

ENVIRONMENTAL PROTECTION COMMISSION
MINUTES
EXECUTIVE SESSION, GENERAL MEETING & PUBLIC HEARING
APRIL 21, 2004

The General Meeting was called to order at 7:30 p.m. in Room 119 of the Darien Town Hall.

Commission Members Present: Peter Hillman, Susan Cameron, Robert Kenyon and Nina Miller

Commission Staff Present: Nancy Sarner

Court Monitor: Bonnie Siatta

Executive Session: Room 213

The Environmental Protection Commission met in closed Executive Session with Town Counsel to discuss pending litigation. Planning Director Jeremy Ginsberg and Environmental Analyst Nancy Sarner joined them.

General Meeting:

Chairman Hillman opened the General Meeting at 8:30 p.m. in Room 119. He explained that it is the Commission's prerogative to address items out of order, and read the following agenda item:

EPC 24-2004, Richard & Robin Woods, 137 Five Mile River Road, proposing a stone and concrete retaining wall on the seaward slope of the property for erosion control purposes and perform related site development activities within a regulated area. The property is located on the east side of Five Mile River Road approximately 1,150' south of the intersection of Davis Lane and Five Mile River Road, shown on Tax Assessor's Map #67 as Lot #65.

Jeffrey McDougal of William W. Seymour & Associates was present on behalf of Mr. and Mrs. Woods.

Chairman Hillman asked the Commission members if they found the application to be complete. Ms. Cameron replied that she would like to see low and high tide photographs and alternate designs. Mr. McDougal stated that there were no alternatives except to build closer to the water since the shoreline is eroding and losing soil. Ms. Cameron explained she would like to see an alternative to the use of fill. Mr. McDougal explained that they proposed to use a minimal amount of 3 cubic yards. Ms. Cameron asked if something other than sod could be used, such as concrete. Mr. McDougal replied that sod was the better solution for the top area. Ms. Cameron explained that she is concerned that the fill would erode into the river. Mr. Hillman said that Ms. Cameron made a good point. He stated that the Five Mile River is a valuable resource and of significant public interest. He said that public notice should be given and review placed on record. Mr. McDougal said that the project would receive a public hearing for coastal site plan

review before the Planning and Zoning Commission. Mr. Hillman explained that he feels the EPC should also hold a hearing. Ms. Sarnier added that the Planning and Zoning Commission has different review criteria, such as they do not consider feasible and prudent alternatives.

In response to a question, Mr. McDougal reviewed the location of the previously approved stonewall. He said that there is currently no wall on the ledge, but that the photographs from the 1930's and 1940's show a previously existing wall in that location. Mr. Hutchison asked that alternative to grass sod be considered. He noted that the EPC had a hearing for the existing new stonewall. Ms. Cameron recommended that photographs be provided. Mr. Roberge, P.E., said the photographs had been submitted with the application packet. Ms. Sarnier reviewed the file, and after not finding file photographs, suggested that they had been given to the Planning and Zoning commission.

Mr. Hillman moved that the application be scheduled for a Public Hearing for the May 19, 2004 meeting. The motion was seconded by Ms. Cameron, and unanimously approved.

Chairman Hillman read the following agenda item:

EPC-21-2004, Boulder Ridge, Inc., Old Oak Road, proposing the regrading and restoration of a stream corridor to eliminate a man-made pond, drainage improvements, removal of invasive plant species, planting of native wetland species, and perform related site development activities within a regulated area. The property is located on the west side of Old Oak Road at its intersection with Leeuwarden Road, and is shown on Tax Assessor's Map #29 as Lot #128.

Woody Oldrin of Round Meadow Landscapes was present of behalf of Boulder Ridge Inc.

Ms. Cameron announced that Mr. Oldrin had recently joined the Darien Land Trust, which she is also a member, and stated that she believes she can be impartial and sit for the application. There were no objections.

Mr. Hillman said he had concerns regarding authorization and permission from the homeowners association. He referred to Ms. Sarnier's memorandum that the association had not reviewed the final plans. He added that the application proposed significant activity that is a matter of public interest. He recommended that a Public Hearing be scheduled so public notice is given. He said that it would give the application time to clarify the project scope.

Mr. Hillman said he would like clarification of who the property owner is and what the role of the homeowners association is. Mr. Oldrin explained that Boulder Ridge Inc., property owner, is the homeowners association. Mr. Hillman explained that a member of the association informed Commission staff during an office visit that he had not seen the plans. He asked that more information regarding the association be provided, and make sure no disconnect between the association's plan and the application submittal. Ms. Miller asked that the watershed be reviewed, noting question about where the pipe originate, especially the southeast corner pipe. Mr. Oldrin replied that it comes from the catch basin. Mr. Hillman asked the photographs be

submitted. Mr. Oldrin said that the trees to be removed have been flagged on the site. Ms. Miller asked for more information regarding the proposed playground equipment. Mr. Oldrin said that the equipment is not part of the application. Ms. Sarnier suggested that the materials be clarified to address only what is proposed under the current application, including the report by Stearns & Wheler, LLC.

Jim Betson of Boulder Ridge Inc., also referred to as the Boulder Ridge Association, explained that they have worked on the plans for one and half years and had distributed plans, which received a majority vote, including by member Rob Swain. Mr. Hillman said that the application may eventually be approved by the Commission, but as submitted, appears to be disconnect.

Mr. Hillman moved that the application be scheduled for a Public Hearing for the May 19, 2004 meeting. The motion was seconded by Ms. Miller, and unanimously approved.

Chairman Hillman read the following agenda item:

EPC 23-2004, Aldo Chiamulera, 25 Circle Road, proposing the construction of a mudroom addition and perform related site development activities within a regulated area. The property is located on the southeast side of the Circle Road cul-de-sac, approximately 2,200' south of the intersection of Circle Road and Old Kings Highway North, shown on Tax Assessor's Map #33 as Lot #50.

Mr. Hillman noted that the proposed mudroom would be $\pm 29'$ from the wetlands and asked if there is a more feasible and prudent alternative, such as the south side of the residence, closer to the pool. Scott Duffield, Architect, replied that there is no other area that has a direct access to the second floor, and the proposed design is a cost effective way to do the project. He added there is no portal on the south side where it is below grade.

Ms. Cameron said she had concerns with the proposed site plan, specifically that the brook is not shown. Her concerns regarding existing site conditions included the considerable amount of fill along the chain link fence, the erosion along the driveway, accumulation of leaves blown into the wetlands, and stumps used to support soil and construction fill already down into the regulated area. She said she was concerned before even look at the proposal. Mr. Hillman asked about the brook's location. Ms. Cameron indicated that the brook flowed east-west along the wetlands line. She said she wanted to see previous files, and asked about the ongoing construction. Mr. Duffield explained that they added windows to an existing screened porch, and added a room over the deck. Mr. Chiamulera explained that they used the same foundation. Ms. Cameron said it looks like the construction would cover the deck. Mr. Duffield replied that they are not covering the deck. Mr. Duffield said that under the Zoning Regulations they are allowed 2' architectural details. Mr. Hutchison said that 2' seems extensive. Mr. Duffield said that, since the existing foundation was solid enough to support the new construction, the intent was not to encroach upon the regulated area. Ms. Cameron said need to address how to get rid of the fill. Ms. Sarnier said it should be determined if the fill was permitted under the approval for the pool.

Mr. Hillman recommended that the application be continued to the May 5, 2004 meeting in order to receive an updated site plan showing the brook, driveway and all existing conditions, and photographs of the activities and issues of concern, including the erosion near the driveway and the fill near the chain link fence. He added that Commission staff will determine compliance with the pool approval.

Mr. Hutchison noted that the approved pool plan shows a boulder wall, and asked if it was installed. Mr. Chiamulera claimed that he did not deviate from the approval. Mr. Hillman said that staff would look into this issue.

Mr. Hillman asked for an outline of any activity within the protected area. Ms. Cameron recommended that an engineer review the existing site problems, and formulate a solution to the erosion problem, and alternatives to the stumps that are retaining soil. She said her concerns included unprotected catch basins, and the deposition of leaves within the wetlands. Ms. Miller said that the site is littered and should be cleaned. Mr. Hillman said would like to see a comprehensive plan to address the existing site problems, so that the issues can be addressed before the Commission makes a decision regarding the mudroom. Mr. Hutchison said that it is important that the Commission makes sure the site conforms with past permit approvals.

The Commission decided to continue the application to the May 5, 2004 meeting.

Public Hearing:

Chairman Hillman read the following agenda item:

Amendment of EPC-78-2003, Edward Piorkowski, 152 Old Kings Highway North, proposed modification of the approved plan to relocate the pool, pool patio and fence denied under the original application, relocate the approved barn, and perform related site development activities within a regulated area. The property is located on the north side of Old Kings Highway North approximately 340' west of the intersection of Wakeman Road and Old Kings Highway North, shown on Tax Assessor's Map #32 as Lot #26.

Edward Piorkowski was joined by Michael Fishman, PWS, of Stearns & Wheler, LLC. Mr. Fishman reviewed that the previous 2003 plan submission which proposed a pool and patio 35' and 41' from the wetlands, respectively, and 724 square feet of disturbance within the regulated area. He said that the 2003 drainage report found that there would be no significant increase in runoff so no retention was required, and that the Commission approved the balance of the proposal, except for the pool and surrounding terrace. He said they developed a new plan, which proposed the straightening of the western property line to create a 15' side-yard zoning setback for the rear western lot line. Mr. Hillman clarified for the record that any approval needs to be based on a legal and valid survey, and that it is nice for the neighbors to verbally agree, but the lot line adjustment needs formalization prior to the implementation the proposed permit amendment. Mr. Fishman explained that the pool has been shifted away from the wetlands and the terrace has been narrowed. He said that the ± 520 square foot pool is minimal size, and is ± 42.4 square feet smaller than the original proposal. The width of the terrace was decreased to

4'. The new plan proposes ± 424 square feet of impact area within the regulated area. The amendment proposed the terrace and the pool 42' and 46' from the wetlands, respectively. He said he resubmitted the old drainage report because the amendment proposed a smaller impact area, and effect would still be nil. He said that the fence would be installed within the easement. A 3' right-of-way would be created within the easement for the installation and maintenance of the fence.

Mr. Fishman explained that infiltrators shall be installed on each side of the pool to allow the percolation of water and the terrace to act as a permeable area. Mr. Hutchison asked about the infiltration capability of the soils. Mr. Fishman said that the soils are not compacted, and that the infiltration depends on the existing subsoil conditions. He explained that the infiltrator units would be installed approximately 3' below grade and that crushed stone would be placed on top to support the terrace. He added that the weight of the concrete not affect the infiltrators, and will protect is from ice heaves.

Mr. Fishman said that silt fence would be used during construction, and noted that a general detail of the infiltrators is shown on the plan.

Ms. Miller said that it was innovative to change the lot line in order to reduce the zoning setback for the rear portion of the side yard. Mr. Piorkowski said that his neighbor is excited to see progress made on the property.

Mr. Fishman explained that he asked Mr. Ginsberg, Planning and Zoning Director, about the chances of receiving a setback variance for the barn from the Zoning Board of Appeals (ZBA). He reported that Mr. Ginsberg told him that his chances would be less than 30-percent for an approval, so it would not be prudent to seek a variance. Mr. Hillman noted that other alternatives are discussed within the Stearns & Wheler report.

Mr. Hillman reported that he spent forty to fifty minutes at the subject property on the previous Sunday, which followed three dry days. He stated that although the rains ended on Thursday, the property was wet. He said that it is an unusual site with massive ledge in the back and wetlands in the middle of the property, and a slope towards Old Kings Highway South. He said a lot of work needs to be done, and he glad that the wetland remediation plan had been approved. He said he did not see a more prudent and feasible alterative to the proposed amendment, and that he is impressed with the lot line change. He said that the Commission is cautious about luxuries within regulated areas and he stands by the wording of the original permit resolution. He feels that the changes to the land and to the plan are so dramatic and significant to support the approval of the amended pool design. He said he does not see significant impact with the changes as posed under the original proposal.

Mr. Hillman asked for comments from other Commission members.

Ms. Cameron stated that the infiltrator would be helpful, but that her concerns regarding the wet site conditions remain. In response to a question, Mr. Fishman stated that the wet conditions are not the result of a high groundwater table, but that the site does stay wet for days. Ms. Cameron

said she was concerned that the infiltrators would be set on clay. Mr. Fishman said that soil report does not indicate that the clay is present in the areas of the infiltrators. He said that the surface characteristics were different from the subsurface, and that there has been significant compaction on the site. He stated that he believes that the site once contained an additional structure.

Mr. Fishman summarized that improvements to the site include the wetland remediation and the infiltrators, and that eliminating the screened porch would not significantly decrease proposed impacts. Mr. Fishman said that he also feels that Mr. Ginsberg's comment precludes the filing of a zoning variance.

Ms. Miller said that if a pool could be used as a detention basin, it would apply to this site.

Ms. Cameron said her concern with the site's water issues were not limited to runoff and explained that the solid pool structure would displace soil and water within the ground.

Mr. Fishman said drainage report addresses impervious surface and the infiltrator would replace soils below ground thereby creating a larger volume of stormwater storage. He reviewed that the soil in the pool area is not easily saturated, but that the infiltrators would pick up groundwater as well as runoff from the pool area. He added that silt fabric would be used to protect the units from sedimentation. Mr. Hutchison noted that the crushed stone to be placed the infiltrators would also contribute to the increase in the storage volume.

Mr. Hutchison said that he was impressed with solution to adjust the lot line that was proposed by the applicant to gain more useable area. Mr. Piorkowski reported that Mr. Ginsberg said that the lot line change would have been a solution for the ZBA as well.

Ms. Cameron said that stated that she believes that the barn/pool house could still be moved back 10' into the zoning setback, and that feels that the ZBA would listen to an application for a variance based on the site's constraints. Mr. Piorkowski said he did not want to move closer to the rear lot line because of the adjacent day care.

Ms. Sarnier reported that Mr. Fishman had explained during a phone conversation that the ledge influences the location of the pool, and asked Mr. Fishman to explain. Mr. Fishman explained that if the barn is shifted back, the pool would still be limited by the location of the ledge which comes out at an angle.

Mr. Hillman reviewed that the amendment poses significant changes, with decrease in square footage of disturbance area, increase in distance from the wetlands, and introduced the use of infiltrators beneath the pool terrace. He said that the new property line adjustment more an exercise by the applicant than seeking a possibly unlikely variance from the ZBA. He said that he believed he could approve the permit amendment. Ms. Miller agreed with Mr. Hillman that an approval would be acceptable. Ms. Cameron said that she felt more could be done with the barn/pool house to reduce impact within the regulated area. Mr. Piorkowski said that they tried to keep the pool in front of the barn to keep sunlight, and avoid the ledge area. Ms. Cameron

recommended that the pool be moved into the area of the screened porch. She added that, while expressing her concerns, she did not want to take away from the efforts made by the applicant under the proposed amendment. Mr. Fishman said even if the porch is eliminated, they would not be able to have a 4' walkway on each side of pool. He explained that the 4' width allows people to walk by one another and is based upon the average width of sidewalks.

The Commission discussed the posting of a performance bond to cover the pool and infiltrators

Mr. Hillman stated that any decision for approval would incorporate the original resolution by reference, and new amendment would be based on the substantial changes and improvements to the plans.

General Meeting – resumed at the close of the Public Hearing:

Chairman Hillman read the following agenda item:

EPC 22-2004, John & Marion Holmgren, 10 Cross Road, proposing a new septic system, the alteration of an existing driveway, installation of drainage appurtenances, regrading, plantings, and perform related site development activities within a regulated area. The demolition and reconstruction of the residence are proposed outside the 50-foot wetland setback area. The subject property is located on the north side of Cross Road, approximately 300' east of its intersection with Homewood Lane, and is shown on Tax Assessor's Map #65, as Lot #2.

Ted Milone of Redniss & Mead presented the application and addressed questions from the Commission. He explained that the plans distributed by Commission staff were revised to provide control for the peak flows of runoff using a weir wall that meters outflow, and that the stormwater flow would leave the unit at pre-construction levels. Mr. Milone added that the infiltrator also recharge groundwater. Mr. Hutchison explained that the metered structure is an infiltrator with overflow pipe. Mr. Hillman asked if there would be an introduced improvement after each storm. Mr. Milone replied that there would be.

Mr. Hillman asked if the new house would be located outside the 50' setback area. Mr. Milone replied that it would be but that the proposed septic system would be within 150' from the watercourse. He said the system would be located in the front yard because of the significant amount of ledge located within the backyard. He reported that Vince Proto of the Health Department approved the proposed location.

Mr. Hutchison asked if the infiltrators could be placed under the driveway. Mr. Milone replied that, according to the health code, they could not install the units too close to the septic.

Ms. Cameron stated that she would like more information regarding the ledge from Mr. Proto. Mr. Milone offered to address septic system questions since he designed the proposed system. He explained that the ledge is visible in the backyard and that they need 2' naturally occurring soil to be a suitable area for septic use. He said that the old system tank would be removed and the gallery would be abandoned. He explained that they did not need a reserve area because they

have proposed a 100% code complying system. He said that the existing system is working but is outdated and approximately 50 years old, and explained that a tear down and rebuild of a residence requires the installation of a B-100a code complying system.

Mr. Milone reviewed that the application proposed the following regulated activities: (1) installation of a new septic; (2) partial relocation of the existing driveway further away from the wetlands; (3) addition of two parking areas; (3) installation of a stormwater detention system to be equipped with riprap and energy dissipaters; (4) installation of underground utilities; and (5) installation of mitigative plantings that will enhance water quality and delineate the resource area.

In response to a question from Mr. Hutchison, Mr. Milone replied that, based upon the test pit results, ledge would not be a problem.

In response to a question from Mr. Hillman, Mr. Milone responded that the plantings would definitely be completed, and that the plantings near the driveway entrance requires approval from the Tokeneke Association.

Ms. Mille asked if any trees would b removed. Mr. Milone said that they planned to save a 50" Oak, 18" Maple, 24" Ash, and 34" Beech, but would lose two 22" Hickory and Ash trees for the septic installation. Ms. Cameron said that she is glad that they are preserving the Oak.

In response to a question, Mr. Milone replied that test pits are dug as deep as possible, sometimes as deep as 8' or 9', in order to look for ledge and groundwater. He explained that a septic system must be installed at least 4' above the ledge and 18" above mottled soils.

Ms. Miller asked about construction parking. Mr. Milone replied that the trucks would unload and the move offsite. They would park closer to residence and will repair all disturbed areas.

Ms. Miller asked about maintenance. Mr. Milone replied that the unit would be installed with bell traps to keep out debris from piping system, the catch basin inserts can be easily removed for cleaning, and the 2' sumps would be installed to collect silt. He said that maintenance would be conducted by inspection by the homeowner. He added that the metered structure would be equipped with trash racks that would be cleaned every three years, and that vacuum trucks could access the units for maintenance through manholes.

Upon further discussion of the materials and plans presented, the following motion was made: The Commission approve with conditions the above-referenced application. The work was approved with the condition that:

1. The Wetland Planting Plan by Rutherford Associates is modified to replace the Yellow Flag Iris, an invasive species, with Blue Flag Iris, and
2. Silt sacks are installed within the two catch basins located within Cross Road adjacent to the Holmgren property.

The work shall conform to the plans entitled:

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1. "Site Development Plan Depicting 10 Cross Road, Darien, Connecticut, Prepared for John J. Jr. & Marion E. Holmgren," Sheets SE-1 through SE-6, by Redniss & Mead, dated 03/10/04, last revised 04/18/04
2. "Wetland Planting Plan, Holmgren Residence, 10 Cross Road, Darien, CT" by Rutherford Associates, dated March 2004.

The motion was made by Ms. Cameron, seconded by Mr. Hutchison and unanimously approved.

Adjournment: Having no further business to attend to, the Commission adjourned the April 21, 2004 meeting at 11:00 p.m.

Respectfully submitted,

Nancy H. Sarnier
Environmental/GIS Analyst