

From: Carrie Vibert                      October 23, 2012 4:21:38 PM  
Subject: Conservation Commission Minutes 09/04/2012 ADOPTED  
To: SimsburyCT\_ConserveMin  
Cc:

CONSERVATION COMMISSION/INLAND WETLANDS &  
WATERCOURSES AGENCY ADOPTED MINUTES  
SEPTEMBER 4, 2012  
REGULAR MEETING

I. CALL TO ORDER

Richard Miller, Chairman, called the Regular Meeting of the Conservation Commission to order at 7:30 p.m. in the Main Meeting Room at the Town Offices. Other members and alternates in attendance were Alan Needham, Patrick Kottas, Margery Winters, Margaret Sexton, and Donald Rieger. Also present were Howard Beach, Conservation Officer, Janis Prifti, Commission Clerk, and other interested parties.

## II. APPOINTMENT OF ALTERNATES

Chairman Miller appointed Commissioner Rieger to serve as an alternate for Commissioner Cunningham, and Commissioner Kottas to serve as an alternate for Commissioner Mihalic.

### III. PUBLIC HEARING(S)

- a. Application #12-31 of Maglieri Development, LLC, Agent for Susan A. Kokulis, Owner, for an Inland Wetlands Map Amendment on property located at 8 The Glade (Map C05, Block 203, Lot 025).

Greg Maglieri stated the site plan for the subdivision lot has been approved by Farmington Valley Health. He is under contract to buy the lot and build a home designed by Jack Kemper and is working with Brian Denno to position the house on the lot. They contacted George Logan, Wetland Scientist, who did the mapping, soil test and has a full report. He said the house is over 50 feet away from the controlled area and the septic, well, and driveway are within required parameters. He said they will stay 10 feet away from disturbing the wetlands line and will put in any planting or necessary replacement of vegetation. He said the slope is currently about 10 feet off the road and will be lowered to 5 feet enhancing the neighbor's privacy. He said the house is within the building envelope restricted area and there will be no grading within 10 feet of the

wetlands. He said they will use silt fence and all needed protective measures during construction. The Commissioners reviewed the map provided by Mr. Maglieri for the map amendment. Mr. Beach explained the wetlands flow.

Commissioner Rieger made a motion to table this matter pending arrival of the Applicant's expert. Commissioner Kottas seconded the motion, and it was passed unanimously.

Mr. Logan discussed the lines and layout of the map: the watercourse is about 60 feet long; soils are outwash; the SCS calls the overall mapping unit a Hinckley, but he believes the Sutton soils are moderately well-drained with Leicester in the upper portion grading into Walpole mostly offsite. He said it is a sandy outwash deposit throughout; 3/29/2012 map shows the approximate boundary with dense woods of Pine and Eastern Hemlock, and Sugar Maple and Oaks interspersed. He said the watercourse is more or less a rock line channel with some minimal erosion that dissipates into the wetlands and flattens out. He said as you grade into the wetland it becomes flatter to poorly drained Scarborough. He said the proposal is simple with a septic system approved by Farmington Valley Health District. He showed the house footprint with distances from the resource maintained and a minimum 10 foot clearing.

Commissioner Winters made a motion to accept the map amendment as presented. Commissioner Rieger seconded the motion, and it was passed unanimously.

#### IV. PRESENTATION(S), DISCUSSION AND POSSIBLE VOTE

a. Application #12-20 of Timothy J. Hayes, Owner, to remove from pond the algae growth, silt, mud, and other organic materials currently adversely affecting pond health on property located at 3 Linda Lane (Map D06, Block 303, Lot 015).

Mr. Beach stated the Applicant asked for an extension and this be tabled.

Commissioner Sexton made a motion to table this Application as the Applicant asked for an extension. Commissioner Kottas seconded the motion, and it was passed unanimously.

b. Application #12-25 of Eric Barch, Agent for Town of Simsbury, Owner, for the construction of a wooden walkway on the marsh at the Community Farm of Simsbury on property located at 3 73 Wolcott Road (Map I02, Block 439, Lot 002).

Eric Barch stated he proposes building in the wetlands behind Community Farm of Simsbury a 54-foot 7-inch long walkway 8 feet wide with galvanized 2 inch diameter steel pipe supports. He showed a photo of the river next to the marsh and the location of the actual bridge. He will use ACQ-type pressure treated wood for the frame and none of it will be in contact with the soil or water, rather steel pipes will be in the ground and connect to the frame. He provided a map showing the walkway placement in relation to the wetlands. He said the anchoring system in contact with the ground water uses a dock hand auger that goes into the steel pipe in order to screw the pipe into the ground until refusal so it is secure when the ground freezes. He said another scout, Ryan Carr, is building a bridge across the river. However, this walkway can be accessed directly from the barn and the projects are not related. Regarding future maintenance, he is not sure who will undertake that function. He said CCQ lumber has harmful substances as opposed to the ACQ used, which does not. He hopes to do this project in the fall, and by spring latest. Regarding beautifying the marsh, he said the walkway helps people access the beauty of the marsh. He will fund raise via a car wash and online. He said access is through a grassy area and you don't have to actually walk on the marsh to get to the boardwalk. He said the dock auger is a miniature helical pile for screwing pipes into moist soil; he found the idea on a Massachusetts town wetlands site stating this method is good anywhere near a river. He also spoke locally with Mark Drake, a licensed contractor, who said as they drill down it will definitely go below the 42 inch frost line until it becomes too hard to turn. Regarding signage, he said it would be nice to have one near the entrance directing people both to the walkway and to stay on the walkway. To change pipe lengths, he said a chain is put around the pipes cut off at the right length, the T is slid over the pipe, fastened, and the frame built onto the T joint with careful measuring of where to put the auger.

Commissioner Rieger made a motion this is a regulated activity because it involves construction in the upland review area and in the wetland. Commissioner Kottas seconded the motion, and it was passed unanimously.

Commissioner Rieger made a motion that it is not a significant activity because it involves essentially no soil disturbance of any consequence and no indication of harm of any sort to the wetlands. Commissioner Kottas seconded the motion, and it was passed unanimously.

Commissioner Rieger made a motion the Commission grant the requested permit. Commissioner Kottas seconded the motion, and it was passed unanimously.

c. Application #12-27 of Maglieri Development, LLC, Agent for Susan A. Kokulis, Owner, for a site review for a new home with septic system within

the 100-foot upland review area on property located at 8 The Glade (Map C05, Block 203, Lot 025).

Mr. Maglieri has an agreement with Mr. Kokulis who is selling the lot. He provided the plan of what they will be building keeping impact to a minimum. He said they will create grading with a walkout basement and showed garage and driveway locations stating well and septic requirements are met and a natural buffer will be maintained as previously described. Regarding reducing grade in back, he said they will work with the natural contour and there will be a 5-foot gentle rise to the garage balancing the elevation with no heavy earthwork in the area.

Regarding brook vegetation, Mr. Logan said it is fairly dense vegetation in the over story and the added light will cause the understory to thrive; there appear to be no issues with invasives; runoff to the brook is not a concern because of sandy soils which should absorb water onsite; and grading will be gentler than currently. He said the tree line doesn't impact the wetland vegetation and closest is 10 feet. Regarding the footing drain, he said erosion is not tremendous and is in the upper portion past the pipe dissipating at the wetland.

Regarding U.S.D.A. and CT suggestions of 15-25 feet buffers or more if there are potential sources of pollution from gardens and landscaped areas, Mr. Logan said if there is a reasonable backyard, the pressure decreases for additional encroachment; admittedly this is a tight lot. He said also considered are buffers to protect the watercourse and these coarser soils are protective and steep slopes require a larger buffer and this slope is gentler. He said these coarser soils will absorb chemicals in the ground although some of it will reach the watercourse, but the question is if they are detrimental and currently water from yards sloping down to the road are piped here and the order of magnitude will be reduced with this project. He acknowledged the buffer is minimal but sufficient. Mr. Maglieri said he has no problem increasing the buffer 5 feet with mulch. Mr. Logan said a linear rain garden could also be used with an increase of 5 feet and the coarse soil may require incorporating humus; bark mulch works or different species of perennials and wildflowers. Mr. Maglieri said they can incorporate it into the professional design. The Commissioners felt the buffer is important and requested a plan showing a more developed buffer with proposed plantings. The Commissioners suggested putting the rain garden along the entire wetland boundary. Mr. Logan said tree stumps will be removed and not interfere with the rain garden. Mr. Maglieri said the footing drain is an outlet pipe for any water running along the foundation but it is not required in permeable soils like this; it is a perforated pipe with stone and wrapping paper around the base of the footing and wall. Mr. Maglieri had no issues with the additional buffer and rain garden on this wooded lot and will refer to the Commission's recommended list to fill

in plantings where needed. He said whatever is noted on the site plan as restricted area is made known to the homeowner allowing for future remedy. Commissioner Winters said if the area is nicely planted at the beginning, chance of success is greatly improved.

Mr. Maglieri said excavation material will be stockpiled near the road with 10-12 loads anticipated to be removed from the site. Mr. Maglieri said going another 10 feet of buffer means there is no need for the rain garden and blank spots would be filled in with plants on the list. Mr. Beach stated he would like to see a site plan of how many plants; Commissioners Winters added the size of the plants is also important. Mr. Maglieri said after the lot is cleared, Mr. Logan can view the area and determine with an expert appropriate plants and locations. Mr. Logan said they can specify now the plants and shrubs will be no less than 3 feet tall. Mr. Beach clarified they cannot clear the site without a permit and the biggest problem here is the northern exposure. Commissioner Rieger suggested granting a permit conditioned upon receipt of a revised site plan showing 10 feet of additional buffer and subsequent agreement on the form, vegetation, and technology of the buffer. Mr. Beach said the additional buffer could be required immediately and another month to design it. Mr. Maglieri said clearing is scheduled for the next 2 weeks and Mr. Logan can flag the buffer to determine plantings to be filled in and a revised plant list provided to the Commission. Mr. Beach suggested a condition the revised plan be submitted to him and he will present it to the Commission at the next regular meeting; and if the Commission disapproves, he will go back to the Applicant requesting a new list; he would be most comfortable having the Commission's agreement. He suggested the best method is to do the clearing and then develop a revised plan.

Commissioner Rieger made a motion this is a regulated activity because it involves construction in the upland review area. Commissioner Winters seconded the motion, and it was approved unanimously.

Commissioner Rieger made a motion that it is not a significant activity because, particularly once the revised buffer is included, the wetland will be adequately protected from any impacts from the construction activity and the building and occupation of the house. Commissioner Winters seconded the motion, and it was approved unanimously.

Commissioner Rieger made a motion to grant the permit on the condition that the Commission receive a revised site plan showing an additional minimally ten feet of buffer and subject to the Applicant agreeing with Town Staff and the Commission on the format of that buffer in terms of vegetation, construction, and the like; and further conditioned on Town Staff being fully comfortable with all of the mechanics of silt fences and other protections during construction. Commissioner Winters seconded the motion,

and it was approved unanimously.

V. ADMINISTRATIVE APPROVAL(s)

a. Application #12-32 of Fred Minges of Minges Building Co., LLC, Agent for Tom and Susan Downes, Owners, to expand an existing sunroom within the 100-foot upland review area on property located at 13 Nod Brook Drive (Map C19, Block 510, Lot 008).

Mr. Beach said the Applicant is expanding an existing sun porch a couple of feet and adding a couple of piers to cantilever it. He approved this administratively.

b. Application #12-33 of PerfectView Remodeling, Agent for David Ferreira, Owner, for the construction of a deck within the 100-foot upland review area on property located at 18 Smokey Ridge Road (Map C04, Block 203, Lot 011).

Mr. Beach said the Applicant is replacing an existing deck and adding a couple of sonotubes between 3 others for support in the same line well within the disturbed footprint. He approved this administratively.

VI. RECEIPT OF NEW APPLICATIONS

None.

VII. DISCUSSION AND POSSIBLE ACTION

a. Meadowood Conservation Easement

Mr. Beach said Meadowood submitted a proposal for open space and the documents said "to be conveyed to the Town"; but they now are proposing conveying an easement to the Town rather than fee simple ownership. He said the Town doesn't necessarily want ownership but wants some control of the open space; but since it is a change from the original agreement, they would like each of the 3 Commissions to vote on it. He said the Conservation Commission is specifically named as recipient. He said Meadowood will maintain the site, incur the costs, and physically do the work; the Town has enforcement rights and within 30 days, if a problem is observed, the Town has the right to require correction of the situation; and if it is not corrected, the Town can hire someone to correct it and back charge them. Mr. Beach provided a copy of a letter received today at 6:30 p.m. from their attorney, Mr. Hollister, to the Commissioners which they plan to discuss with the Commission on 9/18/2012.

Regarding the State requiring Meadowood to have more open space, Mr. Beach

said they had a situation where this was considered bird land habitat and EPA wanted an offset and Meadowood was forced to donate 75 acres of grassland habitat in Suffield. The Commissioners questioned why this would be an offset in Simsbury.

Mr. Beach asked the Commissioners to read over the letter. He said throughout the initial 10 years an issue was the public not having access to the site and trail system throughout the complex providing safe route to school for children as it was not intended just for their children; and now in the agreement rewrite, they have now opened access to the trail system. He said once this is voted on and in place nothing theoretically can be done in that area, but Hoskins 7 remediation is incomplete, so the caveat is left that except as required by this settlement plan in the way of remediation of soil.

Mr. Beach said Riverbend states the easement was their original intent, and the Town apparently doesn't care to retain fee simple ownership. He will provide the Commissioners with a copy of the Town Attorney's letter. Mr. Beach said the area is about 91 acres of mostly little pieces and showed the Commissioners a parcel map and noted the Army Corp is overseeing nearby Hoskins 7. He said the Town bought the triangle and noted areas the Town has leased with the requirement only organic farming can be done. Mr. Beach said if they build Meadowood, at 51% ownership it will revert to the homeowner's association with questions of how it will be maintained and funded. Chairman Miller said it is desirable to preserve some kind of structure for benches or walkways for public use and this is pretty restrictive. Mr. Beach said this stipulated agreement is the most restrictive of any he has seen, even though not allowing pesticides and unrestricted cutting may be good.

Mr. Beach said their Attorney wants to provide the Commission with a presentation on 9/18/2012 before the Commission votes. Mr. Beach confirmed there is no money in the budget for maintaining additional open space currently; most of these agreements run for 30 years, but theoretically if the Town has a need for protected space, it can take it. He reiterated the Town has the right here to assure needed things are done in the open space and so far invasives have not been an issue. Chairman Miller said once the neighborhoods are built it is necessary to envision what kind of use this property will have. Mr. Beach said one of the plans continues to show connectivity from Catherine Lane to the trails under the easement. Mr. Beach requested receiving questions from the Commissioners in advance of the 9/18/2012 meeting so he can provide them to the attorneys in advance.

#### VIII. CORRESPONDENCE/ANNOUNCEMENTS

Regarding the Hop Hollow show cause issues, Mr. Beach said the deadline for

public notice was missed and it will definitely be on for the next meeting; and should the Commission impose a fine, it can be from the date of the offense.

Regarding the Apple Way pipes, Mr. Beach said Mr. Sawitzky advised him where water comes off Brooks Drive nothing worked to stabilize the stream and they did a pipe to relatively stable soil and stopped using the natural channel. He cleaned out some of the debris and the drop manhole was the biggest problem. He may come in to provide further explanation.

#### Wild and Scenic Study Endorsement Letter

Commissioner Rieger said there are 3 alternatives: a) do nothing; b) designate as wild and scenic all of the eligible parts of the river with ineligible parts comprising the dam development; and c) designate less of the river in an effort to assuage Stanley Black and Decker, owner of the Rainbow Dam. He said Stanley had a representative on the Committee and the question was how much of the dam to exclude for the Rainbow Dam operation, and the Committee was committed throughout to not interfere with Stanley's existing operation at Rainbow Dam, but up-river and down-river boundaries of the excluded segment need to be defined.

He said alternative b) is preferred by the Committee and labeled by the National Park Service as the environmentally desirable alternative. He said Stanley wants 2 things largely provided by alternative c): 2 miles of the river downstream to the Rte. 75 bridge in Windsor excluded; Stanley owns land down there and asserts they could someday put a dam there to produce electricity. However, he said the Town of Windsor never heard of that and objected to part of the town being flooded. He said Stanley has no flowage rights permitting flooding and would have to buy those rights. He noted currently relevant regulators are in dam removal mode in any rivers containing fish, so there is little chance of a dam being permitted by the Corp of Engineers, DEEP, and others.

He said his hydroelectric experience indicates such a little dam would not be economically viable and others believe Stanley would like to sell the real estate to a conservation buyer - this is the first piece alternative c) excludes. He said the next question is where to draw the line above Rainbow Dam and reservoir and initially, there was agreement the Rte. 187 bridge (used in alternative b)) was the up-river quality boundary, but Stanley backed out of that agreement. He said Stanley then wanted to go above that landmark to about 500 yards downstream from the former Spoonville Dam site to the tip of the Helco Island, and the National Park Service grudgingly agreed as it would not interfere with recreational use of Tarriffville Gorge; and Stanley had no flowage rights and could not raise a dam without a FERC license; and Stanley backed out of this

agreement.

He said recently Stanley wants a limit 500 feet upstream of the Spoonville Dam site which is in the gorge, and the National Park Service has not agreed and recommends the Rte. 187 bridge as the appropriate level. He said the Congressional bill introduced by staff is more generous and suggests the Spoonville Dam site in an effort to negotiate a compromise Stanley will accept, but Stanley has more conditions they'd like, including flash boards that could be inflated to raise the dam 13 feet resulting in impacts on houses and road flooding, but they have no legal right or FERC permit to do that currently. He said the Town of Simsbury has no interest in seeing the economic benefits of Tarriffville Dam interfered with, nor the environmental impacts. He said the draft letter has the Commission endorsing alternative b) which the Committee and National Park Service favor. He said the Congressional bill was done in Chris Murphy's office in collaboration with Lieberman staff and the National Park Service. Commissioner Winters said Stanley does not have a FERC license but dams they already have are grandfathered and a purpose of the Wild and Scenic designation is to keep dams from being built. Commissioner Rieger believes Stanley is more interested in a real estate sale to a conservation buyer.

Commissioner Rieger made a motion the Commission authorize the Chairman to sign the letter. Commissioner Winters seconded the motion, and it was approved unanimously.

Commissioner Needham stated he has been approached twice about the size of the parking lot at 138-142 Hopmeadow. He researched Zoning and Conservation Commission minutes to see if it was discussed as it looks like 60% coverage. Mr. Beach said the water table level was miscalculated and when the detention basin was dug overflowed into the State system because there was no storage capacity. He said a proposal was made to replace it with perforated pipe for some infiltration and overflow to the State system. He said there were no wetland soils or habitat with no need for regulatory approval by the Commission. Regarding coverage on site, he said that Reistoffel obtained approval for 53.4% coverage, and Dunkin Donuts reduced it to 50%, but when the detention basin was filled in it went to 57.9% which is in excess of the approved 53.4%. He said below 60%, the Commission can approve that variance, but no application was made to increase it to 57.9%. He spoke with Mr. Peck and they are supposed to be coming in to request approval from Zoning; evidently, the submitted plan had an error stating 50% coverage and has to be changed; they are coming in for regulatory approval which Zoning can grant.

Regarding the rain gardens, he said they are on another part of the site and were designed to be shallow and are working. He said DOT has 3-4 catch basins along the road flowing to different areas. Commissioner Winters

suggested it would be beneficial to review failed projects in relation to future permitting. Mr. Beach said the Town Engineer does a thorough review and all indications were that this would be a successful project. He said initially the site had 2 buildings and a problem with adequate parking developed with the additional orthopedic prosthesis business.

IX. APPROVAL OF MINUTES of July 31, 2012

On Line 16, "Bucknam" was corrected to "Zackeo".

On Line 165, "11/17/2012" was corrected to "10/17/2012".

Commissioner Rieger made a motion to approve the July 31, 2012, minutes as amended. Commissioner Kottas seconded the motion, and it was passed unanimously.

X. ADJOURNMENT

Commissioner Winters made a motion to adjourn the meeting at 9:55 p.m. Commissioner Kottas seconded the motion, and it was passed unanimously.

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Ryan Mihalic, Secretary