loss of wetlands and a loss of vegetation.

Mr. Hillman asked for comments from the public.

Dennis Maroney of Miller Road said he is concerned about gravel and snow being plowed into his yard. He said he has safety concerns on Miller Road. He is concerned about oil and gas spills into the wetlands and emergency vehicle access.

Maureen McGrath of 22 Miller Road said she is concerned about the increase in water and ice on Miller Road.

Paul Schreyer of 2 Miller Road said there is one drainage structure at the bottom of Miller Road. He said the application is missing information on the grades at the bottom of Miller Road.

The Commission recessed the hearing on EPC-61-2006 and Mr. Hillman read the next hearing item:

EPC-79-2006 James B. and Katherine G. Kane 147 Five Mile River Road, proposing to construct a replacement house and related construction activity within upland review area.

The public hearing was opened and continued until January 17, 2007.

The hearing on EPC-6-2006 was resumed.

Paul Schreyer of 2 Miller Road said the drainage from the property has been through his yard over the last several days. He said he has safety concerns with the Miller Road and Hoyt Street intersection.

Jacque Droney of 22 Miller Road said that Miller Road was up-zoned at the request of the residents to allow building 3 homes instead of six. He said a deed restriction was placed on the wetlands behind the homes on Miller Road to prevent future building.

David Hagen of 17 Miller Road said he is concerned with drainage issues and runoff. He said the best alternative is to re-grade the existing driveway.

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Don Bussey of 5 Miller Road submitted a statement for the record. Mrs. Bussey submitted photos of the property.

Mr. Engle said the impacts on the wetlands will be mitigated. He said there is un-refuted expert testimony that the drainage will not impact the neighbors.

Mr. Hillman asked Mr. Oley and Mr. Ryder of Land-Tech if there was anything they had heard tonight which would alter their report. Mr. Oley said he would have liked to have more time to review the new information. He said that, with regard to the statement in the report about feasible and prudent alternatives, he would hesitate to call the alternatives prudent but that does not mean they are not prudent. He said that from an engineering perspective, the Town Engineer would require a 10 foot driveway. He said he has no problem with a 15% driveway but the problem in this case is there is no landing. He said he is in agreement with the drainage report that the drainage area is 7 acres in total. He said the 0.32 acres directed to the new driveway crossing seemed small but the majority of the water is directed to a drainage ditch on the adjacent property. He said the potential additional runoff from the gravel driveway on 0.32 acres is worth reviewing.

Mr. Hillman asked Mr. Ryder if there were points he would have elaborated on if he had more time. He said he did not elaborate on the functions of the wetlands because he agrees with the Stearns and Wheler functional analysis. He would have used the same methodology. He said if there are no alternatives, what would be the impacts to the functions of the wetlands. He said it is a transitional system which has a primary function of surface flow conveyance. He said it is not a high functioning system.

Ms. Cameron said there is very little land left in Darien and she is concerned with fragmentation of the wetland. Mr. Ferlow said the wetland functions pre-and post development will be maintained.

Mr. Schryer said there are products which can be used to heat the driveway to melt ice.

Mr. Coates said that Mr. Oley reiterated that the alternatives are feasible and that he has no opinion on prudent. He said the driveway is not 10 feet wide as required.

Mr. Ferlow commented on the three alternatives provided by Mr. Coates. He provided a copy of the subdivision standard for driveways which is 10%. Mr. Criscuolo said he serves as a volunteer EMT and that emergency vehicles would not be an issue.

Mr. Hillman made a motion to close the public hearing. Mr. Flaherty seconded the motion and it passed unanimously. The public hearing was closed at 12:20 a.m.

Mr. Hillman read the next hearing item:

Proposed amendments to the "Inland Wetlands and Watercourses Regulations" of Town of Darien. The amendment to section 2.1.y will add Tokeneke Brook and Stony Brook to

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the “named watercourses” under the definition of regulated activities which will increase the upland review areas associated with these watercourses. The second amendment corrects a typographic error in the “as-of-right” definition. (cont. from 12/06/06).

Mr. Hillman asked for public comment.

Mr. Ross of 15 Old Parish Road said the increase in the setback will be an economic hardship to homeowners. He said the problem is excess water from Stony Brook and sediment build-up. He asked the Commission to postpone the decision and study the issue.

Seeing no further members of the public who wished to comment Mr. Hillman asked for a motion to close the public hearing. Mr. Flaherty made a motion to close the hearing. Mr. Hillman seconded the motion and it passed unanimously. The hearing closed at 12:35.

Mr. Hillman read the next agenda item

Referrals from Planning and Zoning:

- 44 Pasture Lane, Linley M. Franklin & Schmidtwerks
- 150-152 Ledge Road, Whole Foods Market

After discussion, the Commission requested staff prepare memos to the Planning and Zoning Commission.

Mr. Hutchison made a motion to adjourn. Mr. Flaherty seconded the motion and it passed unanimously.

The meeting adjourned at 12:40 a.m.

Respectfully submitted,

Richard B. Jacobson  
Environmental Protection Officer