

ENVIRONMENTAL PROTECTION COMMISSION
REGULAR MEETING/PUBLIC HEARING
MINUTES
July 6, 2011
7:30 P.M.
Room 206, Town Hall

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

Commission Members Present: Michael Tone, Craig Flaherty, Wynne Shapiro, Ed Sweeney, Pete Kenyon, and Rick Rohr (7:50 p.m)

Staff : Jacobson

Court Reporter: Syat

Recorded by Channel 79

Mr. Tone introduced himself as the new Chairman. He noted Peter Hillman's long and distinguished service to the Town. The Commission learned a great deal from Peter and he will be sorely missed.

He congratulated Pete Kenyon on his four gold medals and four world records in swimming events at the World Transplant Games.

Mr. Tone called the first agenda item:

Amendment to EPC-20-2010, Adam Mobarik, 86 West Avenue, proposing revisions to permit.

Adam Mobarik represented himself. He said he addressed a number of elements requested by the Commission on one drawing. He said the addition calls for an additional 135 square feet of impervious coverage.

Mr. Tone asked him the total impervious area. Mr. Mobarik said 291 square feet.

Mr. Kenyon asked if demarcation of the wetland such as boulders should be considered. Mr. Mobarik said there is currently a distinct change in grade.

Mr. Flaherty made a motion to approve the application with a planting plan to be provided. Mr. Tone seconded the motion and it passed 5-0.

Mr. Tone called the next agenda item:

EPC-15-2011, Martin & Ann Milewski, 8 Glenn Gorham Lane, proposing a house addition in an upland review area. The site is shown on Assessor's Map #49 as 46B.

Peter Finkbeiner, P.E. represented the applicant. He said they provided information on the perc test and soil observations in the rain garden area.

Mr. Sweeny made a motion to approve the application with a planting plan to be provided. Mr. Flaherty seconded the motion and it passed 5-0.

Mr. Tone called the next agenda item:

EPC-25-2011, Andrew & Terry Brode, 504 Mansfield Avenue, proposing an addition in an upland review area. The site is shown on Assessor's Map #1 as Lot #115.

Marc Andre, Architect represented the applicant. He said the proposed addition is slightly larger than a previously approved application. He said they are providing stormwater storage where none was required previously. No trees will be removed.

Mr. Tone asked him to describe the differences from the previous permit. Mr. Andre said they will use sonotubes instead of a full foundation and he described the additional drainage structure. The building area in the upland review area will be slightly smaller.

Mr. Flaherty asked that the temporary stockpile area be moved away from the infiltration area.

Mr. Flaherty made a motion to approve the application with the revision of the stockpile area. Mr. Tone seconded the motion and it passed 5-0.

Mr. Rohr arrived at 7:50 p.m.

Mr. Tone called the next two agenda items:

EPC-26-2011, William Morehouse, 15 Morehouse Drive, proposing new house construction and related activities in an upland review area. The site is shown on Assessor's Map #15 as Lot #12.

EPC-27-2011, William Morehouse, 21 Morehouse Drive, proposing new house construction and related activities in a regulated area and upland review area. The site is shown on Assessor's Map # 15 as Lot #11.

Ted Milone, P.E. represented the applicant.

Mr. Tone said the applications will be scheduled for public hearing on August 3. He said the applicant should be prepared to discuss the alternatives at the public hearing. Their wetland scientist should be prepared to discuss mitigation measures.

Mr. Rohr asked them to be prepared to discuss the basement elevations relative to groundwater.

Mr. Tone called the next agenda item:

EPC-28-2011, Spencer Segura, 24 Tokeneke Trail, proposing pool cabana and septic system within an upland review area. The site is shown on Assessor's Map #69 as Lot #24.

Ted Milone, P.E. represented the applicant. He said as part of the improvements on site they are proposing to relocate a portion of the septic system. There are no significant changes in grade proposed. They will add a ten foot buffer adjacent to the stream.

Mr. Kenyon asked about tree removal. They will be removing one dead tree near the garage, not in the upland review area.

William Rutherford, Landscape Architect said the tree to be removed is a birch tree. They will be adding additional trees and plantings near the pool.

The Commission asked about the Conservation Area and if there are any restrictions. They will need to understand what is in the document before making a decision.

Mr. Kenyon asked about the additional impervious surface area. Mr. Milone said 1700 square feet.

The Commission continued the application to August 3.

Mr. Tone called the next agenda item:

EPC-29-2011, Lisa Washburn, 3 Waterbury Lane, proposing generator and propane tank in an upland review area. The site is shown on Assessor's Map #28 as Lot #4.

Bob Rosic, Contractor, represented the applicant. He said they are proposing a generator in the backyard. They looked at locating the generator and tank on the north side of the house but the lot is tight because of setbacks and a sewer easement.

Mr. Tone asked if they would be disturbing the wetland. Mr. Rosic said no.

Mr. Flaherty asked if they could locate the generator on the lawn side of the wall to maintain the wall as a buffer to the natural area. Mr. Rosic said they could.

Mr. Tone made a motion to approve the application with. Ms Shapiro seconded the motion. Mr. Flaherty said he would prefer a revised generator location on the lawn side of the wall and moved to revise the motion. Mr. Rohr seconded the revision and the motion passed 5-0-1. ? abstained.

Mr. Tone called the following public hearing item:

EPC-9-2011, John & Mary Keene, 30 Hamilton Lane, proposing a pool within a regulated area and upland review area. The site is shown on Assessor's Map #10 as Lot #28. (Continued from June 1)

Matt Popp, Wetland Scientist and Landscape Architect represented the applicant. He described the existing conditions and the wetlands and Goodwives River. He said they are proposing 140 square feet of disturbance, of which 11 square feet is wetland soil. He said the proposed mitigation will result in a net gain in wetland functions. He described the alternative plan submitted which will impact slightly more wetland but they would be able to protect the trees along the property line. He said the pool and house are located outside of the FEMA flood zone.

Mr. Flaherty asked about the wetland functions. Mr. Popp said they have very low functional value. He said with the alternate plan of additional wetland impact the proposal would still be more beneficial to the wetland system.

Mr. Flaherty asked if they have considered the impact of an impervious pool cover. Mr. Popp said they could lower the grade of another area on the property to compensate. Ms. Shapiro asked about the depth of the pool. Ms. Keane said they do not know yet.

Mr. Kenyon asked about mitigation next to the river. Mr. Popp said the river edge is mostly vegetated and functions well. They are proposing to enhance a small degraded area.

Mr. Flaherty asked about a demarcation feature along the river. Mr. Popp suggested a row of sunken boulders.

Mr. Tone asked for public comment. No members of the public wished to speak.

Mr. Popp said they are proposing a better functioning wetland. He suggested conditions showing the runoff compensation area and the demarcation.

Mr. Flaherty said he would like the plan revisions prior to closing the hearing.

Mr. Rohr said he prefers the alternate plan that will protect the trees.

Mr. Tone said moving the pool has merit since the wetland is lawn and low functioning.

The hearing was continued to August 3.

Mr. Tone called the next agenda item:

Mr. Tone called the following public hearing item:

EPC-20-2011, Dale & Hillary Miller, 5 Tokeneke Beach Drive, proposing to amend the Regulated Inland Wetlands and Watercourses Map. The site is shown on Assessor's Map #62 as Lot #67.

Attorney Robert Maslan represented the applicant. He introduced Mr. & Mrs. Miller, Todd Ritchie, P.E., John Roberge, P.E. and Dave LaPierre, Architect.

Mr. Maslan said the issue under consideration is if the lagoon is a watercourse under the Inland Wetlands and Watercourse regulations. He said the question was asked at the last meeting if there is a pipe under Searles Road. There is no pipe. He said the answer to the question of how long the driveway has been there is he does not know, but prior to 1935 based on DEP photos.

Mr. Tone asked if there is a culvert under the driveway. Mr. Maslan said no.

Mr. Maslan said the D.E.P has jurisdiction over the lagoon.

Mr. Tone asked him to outline the exact boundary of the applicant's property. Mr. Maslan outlined the property at the edge of mean high water. He said the tidal waters are held in the public trust.

Mr. Tone asked if anyone owns the lagoon. Mr. Maslan said no, not other than littoral rights. Mr. Tone said he would like him to provide support for that argument.

Mr. Tone asked him if there is any freshwater source entering the lagoon. Mr. Maslan said only rain and surface runoff.

Mr. Tone asked if his position is that if the lagoon is regulated as tidal it cannot also be regulated as an Inland watercourse. Mr. Maslan said yes.

Mr. Tone asked where in the Tidal Wetland Act is watercourse defined. Mr. Maslan referred to page three of the GHD report. Mr. Tone said watercourse is defined only in the Inland Wetland Act and the Commission's regulations. Mr. Maslan said coastal waters are defined by salinity concentration. Mr. Tone asked if the applicant contends that the lagoon is coastal waters. Mr. Maslan said yes.

Todd Ritchie described the salinity testing methods and results from field analysis and laboratory analysis. The Commission asked questions about the sampling methods and locations.

Mr. Ritchie provided photos of the property to document conditions at extreme high tide and demonstrate a tidal connection.

Mr. Kenyon asked how often the extreme high tides occur. Mr. Roberge said three to four times per year.

Mr. Ritchie said they have established the tidal connection, the salinity and the tidal wetland soils.

Mr. Kenyon asked if the vegetation in the wetland is tidal. Otto Theall, Soil Scientist said there is High-tide Bush along the lagoon and Butlers Island Creek and Spartina on the Butlers Island Creek side.

John Roberge said he has a history of working on properties adjacent to the lagoon. He said there is a fluctuation in tide level. There is no culvert under the driveway. He said there is no culvert under Searles Road but the structure is founded on dumped rock and there is a hydraulic connection. He said the elevation in Pond Gut is controlled by a weir and the tidal range in the lagoon is about one foot. He said extreme high tide is about 3 feet higher. Mr. Rohr said he does not believe that to be accurate since the elevation of the pond is six inches below the driveway and Butlers Island Creek appears to be four to five feet lower.

Mr. Tone asked for public comment.

Attorney Wilder Gleason represented Mr. & Mrs. Balloch of 15 Edgehill Drive. He said the application poses a threat to the EPC's historic jurisdiction. He provided a colored map of the areas which could be affected.

Mr. Tone asked for research from Mr. Maslan and Mr. Gleason of the ownership of the lagoon.

Mr. Truett of 7 North Road said the Millers have reached out to him about their plans to develop the property.

Ward Glasemyer of Coves End Road said he has lived there his entire life. He said the lagoon is clearly tidal on both sides of Searles Road.

Mr. Rohr asked if there are any communications with DEP or meeting minutes. Mr. Maslan said he would provide them.

Ms. Shapiro asked the applicant to clarify the limits of Pound Gut. Mr. Roberge said above Searles Road. Ms. Shapiro asked if Pound Gut is fed by Tokeneke Brook. Mr. Roberge said yes.

Mr. Sweeney asked if the lagoon fluctuates one foot twice a day. Mr. Roberge said yes.

The Commission requested salinity samples on the north end of the pond and on the Pound Gut side of Searles Road. They also requested any data Mr. Roberge can provide on his observations of the tidal fluctuation in the lagoon.

Mr. Tone asked Mr. Maslan if the pond is owned by others, how does the applicant have standing to make the application? He asked Mr. Maslan to provide any definitive cases on that issue in CT.

Mr. Maslan said that between 1992 and 2002 or 2003 the Inland Wetland Regulations contained upland review area for certain tidal wetlands. He said this was carried over from old zoning regulations and cut and pasted into the wetland regulations. He said no applications for a ten year period were required for tidal portions of the named water bodies. He said they were reviewed as coastal permits. He said around 2003 the EPC started to require applications adjacent to tidal water bodies.

Attorney Gleason said that if staff failed to require permits and does not affect the EPC jurisdiction.

The Commission continued the hearing to August 3.

Mr. Kenyon made a motion to approve the minutes of May 4. Mr. Flaherty seconded the motion and it passed 6-0.

Mr. Tone made a motion to approve the minutes of June 1. Mr. Rohr seconded the motion and it passed 6-0.

Planning & Zoning Referrals:

Foster Kaali-Nagy, 144 Five Mile River Road, Coastal Site Plan Review #28B

Ms. Shapiro and staff will review the application and provide comments.

Robert Miniccuci, 159 Long Neck Point Road, Coastal Site Plan Review #218B

Mr. Rohr will review this application and provide comments.

Dale & Hillary Miller, 5 Tokeneke Beach Drive, Coastal Site Plan Review #257A

Mr. Tone, Mr. Kenyon and staff will review this application and provide comments .

Mr. Kenyon made a motion to adjourn. Ms. Shapiro seconded the motion and it passed unanimously. The meeting adjourned at 10:50 P.M.

Respectfully submitted,

Richard Jacobson
Environmental Protection Officer