

ENVIRONMENTAL PROTECTION COMMISSION
MINUTES
GENERAL MEETING & PUBLIC HEARING
MAY 19, 2004

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

Commission Members Present: Peter Hillman, Reese Hutchison, Susan Cameron, Ellen Kirby, and Nina Miller

Commission Staff Present: Nancy Sarner

Court Monitor for Public Hearing: Bonnie Syatt

General Meeting:

Chairman Hillman explained that he met Mrs. Saitta, current property owner for 16 Arrowhead Way, during a recent site visit, and had promised her that the Commission would be able to discuss the pending violation with her as the first agenda item, and read the following agenda item:

EPC-31-2004, Rafael Aparicio, 16 Arrowhead Way, proposing addition, flagstone terrace, and perform related site development activities within a regulated area. The property is located on the west side of Arrowhead Way approximately 430 feet south of the intersection of Arrowhead Way and East Trail, shown on the Tax Assessor's Map #64 as Lot #25.

Ms. Sarner noted that Mr. Aparicio was not present, and advised the Commission that, without the applicant present, they could not ask Mrs. Saitta to represent the application. Chairman Hillman stated that Mr. Aparicio evidently pulled back on the application because of the outstanding violation by the current property owners. He stated that, although the discussion of the violation is not formally on the agenda, the Commission would engage in an informal discussion with Mrs. Saitta. He said that he is a little concerned about some of the issues that have arisen concerning the property.

Mrs. Saitta explained that the septic system is located in the front of the residence, and she will meet with Vince Proto of the Health Department and Ralph Paladino, septic installer. She said that the septic failed because of too much rain, but that it is actually fine. She said that another problem is that it is used by eight people, exceeding its capacity. Mr. Hillman advised Mrs. Saitta that she would need wetland permits for a new septic installation. Mrs. Saitta said that she will meet with Vince Proto tomorrow and thinks this will address Item #1 on the May 13, 2004 letter from Mr. Woodside.

Ms. Cameron expressed concern that the system should fail one day and be fine the next, and asked if a dye test was conducted. Mrs. Saitta replied it was not.

Mrs. Saitta said she would work with Redniss & Mead and Environmental Land Solutions to address Items #5, #6 and possibly #7 of the May 14, 2004 letter. Mr. Hillman advised that Environmental Land Solution be in touch with Commission staff.

Mrs. Saitta submitted a copy of a receipt from Brookside Nurseries indicating that the cost of the work was \$700, but stated that she is not sure of the amount of fill placed within the wetlands. She said that when she met with Matt Popp of Environmental Land Solutions, he told her that it was obvious what needed to be restored. Ms. Sarnier reminded Mrs. Saitta that the Commission is not only concerned about the fill but also about the significant amount of clearing and that Mrs. Saitta would need to work with Mr. Popp to address that issue as well.

In response to a question, Mrs. Saitta said that her brother cut the trees within the wetlands and adjacent sloped area located within the 50' setback area.

Ms. Miller asked when the silt fencing would be installed. Mrs. Saitta replied that she would hire a landscaper to assist her.

Ms. Cameron asked if the survey requirement could be waived. Mr. Hillman replied that Mr. Popp could begin his work using the existing survey but the Commission would still need the updated survey for its review.

Chairman Hillman read the following agenda item:

EPC-35-2004, David & Kristin Nemeč, 60 Inwood Road, proposing the correction of a violation of the Town's Inland Wetland and Watercourses Regulations. The violation involves the unauthorized clearing of trees, 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 east side of Inwood Road approximately 1,500 feet north of the intersection of Allwood Road and Inwood Road, shown on the Tax Assessor's Map #3 as Lot #18.

John Anderson, Environmental Planner and Wetland Scientist of Environmental Land Solutions presented the application. Applicant David Nemeč was present to address questions from the Commission.

Mr. Hillman commented that there were a lot of stumps in the rear yard, which is very wet.

Mr. Anderson said that the application was submitted to bring resolution to the December violation. He explained that the violation involved unauthorized selective cutting that occurred in the rear portion of the property with plans to extend the lawn. The violation was discovered by Mr. Woodside, who found that the work was conducted within a regulated area. Mr. Anderson described the site, noting that a wooded wetland area is located on the east side of the lot. A survey was done in the spring. The majority of the stumps were 2" to 4" in diameter and mostly Beech, which are colony trees that spread through sucker from its root system. In response to a question, Mr. Anderson explained that some beech trees would regenerate by virtue of the remaining larger trees by seed and root system. Ms. Cameron said that clearing of the edge of a wooded area stressed the trees at the new edge, except for Beech, which seem to recover. Mr. Anderson agreed that the remaining Beech trees should recover.

Mr. Anderson said that the new opened canopy would allow for more ground cover growth, and hopes that an understory would be established. He said he included both large and small growing trees on the restoration plan.

Ms. Cameron said that she was surprised that no one thought the property contained wetlands since it is so wet, and that she suspected that the site contains a vernal pool in the northeast portion of the property. Mr. Hillman said that the Commission should err on the side of conservation and assume it is wetlands. Ms. Cameron noted that a study to determine if the pocket is a vernal pool would need to be conducted in the spring to check for obligate species. Mr. Anderson said that the water source to the pool area is from a neighboring property, but felt that it contained too low of water to allow amphibian egg masses to survive and that the algae present indicates that too much nutrients and higher temperature to allow for breeding. Ms. Cameron cautioned that if more trees were taken out, the thermal load would increase.

Mr. Anderson said that he was glad to see that more trees were removed from outside the wetlands, and hopes to increase wildlife value through the proposed plantings. He reported that Mr. Woodside questioned if a watercourse connected the possible vernal pool area to the southern wetland pocket, but that he found it is not an intermittent watercourse. Mr. Hillman said that it is definitely wetlands, and is part of the Stony Brook corridor.

In response to a question, Mr. Anderson said there are no plans for a play structure or new work.

Ms. Cameron recommended that more plantings be added to the planting plan and Mr. Hillman agreed. Ms. Cameron explained that the Commission is concerned with the thermal load of the wetlands and would like more trees and a wider planting area proposed. Ms. Cameron asked if the possible vernal pool could be made deeper. Mr. Anderson replied that he could not block the channel on the neighboring property. Mr. Hillman recommended that the application either return to the next Commission meeting, or that the revised planting plan be reviewed by Ms. Cameron and Commission staff. Ms. Cameron recommended that the planting plan be augmented with the following plantings: nine (9) Red Maples, five (5) White Oak, one (1) Red Oak, twelve (12) Shadblow, five (5) Dogwoods, fifteen (15) Winterberry, and thirty (30) Blueberry.

In response to questions, Mr. Nemeč said he purchased the property in September 2003, with the assistance of Attorney Margaret O'Neill and Realtor Carolyn Brooks. Mr. Nemeč said that the Town's map looked like there were no wetlands on the site. Ms. Sarnier disagreed and explained that the map shows wetlands in the rear yard. She added that Mr. Woodside discovered more wetlands when he visited the site.

In response to a question, Mr. Nemeč replied that Luis Castaneda d/b/a First Step Landscaping Services and Skyview Tree conducted the unauthorized work activity.

Ms. Miller expressed regret that Mr. Nemeč was misinformed about his new property, adding that Darien is a nice place to live, and informed Mr. Nemeč that the Commission is trying to work to better educate the public.

Upon further discussion of the materials and plans presented, the following motion was made: That the Commission approve with conditions Wetland Permit Application #EPC-35-2004. The application is approved with the following conditions:

1. The plan, "Wetland Buffer Planting Plan", by Environmental Land Solutions be augmented to include the following plantings: nine (9) Red Maples, five (5) White Oak,

one (1) Red Oak, twelve (12) Shadblow, five (5) Dogwoods, fifteen (15) Winterberry, and thirty (30) Blueberry.

2. That a performance bond in the amount of seven thousand five hundred dollars (\$7,500) shall be posted with the Planning and Zoning Office to ensure that the mitigation plan is fully implemented in accordance with this approval. The bond shall be held for three (3) growing seasons. One third of the amount (\$2,500) shall be returned after the first growing season (no earlier than year after the work is completed) and a second third shall be returned after the second growing season. The remaining amount shall be returned at the end of the third growing season to ensure that the new plantings are established. Any diseased or dead plantings must be replaced.
3. That the Commission has the right to inspect the wetland restoration area for twenty (20) years to ensure the plantings are maintained.

The motion as made by Mr. Hillman, seconded by Mr. Hutchison, and unanimously approved.

Chairman Hillman read the following agenda item:

EPC-40-2004, Holliston & Chris Hurd, 106 Stephen Mather Road, proposing the installation of an underground electric dog fence and perform related site development activities within a regulated area. The property is located on the south side of Stephen Mather Road at the southeast corner formed by the intersection of Stephen Mather Road and Maplewood Drive, shown on Tax Assessor's Map #1 as Lot #29.

Mr. Hillman stated that he did not have any concerns regarding the proposed dog fencing. Ms. Cameron noted that trees were dying along the back property line. Mrs. Hurd explained that she did not have any plans to remove the trees.

Upon further discussion of the plans and materials presented, the following motion was made: That the Commission approve Wetland Permit Application #EPC-40-2004. The work is approved as shown on the sketch of the dog fence location submitted with the application and received by the Planning and Zoning Office on April 14, 2004. The motion was made by Mr. Hillman, seconded by Ms. Cameron and unanimously approved.

Chairman Hillman read the following agenda item:

EPC-39-2004, Land Trust of Darien, Olson Woods, 675 Heather Lane, proposing the installation of a footbridge, and perform related site development activities within a regulated area. The property is located on the south side of the cul-de-sac for Heather Lane, approximately 970 feet southwest of the intersection of Heather Lane and Hoyt Street, shown on Tax Assessor's Map #30 as Lot #89

Ms. Cameron announced that she sits on the Land Trust board and recused herself.

Dorothy Kelly was present on behalf of the Land Trust of Darien. Mr. Hillman stated that he did not have any concerns regarding the installation of the footbridge on the Olson Woods Land Trust property. The Commission members expressed agreement.

Upon further discussion of the plans and materials presented, the following motion was made: That the Commission approve Wetland Permit Application #EPC-39-2004 as submitted. The work shall be conducted in accordance with the project narrative and footbridge design submitted with your application and received by the Planning and Zoning Office on April 14, 2004. The motion was made by Mr. Hillman, seconded by Mr. Hutchison, and unanimously approved.

Chairman Hillman read the following agenda item:

EPC-36-2004, Country Club of Darien, 300 Mansfield Avenue, proposing an amendment of the Town's wetland boundary map to reflect a field delineation of the wetlands soils located on the subject property. The property is located on the east side of Mansfield Avenue approximately 1,800 feet north of the intersection of Mansfield Avenue and Buttonwood Lane, shown on Tax Assessor's Map #5 as Lot #40.

And,

EPC-37-2004, Country Club of Darien, 300 Mansfield Avenue, proposing demolition of two maintenance sheds and garage (sand shed), paving for parking area to be equipped with a filtered drainage system, placement of a dumpster on a new concrete pad, installation of a water line and underground utilities, widening of the main entry road, installation of fencing and stonewall, drainage improvements, headwall, relocation of tee areas, realign cart path, install new cart path, and plantings, and perform related site development activities within a regulated area. The property is located on the east side of Mansfield Avenue approximately 1,800 feet north of the intersection of Mansfield Avenue and Buttonwood Lane, shown on Tax Assessor's Map #5 as Lot #40.

Attorney Stephen Pierson was present on behalf of the Country Club of Darien. Mr. Hillman recommended that a Public Hearing be scheduled for the review of the applications due to the nature of the work and public interest. Ms. Cameron recommended that the applicant submit alternatives prior to the meeting.

It was the consensus that a Public Hearing be scheduled for the June 17, 2004 Commission meeting.

Chairman Hillman read the following agenda item:

EPC-38-2004, John & Valerie Kratky, 83 Camp Avenue, proposing an amendment of the Town's wetland boundary map to reflect a field delineation of the wetlands soils located on the subject property, the construction of a mudroom addition, relocation of a porch, expansion of a slate patio, and perform related site development activities within a regulated area. The property is located on the south side of Camp Avenue approximately 125 feet east of the intersection of Camp Avenue and Jackson Place, shown on Tax Assessor's Map #8 as Lot #77.

Attorney Wilder Gleason presented the application on behalf of John and Valerie Kratky. Atty. Gleason explained that the Kratky's purchased the property approximately six to eight months earlier. He reviewed the site survey, indication the wetlands and setback areas, and stated that a watercourse is located to the east of the subject property.

Atty. Gleason explained that the mudroom exists, and the application proposes to shift and extend the back porch, add a front patio with steps, and bury utilities along the uphill side of the driveway, further away from the wetlands. The property is currently maintained as lawn. Atty. Gleason noted that a map amendment is included as part of the application request.

Upon further review and discussion of the materials and plans presented, the following motion was made: That the Commission approve Wetland Permit Application #EPC-38-2004. The Town's Inland Wetland and Watercourses Map shall be revised in December 2004 under the Commission's annual map update to reflect the April 8, 2004 wetlands delineation by Soil Science and Environmental Services. The work shall conform to the plans approved, entitled "Zoning Location Survey, #83 Camp Avenue, Prepared for John Kratky & Valerie Kratky, Darien, Connecticut" by William W. Seymour & Associated, dated July 17, 2003 and last revised April 30, 2004. The motion was made by Mr. Hillman, seconded by Mr. Hutchison, and unanimously approved.

Chairman Hillman read the following agenda item:

EPC-32-2004, Lance Zimmerman, A.I.A., on behalf of Mark & Patricia Dailey, 59 Holly Lane, proposing fill and regrading, installation of a stone retaining wall, landscaping and wetland plantings, and perform related site development activities within a regulated area. The property is located on the north side of Holly Lane, approximately 815 feet east of the intersection of Holly Lane and Hollow Tree Ridge Road, shown on the Tax Assessor's Map #9 as Lot #133.

Ms. Sarner distributed revised proposed plans received by the Planning and Zoning Office the day before. The Commission discussed current site conditions with Lance Zimmerman. The residence is under construction. Mr. Hillman advised Mr. Zimmerman to tell his clients that the Commission is not very happy with the lack of sediment and erosion controls and will not consider more work until they are satisfied. The Commission decided to continue the application to the June 17, 2004 meeting in order to review the revised plan and to ask the applicant, in the meantime, to repair and reinstall the sediment and erosion controls, as needed, and remove unauthorized activity, such as boat storage and drainage, from the regulated area.

Chairman Hillman read the following agenda item:

EPC-41-2004, Robert & Debra Lee, 8 North Road, requesting a determination of regulatory authority, and proposing the demolition and reconstruction of a single-family residence, patio, regrading and fill, installation of a septic system, and perform related site development activities within a regulated area. The property is located on the east side of North Road approximately 375 feet northeast of the intersection of North Road and Butlers Island Road, shown on Tax Assessor's Map #67 as Lot #74.

Ms. Sarner distributed revised proposed plans received by the Planning and Zoning Office the day before. The Commission decided to schedule a Public Hearing for June 17, 2004, and asked Ms. Sarner to contact the State DEP regarding the question of jurisdiction.

Public Hearing:

Chairman Hillman 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 feet east of the intersection of Meadowbrook Road and Brookside Road, shown on Tax Assessor's Map #14 as Lot #9.

Claire Locher was present to discuss her application with the Commission. Mr. Hillman summarized that the plan was revised to eliminate the proposed swimming pool and modify the deck design. Ms. Locher explained that the deck design was modified to construct the deck on one level and located further from the northern wetlands. She said that the deck is larger in order to connect to the existing deck on the south side of the residence. In response to a question, Ms. Locher stated that the deck and the hot tub would be 21' and 40' from the wetlands, respectively.

The Commission discussed the unauthorized playhouse with Ms. Locher. Ms. Locher explained that the swing set is not used, but she hoped to keep the playhouse 27' away from the watercourse because the children play in the stream. She said she did not realize she needed a wetlands approval. She added that it is used by the neighborhood kids as well and is in a location visible from different homes. Ms. Cameron expressed concern regarding the placement of woodchips in the wetlands associated with the play area. Ms. Miller said that if the playhouse is approved as an after-the-fact approval, mitigative plantings could be installed. Mr. Hutchison and Mr. Hillman thought it might be a good compromise.

Mr. Hillman opinioned that the new location of the hot tub seemed to be the only place for it and that the hot tub set on the new deck would not be an intense use, and noted that it would be 40' from the wetlands. Ms. Locher said that the hot tub would be, at its largest, 7' by 7' and that a 6' by 6' hot tub would accommodate five people. Mr. Hillman said that with a smaller hot tub, a smaller deck could be constructed. Ms. Locher replied that it would reduce the deck by only 6', since there needs to be $\pm 4'$ from the edge of the deck to the edge of the hot tub. Mr. Hillman said he would like to see that the minimum walk area is included.

In response to questions, Ms. Locher stated that the hot tub would be raised slightly above the deck floor so people would not fall in and that the deck would be constructed of mahogany.

Mr. Hillman invited the public to speak regarding the application, but there was no response.

It was the consensus of the Commission that the hearing be closed.

Chairman Hillman read the following agenda item:

EPC-21-2004, Boulder Ridge, Inc., Old Oak Road, proposing the regrading and restoration of a stream corridor to eliminate a man-made pond, drainage improvements, removal of invasive plant species, planting of native wetland species, and perform related site development activities within a regulated area. The property is located on the west side of Old Oak Road at its intersection with Leeuwarden Road, and is shown on Tax Assessor's Map #29 as Lot #128.

John W. (Woody) Oldrin presented the application to the Commission, along with Jeff Kuffel. Mr. Oldrin explained that the application proposed the restoration of a stream corridor that had

been blocked in the 1950's with a man-made berm to create a pond. The area is overgrown with invasive species, therefore, the applicant would like to re-introduce native plantings. The pond does not flow contributing to the Phragmites and mosquito problem.

Mr. Oldrin explained that plantings including Iris and ferns would be installed. The area of the Phragmites would be covered with $\pm 12''$ to $18''$ of material after it is cut flush to the ground in order to kill the invasive species.

Mr. Kuffel stated that the watercourse would be cleaned by hand, and a riprap trap would be established for the future collection of sediments. In response to a question, Mr. Oldrin said that the riprap would be placed below the dam, and that no drainage impacts are proposed pursuant to the drainage report by Stearns & Wheler.

Mr. Oldrin reported that Boulder Ridge, Inc., the homeowners association, would apply in the future for other park improvements including renovating the existing tennis court, constructing a gazebo, and installing new play equipment.

Mr. Batson of 26 Old Oak Road reported that the homeowners association voted regarding the plan and project, and only one vote was against because of the use of funds. Mr. Rodney Swain of 29 Old Oak Road said he was present to observe, and briefly discussed the history of the subdivision.

Ms. Miller recommended that accumulated sand and sediment be removed by hand from the drainage ditch on the west side of the lot near the play equipment.

It was the consensus of the Commission that the hearing be closed.

Chairman Hillman read the following agenda item:

EPC 24-2004, Richard & Robin Woods, 137 Five Mile River Road, proposing a stone and concrete retaining wall on the seaward slope of the property for erosion control purposes and perform related site development activities within a regulated area. The property is located on the east side of Five Mile River Road approximately 1,150 feet south of the intersection of Davis Lane and Five Mile River Road, shown on Tax Assessor's Map #67 as Lot #5.

Jeffrey McDougal of William Seymour & Associates and John Roberge of Roberge Associates presented the application to the Commission.

Mr. McDougal summarized that the application proposed the stonewall as erosion prevention, and submitted site photographs. He said he has been in communication with the DEP and looked at alternatives to address the problem. He explained that the DEP found they did not have jurisdiction because the work would be located above the high tide line, but that the State responded to the Planning and Zoning Commission's transmittal request. The stonewall is proposed because they found that a vegetative solution favored by the DEP is not feasible. Mr. McDougal said that the soil veneer is $\pm 6''$ to 1' thick and there is a sharp escarpment. He said that they did have a landscaper visit to site for recommendations. He said that he has done a lot of soil stabilization using geotextile fabric, but with the thin soil veneer, he is not confident it would hold. He said that ± 93 cubic feet of fill would be placed behind the wall to reduce flow

by lessening the slope. The area would be planted with grasses, such as beach grasses or other native, higher grass. Ms. Cameron recommended they use Salt-spray Rose (*Rosa rugosa*) or other low bush with high grasses. Ms. Miller said that she would like to see that the area is not turned into a park-like setting. Mr. McDougal reviewed an older site photograph showing the wall, but said that it was not sound or well built, and noted that the erosion control manual discusses concrete retaining walls.

Mr. Hutchison expressed concern regarding the fill, and recommended less fill be used to that it would not create a level, park-like setting. He noted that the wall would have weep holes and the root systems of the new plantings would absorb water. Mr. McDougal replied that 93 cubic feet is approximately a pickup truck sized load, and that the low wall does not need to pitch back. In response to a question, Mr. Roberge explained that the old wall does pitch back, but the new wall would not because it is low.

In response to the Commission's concerns regarding the possible creation of a park, Mr. Richard Woods said that the area behind the proposed wall would be unsuitable for a "park" area and is not large enough to accommodate a table.

In response to a suggestion that a conservation easement be considered, Ms. Cameron cautioned that the area in question may be too small and isolated for an easement, and recommended that a planting plan be submitted to ensure that it is not lawn. Mr. Hillman opined that Mr. Woods has shown good faith effort through his application.

It was the consensus of the Commission that the hearing be closed.

Continuation of the General Meeting – resumed at the close of the public hearing:

Chairman Hillman opened the discussion of the following agenda item:

Discussion of EPC-21-2004, Boulder Ridge, Inc., Old Oak Road.

The Commission briefly discussed how they wished the resolution to be drafted.

Chairman Hillman opened the discussion of the following agenda item:

Discussion of EPC 24-2004, Richard & Robin Woods, 137 Five Mile River Road.

The Commission briefly discussed how they wished the resolution to be drafted.

Chairman Hillman read the following agenda item:

Discussion and Possible Decision for Amendment of EPC-78-2003, Edward Piorkowski, 152 Old Kings Highway North, proposed modification of the approved plan to relocate the pool, pool patio and fence denied under the original application, relocate the approved barn, and perform related site development activities within a regulated area. The property is located on the north side of Old Kings Highway North approximately 340 feet west of the intersection of Wakeman Road and Old Kings Highway North, shown on Tax Assessor's Map #32 as Lot #26.

Upon discussion and consideration of the application file, the following resolution was adopted:

TOWN OF DARIEN
ENVIRONMENTAL PROTECTION COMMISSION

AMENDED PERMIT TO CONDUCT A REGULATED ACTIVITY

EFFECTIVE DATE OF ORIGINAL DECISION: OCTOBER 1, 2003

DATE AMENDED: MAY 19, 2004

EXPIRATION DATE: OCTOBER 1, 2008

Application Number: EPC-78-2003

Applicant's Name and Address: Edward Piorkowski
152 Old Kings Highway North
Darien, CT 06820

Property Address of Proposed Activity: 152 Old Kings Highway North
Darien, CT 06820

Name and Address of Applicant's Representative: Michael Fishman
Stearns & Wheeler, LLC
35 Corporate Drive, Suite 1000
Trumbull, CT 06611

Proposed Activity: An addition to an existing residence, construction of an inground pool with surrounding terrace, installation of new water line and sewer lateral, fill and regrading activity, construction of a stone retaining wall, enhancement/revegetation of a wetland area, including the removal of invasive species, and perform related site development activities within a regulated area

Shown on Tax Assessor's Map #32 as Lot #26.

The Environmental Protection Commission has considered the application with due regard to the matters enumerated in Section 21a-41 of the Connecticut General Statutes as amended and in accordance with Section 10 of the Inland Wetlands and Watercourse Regulations of the Town of Darien, and has found that an approval is in conformance with the purposes and provisions of said sections.

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

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

The Environmental Protection Commission met for a general meeting on August 6, 2003 and moved that the application be scheduled for a public hearing. The Public Hearing was held on September 3, 2003 and September 17, 2003. The Commission opened the hearing on September 3, 2003 and tabled the application without discussion until the next hearing. During the Commission's September 17, 2003 hearing, the applicant's representatives presented information explaining the project and provided answers to concerns and questions raised by the Commission and Commission staff. No one from the general public participated in the public hearing, although invited to do so by the Commission.

The Commission scheduled the applicant's request to amend the September 13, 2003 decision for an immediate Public Hearing held on April 21, 2004. During the Public Hearing, the applicant's representative presented information explaining the amendment request, changes to the proposal, and changes to the site. No one from the general public participated in the public hearing, although invited to do so by the Commission.

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

A. ORIGINAL APPLICATION PROJECT DESCRIPTION:

The application proposes an addition to an existing residence, the teardown of the barn and rebuild of a barn/garage/guest and pool house, and installation of an inground swimming pool with surrounding terrace. The addition is proposed for a family room, master bedroom and one car bay. The proposed barn/garage/guest and pool house would be larger than the existing structure, closer to the wetlands, and would serve as a garage, storage area, pool house, and guest area. Water and sewer lines for the garage/guest house would be installed within the regulated area. Additional regulated activities include the placement of fill in the lawn to the north, west and south of the wetlands, and the enhancement of the wetland area, including the removal of invasive species and the replanting with native species. The fill would be separated from the wetlands by a proposed stone retaining wall located 35' from the wetlands.

A.1 AMENDMENT DESCRIPTION:

Under its October 1, 2003 decision for Wetland Permit Approval #EPC-78-2003, the Environmental Protection resolved to deny the construction of the inground pool and

surrounding terrace area based upon their finding that: (1) a pool with terrace is not a necessity; (2) this proposed pool/terrace presents a significant impact to the regulated area, and (3) prudent and feasible alternatives are available to eliminate or more fully mitigate such impact.

In April 2004, the applicant proposed a permit amendment for an inground pool and surrounding terrace in a location different from the original application, resulting from the applicant's agreement with a neighbor to purchase additional land. The proposal would straighten the western property boundary of the subject parcel, removing the right angle bend that, per Zoning Regulations, changed the boundary line from a side yard to a rear yard lot line. The straightening of the boundary would decrease the zoning setback for the boundary line from 25' to 15' for the barn. The amended plan shifts the barn into this newly available 10' wide space, allowing the proposed 17' by 35' swimming pool to shift north and slightly east further away from the wetlands. The edge of the pool and edge of the terrace would be 46' and 42' from the wetlands, respectively. The pool fence would be installed from the southeast corner of the barn, along the southern edge of the pool, and then around the entire ledge rock to the rear property boundary, within the approved Conservation Easement area. The pool equipment would be located behind the approved barn.

B. SITE DESCRIPTION:

The property is a ±1.26-acre flag-shaped parcel located on the north side of Old Kings Highway North, approximately 340' west of the intersection of Wakeman Road and Old Kings Highway North. It is shown on the Tax Assessor's Map #32 as Lot #26. The residential property is developed with a two-story single-family residence located in the southeast corner and a barn located in the northwest portion of the lot. The existing landscape, including both wetlands and uplands, is a mixture of lawn and garden with ornamental trees and shrubs. A wetlands pocket extends across the eastern lot line and is approximately 52' north of the existing residence. This wetland is dominated by a thick growth of Multiflora Rose and Raspberry bramble. A second pocket of wetlands is located on the south side of the "flag" portion of the lot, which is wooded. An area of ledge is located approximately 33' east of the existing barn.

The wetlands were flagged on April 18, 2002 by Otto Theall, Professional Soil Scientist. The flagging is consistent with and closely matches the boundary shown on the Town's wetland boundary map. The wetland soils consist of Ridgebury, Leicester and Whitman extremely stony fine sandy loam (Rn).

C. HEARING PRESENTATIONS AND RECORD:

The applicant and his representatives provided materials to the EPC as part of the record in this matter. These materials were presented and discussed during the General Meeting of August 6, 2003 and Public Hearing of September 17, 2003, and discussed during the Commission's deliberation on October 1, 2003:

1. Plan – “Figure 3, Proposed Conditions, Piorkowski Residence, 152 Old Kings Highway North, Darien, Connecticut,” Sheet 2, by Stearns & Wheler, LLC, last revised 09/03, received during September 17, 2003 Public Hearing.
2. Plan – “Figure 3, Proposed Conditions, Piorkowski Residence, 152 Old Kings Highway North, Darien, Connecticut,” Sheet 2, by Stearns & Wheler, LLC, last revised 08/03, received by Planning and Zoning Office on August 27, 2003.
3. Plan – “Figure 3, Proposed Conditions, Piorkowski Residence, 152 Old Kings Highway North, Darien, Connecticut,” Sheet 2, by Stearns & Wheler, LLC, last revised 07/03, received by Planning and Zoning Office on July 30, 2003.
4. Plan – “Figure 3, Proposed Conditions, Piorkowski Residence, 152 Old Kings Highway North, Darien, Connecticut,” Sheet 2, by Stearns & Wheler, LLC, dated 07/03, received by Planning and Zoning Office on September 16, 2003.
5. Sediment & Erosion Control Plan – “Figure 4, Erosion Control Plan, Piorkowski Residence, 152 Old Kings Highway North, Darien, Connecticut,” Sheet 3, by Stearns & Wheler, LLC, last revised 07/03, received by Planning and Zoning Office on July 30, 2003.
6. Sediment & Erosion Control Plan – “Figure 4, Erosion Control Plan, Piorkowski Residence, 152 Old Kings Highway North, Darien, Connecticut,” Sheet 3, by Stearns & Wheler, LLC, dated 07/03, received by Planning and Zoning Office on September 16, 2003.
7. Existing Conditions Plan – “Figure 2, Existing Conditions, Piorkowski Residence, 152 Old Kings Highway North, Darien, Connecticut,” Sheet 1, by Stearns & Wheler, LLC, dated 07/03, received by Planning and Zoning Office on July 16, 2003.
8. Untitled Map, enlarged sectional photocopy of Tax Assessor’s Map #32, highlighting wetlands and proposed conservation easement area on Lot #26, owned by Edward Piorkowski, and an approved conservation easement on Lots #28A owned by Annette Miceli and #28B, owned by Dominick Miceli, undated, received during the September 17, 2003 Public Hearing.
9. Soils Report – “Soil Investigation Report, 152 Old Kings Highway North, Darien, Connecticut” by Soil & Wetland Science, LLC, dated April 18, 2002.
10. Environmental/Wetland Impact Review – “Report – Environmental and Wetland Impact Assessment for Proposed Filling, Construction, and Renovation, 152 Old Kings Highway North, Darien, Connecticut” by Stearns & Wheler, LLC, dated July 2003, received July 16, 2003.
11. Drainage Report – “Drainage Report, Piorkowski Residence, 152 Old Kings Highway North, Darien, Connecticut” by Stearns & Wheler, LLC, dated July 17, 2003.
12. Mailing List for 152 Old Kings Highway North, Neighbors within 100 Feet of Project Area, dated 7/15/2003, with map.

13. Letter to Michael Fishman, Stearns & Wheler, LLC, from Nancy H. Sarner, GIS Specialist/Planner, dated July 22, 2003, Re: Wetlands Permit Application #EPC-78-2003, Edward Piorkowski, 152 Old Kings Highway North.
14. Letter to Michael Fishman, Stearns & Wheler, LLC, from Nancy H. Sarner, GIS Specialist/Planner, dated August 12, 2003, Re: Wetlands Permit Application #EPC-78-2003, 152 Old Kings Highway North – Request for Additional Information, Notification to Adjacent Property Owners.
15. Letter to Nancy Sarner, GIS Specialist/Planner, from Michael Fishman, Stearns & Wheler, LLC, dated August 27, 2003, Re: Wetlands Permit Application #EPC-78-2003, 152 Old Kings Highway North, Response to Your Letter of August 12, 2003 Requesting Additional Information.
16. Memorandum to EPC Members from Nancy Saner, Environmental/GIS Analyst, Re: EPC-78-2003, Piorkowski Application, 152 Old Kings Hwy N, dated Wednesday, August 27, 2003.

C.1 AMENDMENT PRESENTATION AND RECORD:

1. Amended Application for Permission to Conduct a Regulated Activity within an Inland Wetland or Watercourses Area within the Town of Darien, received by the Planning and Zoning Office on March 10, 2004.
2. Letter to the Town of Darien Environmental Protection Commission from Michael S. Fishman, PWS, Stearns & Wheeler, LLC, dated March 9, 2004, Re: Application for Amendment to Inland Wetland Permit #EPC-78-2003 to Add an In-ground Swimming Pool with Associated Terrace and Fence at 152 Old Kings Highway North; Applicant: Edward Piorkowski
3. Plan – “Figure 2, Previously Proposed Site Plan, Piorkowski Residence, 152 Old Kings Highway North, Darien, Connecticut,” Sheet 2, by Stearns & Wheeler, LLC, last revised 3/9/04.
4. Plan – “Figure 3, Approved Site Plan, Piorkowski Residence, 152 Old Kings Highway North, Darien, Connecticut,” Sheet 3, by Stearns & Wheeler, LLC, last revised 3/9/04.
5. Plan – “Figure 4, Proposed Site Plan, Piorkowski Residence, 152 Old Kings Highway North, Darien, Connecticut,” Sheet 2, by Stearns & Wheeler, LLC, last revised 3/9/04.
6. Mailing List for 152 Old Kings Highway North, Neighbors within 100 Feet of Project Area, dated 7/15/2003, with map.
7. Proof of Mailing for Notification of Neighbors, with copy of April 8, 2004 Notification Letter from Stearns & Wheeler, LLC, received by the Planning and Zoning Office on April 12, 2004.

8. Letter to Michael Fishman, Stearns & Wheeler, LLC from Nancy Sarner, Environmental/GIS Analyst, dated March 29, 2004.

D. AMENDED ITEMS/ISSUES OF CONCERN TO THE COMMISSION:

1. Impact to Wetlands and Watercourse

The wetlands located on the Piorkowski property are part of a larger wetland system associated with Tokeneke Creek and impacted by residential development. Under its wetland review process, the Commission not only limits additional development impact to wetlands, but, whenever possible, seeks to improve existing conditions.

The Commission reviewed the proposed plan for the revegetation and enhancement of the wetland area. The Commission accepts the testimony and findings of Mr. Fishman that the biodiversity and habitat value of the wetlands would be increased by the proposed enhancement and revegetation of the wetland area, including the removal of invasive species. In addition, the Commission finds that the stone retaining wall and planted wetland buffer to surround the wetlands should reduce the likelihood that the area should be disturbed. The planted buffer should serve to filter out most herbicides, insecticides, and fertilizers used on the lawn area from stormwater runoff before it enters the wetlands, and should support a greater variety of beneficial insects and microorganisms. Nutrients dissolved in the runoff would be used by the plants and microorganisms, or incorporated into the soils of the buffer, which would protect the wetlands from nutrient overload and changes in the plant community.

The Commission finds that the establishment of the conservation easement, as proposed by the applicant, would maintain the long-term productivity of the existing wooded wetlands, and expand the protected natural area created by the establishment of a similar conservation easement area under Wetland Permit Approval #EPC-56-2000, located on Lots #28A and #28B on Wakeman Road.

The Commission appreciates the plan revisions provided by the applicant in an attempt to reduce impact and disturbance to the wetlands. The Commission finds that the location of the water and sewer line on the east side of the driveway should preserve trees located along the western property boundary. It finds that the second-floor balcony would maintain activity further away from the wetlands, and that the stone retaining wall would limit the amount of fill activity within the regulated area and serve to demarcate the wetland restoration area. The gravel driveway with grass median poses less impervious area than a paved driveway and provides needed access to the rear barn/garage/guest and pool house. . The adjustment to the western property boundary allows the barn to be shifted west, and the inground pool with surrounding terrace to be moved northeast from the locations proposed by July 2003 plan presented in September 2003. The edge of the pool and edge of the terrace would be 46' and 42' from the wetlands, respectively. The amended plan reduces the total area of disturbance within the regulated area from ± 724 square feet $\pm 35'$ from the wetlands to ± 423 square feet $\pm 42'$ from the wetlands.

2. Review of Necessity, or Hardship

The Commission has reviewed the regulated activities proposed by the application. In doing so, the Commission has considered the applicant's basic goal, which was presented as the improvement and partial redevelopment of the property. In order to balance the owner's property rights with the need to protect the Town's wetland resources, the Commission considered the issue of luxury versus necessity, as it relates to the reasonable use of a property. The Commission felt that granting permission for the residential addition, sewer and water lines to the reconstructed barn/garage/guest and pool house, improvement of the existing driveway, and related grading and fill activities constituted reasonable, expected and necessary uses associated with a residence, and posed acceptable disturbances and impact to the wetlands.

The Commission concluded under its original decision that a new inground swimming pool with pool patio and use of the barn in part as a pool house constitutes a luxury, or non-necessity. The Commission also accepts the testimony of the property owner that the useable land on the property is limited due to the amount and location of ledge and wetland areas. However, since the original decision, the applicant has made significant efforts to reduce impact through the lot line adjustment and relocation of the barn and pool area, and address wetland protection issues not addressed under the original submission.

The Commission finds that the amended plan has been modified in a fashion that substantially changes the impact which resulted in the denial.

In approving this amendment, which includes an inground pool partly within the regulated area, the Commission cautions members of the public and their representatives against seeking to rely on this decision in any affirmative way in support of a future proposed non-necessary use within a regulated area. Rather, this approval resulted from significant factual changes and modifications since the Commission's prior denial, all detailed herein. No affirmative precedential use of this approval, particularly with regard to the inground pool, should be made by any future application. The Commission believes, after careful and full consideration, that this approval is strictly site and fact-specific and representative of a collaborative and fruitful process with this applicant.

3. Review of Feasible and Prudent Alternatives

The Commission appreciates the plan revisions provided by the applicant under his permit amendment request in an attempt to reduce impact and disturbance to the wetlands. Under the amended plan, the amount of disturbance within the regulated area has been reduced from ± 724 square feet to $+423$ square feet. The fill and regrading activity within the regulated area has been reduced, the stone retaining wall, and the pool and terrace have been moved further away from the wetlands.

The Commission has reviewed the regulated activities proposed by the application under its September 2003 review for the original project proposal and its April 2004 review for the amended plan. In doing so, the Commission has considered the applicant's basic goal, which was presented as the improvement and partial redevelopment of the property, and considered alternatives to the proposal in light of the goal. Pursuant to the State Inland Wetland and Watercourses Act and the Town's Inland Wetlands and Watercourses Regulations, the

Commission may issue an approval if it finds that prudent and feasible alternatives have been satisfactorily reviewed.

4. Sediment and Erosion

The Commission recognizes that work activity within and adjacent to the wetlands could cause erosion and/or sedimentation, and has reviewed the applicants' proposed steps to prevent significant impact to the resources. The Commission has found that the proposal incorporates both short-term and long-term sediment and erosion controls into the development plan. Temporary controls will be utilized during construction and are proposed to be maintained during the stabilization period following work activity. Permanent controls include the construction of a stone retaining wall and the installation of plantings within the wetlands and buffer area.

E. AMENDED DECISION:

The Commission hereby approves the applicant's request to amend Wetlands Permit Approval #EPC-78-2003, the following stipulations:

1. This is a conditional approval. Each and all of the conditions herein are an integral part of the Commission's decision. The conditions of approval from the October 1, 2003 decision are incorporated within this decision.
2. That the Commission approves the residential addition, driveway improvements, inground swimming pool with surrounding terrace, pool fencing, fill and regrading activity, installation of sewer and water lines, reconstruction of the garage/guest house, wetland enhancement/replanting including the removal of invasive species, construction of a stone retaining wall, and creation of a conservation easement area. Construction shall be in accordance with the plans submitted to and reviewed by the Commission, entitled "Project 4, Proposed Site Plan, Piorkowski Residence, 152 Old Kings Highway North, Darien, Connecticut," Sheet 4, by Stearns & Wheler, LLC, last revised 3/9/04.
3. This amended approval is subject to the straightening of the western property boundary. A Zoning Permit shall not be issued until a mylar of the lot line adjustment is filed on the Darien Land Record. A copy of the stamped map shall be submitted into the EPC record.
4. Construction shall occur in accord with construction sequence listed on the approved plan "Figure 3, Proposed Conditions" by Stearns & Wheler, received during the September 17, 2003 Public Hearing.
5. That the wetlands enhancement/planting be installed as shown on the plan by Stearns & Wheler, LLC, entitled "Figure 4, Proposed Site Plan," Sheet 4, last revised 3/9/04. The wetland restoration and enhancement is an integral part of the approval and therefore must be completed prior to the filing for a Certificate of Occupancy. Plant substitutions shall be approved by Commission staff prior to planting. The wetland areas are to remain natural areas after to planting is completed; therefore, the use of detritus mulch is allowed for only the first growing season.

6. That a performance bond shall be posted with the Planning and Zoning Office to ensure that the wetland enhancement and planting plan is completed according to the above mentioned approved plan, and the compliance with this approval. The bond shall be based upon an estimate of plant and labor costs, including the removal of invasive species, to be submitted to the Commission by the permittee. Half of the amount shall be returned upon the completion of the restoration activity. The remaining amount shall be held for three (3) growing seasons to ensure that the new plantings are established. Any diseased or dead plantings must be replaced. According to Section 11.10 of the Town's Inland Wetland and Watercourses Regulations, a Zoning Permit shall not be issued until the bond is provided.
7. That a Conservation Easement from the property owners to the Land Trust of Darien or the Town of Darien Environmental Protection Commission shall be filed in the Darien Land Records, which shall designate an approximately 13,690 square foot area located in the northeastern portion of the site and shown on plan entitled "Figure 4 – Proposed Site Plan," Sheet 4, last revised 3/9/04, to remain in perpetuity as undisturbed and natural. The applicant will prepare easement language to allow the construction and maintenance of the pool fence within the easement, allowing for maintenance access of 3' on either side of the fence. The deed restriction shall state that (a) all clearing, construction, filling, removal or deposits of materials and alteration of any kind, shall be prohibited within the conservation easement area, unless otherwise permitted by the Environmental Protection Commission; and (b) use of the conservation easement area shall be limited to passive recreation and wildlife habitat, with no construction activity allowed. A copy of the conservation easement shall be submitted to and reviewed by the Town Attorney and the Planning and Zoning Director prior to filing a mylar for the conservation easement area in the Darien Land Records. The Conservation Easement is an integral part of the approval and therefore must be filed with map in the Darien Land Record prior to the filing for a Certificate of Occupancy.
8. The work activity is limited to that which is approved. Prior to implementation, any possible revisions to the plans must be submitted to and reviewed by the Planning and Zoning Office to determine conformance to this approval, and may require an amendment approval by the Environmental Protection Commission. Any increase in the extent of regrading, development, disturbance or impacts within the wetlands or watercourse, or regulated area around the wetlands, or other significant amendments to the approved plan will require prior submission to and review by the entire Commission in accordance with Section 7.8 of the Inland Wetlands and Watercourses Regulations of the Town of Darien.
9. All sediment and erosion controls shall be installed prior to the commencement of work activity as shown on the plan to be modified to reflect this amendment approval, entitled "Figure 4, Erosion Control Plan, Piorkowski Residence, 152 Old Kings Highway North, Darien, Connecticut," Sheet 3, by Stearns & Wheler, LLC, dated 07/03, received by Planning and Zoning Office on September 16, 2003. The modified sediment and erosion control plan shall be submitted for Commission staff review and approval prior to the issuance of a Zoning Permit. The bottom of the silt fence shall be buried a minimum of 6-inches into the soil and shall be backfilled with suitable material. All controls must be inspected daily by the permittee or their representative. Any sagging, undermining, or damage to the silt fence or construction barrier must be repaired immediately

10. Sediment and erosion controls shown on the plans shall be maintained throughout the construction process and shall only be removed when the disturbed areas have been adequately re-stabilized with suitable vegetation.
11. All equipment and storage of materials during construction shall be maintained outside the regulated areas, to ensure that the wetlands on the eastern portion of the site will be undisturbed.
12. This permit does not relieve the applicant of their responsibility to comply with all other applicable rules, regulations, and codes of other Town agencies or other regulating agencies. In particular, it is noted that approval from the Sewer Department and Zoning and Building Permits are needed before this project can proceed.
13. The permittee shall notify the Environmental Protection Commission prior to commencement of excavation or regrading work and after the sediment and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and as per plan. All sediment and erosion control measures should be maintained until all disturbed areas are stabilized and revegetated.
14. The permittee shall notify the Environmental Protection Commission immediately upon commencement of work and upon its completion.
15. No equipment or material, including without limitation, fill, construction materials, debris, or other items shall be deposited, placed or stored in any wetland or watercourse on or off site unless specifically authorized by this permit.
16. The duration of this permit shall be five (5) years and shall expire on the date specified above. All proposed activities must be completed and all conditions of this permit must be met within one year from the commencement of the proposed activity.

The motion was made by Mr. Hillman and seconded by Mr. Hutchison. Voting in favor of the motion were Mr. Hillman, Mr. Hutchison and Ms. Miller. Voting in opposition of the motion was Ms. Cameron. Ms. Kirby abstained. The motion was passed by a vote of 3 to 1.

Chairman Hillman read the following agenda item:

Discussion and Possible Decision for 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 feet north of the intersection of Holly Lane and Middlesex Road, shown on Tax Assessor's Map #9 as Lot #144.

Upon discussion and consideration of the application file, the following resolution was adopted:

TOWN OF DARIEN
ENVIRONMENTAL PROTECTION COMMISSION
PERMIT TO CONDUCT A REGULATED ACTIVITY

EFFECTIVE DATE: MAY 19, 2004
EXPIRATION DATE: MAY 19, 2009

Application Number: EPC-26-2004

Applicants' Name and Address: Thomas & Nancy Cornacchia
17 Holly Lane
Darien, CT 06820

Property Address of Proposed Activity: 17 Holly Lane
Darien, CT 06820

Name and Address of Applicants' Representatives: Attorney Robert F. Maslan, Jr.
Maslan, Brown & Associates, LLP
9 Old Kings Highway South
P.O. Box 37
Darien, CT 06820

Michael Fishman
Stearns & Wheeler, LLC
35 Corporate Drive, Suite 1000
Trumbull, CT 06611

Proposed Activity: Construction of an inground swimming pool with surrounding terrace, spa, and small pool shed/house, landscaping, and installation of a riparian buffer.

Shown on Tax Assessor's Map #9 as Lot #144.

The Environmental Protection Commission has considered the application with due regard to the matters enumerated in Section 21a-41 of the Connecticut General Statutes, as amended, and in accordance with Section 10 of the Inland Wetlands and Watercourse Regulations of the Town of Darien, and has found that a denial in part and approval in part is in conformity with the purposes and provisions of said sections.

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

- In reviewing this application, the Commission has relied on the applicants' assurances, and makes no warranties and assumes no liability as to the structural integrity of the design or any structures, nor to the engineering feasibility or efficacy of such design.
- In evaluating this application, the Environmental Protection Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, after interested parties have had an

opportunity to be heard at a duly noticed public hearing this permit shall be modified, suspended or revoked by the Commission.

The Environmental Protection Commission met for a Public Hearing on May 5, 2004. During the Public Hearing, the applicants' representatives presented information explaining the project and provided answers to concerns and questions raised by the Commission, Commission staff and the general public. The general public, including nearby property owners, was provided an opportunity to express their opinions and comment regarding the proposed development.

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

A. PROJECT DESCRIPTION:

The application proposes the construction of an inground pool with surrounding terrace. The 650 square foot pool would be located 11' from the wetlands, and the terrace would be 7' from the wetlands and 64' from Stony Brook. A spa would be installed within the pool. A 14' x 8' pool house, also referred to as a pool shed by the application, would be located between the proposed pool and existing driveway. The area around the pool and pool shed would be landscaped with ornamental plantings. The pool fence would be set at the edge of the terrace, and pool equipment, which would include a diatomaceous earth filter, would be installed within the pool shed.

The application also proposes the creation of three riparian buffer planting areas. The buffer areas would range from 7' to 30' in depth, and include native species such as Gray Dogwood, Shadbush and Sweet Pepperbush, as well as a New England wildflower seed mix.

B. SITE DESCRIPTION:

The property is a ± 1.38 -acre parcel located on the north side of Holly Lane, approximately 1,000' north of the intersection of Holly Lane and Middlesex Road. Stony Brook and associated wetland soils flow across the eastern property boundary. The wetlands wrap around the house and extend along the southern property boundary to Holly Lane. The wetlands and Stony Brook located on the Cornacchia property are intertwined resources that are part of a significantly-sized wetlands corridor that extends from the New Canaan town line to Interstate 95. Stony Brook continues further south into Gorham's Pond. Broadly speaking, the watershed for this system has been impacted by residential development.

This residential property is developed with a two-story single-family residence. The structure sits within a pocket of upland soils and is $\pm 20'$ from the wetlands at its closest point. The HVAC equipment sits on a concrete slab that is $\pm 14'$ from the wetlands as the closest development feature. In other words, the house and certain existing and approved features already present a noticeable intrusion into the regulated area. The driveway is located along the northwestern property boundary. The existing landscape, including both wetlands and uplands, is predominantly lawn with some larger trees. The lawn extends to the edge of Stony Brook.

The wetlands were flagged on December 3, 1999 by Otto Theall, Professional Soil Scientist. The wetland soils consist of Walpole fine sandy loam (Wd) and Rippowam fine sandy loam (Ro), and upland soils defined as Udorthents smooth (UD).

C. HEARING PRESENTATIONS AND RECORD:

The applicant and his representatives provided materials to the Environmental Protection Commission as part of the record in this matter. These materials were presented and discussed during the Public Hearing of May 5, 2004, and discussed during the Commission's deliberation on May 5, 2004, May 19, 2004,:

1. Application for Permission to Conduct a Regulated Activity within an Inland Wetland or Watercourse Area in the Town of Darien, for the property at 17 Holly Lane.
2. Existing Conditions Plan – “Figure 2, Existing Conditions, Inland Wetlands Application, Cornacchia Property, 17 Holly Lane, Darien” by Stearns & Wheler, LLC, dated 03/09/04.
3. Original Proposed Plan – “Figure 3, Proposed Conditions, Inland Wetlands Application, Cornacchia Property 17 Holly Lane, Darien” by Stearns & Wheler, LLC, dated 03/09/04, received March 10, 2004.
4. Revised Proposed Plan – “Figure 3, Proposed Conditions, Inland Wetlands Application, Cornacchia Property 17 Holly Lane, Darien” by Stearns & Wheler, LLC, dated 03/09/04, revision date not listed, received March 31, 2004.
5. Sediment and Erosion Control Plan – “Figure 3, Proposed Conditions, Inland Wetlands Application, Cornacchia Property 17 Holly Lane, Darien” by Stearns & Wheler, LLC, dated 03/09/04, revision date not listed, received March 31, 2004.
6. Planting Plan – “Figure 3, Proposed Conditions, Inland Wetlands Application, Cornacchia Property 17 Holly Lane, Darien” by Stearns & Wheler, LLC, dated 03/09/04, revision date not listed, received March 31, 2004.
7. Soils Report – “Soil Investigation Report, 17 Holly Lane, Darien, Connecticut, Prepared for Thomas Cornacchia” by Otto R. Theall, Professional Soil, dated December 3, 1999.
8. Environmental/Wetland Impact Review – “Report – Environmental Impact Assessment for a Proposed Swimming Pool and Associated Structures, 17 Holly Lane, Darien, Connecticut” by Stearns & Wheler, LLC, dated March 9, 2004.
9. Drainage Report – “Drainage Report, Cornacchia Residence, 17 Holly Lane, Darien, Connecticut” by Stearns & Wheler, LLC, dated May 8, 2003.
10. Letter to Ms. Nancy Sarner, GIS Specialist, from Robert F. Maslan, Jr., Re: EPC Application, Thomas & Nancy Cornacchia, 17 Holly Lane, Darien, dated March 10, 2004.

11. Mailing List for 152 Old Kings Highway North, Neighbors within 100 Feet of Project Area, dated 7/15/2003, with map.
12. Letter to Michael Fishman, Stearns & Wheeler, LLC, from Nancy H. Sarnier, GIS Specialist/Planner, dated July 22, 2003, Re: Wetlands Permit Application #EPC-78-2003, Edward Piorkowski, 152 Old Kings Highway North.
13. Site History Format table for 17 Holly Lane, dated 2/20/02.
14. Section of "Zoning Location Survey Prepared for Thomas W. Cornacchia & Nancy L. Cornacchia, Darien, Connecticut," labeled "1999 Existing Plan," by William W. Seymour & Associates, dated June 8, 1998.
15. Section of "Zoning Location Survey of #17 Holly Lane, Prepared for Thomas W. Cornacchia & Nancy Cornacchia, Darien, Connecticut," labeled "2000 Plan," by William W. Seymour & Associates, dated June 8, 1998.
16. "Front Landscape Plan C, revision 2, Cornacchia Residence, 17 Holly Lane, Darien, CT 06820" by Round Hill Landscapes, dated February 2002, labeled "Rec'd 3/6/02, Approved on 3/6/02, EPC-14-2002."
17. February 2, 2002 Meeting Minutes of the Environmental Protection Commission, pages 5-7.
18. December 6, 2000 Meeting Minutes of the Environmental Protection Commission, pages 1-3.
19. April 4, 2001 Meeting Minutes of the Environmental Protection Commission, pages 3-4.
20. March 6, 2002 Meeting Minutes of the Environmental Protection Commission, pages 3-5.
21. List of Owners within 100 feet of Property – Application of Maslan, Brown & Associates, LLP for Thomas & Nancy Cornacchia, dated March 10, 2004.
22. Mailing List for 17 Holly Lane, Neighbors within 100 feet of Project Area, dated 3/29/2004.
23. Map of Properties within 100 feet of 17 Holly Lane, dated 3/29/2004.
24. Letter to Robert F. Maslan, Jr., Esq., from Nancy H. Sarnier, Environmental/GIS Analyst, Re: Wetlands Permit Application #EPC-26-2004, dated March 15, 2004.
25. Letter to Robert F. Maslan, Jr., Esq., from Nancy H. Sarnier, Environmental/GIS Analyst, Re: Notification to Neighbors for Wetlands Permit Application #EPC-26-2004, Thomas & Nancy Cornacchia, dated March 29, 2004.
26. Letter to the Environmental Protection Commission from Michael S. Fishman, PWS, Stearns & Wheeler, LLC, Re: Additional Information for Wetlands permit Application #EPC-26-2004, Thomas & Nancy Cornacchia, 17 Holly Lane, S&W No. 40051.0, dated March 30, 2004.

27. Letter to Robert F. Maslan, Jr., Esq., from Nancy H. Sarner, Environmental/GIS Analyst, Re: Notification to Neighbors for Wetlands Permit Application #EPC-26-2004, Thomas & Nancy Cornacchia, dated April 16, 2004.
28. Certificates of Mailing, dated April 9, 2004.
29. Certificates of Mailing, dated April 20, 2004.
30. Plan – “Figure A: Alternative Analysis, Wetland Permit Application, Tom & Nancy Cornacchia Property, 17 Holly Lane, Darien” by Stearns & Wheler, LLC, date March 2004.
31. Plan – “Figure B: Alternative Analysis, Wetland Permit Application, Tom & Nancy Cornacchia Property, 17 Holly Lane, Darien” by Stearns & Wheler, LLC, date March 2004.
32. Plan – “Figure C: Alternative Analysis, Wetland Permit Application, Tom & Nancy Cornacchia Property, 17 Holly Lane, Darien” by Stearns & Wheler, LLC, date March 2004.
33. Site Photographs of Existing Conditions, May 5, 2004.
34. Site Photographs with hand renderings of Proposed Conditions.
35. Analysis of Standard Criteria for Decision.
36. FIRM Flood Insurance Rate Map, Panel 3 of 6, Showing Holly Lane area, Darien, Connecticut.

D. ITEMS/ISSUES OF CONCERN TO THE COMMISSION:

1. Impact to Wetlands and Watercourse

The wetlands and Stony Brook located on the Cornacchia property are interconnected resources that are part of a significantly-sized wetlands corridor within the Stony Brook watershed. Under its wetland review process, the Commission strives to protect wetlands and watercourses from random and unnecessary uses and disturbances. It not only limits additional development impact to wetlands, but, whenever possible, seeks to improve existing conditions.

The Commission reviewed the proposed plan for the construction of an inground pool, spa, terrace, and pool shed/house. It finds that these structures pose a substantial intrusion into the wetland setback area by encroaching 43’ (more than 80%) into the 50’ setback. The proposed construction introduces a new, intense use directly adjacent to the wetlands and introduces risks, including but not limited to the use and dispersion of chemicals adjacent to the wetlands for the treatment of the pool and the cleaning of the pool structure; substantial displacement of soil in the protected area; and loss of lawn area regarded as an important component of the buffer.

The Commission considered Mr. Fishman's testimony regarding the proposed use of infiltrators to compensate for the loss in filtration and percolation posed by the construction activity. However, the Commission maintains concerns about relying too heavily on such nascent technology. The applicants' representatives acknowledged that the proposed infiltrators have not been available for very long. The Commission recognizes and appreciates that such infiltrators (which have been approved by this Commission in at least one instance) may, over time, prove to be mitigating factors with respect to the concern of soil displacement, loss in infiltration and percolation, and other intrusions into the wetland buffer. In this case, however, the proposed encroachment is so substantial and the nature of Stony Brook and wetland area is so clear that the Commission's mandate to protect renders it unwilling to make such a sharp exception to its standards. The Commission finds that that infiltrators would be installed directly adjacent to soils having a high water table, identified by the soil scientist as Walpole fine sandy loam (Wd), and within an area of undocumented water table but having the same lower soil horizons as the Walpole soils. It is within this lower soil horizon that the infiltrators would be installed. Infiltrators that are inundated with groundwater during wet seasons would not, in the Commission's view, offset the impacts posed by the construction.

In addition, The Commission agrees with Mr. Fishman's testimony that the wetlands have been impacted by past activities associated with the property's residential use. However, the Commission finds that the proposal would put additional pressure on the resource's capacity to facilitate drainage and serve as flood control. The proposed construction poses potential damage from erosion, flooding and pollution, and subsequent impairment of economic and aesthetic values of downstream neighbors' properties.

The Commission finds that the construction poses a threat to water quality by proposing an increase of impervious surface area to 17%. Water quality has been shown to become impacted as impervious area on a property, and subsequently within a watershed, increases.

In reviewing the application, the Commission considered the proposed construction's potential to pose an irretrievable or irreversible impact or loss to the wetlands and Stony Brook, including the extent to which the activity would foreclose a future ability to protect, enhance or restore such resources. The Commission finds that the construction does propose such an impact that would limit future options that would benefit the wetlands, its long-term productivity, and floodplain area. It also finds that the construction poses an irretrievable commitment of the wetland setback area which serves to protect and buffer the wetlands and Stony Brook.

The Commission considered the suitability of the construction activity to the area for which it is proposed. In doing so, it balanced the needs for the economic growth of the State and use of its land, with the need to protect its environment and ecology for the people of the State and the benefits of future generations. The Commission finds that the location of an inground pool with spa and surrounding terrace 7' from a wetlands is not a suitable use. It also finds that, in denying the construction, it would not take away from the economic growth of the State or the reasonable use of the property by its owner. Indeed, as the findings below under "Permitting History" demonstrate, this Commission has painstakingly worked with the applicants for more than three years on requested development, generally resulting

in approved uses to the considerable economic and residential favor of the applicants. Here, however, the Commission must side completely with the wetlands interest.

The Commission reviewed the plan for the proposed riparian buffer. The Commission accepts the testimony and findings of Mr. Fishman that the biodiversity and habitat value of the wetlands would be increased by the proposed enhancement and revegetation of the wetland area. The planted buffer should serve to filter out most herbicides, insecticides, and fertilizers used on the lawn area from stormwater runoff before it enters the wetlands, and should support a greater variety of beneficial insects and microorganisms. Nutrients dissolved in the runoff would be used by the plants and microorganisms, or incorporated into the soils of the buffer, which would protect the wetlands from nutrient overload and changes in the plant community.

2. Review of Necessity, or Hardship

The Commission has reviewed the regulated activities proposed by the application. In doing so, the Commission has considered the applicants' basic goal, which was presented as the improvement of the property through the construction of the recreational facility. In order to balance the owner's property rights with the need to protect the Town's wetland resources from random, undesirable or unnecessary uses, the Commission considered the issue of luxury versus necessity, as it relates to the reasonable use of a property.

The Commission concluded that a new inground swimming pool with spa and surrounding terrace would significantly impact the regulated area. While many would consider having a swimming pool to be desirable, a pool is a luxury. It is quite nice to have. But it is not a necessity, not in the sense that a larger, needed living and cooking space for example, can be. Where it is proposed that substantial intrusion be made to a regulated area for a luxury as opposed to a habitation use that is reasonable, expected and necessary, the Commission must be particularly vigilant against unnecessarily impacting wetlands. Here, the pool and pool patio would be located 11' and 7' from the wetlands, respectively. This is, by any measure, enormous intrusion into the 50' regulated area. It is no slight encroachment that can be justified by reference to, e.g., infiltrators. What is more, the pool and patio would total approximately ±943 square feet of new impervious area directly adjacent to a wetland area. The total disturbed area, all within the regulated areas, would total ±1,618 square feet.

The Commission finds, and appreciates, that the useable land on the property is limited due to the location of Stony Brook and the amount of wetland soils. It is understood that development potential on such restricted properties is limited due to the need for wetlands protection, when compared with properties of equal size that lack these site constraints. Still, after careful consideration, the Commission finds that there is no "hardship," or necessity, to justify the proposed inground pool's extreme proximity and significant potential for impact to the wetlands. Further, the Commission finds that in denying the proposed pool, it would not take away the property owner's reasonable use of the property.

3. Review of Feasible and Prudent Alternatives

The Commission has reviewed the regulated activities proposed by the application. In doing so, the Commission has considered the applicants' basic goal, which was presented as

residential improvement, and considered alternatives to the proposal in light of the goal. Pursuant to the State Inland Wetland and Watercourses Act and the Town's Inland Wetlands and Watercourses Regulations, the Commission cannot issue a permit for a regulated activity that receives a public hearing unless it finds that a feasible and prudent alternative does not exist.

The Commission accepts the testimony of Mr. Fishman that the alternative of incorporating an inground pool within the raised stone terrace is not feasible. This alternative had been thoroughly reviewed by Mr. Fishman, as outlined within his presentation during the Public Hearing and submitted plans, Figure A to C.

The Commission accepts the testimony from the applicants' agents that a more prudent and feasible construction alternative does not exist. However, the Commission finds that the "no build" alternative is a feasible option that does not take away from the owner's reasonable use and enjoyment of his property.

4. Permitting History

During the Public Hearing, the Commission noted that, during its April 4, 2001 meeting for the review of an amendment to a 2000 permit for residential alterations, Mr. Cornacchia's agent, Architect Lance Zimmerman, stated that the "remaining" yard area would remain lawn. Clearly, the present application is in direct contradiction to that representation, which was material to the Commission's 2001 approval. Simply put, it is highly probable that the 2001 approval would not have been granted but for the applicant's representation that the "remaining" yard area would remain lawn. The now proposed inground pool, spa, terrace and pool house/shed would displace a very meaningful portion of what was represented would remain as lawn. The applicants' response to this important point was, to paraphrase, "plans sometimes change." The commission finds the response to be wholly inadequate. After careful review, the Commission finds the 2001 representation to be yet another factor justifying denial of the current application.

The Commission reviewed the past permitting history for the six applications and one permit amendment filed for the property over the past four years: dredging of the pond and placing dredged materials within a regulated area; additions and new terrace; enlargement of approved additions; enlargement of the approved terrace; installation of a.c. units set on a concrete pad; and the enlargement and alteration of a driveway.

The Commission accepts the applicants' statement that the activities were permitted separately as the need arose, and not as part of an overall site development plan for the property. However, the Commission does not accept Stearns & Wheler's claim that the construction activity associated with the house renovation in 2000 was limited to the existing footprint, since the plans clearly reveal that the house footprint had been extended both in the front and rear of the structure. In addition, the raised stone terrace replaced a smaller, on-grade patio. The Commission does not fault the applicant for the process taken for his past applications. The Commission does believe, however, that it would have been advantageous had an overall site development plan been considered from the onset. It is the Commission's experience that piece meal development of a property, especially one with limited useable area, can foreclose opportunities for future site improvements.

5. Sediment and Erosion

The Commission recognizes that work activity within and adjacent to the wetlands could cause erosion and/or sedimentation, and has reviewed the applicants' proposed steps to prevent significant impact to the resources. The Commission has found that the proposal incorporates short-term and long-term sediment and erosion controls into the development plan. Temporary controls will be utilized during construction and are proposed to be maintained during the stabilization period following work activity. Permanent controls include the installation of plantings within the wetlands to create a riparian buffer for Stony Brook.

6. Issue of Precedent

The Commission also finds that the permitting of the pool, spa, and terrace as proposed by the application and on a property with such extensive resources and limited useable area could serve to prompt an increased pressure for development within other regulated areas.

During the Public Hearing, Mr. Fishman claimed that the Commission had established precedent for such development by permitting a pool on a Prospect Avenue property. Mr. Fishman noted this precedent after the Commission stated that it is quite unusual for a permit to be issued for an inground pool in such close proximity to wetlands. The similarities between the two applications are the proposal of a pool and terrace 11' and 7' from wetland soils, respectively. However, the Commission finds that there are significant site differences between the two properties. While the Holly Lane property now under review has a floodplain wetland area associated with the significant Stony Brook corridor, the Prospect Avenue property in question contains a pocket of wetlands not directly associated with a watercourse. The closest river to the Prospect Avenue property is the Goodwives River and is located more than 120' from the property. In sharp contrast, Stony Brook is located directly on the Cornacchia property and is 64' from the proposed construction. A host of other differences exist between the two properties rendering them, in the Commission's view, substantially dissimilar. Accordingly, the Commission finds that the previous approval by the Commission does not establish precedent for its review of Application #EPC-26-2004.

7. Compliance Issues

During the May 5, 2004 Public Hearing, the Commission raised concerns regarding an unauthorized play structure installed adjacent to Stony Brook, and the lack of maintenance, or upkeep, of the riparian plantings required under previous permit approvals. These enforcement issues shall be addressed separately from the current application.

E. DECISION:

The Commission hereby approves in part and denies in part Wetlands Permit Application #EPC-78-2003, with the following stipulations:

1. This is a conditional approval. Each and all of the conditions herein are an integral part of the Commission's decision. The conditions of approval from the October 1, 2003 decision are incorporated within this decision.
2. That the Commission approves the riparian zone restoration. The work shall be in accordance with the plans submitted and reviewed by the Commission, entitled "Figure 3, Proposed Conditions, Inland Wetlands Application, Cornacchia Property, 17 Holly Lane, Darien" by Stearns & Wheeler, LLC, dated 3/09/04.
3. That the Commission denies the construction of the inground pool, spa, pool house and surrounding terrace based upon their findings the proposed activities pose significant impact or major effect upon the wetlands and watercourse, as discussed herein.
4. The work activity is limited to that which is approved. Prior to implementation, any possible revisions to the plans must be submitted to and reviewed by the Planning and Zoning Office to determine conformance to this approval, and may require an amendment approval by the Environmental Protection Commission. Any increase in the extent of regrading, development, disturbance or impacts within the wetlands or watercourse, or regulated area around the wetlands, or other significant amendments to the approved plan will require prior submission to and review by the entire Commission in accordance with Section 7.8 of the Inland Wetlands and Watercourses Regulations of the Town of Darien.
5. All sediment and erosion controls shall be installed prior to the commencement of work activity. The bottom of the silt fence shall be buried a minimum of 6-inches into the soil and shall be backfilled with suitable material. All controls must be inspected daily by the permittee or their representative. Any sagging, undermining, or damage to the silt fence or construction barrier must be repaired immediately
6. Sediment and erosion controls shall be maintained throughout the construction process and shall only be removed when the disturbed areas have been adequately re-stabilized with suitable vegetation.
7. This permit does not relieve the applicant of their responsibility to comply with all other applicable rules, regulations, and codes of other Town agencies or other regulating agencies. In particular it is noted that approval from the Sewer Department and Zoning and Building Permits are needed before this project can proceed.
8. The permittee shall notify the Environmental Protection Commission prior to commencement of work activity and after the sediment and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and as per plan. All sediment and erosion control measures should be maintained until all disturbed areas are stabilized and revegetated.
9. The permittee shall notify the Environmental Protection Commission immediately upon commencement of work and upon its completion.

10. No equipment or material, including without limitation, fill, construction materials, debris, or other items shall be deposited, placed or stored in any wetland or watercourse on or off site unless specifically authorized by this permit.
11. The duration of this permit shall be five (5) years and shall expire on the date specified above. All proposed activities must be completed and all conditions of this permit must be met within one year from the commencement of the proposed activity.

The motion was made by Mr. Hillman and seconded by Ms. Miller. Voting in favor of the motion were Mr. Hillman, Ms. Miller, Mr. Hutchison and Ms. Cameron. Ms. Kirby abstained. There were no votes in opposition of the motion. The motion was passed by a vote of 4 to 0.

Other Business:

Email Correspondence.

Chairman Hillman discussed the Commission's policy regarding email, and cautioned that the messages be limited to minor issues such as scheduling, noticing and confirming meetings and "FYI" items. Issues that are pending, may be seen in the future, or require a Commission decision should not be discussed through email.

Scheduling of next Executive Session.

The Commission agreed that the next Executive Session would be scheduled for a Special Meeting on June 23, 2004 at 7:30 p.m.

Planting Plan for EPC-70-2002, Michael & Jennifer Pucinelli, 93 West Avenue.

Ms. Sarnier explained that the sale of 93 West Avenue is pending, however the Pucinelli have failed to plant and/or maintain the required planting stipulated under Permit #EPC-70-2002. Therefore, a Certificate of Occupancy for the deck could not be issued. The Pucinelli's have requested confirmation of the plant count required.

The Environmental Protection Commission (EPC) reviewed and approved the approved planting list from Sambridge Nursery & Greenhouses. The approved lists specifies that twenty (20) Clethera, forty (40) ferns, and forty (40) Blue Flag Irises, and accompanies the planting plan approved by the EPC on September 17, 2002.

Performance Bond for Wetlands Permit Approval #EPC-98-2001.

The Environmental Protection Commission discussed the performance bond filed under the amended Wetland Permit #EPC-98-2001, and the new estimate submitted on May 14, 2004. Based upon the new information, the Commission decided to change its previous decision regarding the bond, and finds that additional monies, which had been required to cover any early withdrawal penalties, do not need to be placed within the certificate of deposit filed as the performance bond

Discussion of the May 6, 2004 Article in the Darien Times from the Darien Green Team.

The Commission extended compliments to Lee Fingar and the Darien Green Team on the informative article.

Cherry Lawn, 120 Brookside Road.

Ms. Cameron reported that an article in the paper indicated that there are no waiting lists for sports, in contrast to what was presented to the Commission during its review of Wetland Permit Application #EPC-75-2003. She said that there was discussion at a recent RTM meeting of seeking a non-binding, mandatory referral.

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. Sarnier
Environmental/GIS Analyst