

Town of East Hampton
Inland Wetlands and Watercourses Agency
Regular Meeting
March 29, 2017 – 6:30 P.M.
East Hampton Town Hall Meeting Room

APPROVED MINUTES

Present: Chairman Jeff Foran, Vice Chairman Joshua Wilson, David Boule, Scott Hill, W. Dean Kavalkovich, Peter Wall, Alternate Member Jacqueline True and Jeremy DeCarli (P & Z)

Absent: Alternate Member Harold L'Hote

1.Call to Order: The meeting was called to order at 6:30 P.M. by Chairman Foran

Chairman Foran made a motion to move agenda item 7A) Application of Tom Burdick for Peter Minoli, to after item 9A. Motion was seconded by Mr. Hill; voted 7-0 in favor.

2. Seating of Alternates: NA

3. Approval of Minutes:

A) February 22, 2017 Regular Meeting: *Mr. Boule moved, and Mr. Talbot seconded, to approve the minutes of the February 22, 2017 regular meeting. Voted 7-0 in favor.*

4. Communications, Enforcement and Public Comment: Mr. DeCarli provided a hard copy of The Habitat magazine, which was also emailed to members. There were no enforcements and no public comment.

5. Agent Approval:

A) Application of Shawn King/Juliano's Pools, 24 Whispering Woods Rd. to install a 20' x 40' inground pool in the upland review area – Map 33/Block 86/Lot 1-8:

B) Application of Kham Khongkham/Juliano's Pools, 30 Whispering Woods Rd. to install a 22' x 36' inground pool in the upland review area – Map 33/Block 86:

Duly Authorized Agent Foran and P&Z Official DeCarli executed site visits to the properties mentioned in the two similar applications above. Both have extensive E&S controls for the project and sent detailed photos of the equipment to be used and where it will be used. The extra fill will be utilized to grade around the pool, and if it is not all used on site it will be removed off-site.

6. Reading of the Legal Notice: None

7. Continued Applications:

A) Application of East Hampton Housing Authority, 18 West Drive, Bellwood Court – Site Plan Modification to Improve Parking Area and Drainage – Map 04A/Block 39A/Lot 2A:

Paul Magyar of Lenard Engineering, the Design Consultants for the East Hampton Housing Authority, presented revised plans for the parking area based on recommendations made by the Conservation Lake Commission. The plans now include deep infiltration catch basins and rip rap lining in the grass swales. The catch basins will be a beehive structure fabricated on site with the basin on top, surrounded by 1' of crushed stone. The impervious surface is slightly reduced from about 80,000 to 78,000 square feet.

Vice Chairman Wilson moved, and Mr. Kavalkovich seconded, to approve the application using the standard short form on the basis that there is no direct adverse wetland impact, the impact to the upland review areas are minimal, the amount of impervious surface will be reduced, and there will be increased water quality due to the improved treatment of the storm water handling. Voted 7-0 in favor.

8. Public Hearings: None

9. New Business:

A) Application of Michael McGuire, 0000 Wopowog Road, for construction of a new single family home and driveway located in an upland review area – Map 22/Block 52/Lot 3:

Jim Dutton of Dutton & Associates, representing Michael McGuire, presented site plans for the construction. The property is on the West side of Wopowog and is southerly of #197. There are 76,000 square feet of total wetland on the property (1.7 acres). The upland review impact area is about 8,800 square feet. The proposed driveway in the North corner of the lot will have an 8% grade to the house in the center of the property. Runoff will sheet flow to the side of the driveway to the wetlands. The driveway will be 12' wide, gravel, with a 2' high boulder retaining wall on either side. There will be fill down the slope as they plan to dig for underground utilities. The total area of disturbance is 62,000 SF. If there is any surplus gravel it will be used around the house; material will not be hauled off site. The boulders for the retaining wall will be imported. The wetlands were delineated in the field by Cynthia Rabinowicz. Agency members requested a signed plan of delineation and survey of the wetlands.

Chairman Foran moved and Mr. Wall seconded to continue this application to the next regular meeting on April 26, 2017. Voted 7-0 in favor.

7. Continued Application

B)Application of Tom Burdick, for Peter Minoli, 135 Middle Haddam Road, directional drilling of water line from house to cistern – Map 02/Block 18/Lot 21:

Mr. DeCarli noted that additional information was received this day of the meeting by email to the Agency. This information included a REMA report, water calculations, Alta Environmental Group letter regarding alternatives, stream flow calculations for the pond behind #135, a well drilling completion report, etc.

Tom Crosby, Attorney for Mr. Minoli, stated that he thought it was made clear by the Agency that there was a deadline for submitting information. A hired independent expert submitted a report which there was time to respond to. The applicant adhered to that deadline, and now feels it is unfair that another layer of information has been added the day of the meeting. He made a procedural objection because both sides have had ample opportunity to present information without adding more and that the other side is in violation of the rules the Agency put forth at the last meeting.

John Bennett, Attorney for the Throckmortons, who are the interveners at #136 Middle Haddam Road, stating they were responding to information received. Chairman Foran explained that it was made extremely clear at the last meeting that they were supposed to submit information into review during the stated time frame. He asked why the information wasn't in to them in time for review. Atty. Bennett stated that they were trying to get data assembled. Attorney Bennett then read the definition of feasible and prudent alternatives from a case the CT Supreme Court heard. Attorney Crosby made it clear that he objects to the submission of information, and to the fact that they are handing out cases and asking the Agency to form legal opinions.

Attorney Bennett read a law of the State and legal cases regarding pond/water ownership. This was in reference to the discussion from last month in which it was brought up that the half of the pond that is on Mr. Minoli's property could be used as an alternative to the proposed application. Atty. Bennett stated that Mr. Minoli does have the right to use the pond water because the water is over the soil which is considered to be owned by Mr. Minoli. He stated the pond is 28,000 SF, which represents 210,000 gallons of water at 1' deep (he stated the pond is actually deeper than 1'). If Mr. Minoli puts a pipe in the pond and draws 2,600 gallons a day, he will not dry it out and the pond would only draw down 1/8".

Atty. Bennett continued that Mr. Minoli has stated that if he cannot use the existing pipe emerging from the road because it is bad, he will have a contingency to return to get another permit to trench and replace it. Atty. Bennet then produced a length of the pipe that he believes is the proposed pipe, which was rusted and corroded, along with photos of the site with the pipe lying above ground. Atty. Crosby noted his continued objection to the photos and stated that this pipe is not the pipe in question. Atty. Bennett stated that this pipe is the only pipe that it could be, so they would have to dig that pipe in to the ground. He also introduced a copy of an email from DEEP stating that Mrs. Throckmorton gave them a report on box turtles. As another alternative, Atty. Bennett suggested tapping into the CT River since the Minoli property has waterfront. He then showed a photo of Mr. Minoli's yard taken last summer, and stated that there is 210,000 gallons of water on the Minoli property that he is entitled to. He stated that he has obviously been watering his lawn well with his existing water and that he has alternative options available that have no impact to the wetlands. He stated that Mr. Minoli hasn't presented any alternatives, and he asked the Agency to remember the purpose that they are to consider, which is for watering his lawn.

Atty. Crosby stated that his client simply wants to repair the pipe to the spring house. He stated that the opponents have submitted report after report, enough to cause the Agency concern to hire the third party, Landtech, who has agreed that there is no adverse impact to the wetlands and the potential usage will not impact the water budget. He noted that this is not a public hearing, but the opponents have turned it into one. He stated that if there was going to be a significant impact, the Agency would have asked for a public hearing. He has tried to accommodate by presenting the directional drilling rather than conventional trenching, which includes an alternative route to avoid impact to the wetlands. He further stated that it is unfair for the intervener's counsel to hand them cases and information from yesterday and ask them to be a legal board for Mr. Minoli's use of the pond, and called these issues red herrings. Landtech has agreed with the applicants that the directional drilling will not impact the wetlands, and aerial photos show that over the years the use of this spring has not caused adverse effects.

Tom Burdick, contractor for the applicant, stated that the pipe that Atty. Bennett presented is not the pipe; the pipe in question is buried in the ground. Vice Chair Wilson asked the makeup of the existing pipe. Mr. Burdick stated that it is plastic at some point, but is unsure of the rest, probably metal. He stated that the pipe was being used only a few years ago and has to be in better shape than the pipe presented here. Atty. Bennett again stated that there is no other pipe; they have looked. There is a pipe that runs in a different direction. Pictures in the REMA report were referenced. He stated that they probed for a pipe and found nothing and that the applicants are setting up a situation for approval of the drilling, then to come

back and ask to trench. Agency members noted that if this were the pipe, it would have frozen and burst long ago since it is on the surface.

Peter Minoli stated that the pipe is below the frost line. There is 150 years of pipe there and additional cisterns. There are other pipes out and lying on ground. He stated that the line was pressure tested 3.5 years ago and determined the leak is closer to the road. He stated that this is an easement they have, this pipe fed a line to his house for 150 years, which he shut off when he redid the conduits when building his garage.

George Logan, soil scientist for the Throckmortons, clarified that there are three pipes that go into the cistern and the one Atty. Bennett presented heads west which is the direction the applicant wants to come into the cistern. The other two go in a northerly direction. Mr. Burdick stated that you cannot see the pipe they want to use from the cistern because it is buried in the ground and that there are additional cisterns dug on the property. There was further discussion and disagreement on whether the pipe presented is the actual pipe in the application.

Atty. Bennett stated that the applicant does not have an easement . Chairman Foran stopped him and discussion occurred during which Vice Chairman Wilson reiterated that the Agency is deciding only upon the application before them which regards directional drilling from the applicant's property to under the road and whether that has adverse direct or secondary impact to the wetlands.

Discussion occurred on the possibility of the applicant returning to the Agency to seek hardship for an additional application to trench if the drilling is unsuccessful because of a bad pipe or other reasons. There was discussion on directional boring, with Mr. Wall, who has experience in this field, stating that it is not always foolproof.

Michael Klein, soil scientist for the applicant, stated that the directional driller needs a small 4' x 4' or 4' x 5' pit, and this equipment is used to avoid trenching wetlands. There was discussion on the potential for trenching if the pipe is not there. Mr. Hill cautioned that if the pipe was not found or not useable, the applicant will come back asking to trench the wetlands. There was also discussion that it could be argued that the directional drilling is the feasible and prudent alternative to trenching. Discussion then occurred on conditions for the motion to be made regarding the application.

A motion was made by Chairman Foran and seconded by Mr. Talbot. The motion included multiple discussions and amendments regarding addition of conditions, culminating in the final motion to approve the application as presented, using the standard short form, with the following conditions: a) that a test pit be dug with Town

Staff present to locate the pipe prior to directional drilling, b) that the pipe is verified to be in working order, with Town Staff present c) the directional drilling will occur only in the location as presented on the site plan prepared by Michael Klein and submitted January 20, 2017, d) the applicant must submit an as-built survey of the completed project specifying exact pipe location, and e) that a shut off valve be installed in order to control the flow of the pipe. This application is approved because there is no direct adverse impact to the wetlands and the secondary impacts are not enough to merit denial. Not following the conditions outlined above puts the applicant in violation of the permit. Voted 6-1 in favor, with Mr. Wall opposed.

10. Old Business

A) Discussion: Seawalls and Lake Shore Treatment: Mr. DeCarli sent a document around and is looking for feedback and/or revisions from the Agency members. Some members still need copies and to review the document. This item will be included on the agenda for the April meeting.

B) Review Open Permits: Mr. DeCarli reported that there is no prepared review, all seem to be in compliance though one developer is lacking some site monitoring data.

Mr. DeCarli stated that he went to the Conservation Lake Commission's meeting to propose a program similar to the Lake Smart Program used in Maine. This is a campaign to get information to homeowners, have them clean up their properties, have some sort of assessment of the efforts, and a reward to those in compliance such as a plaque for their home. The Lake Commission will form a sub-committee and involve the various lake associations; Mr. DeCarli also spoke with the High School's environmental club and they are interested in assisting. Mr. Hill suggested UCONN or another similar program would be of assistance.

11. Public Comments: None

12. Adjournment: *Mr. Talbot made a motion, seconded by Mr. Hill, to adjourn at 8:16 P.M. Voted 7-0.*

Respectfully submitted,

Eliza LoPresti
Recording Clerk