

ENVIRONMENTAL PROTECTION COMMISSION
GENERAL MEETING & PUBLIC HEARING
MEETING MINUTES
SEPTEMBER 8, 2004

Commission Members Present: Peter Hillman, Reese Hutchison, Susan Cameron, Robert E. Kenyon, Ellen Kirby, Edwin Lewis and Nina Miller

Commission Staff Present: Nancy Sarner

Court Monitor: Bonnie Syat

General Meeting:

Old Business:

Chairman Hillman read the following agenda item:

Continuation of EPC-77-2004, 174 Mansfield, LLC, 174 Mansfield Avenue, proposing a split rail fence, installation of a rain garden buffer, and perform related site development activities within a regulated area. The property is located on the east side of Mansfield Avenue approximately 136' south of the intersection of Mansfield Place and Mansfield Avenue, shown on Assessor's map #10 as Lot #76.

Jeffrey McDougal of William Seymour & Associates explained that, during the last meeting on August 11, 2004, the Commission members had asked for alternatives that would reduce the size of the residence and locate it further away from the wetlands. Mr. McDougal reviewed that the residence would be built outside the buffer, but that he knows that after it is constructed, there would be "creep" into the setback area. He said that the proposed rain gardens would work exceptionally well and they would maintain what is already lawn. In response to a question, Mr. McDougal replied that no trees would be taken down or impacted by the rain gardens.

Upon further review of the materials and plan submitted, the following motion was made: That the Commission approve modified Wetland Permit Application #EPC-77-2004. The work is approved as shown on the plans entitled:

1. "Topographic/Zoning Location Survey Prepared for 174 Mansfield LLC, #174 Mansfield Avenue, Darien, Connecticut" by William W. Seymour & Associates, dated March 8, 2004, last revised August 12, 2004; and
2. "Rain Gardens Notes & Details, Prepared for 174 Mansfield, LLC, 174 Mansfield Avenue, Darien, Connecticut" by John R. Martucci, P.E., dated July 28, 2004.

The motion was made by Mr. Hillman, seconded by Ms. Cameron, and unanimously approved.

Chairman Hillman read the following agenda item:

Continuation of EPC-42-2004, Lisa Michels, 34 Lake Drive, proposing a hot tub, and perform related site development activities within a regulated area. The property is located on the west side of Lake Drive approximately 550' north of the intersection of Philips Lane and Lake Drive, shown on Assessor's Map #30 as Lot #4.

The Commission tabled the application and requested that Commission staff send a letter to Mrs. Michels requesting that she attend the September 15, 2004 meeting.

Chairman Hillman read the following agenda item:

Continuation of EPC-62-2004, Kevin & Danielle Granath, 5 Old Parish Road, proposing the construction of a three car garage, driveway extension, and perform related site development activities within a regulated area. The property is located on the east side of Old Parish Road, approximately 303' south of the intersection of Middlesex Road and Old Parish Road, shown on Assessor's Map #19 as Lot #37.

Mr. and Mrs. Granath presented a revised plan to the Commission, and addressed questions.

Mr. Granath explained that, based on the August 4, 2004 meeting discussion, the Commission requested two things: that the driveway be modified to avoid impacting the 30" Maples, and that the setback area in the backyard be cleaned. He assured the Commission that both items have been addressed. He told the Commission that, in the course of putting together the alternate designs, they had inadvertently omitted steps within the garage, which would be needed to access the house. He said that the garage had to be expanded to accommodate the interior steps, changing the proposed garage dimensions from 30' by 30' to 36' by 24'. He added that the driveway would not need to be the full width of the garage. Mr. Hillman said that he was impressed that the applicants listened and were willing to modify their plans.

In response to a question, Mrs. Granath replied that the garage would be $\pm 26'$ from the waterway. Ms. Cameron explained that the Commission was not concerned with the depth of the garage, but how close it would extend to the waterway. Mr. Hillman said that he was not sure if there was a more prudent alternative that had not been discussed. Ms. Cameron said that the applicants are not asking for a three-car garage, but a two-car garage with an extra storage bay. Mr. Granath said that it was their intent to construct a three-car garage, which is demonstrated by the original plan.

Ms. Cameron asked about the watercourse buffer area. Mr. and Mrs. Granath replied that the buffer along the watercourse is vegetated with brush and mature evergreens, unlike other homes in the area.

Mr. Kenyon asked if the existing garage would be removed. Mrs. Granath replied that it would be removed and the area would be turned into a lawn or garden.

Ms. Miller inquired about an impaired tree located near the roadway. Mrs. Granath replied that they had called the Town and Connecticut Light and Power (CL&P), and finally received a work order from CL&P for the removal of the hazardous tree, but no date for the work had been given.

Mr. Hutchison asked if the garage stairs could be installed within the house. Mr. Granath replied that the oil tanks are located below the area.

Upon further review of the materials and plan submitted, the following motion was made: That the Commission approve modified Wetland Permit Application #EPC-62-2004. The work is

approved as shown on the plan by Patterson-Bigosinski Architects, received by the Planning and Zoning Office on September 2, 2004 and overlaid on the Zoning Location Survey by William W. Seymour & Associates, last revised June 4, 2004. The motion was made by Ms. Cameron, seconded by Mr. Hillman, and unanimously approved.

Chairman Hillman read the following agenda item:

Discussion and Possible Amendment of EPC-53-2004, Friends of Goodwives River, Hope Pond, requesting permit modifications including the removal of trees and shrubs, placement of a large boulder within the banks of Hope Pond, relocation of construction access, and perform related site development activities. Hope Pond is located on the north side of Overbrook Lane, adjacent to roadway, approximately 130' west of the intersection of Rabbit Lane and Overbrook Lane, shown on Assessor's Map #10 as Lots #7, 8, 8C, 8A & 9.

Richard Windels, President of the Friends of Goodwives River (FOGR), reviewed his request for a permit amendment outlined within his September 3, 2004 letter and associated site photographs. Mr. Hillman said that he was glad that the applicant came before the Commission to proceed with the work, and that the Commission staff acted appropriately because FOGR needed Commission approval of the modifications before proceeding.

Ms. Sarnier informed the Commission that an additional modification was desired by FOGR. Darren Oustafine, Deputy Director of the Public Works Department, explained that his department has agreed to assist FOGR with a stream cleanup south of the roadway culvert on the Massie property. He said that the Town's AquaTech would be used to clean sediments within the river, and could be parked on Overbrook Lane and reach 10' to 20' into the channel to minimize disturbance. In response to question, Mr. Oustafine said that the work could be done in approximately one hour, unless multiple trips to dispose of collected materials are needed.

Upon further review of the materials and plan submitted, the following motion was made: That the Commission approve Items #1a, #1b, #1c and #2 of the September 3, 2004 letter, as well as grant permission to the Department of Public Works to use the town-owned AquaTech truck to remove sediments from the river immediately south of Overbrook Lane. The AquaTech truck shall be stationed in the roadway and may clean the section of the river within its reach, approximately 20' from the roadway. The motion was made by Mr. Hillman, seconded by Ms. Miller, and unanimously approved.

Mr. Windels stated that he was aware the Commission would discuss bond procedures during the September 15, 2004 meeting. Mr. Hillman clarified that the discussion would be postponed due to a conflict with counsel's schedule. Mr. Windels said he feels he has become an "expert" in performance bond after his experience with the dredging project. Mr. Hillman stated that Mr. Kenyon is an expert regarding performance bonds.

Mr. Windels said that FOGR told the Commission that they wanted a performance bond from the contractor, and now ask that all dredging projects require a performance bond or surety because they would be protected and would get better quality dredging contractors. He said that it was a problem that the Town wanted to enforce the bond themselves, and that he felt that it was not

legal to provide what the Town had requested as a bond. He said it puts the permittee in a weaker position. Mr. Hillman disputed Mr. Windel's contentions regarding the bond. Mr. Hillman said he was satisfied EPC had acted in accordance with sound legal advice from its counsel on this matter. Mr. Hillman explained that the Commission would work with counsel, Ira Bloom, who is also counsel for the Town of Westport, to develop a policy and procedure for Darien. He said that policies cannot be automatically changed, but that he is willing to consider the partial release of the bond for the Hope Pond project. Mr. Windels said he appreciates it, but that he wanted to say that it was a learning experience for him and that he feels there is a need for more flexibility to make minor changes. Ms. Cameron said that a subcommittee could review the requests, but that, in this instance, the applicant wanted to change something specified within the resolution. Ms. Sarner cautioned that the State and Town regulations establish that the Commission, not a subcommittee, make decisions regarding the merits of a project. Ms. Cameron noted that field changes would be needed during dredging projects, and that the expertise of the contractor can be relied upon.

Mr. Windels requested that the condition that no trees and shrubs shall be removed be stricken from the resolution. Mr. Hillman disagreed, noting that it was too broad of a statement.

After discussion, the following motion was made: That the Commission delegates to the staff the ability to approve or disapprove any additional requests by FOGR, similar in nature to the items approved tonight. At their discretion, Commission staff shall consult with one or more Commission members in making the decision(s). If modifications are made without prior consultation with Commission staff, FOGR must come before the Commission. This motion is not intended to be used as precedent. The motion was made by Mr. Hillman, seconded by Mr. Kenyon, and it was unanimously approved.

Upon further discussion, the following motion was made: That the Commission approve the release of the performance bond posted as a certificate of deposit for Permit #EPC-53-2004 based on Mr. Windel's representation that the work was substantially completed, and would soon be finished in its entirety. The motion was made by Mr. Hillman, seconded by Mr. Kenyon, and unanimously approved.

Ms. Cameron reported that the Country Club of Darien said that they would not release water from their ponds, and that the release is not part of the current State Diversion Permit. Ms. Sarner explained that the State holds jurisdiction over the diversion permit, or water use, and dam safety, and that the Town does not control these issues. She asked if the State needed additional information regarding the Country Club's activities. Ms. Cameron said she did not know.

The Commission did not modify any permit requirements for Katy's Pond, Upton Pond, and Upper Pond stipulated under Wetland Permits #EPC-66-2003, #EPC-54-2004, and #EPC-55-2004.

New Business:

Chairman Hillman read the following agenda item:

EPC-63-2004, Chris Noe, Open Space Parcel #1, Old Kings Highway South, proposing the removal of sediments and invasive plant species from a stream channel, relocation of an existing, unauthorized fence, and perform related site development activities within a regulated area. The property is located on the north side of Old Kings Highway South approximately 600' east of the intersection of Old Kings Highway South and Boston Post Road, shown on Assessor's Map #41 as Open Space #1.

Upon further review of the application file, the following motion as made: That the Commission deny without prejudice Wetland Permit Application #EPC-62-2004 based upon the finding that a letter of authorization from the property owner and sufficient information had not been provided. The motion was made by Mr. Hillman, seconded by Mr. Hutchison, and unanimously approved.

Chairman Hillman announced that the Commission would not be able to go through all of the remaining agenda items due to time constraints. He said he would like to open and table the EPC-79-2004 for Wee Burn Country Club, and discussed rescheduling dates with the applicant's agent, Atty. Robert Maslan. Atty. Maslan agreed that his clients and their representatives could be available for the September 15, 2004 Special Meeting. Atty. Gleason, who was representing Mr. Huebsch, asked to be heard, stating that his client could not wait until the next meeting. Attorney David Rucci, representing the Bastones, requested that their item be heard because consultant Donald Ferlow traveled a distance and would not be available on September 15, 2004. Mr. Ferlow said that the Bastones only "cut a few trees."

Public Hearing:

Chairman Hillman read the following Public Hearing item:

EPC-79-2004, Wee Burn Country Club, 410 Hollow Tree Ridge Road, proposing the demolition and reconstruction of maintenance structures, relocation of an existing watercourse, fill wetlands, create new wetland area as mitigation, and perform related site development activities within regulated areas. The property is located on the northeast side of Hollow Tree Ridge Road, north of the intersection formed by Hollow Tree Ridge Road and Hanson Road, shown on Assessor's Map #7 as Lots #13, #64 & #66.

Chairman Hillman said that, before opening the discussion, he wanted it noted on the record that the applicant and Commission reviewed the Commission docket and agreed to continue the application to the September 15, 2004 Special Meeting.

Mr. Hillman requested that the applicant provide a two to three page narrative to outline the materials submitted with the application. Atty. Maslan said that a narrative was provided as part of the review of alternatives. Ms. Cameron agreed with Mr. Hillman, stating that it was confusing to tell the differences between the three alternative maps. Mr. Hillman said that the narrative should explain what is important about each item submitted. Ms. Cameron requested additional information regarding the number of trees to be removed, increase in impervious surfaces, and permit number and information regarding the Club's State Diversion Permit. Atty. Maslan said that a diversion permit was not needed. Ms. Cameron explained that the State had told her one was needed for the proposed work, and that under the Club's 1982 registration, any changes must be reviewed and approved by the State.

General Meeting – continued:

Chairman Hillman announced that the Public Hearing would be temporarily closed and then read the following agenda item:

EPC-70-2004, Paul R. & Elina Bastone, 129 Raymond Street, proposing the correction of a violation of the Town's Inland Wetland and Watercourses Regulations, and perform related site development activities within a regulated area. The violation involves the unauthorized clearing of trees and understory vegetation, and associated impacts to a conservation easement area, and regulated setback and wetland areas. Discussion shall include a review of the unauthorized regulated activities and consideration of proposed remediation. The property is located on the west side of Raymond Street approximately 165' north of the intersection of Raymond Street and Tulip Tree Lane, shown on Assessor's Map #33 as Lot #19.

Atty. David Rucci presented the application to the Commission. Ms. Kirby announced that Mr. Rucci had been her attorney during the purchase of her property last fall, but felt that she could sit impartially for the consideration of the application. There were no objections.

Ms. Sarner distributed copies of Mr. Woodside's June 18, 2004 letter and the conservation easement for 129 Raymond Street. Mr. Hillman said he would recommend that the application be scheduled for a public hearing, and that he was surprised Atty. Rucci had Mr. Ferlow travel and that they were insistent on being heard that night, after reading Mr. Woodside's letter, and since the attorney could tell from the agenda that the Commission had a full night's schedule.

Atty. Rucci reported that the violation occurred in July 2003 and that the owners were trying to bring in light, which their landscapers said would be okay to do. He said that he represented the Bastones in the purchase of their property. In response to a question, Atty. Rucci replied that he gave the Bastones a copy of the conservation easement. Ms. Cameron stated that the Bastones could read from the easement that the work required approval.

Atty. Rucci said that six trees had been removed, and the Bastones had requested that Mr. Woodside send a letter regarding the violation.

Atty. Rucci said he discussed whether or not to have Mr. Ferlow attend the meeting with Ms. Sarner, who told him that they might not be heard. He said he told Ms. Sarner that Mr. Ferlow would not be available next week.

Atty. Rucci reported that the buyer knew of the violation.

Mr. Hillman asked Mr. Ferlow what he proposes to improve the site. Mr. Ferlow replied that, by cutting the trees, the Bastones allowed more light into the easement area, and therefore the ground growth has more vigor. He reviewed his list of existing plants. He said that the remediation plan proposed the flagging of the easement line, installation of a picket fence along the easement line, removal of invasives, dispersion of a seed mix, and the planting of shrubs and ferns. He said that some plants are growing back, such as Black Cherry and Spicebush. Mr. Hillman noted that the new owners must maintain the remediation plan.

Mr. Ferlow reviewed that the plan proposed 4 Arrowwood, 1 Red Maple, and 8 Spicebush. Ms. Cameron inquired to the size of the Red Maples. Mr. Ferlow replied that the trees would come from a wetland nursery and would need to be at least 3' in height to deter predation from deer. Ms. Cameron asked why the deer would not eat the Maples growing from seed. Mr. Ferlow replied that they probably do. He said that the remediation would create a richer understory and middle level growth than the pre-existing conditions. He said that he could add more wetland-grown Maples to the plan. He said he thought the understory would do well by reseeding, and that the deer would probably eat the Clethera but not the Spicebush. In response to a question, Mr. Ferlow replied that the deer would not eat the Winterberry as much as the Clethera. Mr. Hillman asked which plan showed the restoration plantings. Mr. Ferlow replied by referring to Sheet #2. Ms. Cameron recommended that additional Red Maples, with deer cones, be added to the plan, and that the site be reviewed over the next 20 years. Mr. Hutchison noted that the Commission also had the easement in place in order to inspect the property. Mr. Hillman asked Mr. Ferlow if he had other suggestions besides adding more Red Maples to the plan. Mr. Ferlow replied that he would add Winterberry as well. Ms. Cameron said she liked that the picket fence would be installed along the easement line.

Mr. Bastone said that, prior to his purchase, yard debris and Christmas trees had been dumped beyond the fence within the conservation easement area, and that he felt that their "cleaning" of the area fueled the growth of new plants. He said that the pre-existing rotted fence had been removed and the new fence would follow the easement line. He added that the new fence would be painted prior to installation.

The Commission discussed the need to require a performance bond with the applicant, and decided that a \$3,000 bond should be posted, with the first half returned after the first growing season, and the remaining amount after the second growing season.

Ms. Kirby said that she was more concerned that the new owners understand the remediation plan and Commission's requirements. Atty. Rucci stated that the buyers did understand, have copies of the remediation plan, and have lived in Darien before. Mr. Hillman recommended that Atty. Rucci inform the buyers' attorney of the Commission's decision. Atty. Rucci said he would notify the other attorney via certified mail and copy the Commission members and staff.

Upon further review of the materials and plan submitted, the following motion as made: That the Commission approve with stipulations Wetland Permit Application #EPC-70-2004. The application is approved with the following conditions:

1. That the August 2004 Restoration Plan, Sheet 2, by Stearns & Wheler be augmented to include Winterberry shrubs and at least 10 Red Maples. The new Maple trees shall be protected with deer cones or wire cones.
2. That a performance bond in the amount of \$3,000 shall be posted with the Planning and Zoning Office to ensure the restoration of the wetlands/conservation easement area, and the compliance 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 (\$1,500) 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; and

3. That the applicants send a letter by certified mail to the prospective buyer's attorney, with a copy to the Commission, apprising them of this decision and details of the approved restoration plan.

The work is approved as shown on the plan entitled "Restoration Plan, Environmental/Wetland Evaluation, Paul Bastone Property, Raymond, Street, Darien, Connecticut," Sheet 2, by Stearns & Wheler, LLC, revised August 2004, as modified by this decision. The motion was made by Mr. Hillman, seconded by Ms. Cameron, and unanimously approved.

Chairman Hillman announced that the following agenda item would be postponed until the September 15, 2004 Special Meeting: Amendment of EPC-41-2004, Robert & Debra Lee, 8 North Road, requesting the modification of an approved grading plan and perform related site development activities.

Chairman Hillman read the following agenda item:

EPC-80-2004, Michael C. Huebsch & Suzanne H. Hooper, 17 Cross Road, proposing the amendment of the Town's Wetland and Watercourses Map, driveway alterations, regrading activity, construction access, and perform related site development activities within a regulated area. The property is located on the south side of Cross Road approximately 90' southeast of the intersection of Hope Drive and Cross Road, shown on Assessor's Map #69 as Lot #8.

Attorney Wilder Gleason and Mr. Huebsch thanked the Commission for hearing them that night.

Atty. Gleason explained that the plans needed approval of the former property owner, Ginny Oldrin, who is also a neighbor. He said that it was not until after they received Ms. Oldrin's approval that the wetland issues were raised, and that a soil scientist was hired to delineate the site's wetlands. Ms. Sarnier reported that the Town's wetland boundary map shows the wetlands and watercourse across the roadway. Atty. Gleason said that the regulated activities include the driveway entrance, and, if the regulated area across the roadway is larger than just the watercourse as implied by the proposed plans, a larger portion of the driveway and associated regrading would be within a setback area.

Upon further discussion, the following motion was made: That the Commission accept the wetland delineation by Soil Science and Environmental Services. The Town's Inland Wetland and Watercourses Map shall be revised under the Commission's annual map update to reflect the November 20, 2002 wetlands delineation by Soil Science and Environmental Services. The motion was made by Mr. Hillman, seconded by Ms. Miller, and unanimously approved.

In response to a question, Atty. Gleason replied that no changes were proposed within the southern regulated area, and that the tool shed and other features are existing.

Ms. Cameron asked about the existing drainage. Atty. Gleason said that the drain leading to the roadway was from the excavation, was okay with the Town, and does not run continually.

Mr. Hutchison asked if the second driveway was for construction access. Atty. Gleason replied the two driveways would be permanent.

Atty. Gleason clarified that the septic galleries would be more than 150' from the wetlands and watercourse.

Upon further review of the materials and plan submitted, the following motion was made: That the Commission approve the regulated activities proposed by Wetland Permit Application #EPC-80-2004, as submitted. The work shall conform to the plans approved, entitled "Figure 4, Proposed Conditions, Huebsch Residence, 17 Cross Road, Darien, Connecticut" by Stearns & Wheler, LLC, dated 08/04. The motion was made by Ms. Cameron, seconded by Mr. Lewis, and unanimously approved.

Public Hearing - continued:

Chairman Hillman reopened the public hearing and read the following agenda item:

EPC-59-2004, Edward & Lisa McCarthy, 11 Red Mill Lane, proposing a residential addition, stone retaining walls, swimming pool and terrace, fill and regrading activity, plantings, and perform related site development activities within a regulated area. The property is located on the north side of Red Mill Lane and approximately 560' west of the intersection of Red Mill Lane and Old King's Highway North, shown on Assessor's Map #32 as Lot #54-4.

Holt McChord, P.E., reviewed that, as part of the 1988 subdivision, the large detention basin was installed, which takes up a little under one-third of the lot. He said that the basin was created with a stonewall, low flow channel through its middles, and an outlet control structure. He said that the basin would be redesigned to allow room for the proposed addition and pool. He reviewed that, per Commission comments, the pool was reduced in size and moved further away from the intermittent watercourse. In response to a question, Mr. McChord replied that the edge of the pool coping and pool terrace would be $\pm 52'$ and $46'$ from the northern wetlands, and $50'$ and $48'$ from the intermittent watercourse, respectively. Mr. McChord said that the southern edge of the pool would be bordered with a $2'$ edge, to be lined with a fence. He said that the pool would be $\pm 110'$ from the Five Mile River.

Gil Wheless of Environmental Design Associates reviewed that, in response to Commission concerns, they worked with the owners to reduce the size of the pool, create a $\pm 10'$ wide area at the bottom of the pool retaining wall for access to the rest of the property, and add more plantings to the plan. In response to a question, he replied that the pool water would be drained after left untreated for a week, and that the pool would be accessed from the driveway, and then through the area between the addition and the pool. Mr. Wheless added that the pool equipment would be within $100'$ of the river. In response to a question, Mr. Wheless said that the pool equipment and fencing could be moved closer to the pool and further away from the Five Mile River. He explained that they wanted to give the owners as much play area as they could.

After being recognized by the Chair, Phil Dolcetti addressed the Commission and submitted letters of support from neighbors. He said that he has lived on the street for approximately five years, and feels that the basin, or "pit," does not retain water, and is an eyesore and dangerous.

It was the consensus of the Commission that the public hearing for #EPC-59-2004 be closed.

Chairman Hillman read the following agenda item:

EPC-67-2004, Gordan & Alta Jelliffe, 77 Brookside Road, proposing an accessory structure, installation of a sewer lateral and connection to town water, and perform related site development activities within a regulated area. The property is located at the southwest corner of Brookside Road and Granaston Lane, shown on Assessor's Map #15 as Lot #19.

The application was presented by builder contractor Robert Cerretani and property owner Gordan Jelliffe.

Mr. Hillman reviewed that the application was scheduled for a hearing largely because of its proximity to the Goodwives River, and the application proposes the construction of a pre-cut cabin. Changes in the application since the General Meeting include the submission of site photographs and an updated plan showing contours and the 100' river setback, and the staking of the cabin area on the site.

Mr. Hillman asked if buffer plantings are needed. Ms. Miller replied that the construction area is above the Goodwives River and property closer to the river very vegetated. She noted that the river is not visible from the proposed site.

Mr. Cerretani said that no grade changes are proposed, except for the backfilling of the foundation. Ms. Cameron asked if retaining walls would be constructed. Mr. Cerretani replied that walls could be constructed to allow for basement access. Mr. Jelliffe explained that he wanted to comply with Planning and Zoning rules in case they wanted to subdivide in the future. He said that he hired an architect a while ago, who worked with Mr. Keating and Mr. Woodside of the Planning and Zoning Office regarding zoning setbacks and widths. He said he was told he could divide the lot in the future, because he does not want to do it now. He said that they also considered the alternative of adding onto the existing house, but that it was discounted because the residence is a historic home from the 1750's, and would require a lot of structural modifications.

Ms. Cameron cautioned that the 100' setback should be adhered to because, after the cabin is constructed, residents would want to have a surrounding lawn. Mr. Hillman said he was concerned with establishing precedent.

Mr. Hutchison said that it was not a taking if the applicant wanted a future lot division because they have an existing house and do not need a new structure. Mr. Hillman said that the Commission has no authority or interest in considering a lot division. Mr. Jelliffe said that he showed the cabin in the proposed location because it was influenced by future considerations. He said the lot division issue was not raised during the last meeting, but that he had been only requested to show contours and the 100' river setback on the plan.

Mr. Cerretani inquired if the Commission could consider 4' retaining walls on the cabin sides. Mr. Hillman replied that they would rely on his expertise regarding the retaining wall design, but that the information needs to be shown on plans. He said that they cannot have staff determining specifications of a design, but require it of the applicant.

Ms. Cameron asked if the house could be moved further away from the Goodwives River. Mr. Hillman reviewed that the cabin would be $\pm 50'$ to the wetlands and $\pm 65'$ from the river, or 35' into the river setback, in addition to associated activities. He explained that once the Commission judges that an application poses adverse impact to the wetland resources, they need to determine if there are feasible or prudent alternatives. Mr. Jelliffe said that, if the cabin were closer to the house, it would break up the existing lawn and require the removal of two significant pine trees. Ms. Cameron noted that, as proposed, they would remove a 10" Maple. Mr. Jelliffe replied that there are a lot of Sumacs in the proposed construction area.

Mr. Hillman explained that he does not feel comfortable with the project as proposed because he feels there are alternatives to the proposal and not enough specifications were given regarding the retaining walls. He asked for comments from the other Commission members. Mr. Kenyon said he would like to see more alternatives, including the cabin closer to Brookside Road and further from Granaston Lane, outside the 100' river setback. Ms. Kirby noted that the applicant must comply with the zoning setbacks along the roadway. In response to a question from Mr. Lewis, Mr. Cerretani replied that they would construct a basement.

Mr. Jelliffe said that if the issues currently discussed by the Commission were raised at the last meeting, he would have provided the information. Mr. Hillman explained that, during the previous meeting, they could not get into the merits of the application without information on the setback area and contours. Mr. Hutchison said that it was premature to try to conform to a possible subdivision while planning the guesthouse.

Ms. Cameron summarized that they need information on the construction, alternatives that proposed the residence further away from the river, and details regarding the retaining wall and basement access.

Mr. Hillman said that they made it clear during the last meeting that they were not judging the application because they needed more information, but after the hearing discussion and review of the materials, he finds that prudent and feasible alternatives are available.

Ms. Miller said that she considered the fact that the existing house is the Jelliffe-Bates house and that the guesthouse would be for the family. She told Mr. Jelliffe that someone should have explained to him that more details were needed, but that the EPC looks at alternatives, such as rotating the cabin to make it further away from the watercourse.

Ms. Kirby recommended that the cabin be placed outside, or as close to, the 100' setback from the river.

Upon further review of the materials and plan submitted, the following motion was made: That the Commission deny without prejudice Wetland Permit Application #EPC-67-2004. The denial is based upon the Commission's finding that a more prudent and feasible alternative may be available and that sufficient evidence regarding associated site alterations had not been provided. The motion was made by Mr. Hillman, seconded by Ms. Cameron, and unanimously approved.

Chairman Hillman read the following agenda item:

Discussion and Possible Decision for EPC-51-2004, Elizabeth Stanley-Brown & Peter G. Horan, 7 Fresh Meadows Lane, proposing the construction of a pool with surrounding patio, the removal and reconstruction stone-retaining wall, tree removal, installation of wetland plantings, and perform related site development activities within a regulated area. The proposed swimming pool has been withdrawn by the applicants. The property is located on the east side of Fresh Meadows Lane approximately 430' north of the intersection of Middlesex Road and Fresh Meadows Lane, shown on Assessor's Map #25 as Lot #92-3.

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: SEPTEMBER 8, 2004
EXPIRATION DATE: SEPTEMBER 8, 2009

Application Number:	EPC-51-2004
Applicant Names and Address:	Elizabeth Stanley-Brown Peter Horan 7 Fresh Meadows Lane Darien, CT 06820
Property Address of Proposed Activity:	7 Fresh Meadows Lane Darien, CT 06820
Name and Address of Applicants' Representative:	John Pugliesi Edward J. Frattaroli, Inc. 62 Mill River Street Stamford, CT 06902
Proposed Activity:	Removal and reconstruction of a stone-retaining wall with new steps, installation of a bluestone patio, fire pit, removal of selected vegetation, installation of wetland plantings, and perform related site development activities within a regulated area. The proposed swimming pool has been withdrawn by the applicants

Shown on Assessor's Map #25 as Lots #92-3.

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 the proposed work 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 and a waterway 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 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 applicants. 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 the application for a general meeting on June 2, 2004, a public hearing August 4, 2004, and deliberations on August 11, 2004 and September 8, 2004. During the Commission's hearing, the applicants' representatives presented information explaining the project and provided answers to concerns and questions raised by the Commission, Commission staff. The general public 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 are fully familiar with the site and its surroundings, finds:

A. PROJECT DESCRIPTION:

The application proposes fill and regrading, relocation of an existing stone retaining wall, removal of vegetation, and replanting within the 50' wetlands setback area. New grass steps would be added toward the wetlands to provide maintenance access. The application requests the removal a 48" Silver Maple, located below the existing retaining wall. The tree was found by an arborist to be in poor health due to the presence of borers, basal cankers, leaf hopper, and trunk decay. In addition, 10 Chokeberry and/or Maple trees, ranging from 3" to 10" dbh, would be removed. Attention would also be given to the removal of existing non-native invasive species Japanese Knotweed and Black Locust trees that are located within the wetlands. Replacement and mitigative plantings to be installed include groundcover of Iris, Cardinal Flower and Ferns, shrubs including Dogwood, Swamp Azalea, Winterberry and Shadbush, and trees including Red Maple, River Birch, and Willow. The fill and relocation of the retaining wall area proposed to extend the rear yard. A drainage system would be installed below the fill area along the rear property line to maintain drainage flow. Other modifications to be located within the regulated area include the installation of a fire pit and a portion of a new, bluestone patio.

B. SITE DESCRIPTION:

The subject property at 7 Fresh Meadows Lane is located on the east side of Fresh Meadows lane, across the roadway from Noroton River. The property has been developed with a single-family residence and associated appurtenances. The developed area is separated from the

wetland resources by a stone retaining wall, which was required under the original subdivision approval for Fresh Meadows Lane. A drainage pipe with floodgate was installed under the roadway to the north of the property as part of the subdivision to prevent the floodwaters of Noroton River from flowing back onto the properties located east of the subject property. In 2003, the wetlands were re-delineated in the field by Soil Science and Environmental Services. At that time, a larger area of wetlands soils was identified than found in 1992 for the subdivision permit review.

C. HEARING PRESENTATIONS AND RECORD:

1. Proposed Plan – “Horan Residence, 7 Fresh Meadow Lane, Darien, CT” by Marders of CT, LLC, dated 7-15-04.
2. “Peter G. Horan, Elizabeth P. Stanley-Brown, 7 Fresh Meadows Lane, Darien, Connecticut,” Dwg. No. 1 to Dwg. No. 4, by Edward J. Frattaroli, Inc., dated April 19, 2004.
3. Existing Conditions Plan – “Zoning Location Survey Prepared for Peter G. Horan & Elizabeth P. Stanley-Brown, #7 Fresh Meadows Lane, Darien, Connecticut” by William W. Seymour & Associates, P.C., dated September 15, 2003.
4. Note to Nancy Sarner from Beth Stanley-Brown, Subject: 7 Fresh Meadows Lane, dated 6/8/04.
5. Erosion and Sediment Control Plan –
6. Drainage Report – “Drainage Summary Report, Prepared for Peter G. Horan and Elizabeth Stanley-Brown, 7 Fresh Meadows Lane, Darien, CT – For the Construction of a Pool and Terrace Area,” by John E. Pugliesi, P.E., Edward J. Frattaroli, Inc., dated May 27, 2004.
7. Narrative Report for Project Proposal for Elizabeth Stanley-Brown and Peter G. Horan at 7 Fresh Meadows Lane – Lot No. 4, Map No. 4529-1 Darien, Connecticut, by Elizabeth Stanley-Brown.
8. “Construction Narrative Report, Prepared for Peter G. Horan and Elizabeth Stanley-Brown, 7 Fresh Meadows Lane, Darien, Connecticut” by John E. Pugliesi, P.E., Edward J. Frattaroli, Inc., dated May 12, 2004.
9. Soils Report – “7 Fresh Meadow Lane, Darien, CT, To: William W. Seymour & Associates” by Soil Science and Environmental Services, Inc., dated Sept. 11, 2003.
10. Letter from Arborist – Letter to John Pugliesi, Edward J. Frattaroli, Inc, from Nicholas F. Lee, Lee Horticultural Services, Ltd., dated May 11, 2004.
11. Site Photographs No. 1 to No. 8.
12. Site Photographs, undated, untitled.

13. Wetland Plant List, Horan/Stanley-Brown Residence, 7 Fresh Meadow Lane, Darien, Connecticut, by Marders of CT, LLC.
14. Application for Permission to Conduct a Regulated Activity within an Inland Wetland or Watercourse Area in the Town of Darien, dated 5/10/2004, signed by Elizabeth P. Stanley-Brown and Peter G. Horan.
15. Deed of Easement and Right of Way, Vol. 706, Page 248 to 257, of the Darien Land Records.
16. Environmental Protection Commission Resolution for EPC-41-1992, effective November 4, 1992.
17. "Proposed Site Plan, Additions and Alterations to the Residence of Beth Stanley Brown, Peter Horan, 7 Fresh Meadows Lane, Darien, CT 06820," S-1, by Patterson Architects Inc., dated 9/9/1998, approved under EPC-57-1998.
18. Letter to John Pugliesi, Edward J. Frattaroli, Inc, from Nancy H. Sarner, Environmental/GIS Analyst, dated May 21, 2004.
19. Letter to John Pugliesi, Edward J. Frattaroli, Inc, from Nancy H. Sarner, Environmental/GIS Analyst, dated June 11, 2004.
20. Letter to John Pugliesi, Edward J. Frattaroli, Inc, from Nancy H. Sarner, Environmental/GIS Analyst, dated July 15, 2004.
21. Proof of Mailings, certified mail receipts dated 7/23/04.
22. Property Owners – Stanley-Brown mailing list.xls, dated 5/12/2004, by Edward J. Frattaroli, Inc.
23. GIS Mailing List for 7 Fresh Meadows Lane, Neighbors within 100' of Project Area, with map, dated 6/11/2004.

D. ITEMS/ISSUES OF CONCERN TO THE COMMISSION:

1. Impact to Wetlands and Watercourses:

In carrying out its duties, the Commission has taken into consideration the standards established under the regulations, and reviewed the plans and reports provided the applicant, as well as heard testimony from the applicants and their representative, John Pugliesi, P.E., of Edward Frattaroli, Inc. During its review the Commission considered and reviewed alternatives to the original proposal in order minimize disturbance, and balance the owners' reasonable use of the land with environmental protraction. The Commission appreciates the applicants' consideration of and

providing alternatives to their original application that pose less impact to the wetland resources. The Commission finds that the modified plan does not pose a significant impact or major effect upon the wetlands.

2. Proposed Clearing within a Regulated Area:

The Commission also accepts the written testimony of Nicholas F. Lee, Licensed Arborist, of Lee Horticultural Services, Ltd., that the 48" Silver Maple, noted for preservation under the 1992 subdivision approval, is in declining health.

The Commission finds that that the proposed planting plan mitigates the proposed removal of selected trees within the wetlands by enhancing the biodiversity and habitat value of the wetlands, and supports the removal of the invasive species Japanese Knotweed and Black Locust.

3. Impact to Drainage:

The Commission received reports and heard testimony from John Pugliesi, P.E. of Edward Frattaroli, Inc. The Commission accepts Mr. Pugliesi's findings that the proposed fill and relocation of the retaining wall would not pose an adverse drainage impact.

E. DECISION:

The Commission hereby approves the proposal 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.
2. The distance of the relocated retaining wall from the rear property line shall be determined in the field by a Commission subcommittee, being the desire of the Commission to protect the trees.
3. Work activity shall be in accordance with the modified plans submitted to and reviewed by the Commission, entitled "Horan Residence, 7 Fresh Meadow Lane, Darien, CT" by Marders of CT, LLC, dated 7-15-04.
4. Silt fencing shall be installed prior to the commencement of work activity along the edge of work to protect the wetlands and adjacent areas from unnecessary disturbance. 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, and maintained until the site is fully stabilized. Any sagging, undermining, or damage to the silt fence or construction barrier must be repaired immediately.
5. The permittee shall notify the Planning and Zoning Office after the sediment and erosion controls are in place and prior to commencement of excavation or regrading work for each phase of construction. The Commission staff will inspect the erosion controls to make sure

that they are sufficient and as per plan. All sediment and erosion control measures must be maintained until all disturbed areas are stabilized and revegetated.

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 by Marders of CT, LLC, 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. The bond shall be held for two (2) growing seasons. Half of the amount shall be returned after the first growing season (no earlier than one 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.
7. Maintenance Schedule for the removal of invasive species – The removal of the existing Japanese Knotweed and Black Locust trees, and other non-invasive wetland plants, shall require yearly maintenance for at least five years to ensure that the invasives, particularly the Japanese Knotweed, are eradicated. New growth should be cut or removed by hand. In late spring to early fall, the freshly cut plants can be treated by wick-method, or painting, by a licensed applicator with herbicides approved for wetlands use, either Accord or Rodeo. Wick, or painting, method of application places the herbicide directly on the cut plants thereby reducing impact to nearby, desirable plantings and limits the amount of herbicide needed.
8. This permit does not relieve the applicant of their responsibility to comply with all other applicable rules, regulations, and codes of other Town agencies or other regulating agencies. A copy of these other permits and approvals shall be submitted to the EPC to complete the file
9. 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.
10. The permittee shall notify the Environmental Protection Commission immediately upon commencement of work and upon its completion.
11. No equipment or material, including without limitation, fill, construction materials, debris, or other items shall be deposited, placed or stored in any wetland, watercourse or setback area, on or off site unless specifically authorized by this permit.
12. The duration of this permit shall be five 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. Cameron. Voting in favor of the motion were Mr. Hillman, Ms. Cameron, Ms. Miller, Ms. Kirby and Mr. Lewis. There were no votes in opposition to the motion. Mr. Hutchison and Mr. Kenyon abstained from voting. The motion was passed by a vote of 5 to 0, with 2 abstentions.

Mr. Hillman announced that the discussions of EPC-58-2004, David Mangini & Casey Elliot, 40 Goodwives River Road and EPC-37-2004, Country Club of Darien, 300 Mansfield Avenue would be postponed until the September 15, 2004 meeting.

Approval of Minutes:

The meeting minutes for June 17, 2004 were approved, with corrections. The motion was made by Ms. Kirby, seconded by Mr. Hillman, and unanimously approved.

Adjournment: Having no further business to attend to, the Commission adjourned the September 8, 2004 meeting at approximately 11:00 p.m.

Respectfully submitted,

Nancy H. Sarner
Environmental/GIS Analyst