

**ENVIRONMENTAL PROTECTION COMMISSION
PUBLIC HEARING
MEETING MINUTES
JANUARY 11, 2006**

Wednesday, January 11, 2006

7:30 p.m.

**Room 206
Town Hall**

COMMISSION MEMBERS PRESENT: Chairman Peter Hillman, Pete Kenyon, Ned Lewis, Reese Hutchison and Craig Flaherty. Susan Cameron was present until 7:35 P.M.

STAFF PRESENT: Director of Planning, Jeremy Ginsberg, Assistant Director, David Keating

COURT RECORDER: Syat

PUBLIC HEARING

Mr. Hillman read aloud the following agenda items. He explained that these public hearings will be opened and immediately continued to January 18, 2006 at 8:30 P.M. in the Auditorium of Town Hall.

EPC 92-2005, William W. Seymour & Associates on behalf of Kent & Lisa Eppley, 20 Driftway Lane, proposing to construct a two-story garage and perform related site development activities within a regulated area. The subject property is located on the east side of Driftway Lane, approximately 200 feet northeast of its intersection with Tokeneke Road, and is shown on Assessor's Map #66 as Lot #121.

EPC 107-2005, John R. Mastera, Architect, AIA, on behalf of Thomas & Joanne Woodring, 11 Edgehill Drive, Proposing to construct additions and alterations to the existing residence and perform related site development activities within a regulated area. The subject property is located on the south and east sides of Edgehill Drive approximately 450 feet east of its intersection with Searles Road, and is shown on Assessor's Map #67 as Lot #38.

EPC 108-2005 – Tokeneke School Building Committee, 7 Old Farm Road, represented by Metcalf & Eddy, Inc., proposing to demolish the existing elementary school buildings and construct a replacement elementary school with associated grading, athletic fields, and parking areas and to perform related site development activities within a regulated area. The property is located at the southeast corner formed by the intersection of Tokeneke Road and Old Farm Road and is shown on Assessor's Map #65 as Lot #23.

At 7:35 P.M., Ms. Cameron then left the meeting, and Mr. Hillman read the next agenda item:

Continuation of the Public Hearing regarding the Referral from the Planning and Zoning Commission about the proposed Nearwater Manor at 77 Nearwater Lane and discussion about the possible jurisdiction of the Environmental Protection Commission with respect to this project.

Mr. Hillman said that he visited the site on Saturday. He said that P&Z is still waiting for the EPC determination on jurisdiction.

ENVIRONMENTAL PROTECTION COMMISSION
PUBLIC HEARING
MEETING MINUTES
JANUARY 11, 2006
PAGE 2

Attorney Wilder Gleason presented reports from Robert DeSanto, and a 12/9 report from Tighe & Bond, and a 12/13 traffic report from Tighe & Bond. He said that Dr. DeSanto testified at the Planning and Zoning Commission meeting about droppings from vehicles into the parking lot. This has potential significant impacts of chemicals entering the wetlands and watercourses.

Professional engineer Joseph Risoli said that his comments are based upon the plans/drawings previously submitted to the EPC, not on the plans submitted yesterday. He said that on day one, the system should work perfectly, but the whole system will fall apart and within 10-15 years, it will be significantly non-effective. They have used a 50-year design storm. He said that the structure is 54 feet from the edge of the wetland per the latest plan. He then submitted charts with the Center for Watershed Protection on the cover page. On sheet 10 of that, there is no information on the depth of the footing drain or the curtain drain. There is an estimated 700 linear feet of collection pipe. He said that there is no time for the separators to work, due to the large volumes of water. The oil grit separators are meant for inside a garage, not an open parking lot that has large volumes of water. Each component has a large volume bypass capacity. There is no warning system for these structures. Even by the Vortechs information, 20% of the pollutants get through in the beginning. When the system is full, then 100% of the pollutants pass through. Mr. Risoli said that he has designed similar systems for existing parking lots. When the Cultec system is full/clogged/failing, it must be removed or replaced, but there is no warning of its failure. The pollutants will get into the Town system and then into Holly Pond. He said that discharges from the Cultec systems might get into the footing drain system, but there is not enough information or details.

Mr. Michael Aurelia said that he is a professional wetland scientist and environmental consultant, and a former employee with Greenwich for 28+ years, and has dealt with tidal and inland watercourse and wetland issues. He submitted his C.V. for the record. He visited the site three times and reviewed the file information. He said that this area is the most viable tidal wetland in Holly Pond, and maybe in all Darien. Mr. Hillman noted that it is on the USEPA list of impaired waters. Mr. Aurelia said that Section 2.y.1 can regulate activities that affect wetlands and/or watercourses due to the Regulations that the Town has on tidal watercourses, there is joint jurisdiction by DEP and local inland wetlands agency. He said that the inland wetlands statute is to protect all watercourses from various types of pollution and impairment. Ecologically, Holly Pond waters influence all tidal wetlands. He added that the critical coastal watercourse is the trench system channels. There were possible mosquito ditches dug years ago. They are watercourses because they routinely contain water. It is a watercourse that is part of the Holly Pond system.

Mr. Flaherty noted that the trenches are about 155 feet from the site. Mr. Aurelia added that he agrees with Mr. MacBroom about the local extreme high water. He said that the monthly highest tide is part of Holly Pond (either 5.8 or 6.2) and needs to be regulated by EPC because of sediment/erosion directly in the Holly Pond watercourse system. He added that as sea level is rising, the tidal wetlands are being inundated and eliminated.

Attorney Wilder Gleason then said that if there is more than 25% impervious surface development, there may be impacts. He said that they have proposed between 50% and 60% impervious area in this case. He submitted a color highlighted copy of the revised site plan submitted by the applicant to the Planning and Zoning Commission dated 1/10/2006. He said that the first floor of the proposed building is elevation 18.5 at the front door. The silt fence is shown as a double row about four feet or less from the south side of the proposed main building. There is no construction

ENVIRONMENTAL PROTECTION COMMISSION
PUBLIC HEARING
MEETING MINUTES
JANUARY 11, 2006
PAGE 3

parking shown on the site, and it will need to be somewhere, possibly in, or affecting the regulated area. He then submitted copies of the building plans as submitted to the Planning and Zoning Commission. There will be a 27 foot high building portion four feet from the regulated area, and a taller section of the building six feet from the regulated area. The backhoe and its supports will need to be in the fifty foot regulated area. The ridge will be 52.2 from the low point of the ground closest to the wetlands. He believed that it is consistent for EPC to regulate due to the construction activity in the regulated area. He said that in the Regulations, the edge of Holly Pond is not statically defined. Holly Pond and Gorham's Pond need more protection than a 50 foot setback.

Mr. Gleason then referred to the Lee property at 8 North Road on Five Mile River. He submitted a supplemental information packet. In that case, the EPC regulated the area of construction disturbance. He then submitted a colored copy of an aerial photograph. He said that the EPC would not need to regulate every connection, EPC and staff would need to make a judgment about the size of the drainage area, the proposed activity and likely impact. The EPC could choose to exert jurisdiction, or decide not to. Given the sensitivity of the proposed project, it would be inappropriate not to regulate this project.

Land surveyor and professional engineer Barry Hammons said that there is not currently an application before the EPC. He disputes the 6.2 NGVD as local extreme high water as per Mr. MacBroom. He believed that it should be elevation 6.8 as the extreme, plus one foot would be elevation 7.8. The wrack line can be pushed up by wind, storms, etc., but it is the main factor to look at as the real conditions at a particular site. He said that based upon the 6.2 and the 7.2, that leaves a ten square foot area (2' x 5') that could legally be inland wetlands. He believed that the wrack line is not the edge of Holly Pond. Holly Pond is mean high water which is rising, now at elevation 4.3, and is a legal ownership line. He added that if the 6.8 and 7.8 numbers are used, then the ten square feet of wetlands disappears. He mentioned that the bay window does not have a foundation and the wall of the building and the foundation is 57 feet away.

Mr. Hillman said that if the regulated area is violated, then it could stop work on the project and require an application to EPC to correct/restore or continue work in the regulated area.

Mr. Hammons said that the drainage systems' design meets the BMPs standards. All systems are secondary within the State 2004 Water Quality standards. It cannot be done due to avoiding work within the regulated area. Biofiltration is the primary recommended method per the State. The sequence of construction has various stockpile areas. It will be difficult, and a tight site to construct, but it can be done. There is a three foot minimum between the rows of silt fence and the silt fence will be subject to frequent inspection/maintenance. They are more likely to have impact to the environment during construction than after the project is finished. Mr. Ginsberg said that the rows of silt fence scale to be one foot apart. Mr. Hammons said that they will be three feet apart. He added that there will be no basement in the area closest to the wetlands.

Mr. Keating said that the temporary diversion is not shown on the plans. In response to a question, Mr. Hammons said that if he were sitting on the EPC, he would like a chance to review the plans.

Ms. Margaret Stefanoni said that she has been before the EPC three times previously. She said that the definition specifically excludes tidal wetlands, but others want the EPC to include tidal wetlands as part of Holly Pond. She said that on 8 North Road, the EPC said that they are not setting a

ENVIRONMENTAL PROTECTION COMMISSION
PUBLIC HEARING
MEETING MINUTES
JANUARY 11, 2006
PAGE 4

precedent, and did not make a definitive decision on jurisdiction. Two letters from DEP about docks may or may not be applicable. Unless one measures Holly Pond to include tidal wetlands, the Pond is 500' +/- from the project. She added that even if one accepts the 6.2 and 7.2 numbers and the ten square feet of inland wetlands, then there is still a strip of lawn, a wall, and the neighbors' driveway between her proposed building and the wetlands.

She said that on a recent Sunswyck Road project, there never was a question of jurisdiction. The applicants were proposing work in the wetland regulated area. They ended up with part of the proposed residence within the regulated area. The Tuck application in 2002 had proposed work within the regulated area from the beginning. Mr. Hillman then briefly mentioned the Queach case. Ms. Stefanoni said that on St. Nicholas Road, work was proposed within the regulated area, and the wetlands were quite large. She also mentioned an application on Greenleaf Avenue.

Ms. Stefanoni said that compared to these other project, this ten square feet of wetlands, which might be inland wetlands, is the size of a beach towel. Her proposed activity is more than 50 feet from the edge of these wetlands. Mr. Hillman responded that EPC has a past practice and habit on erring on the side of caution. He added that no two properties are exactly the same. Demolish a 2300 square foot building and construction 10 times the amount of impervious surface needs to be considered. Could it affect Holly Pond? The YMCA and First County Bank were not regulated by EPC. The overflow of treated water will go into the Town storm sewer system in Nearwater Lane. It is a "drop in the bucket" of the total water going through that system, all of which is untreated. Ms. Stefanoni added that if the Town regulates, then they have to do it fully and consistently. She said that the Schmidts across the street tied into the town system when they substantially expanded their house recently.

Mr. Flaherty said that the percent of impervious coverage is critical. Here, the great increase in development is proposed all at once. Ms. Stefanoni said that if the EPC regulates under the potential impact under Section 2.1.y, then they are regulating the town storm sewer system. Mr. Hillman said that this would be a judgment call, and this would be an extreme judgment.

Mr. Hillman said that it is not the size of the wetlands which is important, it is whether it is wetland soil or not. Mr. Stefanoni said that if one looks at the utility pole and the dark marks, the maximum size of the inland wetland is ten square feet.

There were no other comments or questions from the general public. Mr. Hillman thanked everyone for their high level of professionalism. Mr. Hutchison made a motion to close the public hearing on the matter. That motion was seconded by Mr. Lewis and unanimously approved. At 10:40 P.M., the EPC then took a recess until 10:52 P.M.

GENERAL MEETING

Discussion and possible decision by the EPC members about the Referral from the Planning and Zoning Commission about the proposed Nearwater Manor at 77 Nearwater Lane and discussion about the possible jurisdiction of the Environmental Protection Commission with respect to this project

ENVIRONMENTAL PROTECTION COMMISSION
PUBLIC HEARING
MEETING MINUTES
JANUARY 11, 2006
PAGE 5

Mr. Hillman explained that Mr. and Mrs. Stefanoni did the correct thing by filing an application with the Planning and Zoning Commission based upon the previous letters they had received from Nancy Sarner. The fact that they did not apply to EPC is totally explainable. He said that in his opinion, the neighbors also did the appropriate thing. He noted that EPC concerns are different from Planning and Zoning concerns relative to this application. He suggested to EPC members to use the January 9, 2006 staff memo as a roadmap with the salient regulations to be considered by the Commission.

Mr. Hillman then outlined issues relative to Section 2.1.y of the Inland Wetland and Watercourse regulations. He said that Michael Aurelia and Joe Risoli testified relative to this issue. He believed that the issue of impervious surface is a major concern relative to the context of the full application. He said that the EPC has authority to review this application. He said that he could not now ascertain if any measures would be needed to avoid affecting the wetland and/or watercourse. Mr. Hillman said that there will be activities 50 feet from the wetlands which may affect the wetlands, and there was convincing testimony that Holly Pond is a watercourse. He said this is expressly written into the EPC Inland Wetland and Watercourse Regulations. Mr. Hillman believed that the EPC does have authority and should see the application. He said that Section 2.1.y gives the EPC the right to review it and to ask about precautionary measures. He said the Michael Aurelia report is persuasive on the sensitivity and impact issues. Mr. Hillman explained that the inland wetlands were delineated by Mr. Kenny, and he does not want to see impacts to the wetlands or the watercourse. Mr. Lewis said it is important to determine how the regulated area will be protected during construction, and he needs more information on the watercourse impacts.

Mr. Flaherty said that he agrees with Mr. Hillman's summation, and that there is currently a 50 foot setback from inland wetlands. He wondered whether in determining jurisdiction it is consistent with past practice. For example, is there a threshold issue such as: 1) amount of impervious surface, or 2) location relative to Holly Pond. He agreed that Holly Pond is a watercourse, and he has defined it based upon mean high waterline. He also believed that the trenches are part of the watercourse, and there is going to be a lot of disturbed material going to one point. He is more concerned about the possible impacts to Holly Pond/the watercourse than the small wetlands identified.

Mr. Hutchison said that there were two letters from Nancy Sarner received by the Stefanonis. The interveners as part of this jurisdiction question had to make their case. He noted that the plans from the Stefanonis have changed throughout the process. He summarized by noting that the submitted plans recently received show four feet between the building and the likely construction activity. He said that the EPC should err on the side of caution in order to have an enforceable permit, and that the tides are impacting the EPC jurisdiction. He said that Mr. MacBroom's testimony was outstanding. Mr. Flaherty confirmed that this is a very difficult issue. Mr. Hutchison added that even the State of Connecticut DEP letters on jurisdiction were somewhat ambiguous.

Mr. Kenyon said that he agrees with Mr. Hillman, and that Holly Pond is a tidally influenced watercourse. He said that Section 2.1.y is important, and he agrees with the expert testimony that sea level is rising. He said that there is proposed a very intense usage of the property, and the high amount of proposed impervious surface is significant. He agrees that the EPC should err on the side of caution and require an application. Mr. Kenyon confirmed that under Section 2.1.y.1 there are no inland wetlands on the subject property, and he agrees with the flagging done by Mr. Kenny. Mr.

ENVIRONMENTAL PROTECTION COMMISSION
PUBLIC HEARING
MEETING MINUTES
JANUARY 11, 2006
PAGE 6

Flaherty said that he accepts Mr. MacBroom's analysis, and that elevation 7.2 is a reality. He believed that there is consensus on the wetland line. Mr. Hillman believed that the MacBroom elevation 6.2 finding was persuasive. All EPC members agreed with Mr. Hillman.

Mr. Hillman then said it is important to the general public to distinguish the prior letters from Nancy Sarner to the Stefanonis. He said that those prior letters were not dispositive, and they do not control any future application. He said that it was understandable that the Stefanonis applied to the Planning and Zoning Commission. However, upon closer analysis and the received expert testimony, the letters do not control the property. Mr. Kenyon agreed, noting that as time progresses, the "state of the art" changes, and the EPC is now more knowledgeable regarding the wetlands and tidal wetlands in this area. The context of the letters is different, and in fact one letter had a caveat within it. Mr. Flaherty mentioned that there was no specific development plan before Nancy Sarner when she was writing those letters. Mr. Hillman believed that the EPC decision in this matter will not be arbitrary. He also agreed that the EPC will not exert joint jurisdiction with the State, and he rejects the concurrent jurisdiction argument put forth by Attorney Wilder Gleason and others. He said that Mr. Murphy's letter said that the EPC and the DEP do not have joint jurisdiction. He said that he agrees with the finding that there are some wetlands above Elevation 7.2. He noted that the changing plans are difficult to understand. However, he notes that the retaining wall has been removed from the revised plans. Mr. Flaherty said the plan revisions do not impact the bottom line. Mr. Hillman reiterated that the EPC did not incorporate the Planning and Zoning Commission record in this matter. He said that the EPC could not conclude that all activity will be beyond 60 feet from the wetlands, which could affect the 50 foot area. He noted that the property slopes generally toward the south. He said that an environmental impact plan would be needed to assess the Holly Pond area, as this is all an interconnected eco-system. There may be a ripple effect. Mr. Hutchison added that Mrs. Stefanoni's comments on storm water discharge are worthy of further inquiry. Mr. Flaherty then asked EPC members what triggers Section 2.1.y relative to impervious surface, location near pond, or the change in the amount of impacts. Mr. Hillman agreed that there are no obstructions proposed and no septic systems proposed for this application.

Relative to Section 2.1.y.4 of the Inland Wetlands Regulations, Mr. Flaherty said that the edge of Holly Pond is Elevation 4.3. Mr. MacBroom confirmed that mean high water line is ticking upward, and that he found the Hammonds' testimony credible at Elevation 4.3. Mr. Flaherty noted that the trenches are at Elevation 3.7, which are 155 feet from Holly Pond. Mr. Hillman said that Section 2.1.y gives the EPC authority to consider the impact regardless of the distance, and that they need to know more. He said that any decision should include answers to these questions. He said that the applicant would need to establish a number of areas.

Mr. Hillman said that he agrees with Mr. MacBroom's description of Holly Pond, with Mr. MacBroom's assessment that Holly Pond is not a tidal wetland, and with his finding that there is no tidal wetlands vegetation. He noted that a tidal pond and a tidal wetland are separate. He also agrees with Mr. Aurelius that trenches are part of the watercourse. Mr. Hutchison noted that the intervener issue needs to be addressed as part of this decision. Mr. Hillman noted that it is through the interveners that the EPC came into this question. Mr. Flaherty said that the elevation of Wetland Flag 2 and Wetland Flag 3 show the upper limits of wetlands. He said that all the experts agree that this is very close. He noted that EPC regulations are not ambiguous. Mr. Flaherty also referred to the material from the EPA website, which is attributable to the Holly Pond concern.

ENVIRONMENTAL PROTECTION COMMISSION
PUBLIC HEARING
MEETING MINUTES
JANUARY 11, 2006
PAGE 7

EPC members then went through the separate questions, including Section 2.1y. a-d. They then answered specific questions relative to Section 2.1.y.1 a-c and 2.1.y.4 a-d. They agreed to meet again on January 18, 2006.

There being no further business, the meeting was then adjourned at 12:12 a.m.

Respectfully Submitted,

Jeremy B. Ginsberg
Planning & Zoning Director

David J. Keating
Assistant Director

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