

ENVIRONMENTAL PROTECTION COMMISSION
MINUTES
EXECUTIVE SESSION, GENERAL MEETING & PUBLIC HEARING
FEBRUARY 4, 2004

The Commission met with town counsel at 7:00 p.m. in Room 213 of the Darien Town Hall for an executive session to discuss pending litigation. They were joined by Mr. Ginsberg and Ms. Sarner of the Planning and Zoning Office. No actions, votes or decisions were made.

The General Meeting was called to order at 7:30 p.m. in Room 119 of the Darien Town Hall.

Commission Members Present: Peter Hillman, Susan Cameron, Reese Hutchison, Robert Kenyon and Nina Miller

Commission Staff Present: Nancy Sarner

General Meeting:

Old Business:

Chairman Hillman read the following agenda item:

Continuation of EPC-1-2004, David & Jennifer Shea, 6 Fox Hill Lane, proposing the paving of an existing driveway, installation of a swale, dredging of a pond, and perform related site development activities within a regulated area. The property is located on the south side of Fox Hill Lane approximately 345 feet west of the intersection of Fox Hill Lane and Mansfield Avenue, shown on Tax Assessor's Map #6 as Lot #104.

Mrs. Shea was present for the discussion of her application. Chairman Hillman confirmed that the Commission received Mr. Shea's January 22, 2004 letter withdrawing the proposed paving of the asphalt driveway and associated regrading activity. Chairman Hillman stated that he found the modified application to be acceptable and asked for comments from the other Commission members. It was the meeting consensus that the project would provide ecological benefit to the waterway system, with minimal short-term impacts that could be addressed with proper mitigation.

Upon further discussion of the plans and materials presented, the following motion was made: That the Commission approve in part Wetland Permit Application #EPC-1-2004 for the dredging of the pond. The driveway alterations, which were withdrawn by the applicant, are not part of this approval. The dredging activity shall conform to the plan entitled "Site Plan-A, Pond Dredging, 6 Fox Hill Lane, Darien, Connecticut; Prepared for David and Jennifer Shea," Sheet SP-1A, by Environmental Land Solutions, dated Dec. 10, 2003, as modified by this approval. The motion was made by Mr. Hillman, seconded by Ms. Cameron and unanimously approved.

No formal findings were made regarding the paving activity. The Commission recommended to Mrs. Shea that, if she decides to reapply for the activity, the application include an environmental

overview regarding, but not limited to, potential impact to water quality from pollutants, thermal pollution, and increased rate and volume of runoff, and a review of alternatives, including an alternative of paving only a portion of the driveway area.

New Business:

Chairman Hillman informed the assembly that he would take some applications out of order for the sake of efficiency, and read the following agenda item:

Amendment of EPC-37-2003, Mary Ferrara & Anne Chiapetta, 504 Mansfield Avenue, requesting a permit modification to authorize an existing swale, and perform related site development activities within a regulated area. The swale was constructed as an emergency measure to address State concerns regarding flooding and possible ice conditions on Mansfield Avenue (State Route 124). The project is located on the west side of Mansfield Avenue approximately 190 feet south of the intersection of Mansfield Avenue and Stephen Mather Road, shown on Tax Assessor's Map #1 as Lot #115.

Mr. and Mrs. Ferrara were present to discuss the permit amendment with the Commission. Chairman Hillman explained that the swale had been installed to address drainage conditions on Mansfield Avenue, and confirmed that the Commission supported Mr. Ginsberg's decision to authorize the work. Mr. Ferrara explained that the State DOT recommended the installation of a berm to redirect drainage to the northern culvert, but that the contractor offered the installation of the swale as a less intrusive alternative. Chairman Hillman the property owners for working quickly and effectively with the Planning and Zoning Office and the Connecticut DOT to solve the safety issues caused by the overflow of water onto Mansfield Avenue.

Upon further discussion of the materials and plans presented, the following motion was made: That the Commission amend Wetland Permit Approval #EPC-37-2003 amended to include the drainage swale constructed to address icing conditions on Mansfield Avenue (State Route 124). The swale was installed to connect the previously existing drainage swale that runs through the middle of the property at 504 Mansfield Avenue to an existing headwall further north. The work was approved, after the fact, as shown by the plan entitled "Property of Mary Ferrara, 504 Mansfield Avenue, Darien, CT - Wetlands Site Plan," Sheet W-1, by JA Kirby Company, dated November 16, 2002, last revised Jan. 6, 2004. The motion was made by Mr. Hillman, seconded by Ms. Miller and unanimously approved.

Chairman Hillman read the following agenda item:

Amendment of EPC-3-2003, James B. & Katherine G. Kane, 29 Delafield Island Road, requesting a permit modification to install an underground electrical line and perform related site development activities within a regulated area. The property is located on the east side of Delafield Island Road approximately 1,230 feet south of the intersection of Locust Hill Road and Delafield Island Road, shown on Tax Assessor's Map #64 as Lot #84.

Architect Mella Kernan presented the permit amendment request to the Commission on behalf of the Kanes. Ms. Kernan explained that Connecticut Light and Power Company (CL&P) wanted

to abandon CPCO Pole #2089 located on the north of the residence, and connect from SNET Pole #1234 on the northeast side of the property to a proposed transformer near the Kane's driveway, with an upgrade in service. An overhead wire was not chosen because severe pruning of the tree canopies would be required by CL&P, and the line could be brought closer to the residence because of ledge. The underground service line must be installed as a straight line, with a cover of at least 5 feet of fill or 30 inches of concrete, and no closer than 5 feet to the septic system. A small, rubber wheeled machine would be used, and no trees would be removed.

Ms. Cameron asked if restoration plantings would be required for any disturbed areas. Ms. Kernan stated that no shrubs or natural understory growth would be disturbed, and noted that evergreen plantings would be placed around the transformer.

Ms. Kernan submitted letters of support from the Delafield Island Tax District and from Christine Osbourne.

Mr. Hillman and Ms. Miller opinioned that the applicant had considered alternatives and had chosen the most feasible and prudent option.

Upon further discussion of the materials and plans presented, the following motion was made: That the Commission approve with conditions the request to amend the Wetland Permit #EPC-92-2003 to include the installation of an underground electric line within regulated areas, with the condition that evergreen plantings be installed around the new transformer. The work activity was approved as described within the January 20, 2004 letter to the Commission from Mella Kernan, AIA, with attached sketch of the work activity overlaid on the plan by Rocco by Rocco V. D'Andrea, Inc. The motion was made by Ms. Miller, seconded by Ms. Cameron, and unanimously approved.

Chairman Hillman read the following agenda item:

Amendment of EPC-92-2003, James & Lori Vincent, 79 Stephen Mather Road, requesting a permit modification to include the demolition and reconstruction of the existing residence, and perform related site development activities within a regulated area. The property is located on the north side of Stephen Mather Road north of the intersection of Pilgrim Road and Stephen Mather Road, shown on Tax Assessor's Map #1 as Lot #49.

Michael Fishman, PWS, of Stearns & Wheeler presented the application request to the Commission.

Chairman Hillman discussed the house inspections for 79 Stephen Mather Road with Mr. and Mrs. Vincent. Mr. Vincent explained that a recent inspection found the presence of asbestos and significant amount of mold that were not found when they inspected the residence prior to purchase. He said he believes the mold occurred when they were not living at the property, and a window was left open during a period of cold and rain. Mr. Hillman said he read the report, and felt that the type of asbestos found would not cause too much concern, but that the problem would be the mold. Mr. Fishman agreed that the greater issue driving the demolition was the presence of the mold.

Chairman Hillman stated that the Commission would not know if it had always been the intention of the owners to demolish the residence, but would take the situation on good faith. Mr. Kenyon explained that mold growth requires water and warmth, not the cold period of weather described by Mr. Vincent. Mr. Vincent replied that the open window fostered the growth, and that the sunroom has a noticeable leak. He added that financially, the teardown of the existing structure is not ideal for them.

Mr. Fishman explained that, since more work would occur, he modified the originally approved plan to include a different stockpile area, and set the silt fence 15 feet from the construction. He added that he checked with Fox Hill Builders regarding the silt fence location, and that told him it would be acceptable. He said that the new plan would not require the loss of trees and no trees are in the path of the vehicles.

Ms. Cameron said that she heard of the Vincents' situation because she happened to be at the Historical Society when they called to check on requirements to tear down the residence.

Mr. Fishman informed the Commission that mold remediation is extremely expensive.

Upon further discussion of the materials and plans presented, the following motion was made: That the Commission approve the request to amend Wetland Permit Approval #EPC-92-2003, to include the demolition and reconstruction of the existing residence. The work shall conform to the plan, entitled "Figure 2, Proposed (Modified) Conditions – Vincent Residence, 79 Stephen Mather Road, Darien, Connecticut," Sheet 2, by Stearns & Wheler, LLC, dated 1/12/04, and received by the Planning and Zoning Office on January 13, 2004. All conditions and stipulations for the October 1, 2003 EPC resolution for approval must be met. The motion was made by Mr. Hillman, seconded by Ms. Miller, and unanimously approved.

Chairman Hillman read the following agenda item:

EPC-4-2004, Robert S. & Jennifer L. Durkin, 5 Mystic Lane, proposing a partial reconstruction of a residence, construction of a two-story addition, patio, walkway, and perform related site development activities within a regulated area. The property is located on the west side of Mystic Lane approximately 284 feet south of the intersection of Mystic Lane and Leroy Avenue, shown on Tax Assessor's Map #18 as Lot #60.

Jeffrey McDougal of William Seymour & Associates presented the application on behalf of the Durkins.

Chairman Hillman asked Mr. McDougal if he addressed the issues raised by Ms. Sarner's January 14, 2004 letter. Mr. McDougal replied that regrading would be limited to 2 to 4 inches near the foundation, and they would replace the existing stones to avoid water problem. Mr. Hillman clarified that the patio was not part of the application. Mr. McDougal added that they did include a proposed walkway on the revised plans.

Mr. Hillman noted that the existing structures were 36 feet from the wetlands and the proposed work would be 31 feet from the wetlands. Mr. McDougal stated yes for construction. The steps

would be 20 feet from the waterway. In jurisdiction is the addition, rebuilt porches, relocated rear steps and stone step walkway. Ms. Miller asked about the area between the stone walkway and the residence. Mr. McDougal replied that it would be left as lawn. He explained that the watercourse was relocated during the development of the subdivision, and that the original subdivision maps shows its original channel.

Ms. Cameron asked if measures would be taken to prevent transport of dirt and silts onto the roadway. Mr. McDougal replied that some tracking could occur, but that the staging area would be clear of the driveway and runoff would be filtered before it reaches the driveway.

Mr. Hutchison recommended that a planted buffer be installed along the stream. Ms. Miller and Ms. Cameron agreed that the plantings would not only provide mitigation, but would be an improvement over existing conditions. Ms. Sarnier recommended the plan include a mix of groundcover and shrubs. Mr. McDougal said that the far side of the brook is wooded. Ms. Cameron stipulated that the buffer be 6 feet in width, at least in the area near the construction, and should extend along the stream.

Upon further discussion of the materials and plans presented, the following motion was made: That the Commission approve with the conditions Wetland Permit Application #EPC-4-2004. The application is approved with the condition that a planting buffer of shrubs and groundcover be installed along the southern wetlands boundary (marked by wetland flags #1 through #6 on the survey). A planting plan shall be submitted to EPC Staff for review and approval prior to the issuance of a Zoning Permit. The planting buffer shall be 6 feet wide in the rear yard and across from the new construction, and may taper down to 3 feet width as it extends toward the headwall located near Mystic Lane. The establishment of this planting buffer is an integral part of this approval; therefore, the plantings shall be completed prior to the issuance of a Certificate of Occupancy. The work shall conform to the plans approved, entitled 'Zoning Location Survey Prepared for Robert S. Durkin & Jennifer L. Durkin, #5 Mystic Lane, Darien, Connecticut' by William W. Seymour & Associates, dated November 18, 2002, last revised January 19, 2004, and received by the Planning and Zoning Office on January 20, 2004. The motion was made by Ms. Cameron, seconded by Mr. Hutchison, and unanimously approved.

Chairman Hillman read the following agenda item:

EPC-5-2004, Peter J. & Patricia A. Daigle, 5 Royle Road, proposing the creation of a new lot, relocation of an existing residence and garage, construction of a new residence and garage, and perform related site development activities within a regulated area. The property is located on the south side of Royle Road at the southwest corner formed by the intersection of Royle Road and Mansfield Avenue, shown on Tax Assessor's Map #6 as Lot #41.

Mark Lebow of William Seymour and Associates was present on behalf of Mr. and Mrs. Daigle.

Chairman Hillman recommended that additional information pertaining to drainage be provided. Ms. Miller agreed, and noted that the project proposed an increase in runoff but the application lacked a detailed runoff report.

Chairman Hillman said that the creation of impervious area proposed a significant impact to Cummings Brook and the wetlands, and recommended a Public Hearing be scheduled. He added that it was Commission policy to hold hearings for the creation of new building lots.

It was the meeting consensus that the Public Hearing be scheduled for the March 3, 2004 meeting. Mr. Lebow stated that he would submit a drainage report by a professional engineer before the hearing.

Chairman Hillman read the following agenda item:

EPC-6-2004, John B. Ward, 32 Beach Drive, proposing the construction of an addition, garage and decks, and perform related site development activities within 100 feet of Holly Pond. The property is located on the west side of Beach Drive approximately 1,400 feet south of the intersection of Boston Post Road and Beach Drive, shown on Tax Assessor's Map #53 as Lot #6.

Jeffrey McDougal presented the application and addressed questions from the Commission. Mr. McDougal announced that the Planning and Zoning Commission continued its public hearing for the project.

Mr. McDougal explained that retention galleries are proposed in rear yard to collect runoff from the roof leaders and a trench drain to be installed in front of the garage. The trench drain would collect water from the proposed driveway expansion. Mr. McDougal stated that most of the property located within 100 feet of Holly Pond is lawn. He said that two lines of silt fence had been proposed because the rear yard may be used for construction parking, and the stormwater gallery would be installed at the end of the project.

Mr. Hillman asked about the purpose of the proposal. Mr. McDougal replied that the application proposes additions to the residence to increase living area. He noted that part of the new construction would be located over an existing wooden deck. The residence would be increased from 1,122 square feet to 5,195 square feet. The impervious coverage would increase from 1,982 square feet to 3,005 square feet. Mr. McDougal characterized the increase as minor.

Mr. Hillman noted that Page 3 of the August 26, 2003 drainage report stated that there would be a significant increase in impervious surface area, which would result in an increase in surface flows. Mr. McDougal speculated that the report could have included the deck as impervious area; and therefore sized the gallery conservatively. Mr. Hillman said the Commission could not confidently make a decision based on the evidence at hand because of differences in engineer's report and Mr. McDougal's testimony. He said he did not consider the application complete. Ms. Cameron agreed.

Mr. Hillman advised that Commission could not make findings regarding the application until they are presented with correct information, and could not vote if there is a discrepancy among the applicant's own experts. He said that he urges the engineer, Mr. Roberge, P.E., to re-assess the project and that a complete and accurate report be given that the experts agree upon.

Chairman Hillman announced that the application would be continued to the March 3, 2004 meeting in order to receive the requested materials.

Chairman Hillman read the following agenda item:

EPC-7-2004, Able Construction Inc. on behalf of Robert & Ingrid Okun, 1 Timber Lane, proposing the demolition of a residence, driveway modification, and installation of a stonewall and perform related site development activities within a regulated area. The residence shall be reconstructed outside regulated setback areas. The property is located on the south side of Timber Lane at the southeast corner formed by the intersection of Timber Lane and Hollow Tree Ridge Road, shown on Tax Assessor's Map #3 as Lot #40.

Peter Greenberg of Able Construction Inc. presented the application and addressed questions from the Commission. Mr. Hillman noted that the new residence would be located outside regulated area, and asked Mr. Greenberg to summarize what activity was proposed within the regulated areas. Mr. Greenberg replied that regulated activities included the house demolition, driveway alterations, and reconstruction of the stonewall.

Mr. Greenberg stated that the proposed silt fencing would be installed before the house is demolished. Mr. Hillman asked Mr. Hutchison if he felt that the proposed silt fence was sufficient. Mr. Hutchison replied that it suitable for the demolition. Mr. Greenberg explained that the fence should be sufficient since the property is fairly level.

Mr. Greenberg explained that areas of the driveway that would be abandoned would be left in place until the end of the construction to serve as an access and staging area. Mr. Hillman asked about changes in impervious area. Mr. Greenberg replied that change existing areas of house and driveway would be converted to lawn as the new residence is placed outside setback areas. In response to a question, Mr. Greenberg confirmed that the existing driveway was located within the regulated area and that the existing curb cut would be used.

Mr. Hillman asked about the work proposed for the stonewall. Mr. Greenberg replied that the existing stonewall is crumbling. He explained that the new wall would be reinforced with concrete and would have base drains to allow for flow in the wetland areas.

Mr. Greenberg explained that an anti-tracking pad would be used at the driveway entrance. Ms. Cameron asked if any catch basins were located near the construction access. Mr. Hutchison and Mr. Greenberg agreed that sedimentation on the roadway would be minimized by maintaining asphalt areas so most machinery could remain on the paved areas.

Ms. Miller inquired about impervious coverage. Mr. Greenberg replied that impervious area on the site would increase from 5,600 square feet to 7,200 square feet. He explained that the application proposed the installation of an underground retention system designed to accommodate four times the volume of the anticipated increase in runoff. The residence would not have a basement; therefore footing drains would not be installed. The roof leaders would be connected to the retention system.

Ms. Miller noted that the existing inground pool would be removed. Mr. Hutchison inquired to the dewatering of the pool. Mr. Greenberg sated that the water would be discharged into a catch basin. Mr. Hutchison said that must discharge through hay bales. Ms. Sarner explained that the water must sit untreated for no less than seven days.

Ms. Miller asked how many trees on the site would be removed. Mr. Greenberg replied that twenty needed to be cut down. Less than 25 percent are within the regulated area. Ms. Miller asked what would be between the house and the wetlands. Mr. Greenberg replied that it would be lawn. Ms. Miller stated that the applicant needs to make up for the lost trees and to mark the wetlands. Mr. Greenberg replied that he could propose a wetland planting plan.

Ms. Cameron expressed concern that leaves from the roof area would clog the underground retention system if they are discharged through the leaders, and recommended the installation of a filter or gutter guards. Mr. Greenberg replied that the roof leaders would be cleaned if clogged as routine house maintenance, but that the underground galleries could not be cleaned.

Ms. Miller opined that the erosion control plan seemed appropriate for the level property and recommended that plantings be installed to replace the trees to be removed and to demarcate the wetlands.

Mr. Hutchison recommended that the house be wetted down during demolition as a dust control measure, especially since the work would be conducted adjacent to the wetlands. Mr. Greenberg said he would mention that to the contractor doing the demolition work, who he thought would be aware of the concern.

Upon further discussion of the materials and plans presented, the following motion was made: That the Commission approve with the conditions Wetland Permit Application #EPC-7-2004 for the demolition and reconstruction of a single-family residence and related site development activities. The application is approved with the condition that plantings be installed to replant and demarcate the wetlands. A planting plan shall be submitted to EPC Staff for review and approval prior to the issuance of a Zoning Permit. A Demolition Permit may be permitted by the Building Department prior to the approval of the planting plan. The motion was made by Mr. Hillman, seconded by Mr. Hutchison, and unanimously approved.

Chairman Hillman read the following agenda item:

EPC-8-2004, Peter Martin & Cara Meade, 6 Andrews Drive, proposing an addition, deck and new driveway, and perform related site development activities within a regulated area. The property is located on the east side of Andrews Drive approximately 116 feet south from the intersection of Old Kings Highway South and Andrew Drive, shown on Tax Assessor's Map #64 as Lot #106.

Attorney Wilder Gleason presented the application and was joined by Mr. Martin and Ms. Meade.

Atty. Gleason submitted construction narrative, and began his presentation by reviewing existing conditions. The existing residence totals 904 square foot of living area, which would be expanded by the proposed addition. The property is accessed from Old Kings Highway North from a neighboring property. The access bridge is narrow and has a limited weight-bearing capacity. Atty. Gleason explained that the application had proposed a driveway off of Andrews Drive, which required an easement from the adjacent property owner, Westmere Group. He

stated that the owners had an oral agreement with Westmere Group, but it had been revoked; therefore, the proposed driveway is withdrawn from application. He said that the driveway was intended to address access and safety issues, and could be revisited in the future.

In response to a question, Mr. Martin explained that they had previously applied to the Commission for a proposed access walkway and steps around the house. He explained that it was not until after tenants had moved out of the residence that they discovered extensive renovations were needed.

Atty. Gleason noted that the property was limited by the wetlands and flood zone, that the back was the only area outside the flood zone. He reviewed photographs of an escarpment located at the rear of the house. He stated that the top elevation of the ledge was at 60 feet and the front of the house was at elevation 35. He said that there were no trees in the proposed work area. Ms. Miller asked about a large spruce. Atty. Gleason said it would not be affected.

Atty. Gleason noted that the existing deck had been mislabeled on the plans as proposed, and that, after the withdrawal of the driveway, the addition is the only activity proposed. Atty. Gleason informed the Commission that the addition met all zoning setback and height requirements

Ms. Cameron asked Mr. Martin if he would be receptive to removing some of the Japanese Knotweed located within 10 feet of the waterway. Mr. Martin replied that he had considered eradicating the knotweed, but was concerned that the root systems prevent the erosion of the stream banks. Ms. Sarnier stated that during a review of the Lupinacci Property at the Brookside Road and Old Kings Highway North, the EPC opted to allow a patch of Japanese Knotweed to remain to ensure the Goodwives River would be stable. Ms. Cameron expressed concern that if the stream bank were not mowed, the knotweed would spread to the other side of the channel.

Atty. Gleason stated that proposed silt fence would be installed along the edge of the construction. He said that the addition posed a minor increase in impervious area, and would have a crawl space in lieu of a basement

In response to a question, Atty. Gleason explained that construction vehicles would not cross the bridge. He said that a backhoe would be used for the excavation, and concrete would be pumped for the foundation. Materials would be carried over the bridge to the construction area by hand.

Mr. Hillman stated that he felt that that no prudent and feasible alternative was available since the proposal seemed to represent the least intrusive way to add onto the existing house, and that hardship had been established.

The Commission discussed the possibility of planting along the river channel. Ms. Cameron stated that if an unmowed buffer was created it could allow the Japanese Knotweed to spread to the other side of the channel. She asked if the Martins considered installing a fence since they have small children. Mr. Martin said he thought he might apply for a fence after construction is completed and silt fence can be removed. He said that at that time, he could propose new plantings. Ms. Cameron said the Commission would try to find an appropriate method of knotweed removal for the property by that time.

The Commission discussed the driveway. Mr. Hutchison commented that he felt that hardship had been clearly presented. Mr. Hillman said he would consider the activity in the future. Atty. Gleason submitted letter of support signed by neighbors. Mr. Hillman noted that two owners signed with a note that they supported the house but not the driveway. Atty. Gleason said that they hope to return with an easement and engineers report for the driveway.

Upon further discussion of the materials and plans presented, the following motion was made: That the Commission approve with the conditions modified Wetland Permit Application #EPC-8-2004 for additions, deck and related improvements. The new driveway construction, which was withdrawn by the applicant, is not part of this permit approval. Work shall conform to the plan entitled "Zoning Location Survey Prepared for Peter Martin & Cara Meade, 6 Andrews Drive, Darien, Connecticut" by William W. Seymour & Associates, dated November 14, 2003, as modified by this decision. The motion was made by Mr. Hillman, seconded by Mr. Kenyon, and unanimously approved.

No formal findings were made regarding this activity. During the discussion, the Commission had the opportunity to briefly discuss the driveway construction with the Martins and Atty. Gleason, including the hardship prompting the pursuit of the activity. The Commission recommends that, if you decide to reapply, the application include the following detailed information regarding regrading, environmental impact and drainage.

Chairman Hillman read the following agenda item:

Continuation of Discussion of EPC-98-2001, Richard O'Hare, 45 Brookside Road, regarding a violation due to activity within a conservation easement area and failure to undertake required revegetation of conservation easement area. The property is located at the northeast corner of Prospect Avenue and Brookside Road, shown on Tax Assessor's Map #15 as Lot #17.

Michael Fishman, PWS, of Stearns and Wheeler joined Mr. and Mrs. O'Hare for the continued discussion of the correction of a violation at 45 Brookside Road.

Mr. Fishman explained that the proposed plan is a melding together of two plans previously reviewed by the Commission. He said that the larger meadow area is proposed to the south of the residence, and that since Mr. Ferlow had concerns with shrub plantings north within the flood area near the residence, it would be prudent to keep it as meadow as well. Mr. Fishman explained that shrubs with multiple stems would catch debris. He reviewed photographs of the types of plants proposed. Ms. Cameron stated that a meadow is difficult to establish for the first five years, and asked Mr. Fishman if there was enough sun for the meadow plants. Mr. Fishman replied that the plants selected would grow in sun and shade. He then reviewed photographs of the different stages of growth and wet meadow projects Mr. Ferlow has worked on, including the wetland restoration at the Markham property on Hickory Lane.

Mr. Fishman said that his firm would meet with the contractor and monitor the site during the planting and throughout year. He said a report would be submitted after the first year. Mr. Fishman said they would mow once in September for the first two years. Mr. O'Hare asked if they needed to mow the area at all. Ms. Cameron and Mr. Fishman replied that the mowing is required to maintain the area at the meadow successional stage.

Ms. Cameron recommended that a break in the boulders be created to allow sledding to continue. Mr. O'Hare suggested that the break be 30 to 35 feet in width, and the Commission agreed that this was reasonable.

The Commission discussed the stipulation of a performance bond. Mr. Hillman said the lowest the Commission should consider for the bond amount is \$6,500. The Commission decided that the bond should be held for three years, with half the amount released after 18 months.

Upon further review and discussion of the materials presented, the following motion was made: That the Commission approve with conditions the modified plan for Wetlands Permit Approval #EPC-98-2001. The plan was approved for the restoration of the wetlands and Conservation Easement Area at 45 Brookside Road. The approval was granted subject to the following stipulations:

1. Work shall be performed in conformance with:
 - a. Approved Site Plan entitled "Easement Restoration, O'Hare Property, Brookside Road, Darien, Connecticut", Sheet A and including Easement Marker Detail, by Stearns & Wheeler, LLC, dated January 15, 2004, as modified by this approval, and
 - b. Approved Project Narrative, submitted as Item 5 of the Report to the Environmental Protection Commission by Stearns & Wheeler, updated January 15, 2004.
2. The plan and narrative must be fully implemented for the property at 45 Brookside Road to be deemed in compliance with Wetlands Permit Approval #EPC-98-2001.
3. A Performance Bond in the amount of six thousand five hundred dollars (\$6,500) shall be posted with the Planning and Zoning Office no later than March 31, 2004 to ensure the required plantings and restoration activity are completed in accordance with the approved plan and narrative. The bond shall be held for three years. Half of the amount (\$3,250) shall be returned eighteen months after satisfactory completion of the planting activity. The remaining amount shall be returned three years after the plan has been implemented and plantings installed, to ensure that the new plantings are established. Any diseased or dead plantings must be replaced.
4. The Planning and Zoning Office shall be notified at the start of the work activity so that site inspections may be scheduled.
5. A break of approximately 30 to 35 feet be created in the line of boulders to be installed along the Conservation Easement boundary. The Commission included this modification to allow the sledding activity on the hill to safely continue.
6. The plan shall be implemented in early Spring 2004, in accordance with the Project Narrative.
7. A report shall be submitted by you or your agent after the restoration activity has been completed. The plan shall be received by the Planning and Zoning Office no

later than June 9, 2004. A follow up report shall be made to the Commission after the first growing season, and shall be received by the Planning and Zoning Office no later than October 13, 2004.

8. The meadow shall be mowed no more than one time per year for the first two years, in October 2004 and October 2005. The meadow shall be mowed a maximum of two times per year starting the third year (2006). The mowing activity shall be limited to two annual time periods: mid to late June (after bird nesting is completed) and October (after the meadow plants have set seed and gone dormant). If a mowing period is missed, you must wait for the next mowing period instead of scheduling the activity for an unacceptable time. For example, if the meadow is not mowed in October 2004, the next acceptable time would be October 2005. Or, after the third year, if the area is not mowed in mid to late June, the next opportunity would be October.

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

Chairman Hillman thanked Mr. and Mrs. O'Hare for their continued efforts to address the Commission's concerns, and especially thanked Mrs. O'Hare for taking responsibility for the nonconformance of their property. Mr. O'Hare stated that Mrs. O'Hare expressed apologies to the Commission were on his behalf as well, and that they are sincere.

Approval of Minutes:

The Commission approved the meeting minutes of January 7, 2004, with corrections. The motion was made by Mr. Hillman and seconded by Mr. Hutchison. Voting in favor of the motion were Mr. Hillman, Mr. Hutchison, Ms. Cameron and Ms. Miller. Mr. Kenyon abstained from the vote.

Continuation of Executive Session:

Chairman Hillman motioned to enter into executive session to discuss pending litigation and schedule a future meeting with town counsel. The motion was seconded by Mr. Hutchison and unanimously approved.

Adjournment:

Having no further business to attend to, it was the consensus of the meeting that the Commission adjourn at 10:30 p.m.

Respectfully submitted,

Nancy H. Sarnier
Environmental/GIS Analyst