

ENVIRONMENTAL PROTECTION COMMISSION
REGULAR MEETING/PUBLIC HEARING
MINUTES
January 5, 2011
7:30 P.M.
Room 206, Town Hall

Chairman Hillman called the meeting to order at 7:30 P.M

Commission Members Present: Peter Hillman, Michael Tone, Pete Kenyon, Ed Sweeney, Craig Flaherty, Rick Rohr

Staff Present: Jacobson

Court Reporter: Syat

Recorded by Channel 79

Mr. Hillman called the first agenda item:

EPC-45-2010, Patrick & Lauren Palomo, 104 Rose Lane, proposing house additions in an upland review area. The site is shown on Assessor's Map #25 as Lot #14.

Steven Gidley, Contractor, represented the applicant. He introduced Joel Villaluz, P.E. and Bruce Salbo, Architect. He described the revised plan showing underground detention instead of the rain garden.

Mr. Palomo said they designed the system to accommodate any future expansion.

Mr. Hillman asked about the additional impervious surface area. Mr. Villaluz said the existing house is 787 square feet and they would be eventually be adding approximately 800 square feet.

Mr. Hillman asked if they were proposing any additional mitigation such as plantings.

The Commission discussed approving the application subject to a planting plan. After discussion of alternatives including restoring lawn to natural wetland and converting an eroded area to stabilized meadow, the Commission continued the application to Feb 2 to allow the applicants to consult with their wetland scientist to propose a mitigation plan.

EPC-50-2010, Bhinesh & Minaxiben Patel, 22 Shady Acres Road, proposing to bury utility lines in a regulated area, remove invasive species, and re-plant native species.

Mr. Rohr was recused for this application.

Lance Zimmerman, Architect, represented the applicant. He described the plan to bury the utilities and remove invasive species and plant native species. He said United Illuminating is now requiring new homes to have buried utility lines to reduce storm damage.

Mr. Tone made a motion to approve the application. Mr. Flaherty seconded the motion and it passed 5-0.

Mr. Hillman read the next agenda item:

EPC-51-2010, Mary Beatty, 93 Mansfield Avenue, proposing lawn expansion and stone wall construction.

Mrs. Beatty represented herself. She said she is proposing to rebuild the existing stone wall approximately 13 feet into the regulated area. She said she has had the property on the market for over a year, and the problem for prospective buyers is the lack of a backyard.

Mr. Hillman said the Commission will have a dilemma if they approve of the encroachment since, by Mrs. Beatty's representation, the proposal to add lawn was being done strictly for sale purposes. He complimented Mrs. Beatty on her honesty. The property was the subject of a wetland violation in 2006 and has been successfully restored.

Mr. Tone asked if there is additional restoration of the property which is necessary. Ms. Beatty said there could be additional removal of invasive species.

Mr. Hillman made a motion to approve based on limiting the Commission's decision to the facts of this particular application to avoid setting a precedent of granting applications to make properties more salable and because of the care and respect shown to the property. Mr. Tone seconded the motion and it failed 4-2. (Hillman and Tone in favor, Rohr, Sweeney, Flaherty and Kenyon opposed).

The Commission considered the application denied without prejudice. Mr. Flaherty noted the recentness of the violation by the builder which is still subject to an outstanding permit, EPC16-2006. The Commission could reconsider if requested directly by a contract purchaser and if additional mitigation were provided, along with long term assurances of the protection of the remaining undisturbed upland review area.

Mr. Hillman called the first public hearing item:

EPC-37-2010, Country Club of Darien, 300 Mansfield Road & M. David & Marianne Magnotta, 215 Brookside Road, proposing driveway construction in a regulated area.

Attorney Amy Souchens represented the Country Club. She said the co-applicants are Mr. and Mrs. Magnotta. She introduced Ron Kaye, C.C. of Darien, Tim O'Neil, Club Superintendent, John Pugliesi, P.E. and Greg Lieberman, Wetland Scientist.

Ms. Souchens said they have reviewed the revised plan with the neighbors. Mr. Hillman said Attorney Zabetakis is not present. Mr. Jacobson provided the Commission with copies of a letter sent today from Attorney Zabetakis.

Mr. Hillman said he would like to begin with a discussion of the legal issues with regard to the conservation easement. He and Mr. Tone have discussed the process by which the Commission should conduct the public hearing with respect to the easement and the application.

Mr. Hillman said the Commission has a fiduciary responsibility to uphold the provisions of the easement. He said there are legal issues which would need to be resolved, should the Commission find that the plan does not violate the easement language. The applicant would need to consult with the Town Attorney to determine if the Attorney General would need to be consulted and if a Cy Pres hearing action would be necessary. He said the applicant would also have to agree to pay the Town's legal fees if there is any legal action taken by the neighbors as a result of the Commission's decision.

Mr. Tone said the easement is analogous to a charitable trust. The Commission needs to determine if the project is acceptable before tackling the legal issues.

Ms. Souchens described the revised plans. She said the shared driveway has become a safety issue.

The Commission discussed the easement language and whether an additional driveway was contemplated at the time the easement was granted. The Commission requested an explanation of how the driveway conforms to the easement.

Mr. Hillman said that the applicant's use of 2% of the easement area would be significant if the heart of the easement was destroyed.

Mr. Tone asked about the distance of the proposed driveway to the Land Trust property. Mr. Pugliesi said approximately 120 feet.

Ms Souchens described the proposed driveways. She said they are proposed to be paved but they could be gravel. She said they are proposing a 12 foot wide residential drive and a 14 foot wide driveway for the Club. The entrance for the Club driveway will be 24 feet wide including grass pavers. There is 11,300 square feet of disturbance proposed.

Mr. Hillman asked for the language of the easement the Club has to use the existing driveway. Ms. Souchens said they will provide a copy.

Mr. Hillman asked Mr. Magnotta if he was aware of the conservation easement when he bought the property. Mr. Magnotta said he was. Mr. Hillman asked if the Magnottas had discussed alternatives with the Club, e.g. regulating delivery times, adding lights/signs, speed bumps, communicating and coordinating with deliveries etc. or a range of measures that would be less intrusive than splitting the easement with a driveway. Mr. Magnotta said they had discussed various alternatives with the Club but there are still problems.

Mr. Hillman said the job of the Commission is to consider alternatives. Mr. Magnotta said they have tried many things. He said the use of the facilities has increased since they purchased and there is more activity on the driveway.

John Pugliesi described the proposed truck access improvements and the proposed impacts to wetlands.

Mr. Hillman asked the applicant to provide the 1997 soil scientist's report and describe the differences in the wetland boundaries.

Mr. Tone asked for more information on what has changed versus the previous situation that is creating the need for a separated driveway. He requested more information on the "no action" alternative and alternatives involving management of the driveways.

Mr. Flaherty asked about the access from Mansfield. Mr. Pugliesi said that access could not handle 18 wheeled trucks. Mr. Kenyon suggested going back to smaller trucks and instituting a traffic management plan.

Mr. Hillman asked for public comment.

Attorney Mary Keating appeared on behalf of Charlotte Rose, Brookside Road. She said they are concerned the driveway would be a hazard. She said they are concerned about an increase in commercial traffic. She said her clients purchased the property believing the easement area would be preserved. She said the proposal is not a driveway but is a roadway. She said they are concerned about increased flooding. She said the original easement was created to minimize impact. Other lot owners would be open to requesting their own driveways. If the purpose of the Club is to have bigger trucks they should try other avenues for safety, like better signage and traffic management

The Commission continued the application to February 2. Mr. Hillman suggested the applicant consider withdrawing the application and explore other alternatives.

Mr. Hillman called the next public hearing item:

EPC-49-2010, Charlie Douglas, 0 Woods End Road (Northeast corner of Woods End Road and Sylvan Road) proposing new house construction within an upland review area.

Doug DiVesta, P.E. represented the applicant. He described the revised proposal and the activities within the upland review areas. He said the storm water detention system exceeds the Town required 50 year event and will have no increases in peak runoff rates for the 100 year storm. There will be a separate detention area for the sump pump discharge. He discussed the report by Aleksandra Moch. He said they located the activities on the site to favor protection of the more valuable wetlands along the brook. He said they are attempting to save trees near the driveway. They are proposing to remove 26 trees and are planting over 40.

Mr. Rohr questioned whether the trees near the driveway construction could be saved because of the construction activity within the drip lines.

Mr. Tone asked about the depth to groundwater in the pool area. Mr. DiVesta said approximately 3 feet.

Mr. Rohr asked about the plantings over the sump pump detention system. Mr. DiVesta said it would be grass. Mr. Rohr requested they look into plantings to provide a better buffer to the stream.

Mr. Hillman asked about the type of pool filter proposed. Mr. DiVesta said it would be the type without a backwash.

Mr. Rohr requested that language in note #4 regarding plant substitutions being approved by the wetland scientist be changed to and instead of and/or to require staff approval.

Mr. Hillman asked for public comment.

Miles Ridder, 53 Birch Road, said he is concerned with water in his basement and does not want additional water directed toward his house. Mr. Rohr suggested an impervious barrier could be installed along the property line to force water toward the stream.

Harriet Riegel, 2 Woods End said she was also concerned with water. DiVesta said there would not be any stormwater directed toward her property. The water has no potential to cross the road.

Karen Plunkett, 51 Birch Road said she is the next property downstream from Mr. Ridder. She is concerned that water might affect downstream owners.

Larry Warble, 52 Birch Road said he was concerned with water backing up onto his property. Mr. DiVesta said they are not proposing any activity which would cause a backup in the system.

Charlie Douglas, Contract Purchaser, addressed the issue of the size of the proposed house. He provided the square footage of several homes in the area which he said are comparable in size.

The Commission continued the public hearing to February 2.

Mr. Hillman requested a summary of the plusses and minuses of the two plans with respect to the impact on the Ridder property.

Mr. Flaherty requested the additional information including consideration of the Ridder water problem and possible impervious barrier, additional testing in the sump pump system area, a drainage basin map for the site, consider sacrificing tress to move the driveway away from the stream, stockpile locations and consider moving material offsite, and consider the overall scope and size of the project.

Mr. Hillman read the next agenda item:

EPC-58-2006, Town of Darien DPW, 1723 Boston Post Road, Sanitary sewer force main installation. Requesting five year permit extension to October 2016.

Mr. Hillman made a motion to approve the request. Mr. Tone seconded the motion and it passed unanimously.

Mr. Hillman read the next agenda item:

Planning & Zoning Commission Referrals:

Mr. Jacobson described the proposed new house construction at 144 Five Mile River Road. The plans prepared by Land-Tech Consultants appear to provide mitigation measures suitable for a CAM application. The Commission did not see the need to have a sub-committee review the referral.

Mr. Hillman made a motion to approve the minutes of December 1 as corrected. Mr. Kenyon seconded the motion and it passed unanimously.

Mr. Kenyon made a motion to adjourn. Mr. Sweeney seconded the motion and it passed unanimously. The meeting adjourned at 11:00 P.M.

Respectfully submitted,

Richard Jacobson
Environmental Protection Officer