

ENVIRONMENTAL PROTECTION COMMISSION
MINUTES
EXECUTIVE SESSION, GENERAL MEETING & PUBLIC HEARING
MAY 5, 2004

Commission Members Present: Peter Hillman, Susan Cameron, Robert Kenyon, Ellen Kirby and Nina Miller

Commission Staff Present: Nancy Sarner

Court Monitor for Public Hearing: Bonnie Syatt

Executive Session: Room 211

After a vote, the Environmental Protection Commission met in closed Executive Session to discuss pending litigation. Planning Director Jeremy Ginsberg and Environmental Analyst Nancy Sarner joined them. Town Counsel was unable to attend but communicated to the Commission via a phone conversation with Mr. Ginsberg.

General Meeting:

The General Meeting was called to order at 8:00 p.m. in Room 119 of the Darien Town Hall.

New Business:

Chairman Hillman explained that it is the Commission's prerogative to address items out of order, and read the following agenda item:

EPC-33-2004, Peter Wagner, 19 Christie Hill Road, requesting a determination regarding the classification of an open channel as a non-regulated area, and proposing the demolition and reconstruction of a single-family residence, relocation of an existing drainage pipe and perform related site development activities. The property is located on the north side of Christie Hill Road approximately 73' southwest of the intersection of Christie Hill Road and Georgian Lane, shown on Tax Assessor's Map #27 as Lot #95.

Kevin Coyle, builder contractor, was present on behalf of applicant Peter Wagner.

Mr. Hillman explained that the Commission members read and were familiar with the materials submitted. He asked if the Commission agreed that acceptance of the new wetlands and watercourse determination would place the proposed work activity outside regulated areas, and therefore, EPC jurisdiction. It was the consensus that the statement was true.

Upon further review and discussion of the materials and plan presented, the following motion was made: That the Commission accept the finding that the open channel located to the north of 19 Christie Hill Road does not meet the regulation's definition of a "regulated watercourse" since it does not have evidence of standing or flowing water, or physical characteristics that would classify a watercourse, and the finding that there are no regulated wetlands soils on or within 50' of the subject property. The findings are based upon its review of the soils report by

Cynthia M. Rabinowitz, Soil Scientist of ConnSoil, dated April 4, 2004, and the hydrologic study by Leggette, Brashears & Graham, Inc., dated April 22, 2004. The Town's wetland boundary map will be updated in December 2004 to reflect this new determination. The motion was made by Mr. Hillman, seconded by Ms. Miller, and unanimously approved.

Based on this new information, the Commission found that the proposed construction would not be located within a regulated wetland area, and therefore does not require a wetland permit approval

Chairman Hillman read the following agenda item:

EPC-25-2004, Per & Jeanne Sekse, 29 Outlook Drive, proposing landscaping, including the installation of fencing, stone retaining wall, fill and regrading, tree removal, plantings, and related site development activities within a regulated area. The property is located on the east side of Outlook Drive approximately 450' south of the intersection of Outlook Drive and Woodland Drive, shown on Tax Assessor's Map #52 as Lot #70.

Ellen Beery presented the application, along with applicants Per and Jeanne Seske. Mr. Hillman asked Ms. Beery to review the proposed regulated activities, including work for the existing stonewalls, and said that he understands that the proposed pool would be located outside the 50' regulated area. Ms. Beery replied that the row of existing diseased and dying Hemlock located along the eastern property line would be removed, and the stonewalls, which were described as more of a rubble pile with a mix of flagstone and cement with a varying height ranging from grade to 2' height, would be rebuilt. Mr. Hillman agreed that it was a good idea to remediate the existing walls. Mr. Seske explained that the Seske's would need the permission of joint owners of the walls, the Mitchells (for the eastern wall) and the Thorens (for the southern wall), to work on the wall. He said that the Mitchells were concerned about the loss of the Hemlocks and want continued screening. He said that the Mitchells told him that they liked the existing stonewall but recognized that it needs "help," and that they are open to dialogue.

Mr. Hillman asked if the applicant was asking the Commission to choose between the removal and the reconstruction of the stonewalls. Mr. Seske said he would like to completely remove the stonewalls and take the area down to grade, referred to as "Method #1" in the application. Mr. Hillman noted that the proposed fence would serve as screening.

Ms. Miller outlined the possible work sequence: take down the Hemlocks, remove the stonewalls, install the proposed chain link fence, and install new plantings.

Ms. Beery said that since the fence is required for the pool, they would ask Building Department to assist them with the fence location, noting that there would be a required separation distance from the stonewall. Mrs. Seske explained that the stonewall would act as a stepping point over the fence.

Ms. Berry reported that the setbacks were measured from the wetlands delineated by a professional soil scientist. Mr. Hillman asked Commissioners Cameron and Miller for their opinions of the proposed plan. Ms. Miller inquired to the location of the adjacent wetlands. Ms. Beery replied by referring to the soil scientist report for the Seske and adjoining properties, and noted that there is a 2' to 3' drop at the southern property boundary. Mr. Seske said that the

footbridge does not belong to him, and that the area to the back of his property has been used for leaf and compost piles. Ms. Miller noted that a brook flowed through the disturbed area. Mr. Seske said that the brook had water during very high tides. Ms. Beery said that to the east of the Seske residence, the soils have been disturbed and the wetlands were identified $\pm 30'$ into the neighbors property; therefore, $\pm 20'$ of the setback area extended onto the Seske property.

Ms. Cameron stated that she liked the planting plan, which includes an excellent variety of native species. Ms. Beery explained that they did not locate the proposed pool to the west because they wanted to preserve the "Ancient Oak." Mr. Seske confirmed that it is their intention to maintain the significant tree. Ms. Cameron asked about the proposed removal of a Hickory tree. Ms. Beery replied that the removal is proposed to address the shade issue for the pool and for the proposed evergreens, but that the other existing Hickories would remain.

Ms. Miller expressed concern regarding the activity near the brook. Mr. Seske replied that the brook and composting activity were located on the Van Dyke's property, and added that he would clean the area near his garage.

Ms. Beery reviewed the plans for the grassy patio with retaining wall, and noted that the retaining wall would be located within the setback area, and would be equipped with weep hole. She noted that a dry well would be installed near the corner of the patio.

Upon further discussion of the materials and plans presented, the following motion was made: That the Commission approve "Method 1" of the above-referenced application, as submitted. The work shall conform to the plans entitled "Grading and Drainage Plan" and Wetlands Buffer Planting" for the Seske Residence, 29 Outlook Drive, Darien, CT by Native Flora Designs, LLC Darien, Conn., dated March 10, 2004 and received by the Planning and Zoning Office on March 25, 2004. The motion was made by Ms. Miller, seconded by Ms. Cameron, and unanimously approved.

In its role as the Town's Conservation Commission, the Commission requested that the 50" Oak, also referred to as the "Ancient Oak," be preserved. This Oak is located approximately 15' from the southwest corner of the residence.

Chairman Hillman read the following agenda item:

EPC-27-2004, David & Elizabeth Winebrenner, 27 Briar Brae Road, proposing a cantilevered bay addition, wooden deck, and perform related site development activities within a regulated area. The property is located on the side of north side of Briar Brae Road, approximately 1,120't east of the intersection of Briar Brae Road and Hoyt Street, shown on Tax Assessor's Map #29 as Lot #21.

Separately, Mr. Hillman, Ms. Cameron and Mr. Kenyon announced that they were acquainted with one or both of the Winebrenners, but feel that there are no conflicts and could impartially participate in the review and deliberation of the application. There were no objections.

Mr. Hillman said that he found that the application to be modest in scope with only 88 square feet of proposed disturbance. He noted that most of the residence is located within the regulated

50' setback area. He said that he felt that a more prudent alternative does not exist, and that the applicants wisely chose their design for the cantilevered addition and deck.

Ms. Cameron said that she felt that the application could easily be approved, and that existing gravel driveway was a great example with Belgium block borders to contain the gravel. She then inquired to an existing compost pile located near the back stonewall, and said that she appreciates the effort but felt a more appropriate location should be sought. Mrs. Winebrenner said she and her husband inherited the compost pile from the previous owner when they purchased the property 27 years ago, but would be happy to remove it.

Upon further discussion of the materials and plans presented, the following motion was made: That the Commission approve Wetland Permit Application #EPC-25-2004 with the condition that the leaf pile located beyond the stonewall near the stream be removed. The work is approved as shown on the plans entitled "Zoning Location Survey Prepared for David E. Winebrenner & Elizabeth C. Winebrenner, #27 Briar Brae Road, Darien, Connecticut," by William W. Seymour & Associates, P.C., dated March 3, 2004. The motion was made by Ms. Cameron, seconded by Mr. Hillman, and unanimously approved.

Chairman Hillman read the following agenda item:

EPC-29-2004, Edward & Marie O'Neill, 84 Camp Avenue, proposing the installation of a stockade fence, and perform related site development activities within a regulated area. The property is located on the side of north side of Camp Avenue, approximately 1,450' west of the intersection of Camp Avenue and Hollow Tree Ridge Road, shown on Tax Assessor's Map #8 as Lot #231.

Mr. Hillman said that he felt that the request for the screening fence was reasonable, but there may be an issue of a possible separate violation.

In response to questions from Commission members, Mr. O'Neill explained that the boulder wall was in place since the house construction. He said that he once owned the adjoining lot to the south, and knew that the area near the Wakemore Road was always clear of vegetation. He explained that the Commission required the boulders and they installed the plantings suggested by the Commission. Mr. Hillman said that the Commission could address the issue of the fence. Ms. Cameron agreed.

Mr. O'Neill submitted photographs of a stockade fence. Ms. Miller noted that the O'Neills would see over the fence when they are on the deck. Mr. O'Neill said that a realtor recommended the fence as a separation from the adjoining Wakemore Road properties. Mr. Hillman said that, during his site visit, he saw steel posts from a pre-existing fence. Mr. O'Neill replied that the posts have been there for years.

Upon further review and discussion of the materials and plans presented, the following motion was made: That the Commission approve Wetland Permit Application #EPC-29-2004 as submitted, and as shown on the fence location plan received by the Planning and Zoning on April 13, 2004. The motion was made by Ms. Cameron, seconded by Mr. Hillman, and unanimously approved.

Public Hearing:

Chairman Hillman opened the public hearing at 9:00 p.m. and read the following agenda item:

Continuation of EPC-13-2004, Kurt & Claire Locher, 19 Meadowbrook Road, proposing installation of an inground pool, deck expansion, installation of a hot tub, and perform related site development activities within a regulated area. The property is located on the side of east side of Meadowbrook Road, approximately 1,010' east of the intersection of Meadowbrook Road and Brookside Road, shown on Tax Assessor's Map #14 as Lot #9.

John Martucci, P.E., presented the application, and Mrs. Claire Locher was present to address questions from the Commission.

Mr. Martucci reported that a soil scientist flagged several areas of wetlands on the property, and that the front wetlands are associated with Tokeneke Brook. He said that most of the property is regulated. He explained that the proposed pool location is already clear of trees, and that the proposed deck and hot tub would be located against the residence. He said that the lawn area within the pool location is fairly flat, and that the residence sits on a high point of the property so that drainage flows in all directions. He said that the proposed deck would be elevated and constructed with different levels so that there would be a step down or two to the hot tub, then another step or two down to the pool. All excavated material would be taken offsite, and no regrading is proposed. The pool equipment and propane tank would be located adjacent to the house. Mr. Martucci explained that the proposed disturbed area would total $\pm 3,200$, which he described as a conservative figure. Mr. Hillman asked about proposed impervious coverage. Martucci estimated that the final coverage would be ± 10 -percent coverage. Mr. Hillman replied that it looks greater than 10-percent.

In response to a question, Mr. Martucci stated that the pool is proposed 26' from the northern wetlands and 37' from the southern wetlands, and the patio is proposed 23' from the northern wetlands and 28' from the southern wetlands.

Mr. Martucci reported that they would use a chlorine-free, chemical-free process that uses ionization for a recycling system that would keep the water drinking-water quality. He said that ionization has been available since 1993, but was not sure how long Mrs. Locher's pool company has been using it. Mr. Martucci added that the pool would be equipped with a cartridge filter that does not have backflow.

Ms. Miller asked the difference between 1992 and 2004 wetland surveys. Mr. Martucci replied that he believes that when the house was constructed, some wetlands were filled near the southern stonewall. He noted that the wetland vegetation installed at that time is still intact, and that there has been no lawn creep into the wetlands.

Mr. Martucci stated that the proposed pool fence would be located within the wooded area, but tree removal is proposed. He explained that the application proposes a temporary disturbance, but since the work area is flat and disturbance would be kept close to the residence, there would be no potential of erosion into the wetlands.

Ms. Miller questioned the accessway that would be located between two trees located in the front of the residence. Mr. Martucci said that since they would excavate with a backhoe, it could back into the site. Mrs. Locher reported that when a septic tank was removed, the contractor was able to move his vehicles between the two trees.

In response to a question, Mr. Martucci stated that the hot tub is proposed 30' from the northern wetlands and $\pm 55'$ from the southern wetlands.

Ms. Miller inquired to the fence type. Mrs. Locher replied that although she has talked to a fence company, she does not have specifics. Ms. Miller recommended that non-treated lumber be used. Mr. Martucci added that the fence would be installed using post hole digger, setting the posts in concrete and posing ± 24 square feet of disturbance for the ± 24 posts required.

Ms. Miller noted that the report discusses the alternative of seeking a variance from the Zoning Board of Appeals. Mr. Hillman noted that the option of seeking a variance for the 40' rear zoning setback is an alternative. Mr. Martucci stated that one plan had it closer to the rear lot line. Mrs. Locher explained that the option was not chosen because it would require the pool to be located in the setback area and clearing of the woods.

Mr. Hillman noted that the property at 19 Meadowbrook Road is a tough site because of the four wetland areas and Tokeneke Brook. He said he is concerned with how wet the property is. He explained that the sitting Commission has never approved a pool so close to the wetlands. He explained to Mrs. Locher that the Commission must safeguard the wetlands and watercourse from unnecessary impacts. Ms. Cameron recommended the alternative of constructing only the hot tub and deck. Mr. Hillman added that the hot tub could be moved a little further out of the setback area.

Ms. Cameron inquired to the existing, unauthorized playhouse located within the front wetlands area. Mrs. Locher said the playhouse was installed ± 5 years ago and that she did not apply for a permit approval because she thought the wetlands were located on only one side of her property. Ms. Cameron recommended that the structure be relocated and explained that she was particularly concerned with the wood chips placed around the base of the playhouse.

Mr. Martucci stated that once the pool, deck and hot tub were constructed, the area would be stabilized. Mr. Hillman replied that he recognizes that they have tried to ameliorate impact by proposing the ionization system, cartridge filter, etc., but that the application proposes an intense use with heavy construction traffic. He concluded that he disagrees with Mr. Martucci regarding the impact.

Ms. Cameron noted that the ground is very wet and that water would be displaced, and inquired to the amount of water displacement posed. Mr. Martucci replied that he did not have that figure, but that it is just groundwater that would be displaced and its movement toward the brook would continue and there would be no impact to flooding.

After being recognized by Chairman Hillman, John Grace of 14 Meadowbrook spoke in opposition of the application. He explained that he is concerned with potential impact to neighboring homes and hydrology with any development in the area, not just the Locher property. He said he believes the project poses such impacts. He said he recognizes that the role

of the Commission is to ascertain impacts, and that if someone objects but the project would not affect neighbors and does impact the wetlands, the Commission must do what it needs to do. He asked the Commission to do the right thing. Mr. Hillman thanked Mr. Grace, and confirmed Mr. Grace's description of the Commission's role, and particularly noted his second point.

Mr. Hillman, Mr. Kenyon and Ms. Cameron recommended that the public hearing be continued to allow Mrs. Locher an opportunity to consider alternative plans. Mr. Kenyon specifically asked Mrs. Locher to consider alternate locations for the playhouse.

Ms. Sarnier confirmed that the hearing could be continued to May 19, 2004 public hearing, with the requested materials submitted to the Planning and Zoning Office by May 12, 2004.

Chairman Hillman read the following agenda item:

EPC-19-2004, Patricia Browne-Zak, 16 Five Mile River Road, proposing the placement of riprap at the river edge for erosion control, removal of debris and vegetation, installation of a flagstone patio, earthen footpath and plantings, and perform related site development activities within a regulated area. The subject property is located on the east side of Five Mile River Road, approximately 500' south of its intersection with Tokeneke Road, and is shown on Tax Assessor's Map #66, as Lot #4.

Mr. Inch of Heather Lane Landscapes presented the application on behalf of Patricia Browne-Zak. Mr. Inch reviewed existing site conditions. He explained that the owner lives across the street from the subject lot. He said that the subject lot is severely eroded based upon a 1950's survey and has been used as a contractors' dumping area. He noted that the shoreline is also eroding into a neighboring property. Mr. Inch stated that a portion of the property has been overgrown by Phragmites. The debris on the site includes concrete, boulders, and rotting wood. Saplings are growing out of the pile, which Mr. Inch estimated was on the property about 20 years. He said that the site contained Bittersweet and Pachysandra, and some of the trees are decaying.

Mr. Inch stated that the purpose of the application is to stabilize the site and prevent further erosion. He reviewed site photographs and said that the existing riprap ends, and that, where there is no riprap, erosion has occurred around the trees. He said that the proposed riprap would be constructed using stone and boulders already on the site. The debris and stone pile would be removed and the area would be replanted with native species. He explained that the owners want site access, therefore an earth path and a patio set in stone dust have been proposed. Mr. Inch said that, currently, the site is an eye sore, and that Mrs. Browne-Zak wants to create a sense of ownership on the property.

Ms. Miller asked if the area would be open to the public. Mr. Inch said that it is not the intention of the property owners to create a "park."

Ms. Cameron said that she walked the property three times, and asked Mr. Inch what has caused the erosion. Mr. Inch said that he is not sure, but suspects past storms broke through the bank, allowing Phragmites to move into the disturbed area. Ms. Cameron noted that all of the trees on the site are not Norway Maples, and expressed concern regarding the removal of the Phragmites. Mr. Inch replied that no work has been proposed within the tidal wetlands, including the

removing the Phragmites. Ms. Cameron recommended that the clearing/cleaning be limited to where the flat area ends in order to save some of the larger, non-invasive trees. Mr. Inch said that the trees are leaning and some bark is missing from some trees. Ms. Cameron explained that the trees' root systems hold the soil. Mr. Inch replied that they would replant after the area is cleared. Ms. Cameron and Mr. Hillman said that aesthetics is only one factor the Commission considers. Mr. Hillman said that debris could be removed. Ms. Cameron cautioned that removing some of the debris would disrupt the trees' root systems. Mr. Inch explained that the saplings are growing out of a debris pile. Mr. Hillman inquired about the debris and rocks. Ms. Cameron replied that the pile of boulders and rubble act as an erosion control. Mr. Inch said that erosion is occurring at the riverbank. Ms. Cameron opined that the proposed continuation of the existing riprap may be acceptable but would not require the removal of the large rock pile. Ms. Miller recommended that Mr. Inch consider selective cutting of trees, and not clear cutting and leveling the lot. Ms. Cameron recommended that buried rocks be kept since they would not impact aesthetics.

Mr. Hillman opened the discussion to public comment. After being recognized by Mr. Hillman, Mr. Rick White of 25 Five Mile River Road addressed the Commission. He said he is in favor of cleaning up the site, and agreed that there is a lot of debris such as cement on the lot. He said he would like to see the lot cleaned, and that he would then like to blend a project of his own with what Mrs. Browne-Zak does on her property, and was present to understand the proposed plan. He said he talked with neighbors, including some that have lived in the area 50 to 60 years, and was told that the lots adjacent to the subject lot have been filled within the tidal zone. He stated that he does not want the fill to be placed within the tidal wetlands on the Browne-Zak property, and requested that the proposed riprap be placed at the high water mark. Mr. Inch said he met with the Office of Long Island Sound Programs in Hartford and had been told that the work must remain above the high tide elevation.

Ms. Miller inquired to "Phase 2." Mr. Inch replied that was up to the owners and nothing has been finalized.

Mr. Sam Pierpont of 19 Five Mile River Road said that the principle behind the project was his main concern. He said he had been told that the entire site was wetlands, and that the adjacent lots had been filled in except for the subject lot. He said that the river has always come up to Five Mile River Road. He said his other concern is that the location of the proposed riprap be marked in the field so that wetlands are not inadvertently filled. Mr. Inch said that the riprap would be placed above the high tide, set into the riverbank. Mr. Pierpont said that it is important to mark the location. He said that he is very sensitive to what Phase 2 might entail, and that he was not concerned with the project until Phase 2 was discussed. Mr. Hillman explained that the future Phase 2 is not germane to the current application since it is not included under the current proposal. Mr. Pierpont said he does not want to bring up issues and anger his neighbors. Mr. Hillman said that if there is a hidden agenda, the Commission would want to be apprised of it tonight. Mr. Pierpont said that he feels there is much more fill than erosion in the area. Mr. Inch said that the property is susceptible to erosion during severe storm events, not from just wave action.

Mr. Gardiner said that water floods the river and road during significant storms.

Mrs. Anne Lunn of 9 Contentment Island Road said she was interested in why the project is not before the CT DEP. Mr. Inch replied that, since the work is proposed above the mean high water line and the high tide line, it does not require a review from the DEP Office of Long Island Sound Programs. Mrs. Lunn stated that she is not opposed to the project because she is a great believer in property rights.

Mr. Hillman asked the Commissioners if the hearing should be closed or continued. It was the consensus that the hearing should be continued in order to have an opportunity to review alternatives to the proposal that would preserve more existing trees. Mr. Inch stated that they could keep the buried rocks and cement, but asked that there be some appreciation that the owners want to improve the site aesthetics. Ms. Cameron suggested that some of the rocks could be blended into a natural setting. Mr. Inch said that they could leave the rocks.

Ms. Cameron inquired to the volume of materials to be removed. Mr. Inch said that the rocks would not be taken offsite, but used to extend the riprap, and that the concrete would be taken offsite.

Mr. Hillman said that good suggestions have been raised, and the Commission should review alternatives that would pose a less dramatic alteration of the site, and the establishment of a less park-like setting, but something more natural.

Mr. Kenyon inquired to the height of the rubble pile. Ms. Cameron replied that it is high, but pushed back from the roadway. Mr. Kenyon commented that the rubble pile seems unnaturally high for something near the water, and is a manmade feature. Ms. Cameron said that the property is hard to describe, and recommended that everyone should see it. Mr. Zak said that he does not want to withdraw the application and asked that the hearing be continued so Commission members could visit the property. He said he believes that the pile is 4' to 5' high and is a mix of boulders and cement from the dumping of garbage and construction debris. He said he does not feel that the project is significant. Ms. Cameron opinioned that the project is significant since it proposes the removal of most of the significant sized trees, and would alter the site, which would not serve to control erosion or offer shoreline protection. She said that she visited the site three times, and feels that a middle ground may be reached. Mr. Inch said that he would try to find a way to save more trees, but is still concerned with the debris. Mr. Zak said that trees are growing out of the debris pile, and although he may want to save the trees, the junk pile is visible from October to March.

The Commission continued the public hearing to the May 19, 2004 meeting.

Chairman Hillman read the following agenda item:

EPC-30-2004, Jeffrey & Karen Guice, 36 Arrowhead Way, proposing the correction of a violation of the Town's Inland Wetland and Watercourses Regulations. The violation involves the unauthorized clearing of a wooded slope, installation of a stonewall, deposition of a significant amount wood chip, destabilization of a steep slope, and associated impacts to the regulated setback and wetland areas. Discussion shall include a review of the unauthorized regulated activities and consideration of proposed mitigation plan. The property is located on the western side of Arrowhead Way northwest of the intersection of Arrowhead Way and Hope Drive, shown on the Tax Assessor's Map #64 as Lot #19.

Attorney Burt Hoffman introduced the application and was joined by Kate Throckmorton of Environmental Land Solutions. Atty. Hoffman expressed concern that the application may be continued to the May 19, 2004 special meeting, but felt that the review could be quick and therefore a continuation would not be needed. After being recognized by the Chair, Atty. Gleason stated that he was not present to oppose the application but to represent a prospective buyer.

Mr. Hillman opined that the unauthorized activity represented a dramatic violation. Atty. Hoffman said that the original plan, approved under #EPC-8-2001, was handled irresponsibly. He said he met with Ms. Sarner and Ms. Throckmorton regarding the current application and plan. Atty. Gleason said that \$40,000 or 20-percent of the remediation cost, whichever is greater, would be held in escrow as part of the property sale. Mr. Hillman stated that the Commission would still require a performance bond.

Ms. Sarner explained that she met with Ms. Throckmorton on the property to discuss the plan. She stated that Ms. Throckmorton had noted an existing site condition, an accessway near the pond that was not first noted during their joint visit, and asked Ms. Throckmorton to discuss the property in more detail during her presentation. Ms. Sarner gave a brief history of the previous violation that resulted in the 2001 approved remediation plan (#EPC-8-2001).

Ms. Throckmorton explained that in 2000, the Guices hired her firm to assist with the correction of a wetlands violation, proposed construction of a series of stonewalls with stepping stones, and other improvements around the pond that were never conducted. She confirmed that the current proposed plan reflects what was done after the 2001 approval.

Ms. Throckmorton explained that, after the 2001 approval, unauthorized fill was taken out of the wetlands, which restored naturally with sedges and thrushes. She said that the approved steps were never constructed, and additional, unauthorized work was conducted, including placement of additional $\pm 1'$ fill on the slope that is retained by the non-permitted stonewall. Ms. Throckmorton reported that the slope was wooded in 2001, predominately with *Euonymus*. The 36" Tulip trees shown on the 2001 plan is still there, but is now surrounded wood chips, ranging in depth from 4' to 6'. She said that the Guices are moving, and would like to address the violation. She said that she met with Ms. Sarner and they both agreed that the lower portion of the slope should not be further disturbed, but obviously the unauthorized work needs to be resolved. Therefore, a section of the stonewall would be maintained, and the slope would be replanted.

Mr. Throckmorton said that she reworked the 2001 remediation plan. She reported that during her second site visit, it was evident that a $\pm 8'$ wide access road had been installed through existing vegetation, and was probably used to construct the stonewall. She proposed that 40' to 45' of the stonewall be removed, and turned back to slope area. The area of fill would be removed to restore the grade. She proposed the removal of the wood chips down to mineral soil, and the replanting, by hand, of the slope with 50 Gray Dogwood. Gray Dogwoods were selected because they can tolerate drier conditions, have fibrous roots systems, and have the ability to spread over a slope. Ms. Throckmorton noted that existing bluestone steps are located partly within the regulated area, and requested an "after-the-fact" approval. She added that two dead trees would be removed.

In response to a question, Ms. Throckmorton explained that the 50 Gray Dogwood would be planted $\pm 5'$ to 8' apart. Ms. Cameron said that she was wondering if more trees should be planted since the wood chips impacted adjacent trees. Ms. Throckmorton said that the wood chips possibly contributed to the demise of some trees, but they have been dead for some time. Ms. Throckmorton explained that they did not propose replanting the slope with larger sized root because it would destabilize the slope. Ms. Cameron said that shrubs should be incorporated into the replanting plan for understory growth, and that the patch of Japanese Knotweed in the woodchip area near the top of slope should be removed.

Mr. Hillman said the proposed plan would enhance, and maybe improve, the area. Atty. Gleason requested that the Commission consider stipulating that Ms. Throckmorton supervise and certify the work for the Commission. Atty. Hoffman said that the stipulation would be a condition of the contract of sale.

Ms. Cameron recommended that the Commission stipulate that they can inspect the property for a period of 20 years to check to see if the restoration plantings are maintained. She explained that there have been incidents of vegetation being removed after the Commission's final inspection. Ms. Cameron explained that the stipulation should reserve the right for the Commission to inspect the restored area once a year, with notice given to the property owner.

Mr. Gleason said that rocks have fallen down into the wetland area and requested that they be removed as part of the clean up. Mr. Hillman said the discretion would be given to Ms. Throckmorton. Atty. Hoffman said that the work would be conducted with care, supervised by Ms. Throckmorton, and require her to sign off on the compliance to her plan. Mr. Hillman recommended that the Guices should let the adjoining neighbors know this work will be conducted, and Ms. Sarnier asked that the Tokeneke Homeowners Association be included as part of the noticing. Ms. Miller requested that language be included in the property sale to give future buyers notice of the required wetland restoration. Atty. Hoffman said that the restoration plan and Commission decision would be part of the town record. Mr. Hillman countered that a notice at the time of sale would be helpful. Mr. Kenyon agreed and stated that such a notice would serve to prevent future owners from conducting similar unauthorized activities. Atty. Gleason recommended that a notice be filed on the land records instead of encumbering the deed.

Ms. Miller inquired to the possible installation of a fence. Ms. Throckmorton replied that the installation of a fence have not been incorporated into the current plan

Mr. Hillman said he would like to see a copy of the letter to the adjacent owners.

Upon further discussion of the materials and plans presented, the following motion was made: That the Commission approve with conditions Wetland Permit Application #EPC-30-2004. The application is approved with the following conditions:

1. That 10 tree saplings shall be planted on the slope in addition to the 50 Gray Dogwood specified by the Mitigation Planting Plan.
2. That the small patch of invasive Japanese Knotweed be removed.

3. That a performance bond in the amount of twenty-five thousand dollars (\$25,000) shall be posted with the Planning and Zoning Office to ensure that the Grading and Mitigation plans are fully implemented in accordance with this approval. The bond shall be filed prior to the commencement of work activity. The bond shall be held for two (2) growing seasons. Half of the amount (\$12,500) shall be returned after the first growing season (no earlier than year after the work is completed). The remaining amount shall be returned at the end of the second growing season to ensure that the new plantings are established. Any diseased or dead plantings must be replaced.
4. That a notification letter shall be sent to adjacent neighbors and the Tokeneke Homeowners Association regarding the timing and scope of the work activity required under this permit approval.
5. That a copy of the notice of this decision (enclosed) shall be filed in the Darien Land Records by the applicant prior to the commencement of work activity.

The work shall conform with the plans entitled "Site and Grading Plan," dated 1-19-01, last revised 4-13-2004, and "Mitigation Planting Plan," dated 1-12-01, last revised 4-5-04, for the Guise Residence, 36 Arrowhead Way, Darien, Connecticut," by Environmental Land Solutions, as modified by this stipulated permit approval. The motion was made by Ms. Cameron, seconded by Mr. Hillman and unanimously approved.

Chairman Hillman read the following agenda item:

EPC-26-2004, Tom & Nancy Cornacchia, 17 Holly Lane, proposing an inground pool, terrace, pool house/equipment shed, and related site development activities within a regulated area. The property is located on the east side of Holly Lane and approximately 1,000' north of the intersection of Holly Lane and Middlesex Road, shown on Tax Assessor's Map #9 as Lot #144.

Attorney Robert Maslan, Jr. was joined by applicant Tom Cornacchia and Professional Wildlife Scientist Mike Fishman to present the application to the Commission.

Atty. Maslan reviewed the existing site conditions. He noted that the Commission has seen the property under reviews for three prior approvals. He said that the first application by Mr. Cornacchia proposed a pond dredging and deposition of dredged materials within the lawn/wetland area. Atty. Maslan added that the wetland soils extend a distance from Stony Brook. He said that the second and third applications proposed the reconstruction of the residence on the existing foundation and the relocation of the driveway. He distributed photographs, which were the same as shown on his presentation board. He explained that the proposed pool location is currently maintained as lawn, and that the edge of lawn extends to the edge of the brook. Atty. Maslan reported that Mr. Fishman said that the wetlands were identified as such by soil type and not function. Mr. Cornacchia said that the Pachysandra required by the Commission under a past approval did not thrive because that there was not enough sunlight. He said that Mr. Keating of the Planning and Zoning Office recommended he use Pachysandra.

Atty. Maslan asked the Commission members to note on the photograph #11 how close other disturbed areas were from the other side of Stony Brook, and that the shoreline on the DeLuca property is wooded. He said that photographs #15 and #16 show the proximity of the neighbors' lawns to the river through the wooded watercourse buffer.

Atty. Maslan said that the application proposes 17-percent impervious surface coverage, specifying that the figure is not the same as zoning coverage, which does not include driveways and walkways. Ms. Cameron asked for an explanation. Atty. Maslan replied that Mr. Fishman's calculation is for the total impervious coverage except for the proposed pool, which was not included in the calculation.

Mr. Fishman addressed the Commission. He said that the Commission may recall an application by Mr. Cornacchia for a pool from last year, and compared the previous submission with the current application. The previous application was withdrawn by the applicant. Mr. Fishman stated that the current application proposes less square footage outside the regulated area. The previous application proposed a larger pool and patio, and included the construction of a gazebo was proposed at the edge of the Stony Brook pond. Mr. Fishman explained that the area of mitigation has been increased under the current proposal, and the proposed spa has been relocated within the pool. The gazebo has been removed from the plan. Mr. Fishman reported that the proposed pool would be ± 650 -square foot and that the average size of pools range from 650 square feet to 800 square feet; therefore, the proposal is at the lowest end of range for pools. Mr. Fishman noted that the patio would be largest near the existing terrace to connect the two areas, but that a 4' width patio area is proposed close to the pool to create a walking area. The proposed 12' by 14' pool house would be stick built and set on piers. Mr. Fishman stated that the previous application proposed the pool 3' from the wetlands while the current proposed pool would be 7' from the wetlands. Mr. Hillman said that the proposed pool would, therefore, be 43' into the regulated setback area. Mr. Fishman said this was correct.

Mr. Fishman reported that Ms. Sarnier, Commission staff, requested that a review of alternatives be provided, which is required under the application, but that there are no alternatives that would place the pool outside the regulated area. He said that they looked at incorporating the pool into the existing terrace as a response to Ms. Sarnier's March 30, 2004 letter. He said that they felt this would not be a practical option since the pool would be closer to the wetland, or as close, than the proposed location, because of building requirements for offsets from the house. A $\pm 8'$ offset would allow for step down pad. Mr. Fishman said that another option considered was to remove the terrace and set the pool away from the house, but felt this would not be feasible. Mr. Hillman noted that "no build" is an alternative. Mr. Fishman said it is not an alternative for what Mr. Cornacchia wishes to do. Mr. Hillman explained that the Commission has a mandate to protect wetlands and watercourses from random and unnecessary impacts, and therefore he may feel that "no build" is a feasible alternative; otherwise, development pressures would increase along the Town's sensitive waterways, including others watercourses such as the Five Mile River and the Goodwives River.

Atty. Maslan said that Section 10.2.1(f) of the Town's Inland Wetland and Watercourses Regulations states that the Commission must balance the need for the economic growth of the State and use of its land, with the need for environmental protection. Mr. Hillman opined that were the Commission not to approve the pool, its actions would be inconsistent with this section of the Regulations. Atty. Maslan said that the setback is a regulated area, and not a prohibitive area. Mr. Hillman said that he does not disagree.

Atty. Maslan said that there is no question about the review and analysis undertaken, and that he feels that the restoration is significant. Mr. Hillman said he would play devil's advocate and asked why Mr. Cornacchia would present the pool and restoration only as a package deal.

Mr. Cornacchia said that he tried to plant Hyacinths to meet conditions of a previous Commission approval but that they died, and that he planted Pachysandra since they had been initially required by the stipulated decision and Mr. Keating requested that he complete the planting, and they in turn died. Ms. Cameron opinioned that she did not understand why Mr. Cornacchia did not try to establish the planting buffer required under the past approval instead of waiting until he received permission to do something new. Mr. Cornacchia replied that a planting buffer is difficult to maintain and weed. Mr. Hillman said that it would be nice to see the restoration separate from a construction project, and that the Commission expected its prior restoration approval to have been implemented. He added that he is not convinced that the Commission should make exceptions because the work area has been maintained as lawn.

Indeed, Mr. Hillman noted during the April 4, 2001 review of the application for house renovation/reconstruction, Mr. Cornacchia's agent at that time, Architect Lance Zimmerman, had been asked if the remaining yard would remain as lawn, and Mr. Zimmerman had replied that it would. Mr. Hillman explained that he considered the statement that the yard would remain as open lawn area to be material and essential in deciding to vote in favor of the reconstruction project. He said that time and again the Commission has worked with Mr. Cornacchia, with results favorable to Mr. Cornacchia. As an example, he said he felt that the flow in the brook was restored by the pond dredging. He said that if the pool had been included as part of the application for the house reconstruction, he would have looked at the project differently, and is concerned that there may have been a bait and switch. He expressed concern that the current application proposes a pool terrace and pool 7' and 11' from the wetlands, respectively, and felt that it was not acceptable.

Mr. Fishman said that "plans change." He also said that the Commission approved a similar project for a property that was located one lot away from the Goodwives River. He explained that the Cornacchia application proposes the pool approximately half the distance 65' from the watercourse, Stony Brook, than the similar application, which proposed a pool 125' from the Goodwives River. Mr. Hillman said that the example could therefore argue against the current proposal. At several points, Mr. Fishman characterized the Cornacchia backyard area as "non-functioning wetlands." Several Commissioners voiced skepticism based on personal visits and documents, as well as interrelationship of the property with the Stony Brook-Gorhams Pond water system.

Mr. Fishman stated that he did not feel that the project would pose a significant impact to the wetlands. He said that they proposed the use of infiltrator units under the pool terrace. The soil in the area is reasonably well drained, largely because of the creek location and the dynamic hydraulic system. He said that Stony Brook had been relocated and the wetland soils did not function as wetlands. He said that one could look at changes in color to help determine upland from vegetation, explaining that even some type of vegetation, such as grasses, would change color when growing in upland versus wetland area. He said he did not see the color change in the lawn grass on the Cornacchia property because of past fill activity and level of soil saturation. He said he believes that the brook has migrated to the outside of the wetlands, and that hydric soils take 100 years to aerate and lose their hydric indicators. He opinioned that soils are poor indicators of wetlands. The Commission pointed out that soils are standard benchmarks for identifying wetlands. Ms. Cameron asked if the brook could migrate back towards the residence. Mr. Fishman replied that it is not likely unless changes occur in the watercourse

upstream of the subject property. It is more likely that the brook would move toward the DeLuca property.

Mr. Fishman showed a model of the infiltrator. He explained that water percolates out of the mesh sides. He stated that the infiltrator would not work during a 50-year storm, during which water would overflow, and then the hydric soil in the adjacent wetlands would serve as flood control, which is what they do. Ms. Cameron said that the soils would function as hydric soils.

Mr. Fishman said that the pool is 6' deep. He reported that the infiltrators are sized to contain ± 14 cubic feet of water, and that six would be installed under the terrace. He said that three catch basins would be installed, each feeding into an infiltrator. Any leaves and solids would collect in the catch basins, and would not clog the infiltrators. The system would capture runoff and allow percolation into the ground. Mr. Fishman said he considered the use of rain gardens instead of the infiltrator, but felt the construction of the rain gardens would pose a greater disturbance. Mr. Hillman added that the rain garden would also require more maintenance on the part of the Cornacchias, and noted that absorption of water flow is only one concern. In response to questions from Commissioners, Mr. Fishman acknowledged that the proposed pool infiltrators had only been developed recently.

Mr. Fishman also explained that they have also proposed a planted mitigation area, which would increase wetland value. He said that, under current conditions, the lawn extends to the edge of the brook, which is not as beneficial. Ms. Cameron explained that the Commission had recognized this issue during its past permit reviews, and had asked for riparian plantings. Mr. Fishman said that the proposed mitigation area would be 30' at its widest point to a minimum of 10' to 12'. He said that the planted area would include trees, dense shrubs and native plantings. Ms. Cameron asked why the proposed plantings would not wash away or die like the previous plantings. Mr. Fishman replied that the plan called for a different planting regime, and they would not plant on slopes. He said they would lay down seed so would need to mulch. Ms. Sarnier asked if they planned to mulch until the plantings are established or on a continual basis. Mr. Fishman replied that they would remulch only if needed to reseed, that the seeds from the plantings would then hold in place, and that it is his intent that the area would be natural.

Mr. Fishman reviewed thirteen functional values of wetlands, such as groundwater recharge and flood flow control. He opined that some functions would be improved with the mitigation area. He said that the new plantings would filter out more sediments and toxins and provide more shoreline stabilization than the existing lawn. He said he had proposed fruit bearing plants. Ms. Cameron said that it was true that the new plantings would be better than the original *Pachysandra* required as mitigation to the past construction, but that it would appear that the applicant has proposed the improved planting plan merely because he now wishes to have approval for more intense regulated activities.

Mr. Fishman said that the plan is based on a 3 ½ to 1 ratio for remediation, or that remediation area is 3 ½ times larger than the proposed area of disturbance. He opined that the wildlife value of the wetlands would be increased, as well as the visual and aesthetic quality. He noted that one point has been left open in the planting area to allow for pond access. He said he believed that the proposed application poses an insignificant impact that is barely measurable.

After being recognized by the Chair, Mrs. Gabrielle Galle of 15 Holly Lane addressed the Commission. Mrs. Galle said that she is interested in Stony Brook, and that there is also a smaller brook located between 15 and 17 Holly Lane. She explained that the Cornacchia property is higher than her property, and that she does not dare to cut down anything on her lot. She stated that since the pond was dredged by Mr. Cornacchia, she has puddles on her property. She referred to a large rock in the brook and said that it is not shown on the photographs from Atty. Maslan. Elizabeth Wanpetitch, Mrs. Galle's daughter, explained that the rock may be visible in other photographs. Mrs. Galle said that because the pond has filled up with water, she has large puddles on her property. She said that there is also standing water adjacent to Holly Lane near the new evergreens planted by Mr. Cornacchia. She explained that she lived at 15 Holly Lane since 1983, and that there was once a large island in the pond that grew after the first high school was built. She said that higher water level in the pond has affected her property.

Ms. Wanpetitch stated that when Mr. Cornacchia proposed the dredging of the pond to the Commission, he claimed that it would benefit neighbors, but she has not seen this happen. She said that if the post-dredging conditions are not worse, they are the same. She said that if part of the plan would revegetate a portion of the property, she would believe it would be favorable but only if the planting were done before other activity. She noted that all of the Cornacchias' rear property is within the wetlands and reported that it floods during storm events. Mr. Wanpetitch said she wanted to reiterate that it is wetlands because there had been said about it being maintained as lawn. Mr. Hillman asked Ms. Wanpetitch if she disagrees that that the wetlands are nonfunctioning. Ms. Wanpetitch said that she does not agree that the soils are nonfunctioning wetland because they are serving a purpose. She said that a soils test does not show that the soils are not wetland soils, and if it did, the pool installation would not be a problem. Mr. Wanpetitch noted that in an earlier application discussion that evening, the Commission expressed concern regarding a pool proposed 30' away from the wetlands. Mr. Hillman confirmed that the Commission has articulated concern regarding Mr. Cornacchia's proposal to install a pool only 7' from wetlands. Ms. Wanpetitch said that Ms. Galle is concerned that the pond would be redredged and the dam would not be altered, and that the water has been eroding the Galle property.

Mr. Dan Anderson of 19 Holly Lane said he was a good friend and neighbor to the Cornacchias and that his children played at the Cornacchia house with the Cornacchia children, and that one thing was this question of bait and switch. It had been noted by the Commission during the meeting that the applicant did not mention the pool until after the house was built and therefore it was not part of a grand plan. Mr. Anderson said that when it rains a lot, the wetland conditions are more noticeable and that everyone could agree that it is a wetland area. He said that he did not believe the Cornacchia property is really a wet area. He said that his property floods but that he had not seen the same flooding conditions on the Cornacchias' property. He said he believes Mr. Cornacchia's intentions are good and that he tries to help other. Mr. Anderson opined that the application would improve aesthetics and compensate with the proposed work, but would not make flooding conditions worse. Ms. Galle and Ms. Wanpetitch stated that Mr. Anderson's property is not impacted by the drainage changes as their downstream property since the Anderson property is upstream of the Cornacchia property. Mr. Anderson concluded by saying that he feels that he would not be impacted by the current proposal.

Mrs. Cheryl Russell of 18 Holly Lane said that she was not addressing the pool construction and that she recognizes that it is the Commission's decision. She explained that her concerns pertain

to drainage and the proposed infiltrators. She expressed concern that emptying of pool water onto the street, when the pool requires drainage for maintenance, would cause a flooding problem. Mr. Fishman said that there is no requirement for draining the pool. He said that the pool would not be treated for a week to allow time for the volatile chemicals to dissipate, and then would drain the water onto a tarp placed on the lawn. Mr. Anderson said that the Cornacchias could pump the water out of the pool. Ms. Russell clarified that Mr. Fishman planned for the pool water to be pumped onto a tarp and then flow into the pond. Mr. Fishman explained that the tarp would prevent erosion and lawn would absorb a lot of the flow. Ms. Russell said that storms flood the upstream area of Stony Brook so that the street is closed.

Mr. Fishman asked the Commission's permission to reply to Mrs. Galle's concerns. Mr. Fishman said that there are flooding problems and reviewed the 100-year flood line and a copy of the FIRM map. He explained that the flood line extends further onto Mrs. Galle's property because it is lower than Mr. Cornacchia's lot. He said that the flooding problem is not related to Mr. Cornacchia's site. Mrs. Galle said she has a creek along the property line shared with the Cornacchia property, and that Mr. Cornacchia raised the planting area for the trees in the front yard. Ms. Miller asked Mr. Cornacchia if he installed a berm for the evergreen plantings. Mr. Cornacchia replied that he lowered the grade on his side toward the trees, and that there is a natural grade to the street, and then it drops down $\pm 2'$. Mr. Fishman said that Mrs. Galle had stated she moved to the property in 1983 and had not experienced much flooding. Mrs. Galle said that floodwater does not disappear as quickly as it used to. Mr. Fishman explained that Mrs. Galle is experiencing more flooding now because there was a long drought period through the 1980s, and added that she may not have been aware how wet the wetlands are on her property. Mrs. Galle noted that she has more trees on her property than Mr. Cornacchia.

Ms. Wanpetitch said that, if the project proposes improvements, the mitigation area should be installed before the swimming pool to show if it would help and see if it increases wetland value and enhances existing conditions. Mr. Fishman stated that they planned to do the mitigation work before they broke ground for the new pool.

Ms. Cameron said that the pond looks like it needs dredging again. Mr. Cornacchia said that he was interested in making another application, and that he feels the flooding issue is a concern but is a separate issue from the pool.

Atty. Maslan submitted a copy of the 1993 FIRM map. Ms. Wanpetitch asked to review a recent FIRM map as a comparison. Mr. Hillman said that the 1993 FIRM map is the current government (FEMA) flood map. Ms. Wanpetitch said that FEMA is not current.

Mrs. Galle said that a prior resident, going back several years, was told that the Corps of Engineers would fix the flooding problems with Stony Brook, but that the brook was not dredged. Mrs. Russell asked if it is the Town or residents' responsibility to correct the flooding problem. Mr. Hillman replied that it would fall upon the property owners. Atty. Maslan said that the Town would do the work if it is part of their stormwater management plan. Mr. Cornacchia offered to pay for the stream dredging.

Atty. Maslan said that the Commission should consider impact and balance during its review of the application. He stated that the application should be viewed as an exception, and that it could stand alone on its own merits. He summarized that the work would be located outside the

wetland boundaries and that the wetland functions have been analyzed. He said that he expects that the Commission would stipulate certain conditions, such as the restoration should be conducted prior to pool installation and the posting of a performance bond. He added that the restoration area is significantly greater than the prior pool application.

Mr. Fishman explained that future pond dredging could be conducted by going around the pool and accessing the pond through the opening in the planting area. Atty. Maslan said that the pond dredging would not be proposed until the high school construction site, located upstream of the subject property, is stabilized. Mr. Cornacchia said that he would plan to dredge deeper the next time. Mr. Hillman thanked everyone for the presentation and discussion and iterated that he was keeping an open mind going into deliberations.

The Commission closed the public hearing for Application #EPC-26-2004.

Approval of Minutes: Meeting minutes for April 7, 2004

The minutes were unanimously adopted for the April 7, 2004, with corrections.

Deliberation of EPC-26-2004, Tom & Nancy Cornacchia, 17 Holly Lane:

The Commission deliberated for approximately 50 minutes, during which they discussed the application materials and how they wished the resolution to be drafted. They decided to continue their deliberation of the May 19, 2004 meeting.

Adjournment: Having no further business to attend to, the Commission adjourned the May 5, 2004 meeting at 12:45 a.m. on May 6, 2004.

Respectfully submitted,

Nancy H. Sarner
Environmental/GIS Analyst