

DATE 2/15/11

APPROVED:

CONSERVATION COMMISSION MINUTES FOR DECEMBER 14, 2010

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MEMBERS PRESENT:

Chairman Ed Schwarz, Tom Failla, Howard Aibel, Jed Ferdinand, and Cathy Minter

Also present: Fred Anderson, Weston Conservation Planner, and Tracy Kulikowski, Land Use Director

Meeting on tapes #1-4 dated 12/14/10

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Mr. Schwartz opened the December 14<sup>th</sup> special meeting of the Weston Conservation Commission at 7:34 p.m.

WALK DATE

The walk date was set for Saturday, January 15, 2011.

MEETING DATE

The commission will next meet on Tuesday, January 18, 2011.

RECEIPT OF APPLICATIONS:

- Hoffman, 96 Goodhill Road, repair of maximized septic system
- Zjang, 86 Treadwell, pool, spa, bath house, garage (Willis Pool)

No one was present for either application, but Mr. Anderson said that the applications were complete. Mr. Anderson said that he visited the Hoffman site earlier in the day and that he had gotten an early start, so the commission tabled the discussion and receipt of the Hoffman application until a representative was present.

MOTION FOR RECEIPT

Mr. Schwarz moved to receive the Zhang application, seconded by Ms. Minter. All in favor, (5-0), the motion carried.

DISCUSSION OF MODIFICATION TO APPROVAL 11/16/2010: COVERBRIDGE LANE PROPERTIES, 54 W. BRANCH ROAD, SMALLER HOUSE (BARRINGTON HOMES, LLC)

Scott Buddenhagen came forward and explained that he wanted to modify the plan for the new house which was previously approved by moving the structure further from the restricted area and reducing its size by 15 percent. Mr. Schwarz asked why Mr. Buddenhagen wanted to make these changes and Mr. Buddenhagen said that the buyer wanted a smaller house. Mr. Failla asked to look at the plan to see the original location of the house in comparison to the new proposed location. Mr. Buddenhagen presented the plan to the commission.

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MOTION FOR APPROVAL

Ms. Minter made a motion to approve the modification of the proposed site plan for 54 W. Branch Road as prepared by L. Edwards and Associates, LLC, revised November 23, 2010. Mr. Schwarz seconded the motion, all voted in favor (5-0) and the motion carried.

DISCUSSION OF APPLICATION: PARKER, 20 BRIAR OAK DRIVE, POOL (SHORELINE POOL)

Gary Turell, representing Shoreline Pools, stepped forward and said he understood that Mr. Anderson had found issues regarding the pool. Ms. Minter explained that there was an impermeable surface, but no indication of where wetlands buffers would go to keep the drainage out of the wetlands. Mr. Turell said that they had designed the system with drains into the Coltech system, which is designed to work with the 100-year flood. The commission looked at the plans presented by Mr. Turell and discussed the issues surrounding the drainage and buffer plans for protecting the wetlands.

Mr. Anderson said that when he originally did an inspection on August 29, 2006, the plot plan he had did not show wetlands and the lot itself was overgrown and access was difficult so he didn't find any wetlands on the property. The revised plans of December 12, 2006 and January 3, 2007, however, indicated wetlands on the property.

Mr. Schwarz said that during the site walk, there were plant species characteristic of wetlands as well as an intermittent water stream and a pipe draining into the area. The commission was concerned about the source of the pipe drainage and requested more information of the applicant regarding how much water is draining into the area, whether the Coltech will be adequate, details about where new trees are to be planted, and the source of the pipe.

The commission decided to continue the discussion of this application until its next meeting and given the receipt date of November 16, 2010, there is no extension needed. The commission recommended that the additional information be submitted for Mr. Anderson's review a week before the meeting as well as for the owner to attend the meeting.

DISCUSSION OF APPLICATION: HOFFMAN, 96 GOODHILL ROAD, REPAIR OF MAXIMIZED SEPTIC SYSTEM

Mr. Hoffman came forward and acknowledged that the excavation work for the replacement of his maximized septic system had begun earlier in the day. Mr. Schwarz explained that under normal procedures, the commission first accepts an application, then conducts a site walk the following month and then discusses the application at the next meeting. Mr. Schwarz emphasized that only in an emergency situation are applicants permitted to expedite the process. Mr. Hoffman said that he had misunderstood and thought that he could begin work once he had fulfilled the recommendations made by the commission during the site walk. Mr. Failla said the commission could discuss consequences of Mr. Hoffman's premature construction after accepting the application.

MOTION FOR RECEIPT

Mr. Failla made a motion to receive the Hoffman application, seconded by Mr. Ferdinand, all voted in favor (4-0) and the motion carried, though Mr. Schwarz abstained from voting.

Mr. Anderson explained that the existing septic tank was just below grade and that a rise in water level in the tank created backup in the toilet located in the basement. Mr. Anderson cited a report dated October 14, 2010, issued by an independent sanitarian, Bill Roy, who determined that the septic system had maxed out and at the time of the water test the system did not appear to be in working order. Mr. Anderson concluded that replacing the system was necessary and given pressure from a potential buyer and the bank to replace the system, as well as approaching winter season, Hoffman wanted to expedite the excavation.

Ms. Kulikowski pointed out that the WWHD had stamped its approval on Mr. Hoffman's plan, dated November 23, 2010. Mr. Failla pointed out that Mr. Hoffman had realized his septic system was failing, submitted an application to the commission, asked the commission to walk the site, and had obtained health approval, so he had only been mistaken in beginning construction early.

Mr. Failla asked if there were any ways to minimize impacts on the wetlands during excavation and Fred said the front trench had been completed, but once the back trench was dug, filled with gravel, and reinforced with hay bales, then the site would be sufficiently protected. Mr. Failla asked whether there were any alternatives, but Mr. Anderson replied that based on the challenges of the elevation, there was no advantage to putting the new septic system anywhere else on the property.

Mr. Schwarz stated that Mr. Hoffman should realize consequences of starting work prior to receiving the commission's approval, but Mr. Ferdinand urged the commission to decide the merits of the project before considering the penalties.

MOTION FOR APPROVAL

Mr. Aibel made a motion to approve the application to install a septic tank at 96 Goodhill Road, as shown on the plans prepared by J. Davis, Inc. for Mr. and Mrs. Hoffman, dated September 25, 2007, revised October 27, 2010, received by the commission on November 29, 2010, received by the WWHD on November 17, 2010, and approved by the WWHD on November 23, 2010, 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.

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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 must submit a copy of the septic as-built when completed.

Mr. Failla seconded the motion. All in favor, the motion carried (4-0), though Mr. Schwarz abstained from voting.

PAGE 10-73DISCUSSION OF PENALTY: HOFFMAN, 96 GOODHILL ROAD, REPAIR OF MAXIMIZED SEPTIC SYSTEM

Mr. Ferdinand said that he believed Mr. Hoffman's early construction was an honest mistake. Mr. Aibel added that given the fact that the tank was baking up, Mr. Hoffman did have a small emergency. Mr. Schwarz said that he had difficulty believing that a professional builder and land owner could be so negligent and that waiting an extra day for the commission's decision would not have made a significant difference in the timeline of the project, therefore Mr. Hoffman needed to face some consequence. Furthermore, Mr. Schwarz said that the commission needed to set a precedent so that in the future applicants wouldn't bypass the commission's approval to begin work. Mr. Failla said he commended Mr. Hoffman for coming before the commission as well as obtaining the appropriate approval from the health district.

MOTION FOR PENALTY

Mr. Schwarz made a motion to impose a fine of \$100 on Mr. Hoffman for beginning construction prematurely, seconded by Mr. Failla. All voted in favor (5-0) and the motion carried.

DISCUSSION OF BABIVSKIY, LOT J, OLD MILL ROAD & NEWTOWN TPKE, NEW HOUSE

Mr. Babivskiy was not present, so Ms. Kulikowski stepped forward to say that she and Mr. Anderson had selected Todd Richy of GHD, formerly Sterns and Wheeler, to perform the independent peer review as requested, but that the report would not be available for another 10 days. Ms. Kulikowski said that the discussion of the application would have to continue beyond the 65 days from application date as set forth in the regulations and therefore Babivskiy would have to apply for an extension.

DISCUSSION OF APPLICATION: 69, 71, 73 NORFIELD ROAD, PROPOSED DRIVEWAY REPAIRS

David Sawyer, resident at 69 Norfield Rd, Jay Maymudes, resident at 71 Norfield Rd, and Bob Oley, an engineer with Land Tech Consultants stepped forward. Mr. Sawyer and Mr. Maymudes introduced themselves as two of five homeowners who share a right of way over a common driveway and who have an obligation to maintain and repair that driveway under a covenant to the deeds of their properties. Mr. Schwarz clarified that no one representing owner was present. Mr. Maymudes presented a prepared statement about the application to simply repair a broken pipe that has been in place for 40 or 50 years to maintain the status quo and not correct or change the driveway.

Mr. Schwarz asked why the pipe had originally been installed and Mr. Oley explained that the wetland system has been in that area for a certain amount of time, so that the pipe was intended to convey surface rainwater under the driveway and to the wetlands rather than flowing across the top of the driveway and creating potentially icy conditions. Mr. Oley clarified that if the applicants were to remove the pipe entirely, then there would be no water flow and the wetlands would be adversely impacted.

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Mr. Schwarz asked how the wetlands could be protected during the repairs. Mr. Oley proposed to construct a silt fence between the wetlands and the driveway as well as to place hay bales on the downstream side of the driveway. Specifically, Mr. Oley proposed to do the work during one- to two-days in a drier season, such as the spring or summer, to minimize any impacts on the immediate wetland system or that system downstream.

Mr. Schwarz asked why Mr. Sawyer and Mr. Maymudes feel they have a right to move forward with repairing the driveway when there are five people who are parties to the agreement. Mr. Maymudes said he felt that all the homeowners had a duty to maintain the driveway because without repair it will eventually become unsafe and impassible and he is particularly concerned about the passage of emergency vehicles.

Mr. Failla asked about the characteristics of the wetlands and Mr. Oley estimated that the wetlands are 11,000 square feet, or one-quarter acre, and that they received water from five acres of land, so the wetlands play an integral role in stormwater management in that area.

Mr. Maymudes and Mr. Sawyer provided copies of their covenants regarding their obligation for maintaining the driveway for the commission's review.

James Rice, an attorney representing Ms. Ostermueller, and Derek Cole, an engineer, stepped forward. Mr. Rice said that he was conducting a title search for the owner of the shared driveway because the commission's regulations require an owner's consent to an application. Mr. Schwarz replied that the neighbors had a right of way out of necessity and therefore had standing to come before the commission. Mr. Rice said that most private roads have detailed road maintenance agreements, where as in this situation there is just simple language in the deed. Mr. Aibel said that the owner's granting the neighbors a right of way is a waiver of the owner's consent, but Mr. Rice raised the issue that the applicants do not have the support of the majority of the neighbors. Mr. Rice and Mr. Cole raised concerns about citations the Sawyers received from the Conservation Planner in 2006 regarding violations to the wetlands regulations. Mr. Schwarz said that was a separate issue and if Ms. Ostermueller believed that there was a violation, it was incumbent upon her to bring it before the town, but the current discussion was not the appropriate forum for it.

Mr. Schwarz asked how an application for repairing the driveway with the same diameter pipes would have adverse effects on Ms. Ostermueller's property. Mr. Cole presented a watershed map of the properties based on an aerial photo from 2004-2005. He estimated that there were nine acres of watershed draining into the wetlands area and said that the current pipe size was inadequate to accommodate that water flow. Mr. Schwarz said that if Mr. Cole believed the proposed pipes were inadequate, then it was incumbent upon him to specify an adequate size as well as provide information on which he was basing those specifications. Mr. Schwarz asked Mr. Cole what further studies he found necessary to satisfy Ms. Ostermueller. Mr. Cole listed several studies that he believed were necessary to determine appropriate size for pipes as well as to minimize the impacts on the wetlands

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during construction. Mr. Rice suggested that because the construction is not time-sensitive that the neighbors come together for a joint application.

Mr. Schwarz asked Mr. Cole to come to the January 18, 2011 meeting with either a joint proposal or an alternative plan that specifies what an appropriate sized pipe would be or how to repair the driveway with minimal impacts. Mr. Schwarz said that if Mr. Cole only presents criticisms rather than constructive recommendations and without any evidence to support an alternative plan, then the commission will likely either accept the original plan because there is no proof otherwise, or it will ask the applicant for more information.

Mrs. Cannon of 73 Norfield Rd, came forward and said that she wanted the roadway repaired and that she wanted it done properly and swiftly. Mrs. Cannon said she moved onto her property in 1972 when there were only three houses, two of which are located in the area of question. She believed that the properties had been farmland and the pipes in question had flowed into a pond that serves as a watering hole for farm animals. She also believed that the owner of the land was a woman by named Chatfield. All the deeds say that the neighbors—and CL&P—have right of way and that the neighbors are obligated to maintain the roadway. Mrs. Cannon said she would like to see the repairs split five ways and that the neighbors could agree on the plan.

Mr. Sawyer, Mr. Maymudes and Bob Oley came forward again. Mr. Maymudes said that the plan he had presented was not meant to be contentious and that he believed it was sufficient in maintaining the status quo in not impacting the wetlands. Mr. Sawyer said that the burden of cost to conduct Mr. Cole's proposed incremental studies should be on the opponents if they wish to prove that the original plan is inadequate. Mr. Schwarz said the commission would not intervene regarding the cost issues, but he recommended that the two groups collaborate to answer the commission's questions. Mr. Oley said that despite the fact that the current pipes might be undersized, they wanted to maintain the status quo since historically there hadn't been any significant flooding across the driveway.

Mr. Schwarz adjourned the discussion of the application until the commission's January meeting. He said that whether the pipes are adequate or inadequate, the commission would need validation of those claims and specific information regarding size of pipes, additional flow, etc. If the applicants or opponents modify their plans, then they should notify the other side at least a week before the meeting. Furthermore, Mr. Schwarz wanted the issue of ownership clarified at the next meeting.

PUBLIC HEARING CONT.: PROPOSED COMPREHENSIVE AMENDMENTS TO THE INLAND WETLANDS AND WATERCOURSES

Mr. Failla made a motion to continue the public hearing on the next meeting, seconded by Mr. Schwarz, all voted in favor (5-0) and the motion carried.

ELECTIONS FOR CHAIRMAN AND VICE CHAIRMAN

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Mr. Failla made a motion to nominate Mr. Schwarz for Chairman, seconded by Mr. Ferdinand, all voted in favor (5-0) and the motion carried. Mr. Ferdinand made a motion to nominate Mr. Failla for the position of Vice Chairman, seconded by Mr. Schwarz, all voted in favor (5-0) and the motion passed.

DISCUSSION OF MEETING CALENDAR FOR 2011

The commission discussed the schedule for meetings and site walks and decided to continue meeting on the 3<sup>rd</sup> Tuesday of the month, though in April 2011 that day would fall on Passover and the school vacation and the December 2011 date would fall on the first day of Chanukah. Mr. Failla proposed that the commission meet the 3<sup>rd</sup> Tuesday of every month, except instead should meet April 12, 2011 and December 13, 2011 to avoid any other scheduling conflicts.

APPROVAL OF MINUTES

The approval of minutes for November 16, 2010 was postponed until the next meeting.

OTHER BUSINESS

The commission discussed the fact that they do not have the authority or the responsibility to mitigate neighborhood issues so that in the future the commission would need to find a way to communicate to applicants that the commission cannot and will not intervene in neighborhood issues.

Mr. Failla said that Ms. Kulikowski had asked him to discuss an issue raised by a neighbor regarding the Sachem decision. Mr. Failla recalled that the silt fence line was the limit of disturbance line and he believed that the minutes and tapes from that meeting would verify that. Referring to the plan, Mr. Failla also said that he recalled a neighbor had addressed the applicant with concerns about a particular area near the property line and the applicant had replied that he would maintain trees in a buffer area. Mr. Schwarz referred to the silt fence line on the plan and the southern boundary of the property. He also indicated to an area of the plan where there are a number of trees and as he recalled there had been a general agreement that the trees there would not be removed. Ms. Kulikowski said there was disagreement over how wide that area actually is. Mr. Ferdinand said that the neighbor who brought the complaint specifically raised the objection that for sight reasons, she didn't want to see the house and they said don't worry, the trees that are on the southern border will be maintained between the boundary line and the silt fence. Mr. Kulikowski asked whether there had been a discussion over what that distance was because they are claiming that the representation made to the commission was that it was 30 feet. Mr. Failla said he could not recall specifically what the applicant had said, however the commission did not approve a plan that moved it—he indicated cut lines on the plan where the applicant needs space to do the sloping.

Mr. Failla said the biggest concern was the distance from the wetlands and there are no wetlands in the area with which the neighbor was concerned. Mr. Schwarz asked if everyone agreed that the plan approved was that the applicant could not cut down trees between the property line and the silt fence. Mr. Aibel said he didn't remember about

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cutting them down, but it was either they leave the trees or plant additional ones. Mr. Failla said one of the conditions called for a planting plan to be approved by Fred, though Mr. Anderson said there was no timeframe on that. Mr. Failla suggested that Tracy remind the neighbor of that condition and that it is up to the neighbor to approach the developer on that point and that then they could resolve the issue. The commission just has to make sure the applicant is in accordance with the plan and if there are changes to the plan, then that is a modification and the applicant has to come back to the commission. Mr. Schwarz said that the plan that was approved had specified that the applicant could not cut down trees between the property line and the silt fence, an area which varies in size, from 16 to 30 feet. Mr. Anderson said the trees that indicate the maximum cut line are wrapped in green tape and they show up in the photographs that Mr. Anderson took earlier in the day and that they were between the silt fence and the property line.

MOTION TO ADJOURN

Mr. Schwarz made a motion to adjourn the meeting and Mr. Aibel seconded. All in favor, the meeting adjourned at 9:57 p.m.

Respectfully submitted,

Victoria Farr, in place of  
Delana Lustberg  
Recording Secretary