

**ENVIRONMENTAL PROTECTION COMMISSION  
MINUTES  
GENERAL MEETING  
September 7, 2005**

Room 206, Town Hall

7:30 PM

**Commission Members Present:**

Chairman Peter Hillman, Ellen Kirby, Nina Miller, Reese Hutchison, Ned Lewis, Susan Cameron, Pete Kenyon

**Commission Staff Present:** Assistant Director of Planning, David Keating

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**Old Business:**

**Discussion regarding the Darien High School Project, EPC-49-2001, Board of Education, 80 High School Lane.**

Nobody was present to discuss this item.

Mr. Hillman then read the next agenda item:

EPC-49-2005, Wilder Gleason Esq. of Gleason, Hill & Ambrette, LLC on behalf of Thomas L. Kelly, Jr., 58 Sunswyck Road PUBLIC HEARING CONCLUDED 8-17-05

Commission members reviewed the draft resolution prepared by Mr. Keating. They then discussed a number of modifications to the resolution, and addressed the issues of tying into the sanitary sewer system sometime in the future, and bonding the project. Ms. Cameron made a motion to adopt the resolution as amended. That motion was seconded by Mr. Hutchison, and approved by a vote of 6-0, with Mr. Hillman abstaining. The adopted resolution reads as follows:

**RESOLUTION ADOPTED BY THE DARIEN  
ENVIRONMENTAL PROTECTION COMMISSION  
SEPTEMBER 7, 2005  
EPC 49-2005  
THOMAS L. KELLY JR.  
58 SUNSWYCK ROAD**

On behalf of Thomas L. Kelly, Jr. of 58 Sunswyck Road, an application has been submitted to the Environmental Protection Commission by Attorney Wilder Gleason. The application involves the proposed subdivision and development of the property at 58 Sunswyck Road in Darien. There is an existing single family dwelling located on the southerly portion of the site. The applicant proposes to subdivide the property into two building lots. The northerly parcel is labeled as Lot B and would contain 1.01 acres of land, including a pond that is sometimes referred to as a vernal pool, the wetlands around the pond, and a watercourse that drains out of the pond.

The structure proposed on Lot B appears to comply with the Darien Zoning Regulations with respect to zoning setback requirements, but it would be located within 50 feet of the pond and the small watercourse.

A public hearing was started by the Environmental Protection Commission on July 6, 2005 and was continued on August 3rd and concluded on August 17, 2005. As a result of the discussions at the

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first two public hearings, the applicants submitted additional information to respond to the issues and concerns raised by the Commission and the neighbors. In particular, revised site plans and planting plans were submitted on August 16, 2005. These drawings depict alternative 5 as a site plan and as a planting plan. The proposed house and garage would be located within the 50 ft. regulated area around the pond and up against the regulated area of the watercourse. A terrace/patio to the east and southeast of the house would be located within the regulated areas. The proposed driveway of alternative 5 leads directly to Sunswyck Road. Alternative 6 Site Plan and Planting Plan has the same house configuration and terrace configuration. The difference of alternative 6 is that the driveway leads due north and would join into a common driveway used by other property owners.

The alternatives discussed in the August 3rd and August 17th public hearings were devised to minimize impact upon the neighboring property owners, although some of the activity for the house construction and terrace would be within the regulated areas.

At the public hearings, the Commission members and neighbors expressed concerns about the proposed impacts upon the pond, wetlands and watercourse as well as the size and scale of the house and the location and safety of the driveway. There was considerable discussion regarding the appropriate size of the house and the alternate driveway locations. The Commission concluded that the driveway location, whether it is directly to Sunswyck Road or into a common driveway used by other property owners, is outside of the regulated jurisdiction of the Environmental Protection Commission and it is not appropriate for the EPC to make a decision with respect to the specific driveway location. That decision will be left to the Planning & Zoning Commission as they review the other aspects of the proposed development.

Commission members recognize the limited development capability of this property due to its size, shape, topography, the wetlands, watercourse and pond, and the need to have an on-site septic system.

The Commission eventually concluded that, from an Environmental Protection Commission perspective, the proposed limited filling and regrading and very restricted house size and the fact that considerable wetland mitigation would be undertaken as part of the project, that the proposed alternatives 5 or 6 are acceptable to the Commission and seems to be the optimal, feasible and prudent alternative for the reasonable use and development of the subject property.

Based on that finding, the Commission hereby approves the application in accordance with the most recently submitted drawings, plans and application materials and subject to the following conditions and stipulations:

1. Development of proposed Lot B shall be in accordance with the Site Plan and Planting Plan Number 5 or Number 6 (the only difference being the location of the driveway) as submitted on August 16, 2005. The schematic drawings do not include dimensions from the wetlands to the proposed activity. So that there is no question in the future, the following dimensional requirements shall apply: The minimum distance from the wetlands located on the west side of the pond to the closest portion of the proposed house and/or garage shall be 33 feet and the minimum dimension from the wetlands to west of the pond to the outside edge of the terrace/patio support wall around the house shall be 25 feet. Also, the minimum distance from the wetlands near the watercourse to the southeast portion of the house shall be 50 feet and the minimum distance from the wetlands near the watercourse to the outside edge of the

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terrace/patio support wall shall be 35 feet. In addition, the minimum distance from the closest portion of the 36 in. sweet gum tree located southeast to the southern most portion of the proposed terrace/patio support wall shall be 10 ft. and the minimum distance from the retaining wall near the septic system to the 30 inch sweet gum tree located to the south shall be 10 ft. No more than a 5 ft. temporary disturbance area on the outside of the retaining wall and/or house shall be permitted at any time and the temporary disturbance area shall be restored with natural vegetation that shall be allowed to grow wild rather than any lawn or high maintenance vegetation.

2. The Commission notes that the proposed house construction and septic system installation and driveway installation seem to maximize the development potential of the property based on the constrictions imposed by the Zoning Regulations with respect to setback requirements, the slope and grade of the terrain, the wetlands and watercourses on the property and the need for an on-site septic system. The amount of development authorized by the Commission at this time should not be expanded upon or extended closer to the wetlands or to have any additional structure, building, deck, patio, terrace, lawn or other development as close to the wetlands as those being approved at this time. Although the plan calls for a proposed 5 bedroom residence, that is the maximum size allowed and is not to be considered 'a right' to have a house with that many bedrooms. If there is a need to modify any dimensional requirements, it is the house and/or terrace and/or septic system that need to be reduced. The distances from the wetlands and trees noted herein shall be the absolute minimum distances permitted to development activity. If the site development proposed by the applicant does not "fit" as proposed, then the intensity of the development is to be reduced rather than having the development further encroach into the regulated area protecting the wetlands and watercourses.
3. Critical for the approval of this plan of development and application, a considerable wetlands mitigation project to deal with the pond has been proposed by the applicant. It involves removal of debris from the pond, revegetation of the pond and surrounding area, and allowing a storm water runoff from the development activity to be placed into infiltrator structures to be located under the terrace so that the water could then drain toward the wetlands. This mitigation plan is shown on and described in detail on the drawings submitted at the August 17, 2005 public hearing and entitled "Kelly Subdivision 58 Sunswyck Road, Darien, Conn Enhancement Plan" Enhance 5 or 6, prepared by Stearns and Wheler, dated August 2005, Sheet #8 and "Kelly Subdivision 58 Sunswyck Road, Darien, Conn Water Quality Detail" prepared by Stearns and Wheler, dated August 2005 Rev (Sheet #) 9. Prior to the issuance of the Zoning Permit for the residence, the applicant shall complete the wetlands mitigation work, including the cleaning of the pond and planting of the vegetation (but obviously not the installation of the drainage in the terrace/patio). Frequently, wetlands restoration work is postponed until the end of the construction project, but in this case, since there will be no construction activity allowed in or close to the pond or wetlands surrounding the pond, and since the access to the wetlands will be unaffected by the construction, it is appropriate and required that the wetlands mitigation/restoration work be completed before the Zoning Permit is issued for the work on the proposed residence.
4. A performance bond shall be posted with the Planning and Zoning Office to ensure that the wetland enhancement and planting plan is completed according to the above mentioned approved plans and the compliance with this approval. The bond shall be in the amount of \$3,000 and shall be submitted by March 7, 2006 and prior to commencement of the work.

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The bond shall be held for at least two (2) growing seasons. Half of the amount shall be returned after the first growing season (no earlier than one year after the work is completed). The remaining amount shall be returned after the house and all site development activity is completed and at least at the end of the second growing season to ensure that the new plantings are established. Any diseased or dead plantings must be replaced. Once the wetlands mitigation work is completed, the applicant shall provide written certification from the environmental consultant verifying that the work has been completed in accordance with the plans approved as part of this Permit.

5. There has been some discussion about the possible extension of the sanitary sewer system into this neighborhood. If extended, the sewers could eliminate the need for an on site septic system on this property. At the time when the construction of the new house is to start, if sanitary sewers are available, or are likely to become available in the foreseeable future, then the owner shall utilize sanitary sewers instead of the on site septic system.
6. Prior to the issuance of the Zoning Permit, the applicant must submit a detailed site plan showing the proposed house and patio/terrace configuration in accordance with alternative 5 and/or 6 and including; a detailed tree protection plan; a detailed storm drainage plan for the entire site; and a detailed sediment and erosion control to protect the pond, wetlands and watercourse.
7. This Permit is valid for 5 years, until September 7, 2010 **but once the work within and adjacent to the wetlands has been started, that work must be completed within one year.**
8. During the construction work, sediment and erosion controls shall be installed and maintained to avoid the discharge of sediment or eroded material into the adjacent wooded area and/or wetlands and watercourses.
9. The Permittee shall notify the Environmental Protection Commission prior to the commencement of the work activity and once the erosion controls have been established. The Commission staff shall inspect the erosion controls to make sure that they are sufficient and as per the plan and site conditions. All sediment and erosion control measures must be maintained until all disturbed areas are stabilized and revegetated.
10. The work activity is limited to that which is shown on the submitted and approved plans as modified herein. Any requested modifications or changes need to be submitted to the Commission for further review and action.
11. No equipment or materials, including, without limitation, fill, construction materials, debris or other items may be deposited, placed, or stored in any wetland, watercourse or the regulated setback around wetlands and watercourses.
12. Once the foundation for the house has been installed, the applicant shall submit an As-Built survey map prepared by a licensed land surveyor to verify that the construction activity complies with the plans submitted and approved by this Commission and with these conditions and stipulations. A similar As-Built map shall be required to verify that the terrace/ patio has been completed in accordance with this approval and that the storm drainage system has been installed as per the plans and this approval. A final As-Built

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survey of the entire developed site condition is required prior to the issuance of a Certificate of Zoning Compliance and/or use of the structure.

13. The Commission notes that the design proposed by the applicant and approved by the Commission, leaves no backyard play area and the only lawn area would be to the west and southwest of the house in what would be considered a front yard. This is a result of the applicant's desire to maximize the development of the house. No regrading or lawn or play area or tree/vegetation removal or other development activities of any sort are permitted to the east or southeast or south of the proposed house because those activities would be increased encroachment into the regulated area and would be located on steep slope areas and would endanger the vegetation in those areas and the adjacent wetlands, pond and/or watercourse.
14. The Commission has based its action upon the representations made by and the plans and materials submitted by the applicant and his representatives and if any of the plans or representations are false, deceptive, misleading, or inaccurate, the Commission reserves the right to void the Permit. Such action shall not be taken by the Commission unless and until a public hearing is conducted at which time the applicant shall be given the opportunity to explain the situation.
15. This Permit does not relieve the applicant of their responsibility to comply with all other applicable rules, regulations, and codes of other Town agencies or other regulating agencies. The subdivision of the property into two separate parcels is subject to the jurisdiction of the Planning & Zoning Commission. Although the Environmental Protection Commission has approved the Permit application for activities within the jurisdiction of the Environmental Protection Commission, no such activities can take place unless and until the applicant obtains all necessary Permits and approvals from the Planning & Zoning Commission.
16. This Permit is not transferable without written approval from the Environmental Protection Commission. The person to whom the Permit is to be transferred must confirm in writing to the Commission that they are fully aware of the responsibilities involved with the implementation of the Permit and that they will be the person responsible for the proper use of the Permit.

Mr. Keating noted that the next item had been postponed until next month at the applicant's request.

EPC 73-2005, Environmental Land Solutions on behalf of David & Rhonda Sherwood, 55 Pembroke Road, proposing to remove existing trees, get permission for unauthorized tree removal, add landscape improvements and perform related site development activities within a regulated area. The subject property is located on the north side of Pembroke Road, approximately 1,500 feet east of its intersection with Mansfield Avenue, and is shown on Assessor's Map #1 as Lot #6.

Mr. Hillman then read the next agenda item:

EPC 77-2005, Laurie Tuck, 29 Tulip Tree Lane, proposing to remove trees, and perform related site development activities within regulated areas. The property is located on the southwest side of Tulip Tree Lane approximately 768 feet west of the intersection of Raymond Street and Tulip Tree Lane, shown on Assessor's Map #33 as Lot #57A.

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Mr. Tuck, and Rocco and Rocco Jr. of Darien Tree Service, LLC, were present to discuss the application. They noted that the front of the property is designated as wetlands soil. The far back of the property is also wetlands. A previous application for additions to the existing residence were approved by EPC, but that application made no mention of any tree cutting to be done at that time. There are five trees proposed to be cut within wetlands and/or the wetlands regulated area.

Tree #1 is located in the wetlands. Tree #4 is an oak tree to be pruned, and not removed. Tree #2 is a maple tree which is leaning at a 45 degree angle towards the house. More than half of it needs to be removed. There is no counterbalance away from the house. Tree #3 is a maple tree which is old and damaged, and they need to remove the top. It too, is leaning towards the house. Tree(s) #5 consists of two oak trees near the neighbor's property. The large fungus at the base indicates decay.

EPC members asked whether any plantings will be done for remediation. Mr. Tuck replied that the proposed tree cutting is a small percent (approximately 8%) of all the trees now on-site. The other trees already in the area will grow better once these are removed. They are, however, willing to plant more trees if required to do so. Ms. Cameron said that the proposed removal of trees in the wetlands will leave a large gap.

Rocco, Jr., said that they can do a resistograph test to determine the trunk wood density. They can also develop a replanting plan. He can always try to save all of the old trees, but he witnessed a lot of damage and destruction.

Mr. Kenyon then made a motion to approve all of the proposed tree removal, except for Tree #1, with the condition that all stumps be flush cut, not grinded or removed. That motion was seconded by Ms. Cameron and unanimously approved.

At approximately 8:10 P.M., Mr. Hillman then read the next agenda item:

**EPC-78-2005, David & Barbra Bell, 50 Buttonwood Lane**, proposing to modify the driveway, expand/extend the existing lawn area, install a fence, selectively thin saplings within wetlands, and related activities within the regulated area. The property is located on the south side of Buttonwood Lane approximately 630 feet east of the intersection of Buttonwood Lane and Mansfield Avenue, shown on Assessor's Map #10 as Lot #48.

Mr. Bell, and Geoffry Mideleer of Silvia F. Erskine Associates, LLC, landscape architects were present to discuss the application. The application includes a proposal to install a driveway in the front of the property within a regulated area; and some new lawn and fence in the side yard also in the regulated area; and removal of poison ivy. The old driveway was to the east of the house. The new driveway to the west could impact the root zone of large trees. Mr. Bell said that his young sons go into the woods and down to the brook. He wishes to thin out the underbrush on the west side of the brook, and there is no planting plan for this area. Mr. Mideleer said that they are proposing a fence along the wetlands, which will be post and beam with wire.

The EPC asked about more details regarding the thinning/clearing of vegetation and the proposed fence. It was noted that shifting the driveway farther to the east and farther from the wetlands would be an alternative, but would mean losing the apple tree. Various alternatives were then discussed.

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Mr. Middleleer said that they are partially impacting the roots of the oak, which could affect the tree, but part of the problem of shifting to the east is that it will require removal of the apple tree. They could eliminate curbing along the driveway to eliminate some of the excavation associated with the project.

Mr. Hillman then made a motion: To approve the application with the following conditions and modifications: move the driveway five feet to the west; no curbing to be installed in the vicinity of the oak tree; the work around the oak tree be done by hand; the fence is not to be painted on-site; and the applicant can remove the poison ivy and choke vines, but not the saplings or any other vegetation. That motion was seconded by Ms. Cameron, and approved by a vote of 6-1, with Mr. Hutchison voting against it.

Mr. Hillman then read the next agenda item:

EPC 79-2005, Ryan Salvatore for property of the Boccarosse Family, 3 Richmond Drive, proposing to remediate / clean up the property, construct a single-family residence, and restore the wetlands, clarify the Town Wetlands Map and perform related site development activities within a regulated area. The subject property is located on the west side of Richmond Drive, approximately 120 feet north of its intersection with Boston Post Road, and is shown on Assessor's Map #13, as Lot #7.

Attorney Wilder Gleason was present on behalf of the contract property owner. He said that they need to prepare a drainage plan and do site remediation/clean up. Mr. Gleason said that this lot was the result of a 1948 Subdivision, and the lot was never developed. They need to correct the survey map with respect to the size and shape of the existing wetlands on the property. They are also proposing to create new wetlands to compensate for the wetlands proposed to be filled. They will be reducing the lawn on the south side of the property. They are considering whether to submit a joint EPC application with the adjacent property owner Tom Sniffen to fill in the ditch on the north and create a landscaped buffer. All EPC members agreed that it would be appropriate to schedule a public hearing on this matter for October 5, 2005.

At approximately 9:00 P.M., Mr. Hillman then read the next agenda item:

EPC 80-2005, Paul & Mary Richardson, 19 Allwood Road, proposing to dredge an existing pond and perform related site development activities within a regulated area. The subject property is on the south side of Allwood Road, approximately 700 feet west of its intersection with Inwood Road, and is shown on Assessor's Map #8 as Lot #304.

Ms. Cameron said that she had recently visited the site with Ms. Miller. It was noted that there was no complete survey or map of the entire site. Mr. Richardson mentioned that the pond does not have a real outlet. There being no further questions or comments from Commission members, Ms. Cameron made a motion to approve the project. That motion was seconded by Ms. Miller, and approved by a vote of 6-0, with Mr. Kenyon abstaining. Ms. Cameron volunteered to serve as a subcommittee of one on this matter.

Mr. Hillman then read the next agenda item:

EPC 81-2005, Darien Public Works Department, for properties at 309 Middlesex Road and 11 Holly Lane, proposing to install a pipe and perform related site development activities within a regulated area. The subject properties are located as follows: 309 Middlesex Road, owned by VR

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Associates, LLC, is located on the north side of Middlesex Road, approximately 200 feet west of its intersection with Leroy Avenue, and is shown on Assessor's Map #9 as Lot #72. Wesley and Kristine Depp own 1 Holly Lane, which is located on the east side of Holly Lane, approximately 550 feet north of its intersection with Middlesex Road, and is shown on Assessor's Map #9, as Lot #146.

Mr. Darren Oustafine, Assistant Director of Public Works, was present to discuss the application. He said that the subject application is to install a pipe. Hopefully, the combination of the new pipe to be installed by the Town and the cleaning out of a brook by the private property owners will alleviate future drainage problems. Mr. Oustafine confirmed that he will modify the plan to pull the flared end inlet back into the existing easement to allow better inflow and it would be less visible from the Depp property. This will result in eight less feet of pipe.

Ms. Cheryl Russell was present, and said that she is a neighbor to this project. She had reviewed the plans, and had her questions adequately answered by Mr. Oustafine. There being no further questions or comments from the general public or Commission members, Mr. Hillman made a motion to approve the application. That motion was seconded by Ms. Cameron, and was unanimously approved.

**Approval of Minutes**  
July 6, 2005 Meeting

Mr. Hillman made a motion to approve the meeting minutes of July 6<sup>th</sup>. That motion was seconded by Mr. Kenyon and approved by a vote of 6-0, with Ms. Cameron abstaining, as she was not at that meeting.

**Any Other Business** (Requires two-thirds vote of Commission).

The Commission then unanimously voted to go into other business to discuss five matters.

1. **Amendment of EPC #51-2005, Murphy, 35 Rocaton Road.**

EPC members reviewed the letter requesting placement of a propane tank within a regulated area. The Commission then approved location "A" for the propane tank as described, but also agreed that Option "B" was also viable. Mr. Hillman made a motion to approve the request, seconded by Mr. Hutchison. That motion was unanimously approved.

2. **Slack property, Runkenhage Road.**

EPC members discussed the recent septic system repair/replacement on the subject property. They all agreed that requiring a full EPC application would be appropriate and necessary, and they were willing to waive the application fee due to the nature of the situation. Mr. Hillman then made a motion: To require an EPC application for the recent septic system repair/replacement at the Slack property. That motion was seconded by Ms. Miller, and unanimously approved.

3. **Requested Modification of EPC 66-2005, Morrow, 57 Deepwood Road.**

Mr. Keating noted that a letter was received from William W. Seymour and Associates dated August 12, 2005, requesting a modification of the prior EPC approval. EPC members agreed that this would be appropriate for discussion at their October 5, 2005 meeting.

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4. **Requested Modification of EPC 4-2004, Durkin, 5 Mystic Lane**

Mr. Keating noted that a letter was received from William W. Seymour and Associates dated August 15, 2005, requesting a modification of the prior EPC approval. EPC members agreed that this would be appropriate for discussion at their October 5, 2005 meeting.

5. **EPC 40-2003, Marianne & Eugene Lauer, 319 Middlesex Road.**

Mr. Keating noted that an August 11, 2005 letter had been received from Ms. Lauer. Ms. Cameron volunteered to visit the property and prepare a report for the EPC's consideration at their October 5, 2005 meeting. Ms. Cameron confirmed that she will not be at that meeting, but will submit the report at least one week prior.

There being no other business, the meeting was adjourned at 10:05 PM.

Respectfully submitted,

David J. Keating  
Assistant Planning & Zoning Director