

DATE
APPROVED:

CONSERVATION COMMISSION MINUTES FOR SEPTEMBER 18, 2008 PAGE #08-27

MEMBERS PRESENT:

Chairman Cory Attra, Vice-Chairman Ed Schwartz, Tom Failla and Jed Ferdinand

Meeting on tapes dated 9/18/08

Chairman Attra opened the September 18th regular meeting of the Weston Conservation Commission at 7:40 p.m.

RECEIPT OF APPLICATIONS:

Fred Anderson reported that the following application was appropriate for receipt:

- Far Horizon Subdivision, 10 Ladder Hill, 5 lots – DiCaro (The Huntington Company LLC)
- Ernst, 204 Lyons Plains – stone wall repair (Rivi Oren, Landscape Arch. & Kenny)
- Spratt, 65 Newtown Turnpike, extension of existing gravel driveway & installation of culvert

MOTION TO RECEIVE:

Mr. Schwartz made a motion to receive the applications of Far Horizon Subdivision, Ernst and Spratt and Mr. Ferdinand seconded. All in favor, the motion carried (4-0).

Ernst – William Kenney from William Kenney & Associates came forward and noted that it is an area along the Saugatuck River with an existing retaining wall with a portion that has fallen in. The homeowners would like to repair that portion with some modification of the addition of steps going down into the stream where that wall was. He passed out pictures of the area showing the conditions of the area. Mr. Failla asked for a map of the stream flows and Mr. Kenney noted that they are in the process of retaining an engineer for the review of the flood plain regulations.

SET WALK DATE

The walk date was set for October 11, 2008. The Commissioners will meet at Town Hall at 8:00 a.m.

MODIFICATION OF APPLICATION: MEHTA, WALNUT LANE – 4th Garage bay (Roger Webb); ENGINEER’S RESPONSES; CEASE & DESIST and any other DISCUSSION

Hem Kohna, P.E. came forward along with Roger Webb, general contractor, who stated he will be handling the job now. Mr. Attra noted that this is a long-standing C&D. The Commission had originally approved development of the property and were then invited to revisit the site with a modification for a geo-thermal farm and re-location of the septic fields. During that site visit, the Commission encountered differing site conditions from what was originally approved, specifically the retaining walls along the back of the yard and the height of the coverage of the

three-sided culvert. Questions were raised regarding the structural integrity of these differences and the risks posed to the wetlands and this eventually ended up in a cease and desist situation. The Commission has been back and forth with the applicants' engineer and independent consultants to try to ascertain whether the structures in question are compliant with standards of practice and whether they pose any significant risk to the wetlands and inland watercourses. Mr. Attra stated that the Commission gave a condition of removal of the C&D when the Town Engineer approved the information presented by the engineers. He also noted that, as a licensed engineer, he was asked to review Mr. Kohna's calculations and assumptions and the independent consultant's assumptions and he agrees with none on both sides. Discussion ensued.

During discussion, Mr. Attra commented that the independent engineer's report was a "non-answer" and recommended that the Commissioners read the report and his own comments and make their own judgment calls. Mr. Kohna explained that if you look at the site, there is no concern regarding the sliding or tipping over of that retaining wall because of the rocky nature of the site. Discussion continued.

Mr. Webb then stated that he had talked to Mr. Anderson and told him that if there is any problem with the wall, they will take it part way down to wherever Mr. Anderson feels comfortable, terrace it and come back up. Mr. Attra then noted although the Town Engineer said in his letter that he takes no objection to the Commission's review and approval of the application, his concern with that statement to the Town and the Commission is that he flat out does not agree with the analysis and is equally concerned with the assumptions Mr. Kohna has made. Mr. Kohna then stated that the responsibility rests on the engineer and he has stated that he does not see any problem, as an engineer, this project has been there for two years, there are no stresses or any concern or questions. Mr. Attra stated that the analysis that Mr. Kohna provided for the retaining wall and the assumptions, the height of the wall itself, differ materially with the conditions that exist, irrespective of what may be going on with the wall today. Discussion continued.

During discussion, Mr. Failla suggested that one of the practical ways to resolve this matter is to take the rocks down and re-build it the right way. Mr. Kohna stated that if that is what the Commission wants, they will abide by that. He will tell the owner to take down the wall and he will design the replacement from scratch.

Mr. Attra then brought discussion to the culvert noting that the concrete test the Commission received from the consultant does not support what the previous engineer set as the design criteria. Mr. Kohn stated with the analysis of the existing culvert, it shows that there is no problem with the height of the fill. He further stated that he is putting his "stamp" on what is there now and will put up his errors and omissions statement. Mr. Failla stated that the Commission will need to get the plans for the new wall. Mr. Attra stated that they should put in an application for the new wall, the new geo-form and the relocation of the septic.

MOTION TO LIFT CEASE & DESIST ORDER

Mr. Schwartz made a motion to lift the Cease & Desist Order on the following conditions:

1. The existing retaining walls are demolished and re-built in accordance with plans that the applicant is to submit in context with other modifications to the original plan which would include the geo-thermal farm and re-location of the septic field and any other activities that are proposed to be conducted on the site.
2. The engineer is to provide a stamped, certified set of plans and Errors & Omissions insurance to the effect of \$500,000 for the 3-sided culvert in its as-built condition

Mr. Webb commented that because the wall is so big, they will have to take it down in sections and redo it part way up. Mr. Failla told him to come back with a total plan for demolition and reconstruction so that the Commission can review that.

Mr. Attra seconded the motion. All in favor, the motion carried (4-0).

DISCUSSION OF APPLICATION: LEVITAN, RESUBDIVISION, 35 INDIAN VALLEY ROAD (RUBENSTEIN)

Attorneys Mark Rubenstein and John Albright along with their engineer Michael O'Bymachow came forward and began with a history of the property. There was a 12 lot subdivision done in 1974 on Indian Valley Road. In late 1980 the developer sold Lots 10, 11 and 12 to Michael Greenberg. He indicated the location of those lots on the map. A year later Michael Greenberg bought a parcel of land from Samuelson and at the same time, bought a parcel from the Nature Conservancy and as part of that transaction, then sold "Old Lot 10" to the Nature Conservancy plus an extra piece. Mr. Greenberg then filed Map 2309 entitled "Map Showing Change of Lot Lines" with no permission, he just filed it on the Land Records. On Map 2761 there was a driveway existing across Mr. Levitan's property. In 1981, right after Mr. Greenberg bought the various pieces, he sold to John Gregory Parcel D (part of what he got from the Conservancy) and Parcel B, which totaled 14.6 acres. At the same time he transferred the parcel to the Conservancy and two months later sold to a party named McClean a 4-acre parcel, including the accessway, made up of part of what was originally Lot 12 and an additional piece which was part of the original Samuelson piece. Fifteen years later, McClean sold to Mr. Walpuck, Jr. and Mr. Walpuck immediately transferred into an LLC called Lockwood, Sterling & Betts, subsequently it got transferred back to Mr. Walpuck, he financed the property and a day later transferred back into Lockwood, Sterling & Betts. Attorney Rubenstein stated that it does not have anything to do with Mr. Levitan's property, but he thinks the Commission needs to know who the owner is. In 1995, John Gregory sold Parcel D and Parcel B to Mr. Levitan. When Mr. Greenberg originally sold to McClean in 1981, he sold it subject to a right of way in favor of himself across that accessway for a right of way and an easement including installation of underground utilities.

Attorney Rubenstein then noted that in attempting to either build something or sell the 14.6 acres, Mr. Levitan came to zoning and they told him that he has an illegal lot because when Mr. Greenberg filed the 1981 map and changed the lot lines, this is no longer a valid sub-divided lot, it is now a lot, but is not subdivided in accordance with P&Z regulations. After conversations with Bob Turner, former Zoning Officer and Fred Anderson, Conservation Planner, it was

decided that Mr. Levitan needed to come in for a re-subdivision of the 14.6 acres. They went to the Weston/Westport Health District and got approval for installation of a septic system for the property and filed the application with Conservation and based on conversations on the site walk, they changed the driveway to come in about 10 feet off the property line so that it will not impact the wetlands off the end of the street. Attorney Rubenstein further noted that in response to Mr. Schwartz' question regarding adding 5 feet to the accessway making it in accordance with the Town Regulations which say that 2 real lots need a 30 foot accessway, he called the attorney who is the Committee appointed by the Court because the other property was recently foreclosed upon with the bank being the successful bidder and, because they suspect that it will end up being appealed, there was probably no likelihood of widening that driveway. Michael Bymachow, engineer, came forward and discussed the location and construction of the driveway. He noted that the wall would be in the wetlands, but not the driveway. Discussion ensued.

During discussion, Mr. Attra commented that they are going for a re-subdivision of the whole thing, it is a chance to take another "bite of the apple" and they are doing one lot which is really extraordinary. It would be ideal if they could shift the driveway to a different location to keep it out of the wetlands and discussion continued. Mr. O'Bymachow then indicated where the proposed location of the dwelling was and described the drainage areas and water quality basins coming down the driveway. He noted that they are asking for approval for the location of the driveway and they will come back for site specific later. Attorney Rubenstein noted that they have a meeting next Wednesday morning and they will try to figure out where they can put it with minimal impact to the wetlands. Because they are at the end of the cul de sac, they don't believe the 10 foot setback is applicable here, but they will talk to the consultant and if they have to do abide by that setback, it will be the plan as submitted here, 10 feet off the line. If they can get closer, then they will move the driveway closer.

MOTION FOR APPROVAL

Mr. Schwartz made a motion to approve the driveway alignment and location through and passed the wetlands area, as shown on plans prepared by Nowakowski, O'Bymachow, Kane & Assoc. dated 6/2/08, revised 9/15/08, subject to the following conditions:

A. Filing of the contractor's statement.

B. Implementation of the erosion and sedimentation control plan prior to any site preparation activity. The plan must meet minimum standards as set forth in Public Act. No. 83-388 (An Act Concerning Soil Erosion & Sediment Control) Effective July 1, 1985.

C. The following language shall appear on the subdivision or deeds to lots which are to be filed on the Weston Land Records'

"No regulated activity as defined in the Public Inland Wetland Watercourse Act of the State of Connecticut Regulations as well as the Town of Weston's Regulations as the same and from time to time as may be amended, shall be permitted in those areas designated and shown as wetlands on the aforementioned maps." The wetland areas as well as any agreed to "buffer zones" designated on the aforementioned maps shall be established as areas whose

natural and indigenous character shall be henceforth preserved and not encroached upon for any use that would alter the natural character of the land”.

D. Upon completion of the work, the developer will submit a certified report from a qualified professional engineer that the property was developed and the work completed as planned.

E. All applicable conditions of the Conservation Commission shall be recorded on the maps or linens of the Weston Land Records which are filed with the Town Clerk.

F. The Conservation Commission reviewed the alternatives to the approved action including a consideration of alternatives which might enhance environmental quality or have a less detrimental effect, and which could feasibly attain the basic objectives of the activity proposed in the application.

G. Per Public Act 93-305, effective 10/1/93, “Any permit issued under this section shall be valid for five years. Any regulated activity approved by the agency shall be completed within one year from the time such activity is commenced provided the agency may establish a specific time period within which any regulated activity shall be conducted and may require that an activity, once commenced, be completed within a time period of less than one year and further provided the agency extend (1) the time period of the original permit provided such period shall not extend beyond ten years from the date such permit was granted, or (2) the time period within which an activity, once commenced, is required to be completed under this section.”

H. Any changes in approved plans shall require notification to the Commission and may require that a new application be made.

I. Applicant agrees, represents and warrants that it will obtain all required federal, state and local permits prior to commencing any work on the site.

J. The applicant will come back for site specific approval for drainage and the structure.

Mr. Ferdinand seconded the motion. All in favor, the motion carried (4-0).

HEARING: CEASE & DESIST: SPRATT, 65 NEWTOWN TURNPIKE, DRIVEWAY AND WALL (LANDTECH)

Mr. Martin Spratt and his wife came forward to discuss the C&D. Mr. Attra noted that the Spratts had filed an application for development of an adjoining property. On the site walk for that property, the Commission went to the Spratt’s adjoining property and discovered that they were putting in a water table and when they returned, the project was finished and the C&D was issued immediately since the project had been finished. Mr. Spratt explained that since the Commission first walked the site, his engineer has been having troubles with brain surgery and the communication had been off. The only clear communication from the Conservation Commission he received this afternoon. He noted that the whole skirt that they put in took 5 or 6 days and he did not intentionally finish the project, he did not know that there was an issue. Mr. Attra then explained that to get the C&D removed, Mr. Spratt needs to come back to the Commission with a plan that addresses sedimentation and erosion control, silt fence and hay

bales. Mr. Spratt noted that the Code Enforcement Officer told him what needed to be done and it has already been done. The work was done last night and this morning and he presented pictures of the area. Mr. Attra explained that the Commission will need to go back to the site and Mr. Spratt will need to come back with plans for the work on the house. Mr. Spratt stated that there will be no expansion, just renovation.

DISCUSSION: SPRATT, 65 NEWTOWN TURNPIKE, DRIVEWAY AND WALL

Continued.

(Mr. Failla left the meeting)

OTHER BUSINESS:

MODIFICATION: PARK, 53 LEDGEWOOD DRIVE EAST, REVISED ENTRY DRIVE

Don Strait came forward to present the revision, noting that they wanted to move the driveway to the right so it is not just a straight shot into the site. The whole area is wetlands anyway, but to make up for that, they would remove the existing driveway, dig out and plant the area. Mr. Strait explained how they would do that and noted that the driveway is in, just not finished. Mr. Park showed pictures indicating the sub-base and surface. Mr. Strait noted that they did a fantastic job of putting the geo-grid fabric down, and noted that it is really rigid. The proposed work would just be moving the pipes and the entry just a little bit. Mr. Strait continued to explain the driveway project and discussion ensued.

During discussion, Mr. Attra commented that there has been four months of study, they have not put the full weight on the system, it is not doing what the engineer said it was going to do in the amount of time that they specified, but at the same time, they have not gotten close to the amount of time the engineer said it would occur in. He suggested that they go back and approach how they are building the road to verify whether or not they are going to get the settlement. Discussion continued.

Following discussion, it was decided that the Commission would walk the property and continue discussion to the next meeting.

APPROVAL OF MINUTES

Being only three Commissioners left and having no quorum, the approval of Minutes was continued to the next meeting.

MOTION TO ADJOURN

Hearing no additional business, Mr. Attra made a motion to adjourn the meeting and Mr. Ferdinand seconded. The meeting adjourned at 10:12 p.m.

Respectfully submitted,

Delana Lustberg
Recording Secretary