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MOTION AS TO DENIAL OF APPLICATION #05-016 - THE PRESERVE

The Inland Wetlands & Watercourses Commission of the Town of Old Saybrook has the authority under the Old Saybrook Inland Wetlands & Watercourses Regulations and the Connecticut General Statutes to grant, deny, or grant with terms, conditions, limitations or modifications permits, for any and all regulated activities conducted or to be conducted on any inland wetland or watercourse (regulated area), and any regulated activities which may occur within 100' of any wetland or watercourse (upland review area), and any activity which may have an impact on any inland wetland or watercourse within the Town of Old Saybrook considered as part of an application process.

The activities proposed in the present application are for the construction of an open space subdivision, country club, and a golf course community (934 acres total) and open space (542.2 acres) known as "The Preserve" in the area of Ingham Hill Road and Bokum Road (Assessor's Map #55, #56 and #61/Lots #6, #3, #15, #17 and #18), within which are situated approximately 114.5 acres of inland wetlands. The proposed activities include activities within the inland wetlands and within the regulated areas, being within 100' of said wetlands, are regulated activities which are within the jurisdiction of the Old Saybrook Inland Wetland & Watercourses Commission, and are subject to the inland wetland regulations of the Town of Old Saybrook and the General Statutes of Connecticut, Section 22a-36 to Section 22a-45, as amended. The application also contains proposed activities which are located outside of the regulated area as defined under the Old Saybrook zoning regulations, but which may have an impact on the regulated area, which activities are subject to the jurisdiction of and are

reviewable by the Old Saybrook Inland Wetland & Watercourses Commission as part of the review of this application.

The proposed activities of the applicant are more particularly set forth in the plans listed in Schedule A which lists plans and other submissions and are filed with the Commission as part of the property owner's application, as revised to the date of conclusion of the public hearing.

The Old Saybrook Inland Wetlands & Watercourses Commission, upon written information received and comments provided by the public and the applicant at the Public Hearing before the Commission, and upon the advice and information given to the Commission by experts and staff under its employ and/or direction, finds the following:

1. That the application, together with further information acquired from the applicant and its experts during the Public Hearing, and further information acquired from the experts and staff hired or under the direction of the Old Saybrook Inland Wetlands Commission, contains sufficient information necessary for a fair determination of the issues to be considered.

2. In connection with its evaluation of the proposed regulated activities, as defined in its regulations, the Old Saybrook Inland Wetlands Commission has considered all evidence offered as part of the record of the Public Hearing, together with advice supplied to the Commission by its own experts and staff hired or under its direction, testimony and information provided by the public at the Public Hearing with respect to the following factors as set forth in Section 10.2 of the Old Saybrook Inland Wetlands regulations:

- (a) the environmental impact of the proposed regulated activity, including the effects on the inland wetlands' and watercourses' capacity to support fish and wildlife, to prevent flooding, to supply and protect surface and ground waters, to control sediment, to facilitate drainage, to control pollution, to support recreational activities, and to promote public health and safety;
- (b) the applicant's purpose for, and any feasible and prudent alternatives to, the proposed regulated activity which alternatives would cause less or no environmental impact to wetlands or watercourses. Such alternatives should include, but not necessarily limited to, requiring actions of different nature which would provide similar benefits with different location for the activity;
- (c) the relationship between the short term and long term impacts of the proposed regulated activity on wetlands or watercourses and the maintenance and enhancement of long-term productivity of such wetlands or watercourses;
- (d) Irreversible and irretrievable loss of wetland or watercourse resources which would be caused by the proposed regulated activity, including the extent to which such activity would foreclose a future ability to protect, enhance or restore such resources, and any mitigation measures which may be considered as a condition of issuing a permit for such activity including, but not limited to, measures to (1) prevent or minimize pollution or other environmental damage, (2) maintain or enhance existing environmental quality, or (3) in the following order of priority: restore, enhance and create productive wetland or watercourse resources;

- (e) the character and degree of injury to, or interference with, safety, health or the reasonable use of property, including abutting or downstream property, which would be caused or threatened by the proposed regulated activity, or the creation of conditions which may do so. This includes recognition of potential damage from erosion, turbidity, or siltation, loss of fish and wildlife and their habitat, loss of unique habitat having demonstrable natural scientific or educational value, loss or diminution of beneficial aquatic organisms and wetland plants, the dangers of flooding and pollution, and the destruction of the economic, aesthetic, recreational and other public and private uses and values of wetlands and watercourses to the community;
- (f) impacts of the proposed regulated activity on wetlands or watercourses outside the area for which the activity is proposed and future activities associated with or reasonably related to, the proposed regulated activity which are made inevitable by the proposed regulated activity and which may have an impact on wetlands or watercourses.

2. The Commission finds that the proposed activities will have a significant major adverse impact on the regulated areas of wetlands and regulated areas within 100' upland of wetland areas by polluting, impairing, and destroying the public trust in the air, water, or other natural resources of the Town of Old Saybrook and the State of Connecticut. The Commission also finds that the applicant has not shown to the satisfaction of the Commission that there are no prudent and feasible alternatives to the proposed activities. As a result of these findings, the Commission hereby denies the applicant's application.

3. The specific reasons for the findings set forth in Paragraph #3 above, and for the denial of the property owner's application, are as follows:

The total project in the Town of Old Saybrook consists of approximately 941 acres of undeveloped property. The applicant's proposal is to construct a golf course, golf club, and 221 units of single-family housing for the property on the site, all as provided and allowed under Section 27 of the Old Saybrook zoning regulations. These regulations provide for a cluster development wherein 50% of the available property is set aside as open space. The remainder of the property is allowed to be developed with substantial reductions in lot area and shape requirements, and similar regulations. The applicant's plan sets aside substantially fragmented areas of the total site for open space, and has proposed to develop the remaining 50% of the land in the following general manner:

- a) approximately one-half of the remaining land is devoted to the construction of an 18-hole golf course, golf club, practice golf range, and related support facilities;
- b) the remainder of the and is to be developed for single-family residences in two clustered groups of dwellings, and the remainder in single-family lots scattered throughout the entire development;
- c) the golf course is divided into two developments sections of nine holes, one located on the easterly side of the property (holes #1 through #9), and the second on the westerly portion of the property (holes #10 through #18).

Generally speaking, the residential development of the property, including

individual house lots, occupy areas with little or no intrusion into wetlands or 100' upland review areas;

- d) the two sections of the golf course are proposed to be developed within and around a concentration of wetland areas on the east and west sides of the subject property, respectively. There is little or no interaction of the development of the housing areas and of the golf course areas;
- e) the wetland areas consist of approximately 114.5 acres of inland wetlands, which includes 38 vernal pools. In order to develop the holes of the golf course in their proposed location, it is necessary for the golf holes to be intertwined closely with the wetland areas and the adjacent 100' upland review areas. This results in extensive clearing of wetland areas and 100' regulated areas (22.6 acres), the construction of multiple wetland crossings for pathways between the golf holes, and over and around the golf holes, extensive soil removal, soil deposit, and re-grading of upland review areas within 100' from wetlands, and extensive additional such activities immediately adjacent to said 100' upland review areas. In order to accomplish this, extensive soil removal and blasting is necessary, especially with regard to holes #10 and #18. The total estimated soil and rock movement for the golf course site alone is approximately 209,458 cubic yards of material. Much of this volume of material will be moved multiple times unavoidably creating airborne dust and waterborne silt sediment which would have a major adverse impact on wetlands.

4. Because of the proposed layout and development of the project, and especially because the proposed 18-hole golf course is located in or in proximity to the dense wetland areas on the site, the Commission finds that the proposed construction of the golf course in those designated wetland areas is incompatible with the application of the principles and purposes of the Old Saybrook Inland Wetland regulations. The Commission further finds that specific reasons for this conclusion are as follows:

- a) The extensive blasting, grading, clearing and cutting on the steep slopes and shallow highly erosive and mobile soils in and around the outcroppings are so extensive and close to the wetland areas that it is likely that substantial silt will enter into wetland areas polluting the water and adversely effecting the chemical and biological makeup of the wetland areas. The effect of this will be to adversely affect the animal and plant life in and associated with the wetlands, including but not limited to, amphibians;
- b) There is considerable activity proposed within the 100' upland review areas (24.58 acres in total for the golf course and other infrastructure). The Commission finds that the proposed 25' undisturbed buffer area and other proposed control measure immediately adjacent to the wetlands are inadequate to protect the wetland areas;
- c) The soils in and around the wetland areas contain a high fine silt and clay content up to 60% by weight. Silt fencing will be only partially effective in preventing this material from flowing into the wetland areas, especially during the construction phase of the project. Because of the extensive blasting, re-grading and removal of material during construction, the Commission finds

that it is likely that control measures will be ineffective to prevent a significant amount of this silt from flowing into wetland areas causing major adverse impact. (This is especially true with regard to the proposed activity adjacent to holes #6, 10, #16 and #18);

- d) Pequot Swamp is a wetland area which is unique to this area of the State of Connecticut. It is presently an undisturbed site, without the presence of nitrates. The vegetation of the Pequot Swamp reflects this unusual and pristine state presently free of nitrates. The proposed construction activity, especially on holes #10, #16 and #18, the proposed construction of a sewage treatment leaching field under the fairway of hole #18, and the ongoing operation and maintenance of holes #10, #16 and #18 will likely result in the flow of nitrates, silt and golf course chemicals and other pollutants into Pequot Swamp. The Commission finds that this will likely have a major and permanent adverse impact upon this wetland;
- e) The proximity of greens, fairways and tees to wetland areas, especially in upland review areas, will likely result in pesticides and herbicides leaching into adjacent wetland areas. The proposed methods for controlling this leaching by the applicant are unlikely to prevent the occurrence of this condition. This is likely to have major permanent adverse impacts on these wetland areas;
- f) The development of the golf course within east and west concentrated wetland areas will result in unacceptable fragmentation and isolation of the area which will result in a substantial reduction of the capacity of the wetlands



to maintain animal life, especially amphibians. The requirements to maintain the viability of vernal pools are set forth in section 4.0 of the environmental review of the Commission's staff prepared by Geoffrey Jacobson, P.E. et al dated October 17, 2005, as revised March 15, 2006. The Commission finds that the concerns set forth in said report, and the failure of the applicant to adequately address said concerns in its application, makes it unacceptable to grant a permit for this proposed activity. It is unlikely that any re-configuration or modification of the layout of the golf holes in either of the two referred to wetland areas could adequately address this problem. This is especially true of certain species, such as wood frogs and spotted salamanders which need upland wooded areas extending 750' from the edge of the vernal pool (as testified by the applicant's experts). The extensive cutting and clearing required for a golf course is incompatible with the protection of the vernal pools. (The applicant has stated that 53% of the vernal pools will be non-conserved, and that 76% of the biomass of the vernal pools can be retained by its application. Other evidence before the Commission, including that of its own experts, severely question the accuracy of these figures);

- g) The introduction of herbicides and pesticides and fungicides resulting from the operation of the golf course is a troubling problem. This problem is particularly acute with regard to the golf course proposal because it is situated within a dense, complex wetlands system. Because of this, any adverse effects from the application of chemicals and the inevitable leaching of these chemicals into the wetland areas, cannot be determined at this time. These

wetland areas provide the headwaters for three important watersheds: Oyster River, Trout Brook, and Mud River. In addition to the immediate adverse effect on the wetlands, there may be adverse effects off-site, downstream of the subject property;

- h) The Commission has additional concerns with the following: that twenty vernal pools will have greatly reduced capacity for survivorship of amphibians; the synergistic effects of the different golf course chemicals is unknown; the risk assessments used for the pesticide studies were not done on amphibians (they were done only on fish and other animals and then extrapolated to amphibians); clearing of forests will adversely effect amphibian populations and nutrient and energy recycling within the wetlands. The applicant has failed to show to the satisfaction of the Commission that there are feasible and prudent alternatives to the proposed activities which would lessen or eliminate the impacts referred to in this paragraph.
- i) The activities proposed around Pequot Swamp are particularly critical because the watershed around said swamp is extremely small, being approximately twice the size of the Pequot Swamp itself. Because of this, any activities injurious to the Pequot Swamp in this watershed area would be concentrated in their effect on said Pequot Swamp and likely to have a major adverse impact thereon;
- j) The proximity of the western leaching area to Pequot Swamp for the project's septic system under Hole #18 is of particular concern. The applicant did not

provide alternative locations for the western waste water leaching system.

The Commission finds the failure to do so unacceptable;

- k) The applicant proposes to use three wells for the purpose of irrigation of the golf course. The water removal from the underground resource from the three wells is proposed to be 135,650 gallons per day. For this, it is necessary for it to receive a permit from the State of Connecticut Department of Environmental Protection. The Commission finds that the test which was performed on these three wells is unacceptable because of the substantial 2" rain event which occurred during the test. Because of this rain event, the Commission cannot make a determination as to whether the use of these wells will have an adverse effect upon stream flow, inland wetlands, water levels in the wetlands, and in particular, water levels in vernal pools. The Commission finds that the applicant has not met its burden of proof with regard to this important item.

As part of its application, the applicant has shown the proposed development of 221 single-family residences on the subject site. Except in a few isolated exceptions, the proposed lots for single-family residences are located outside of regulated areas. The Commission finds that there are no proposed activities with regard to these lots which are "significant activities" which will have an adverse effect on any regulated area. The Commission also finds that there is no proposed activities outside of the regulated areas with reference to said proposed single-family residential lots which might have a major adverse effect on regulated areas.

The owner's application proposes the construction of nine roadways within the proposed development area to serve the needs of the golf course and the residential development. The proposed lot pattern in the subdivision is configured to allow the use of the developable property as 221 single-family residences and the 18 hole golf course, with amenities. With regard to this proposal, the Commission finds that there is probably no feasible or prudent alternatives to the proposed road layout which would reasonably accommodate said proposed development of the property. However, since the Commission has concluded that the development for the golf course within the concentrated area of the wetland is impermissible, it is unlikely that any layout roadway in a redesigned project not containing a golf course would follow substantially the same road layout as now proposed. Because of this, there may be many other feasible and prudent alternatives for the layout of the roadways which would be more desirable than the now proposed locations. On account of this, the Commission finds that it is unnecessary to make a specific determination as to the proposed regulated activities for the construction of the proposed roadway layout in the present application.