

SOUTHINGTON INLAND WETLANDS AGENCY
 Regular Meeting
 Thursday, January 7, 2010
 7:00 pm - Town Hall Council Chambers
 75 Main Street, Southington, Connecticut

MINUTES

The Southington Inland Wetlands Agency held a regular meeting on Thursday, January 7, 2010. Chairperson Theresa Albanese called the meeting to order at 7:00 o'clock, p.m.

The following Councilpersons were present, viz:

James Sullivan, Chris Borowy, Ted Cabata, Kevin Conroy, Anne Hulick and John DeMello

Alternates: William Camp
 Richard Post

Ex-officio members present were as follows, viz:

Mary Savage Dunham, Town Planner
 Louis Martocchio, Assistant Town Attorney

Absent: David Lavallee, Ass't Town Planner

A quorum was determined. The new alternate commissioner was welcomed.

THERESA ALBANESE, Chair, presiding:

Approval of Minutes: Regular Meeting of December 3, 2009

Mr. Borowy made a motion to approve the Minutes from December 3, 2009 as presented. Mr. Sullivan seconded. Motion passed unanimously on a voice vote.

Special Meeting of December 19, 2009

Mr. Sullivan made a motion to approve the Minutes from December 19, 2009. Mr. Conroy seconded. Motion passed on a majority voice vote with Mr. DeMello abstaining.

Treasurer's Report

Mr. Sullivan read the Treasurer's Report to date. Mr. DeMello made a motion to approve as reported. Mr. Borowy seconded. Motion passed unanimously on a voice vote.

Reports from Public, Press and Ex-Officio Members regarding items scheduled for action.

No response.

Inland Wetland/Floodplain Filling Applications:

A. Information/Action - IW #1166/FF #220, application of the Southington Water Department seeking to complete a previously approved water line crossing below the Eight Mile River on Welch Road.

The Chair reported a request for a 65-day extension and a request to table by the applicant. Mr. Sullivan made a motion to approve the request for a 65-day extension. Mr. DeMello seconded. Motion passed 7 to 0 on a roll call vote.

Mr. Cabata made a motion to table. Mr. Borowy seconded. Motion passed 7 to 0 on a roll call vote.

B. Information/Action - IW #1168, application of 45 Newell Street Associates seeking to fill .15 acres of upland review area for the construction of a fueling station at 45 Newell Street.

Sev Bovino, Planner with Kratzert, Jones represented the applicant. Oriented the commissioners with a map on the board. The proposal is for a fueling station to serve our trucks, our fleet. The proposed pumps and fuel tank are in the center of two concrete pads with a canopy. The tank is above ground. The tank is double walled and designed to meet all safety requirements. The westerly edge of the travelway is separated from the wetlands by a concrete curbing and a landscaped berm. The canopy will discharge the water to the grassed area to the west.

The critical area of the pavement as discussed in the field is about 8,000 sf and it drains in this area(indicating). The slopes are designed to take the flow from these areas into two catch basins which are piped to a 1,000 gallon oil separator.

We propose a gate valve which will be closed by the driver prior to unloading the fuel. See Sheet S-1 for note. It's part of the spill control practices. Explained.

Skim and booms will be placed at the north and south end of the curb where the curb joins the exiting pavement. Speedy Dry drum is available on site. To minimize releases during the disconnect, spill pockets are used to meet the post connection. The driver remains with the truck during the entire delivery period. The volume of spill that could be obtained in the catch basin prior to an oil separate exceeds 3,000 gallons not counting the ponding effect on the pavement.

Drainage calculations were provided. All appropriate notes on the plans including the job meeting prior to starting.

An alternate location was considered which I'll provide for the commission. That location was near the building. It would cause traffic problems and also fire code concerns.

Comments were received from staff and some comments from the commission were received on site. All comments are responded to in writing and incorporated in the plans.

(Passed in copies of the gate valve, detail of the double wall oil tank which does meet all safety requirements and some additional copies of the drainage calculations for the record.)

(Submitted three copies of the alternate plan.)

I'll answer any questions now.

Discussion points raised by the commissioners which generated extensive discussion:

- Booms at the area of the runoff and drainage system.
- Drainage flow direction.
- Roof drains are not going through the drainage system.
- The post indicator gate valve location and function and operation of the gate valve.
- Maintenance schedule for the oil removal of the oil separator and checking of the tanks on a quarterly basis and cleaning yearly.
- How a major release/spill would be handled.
- DEP approval is required.
- Roof vents locations being modified.
- Hydrocarbon check done by stick and paste.

Mr. Lavallee advised he was satisfied with the plans as presented, reported Ms. Savage Dunham. She has no stipulations to recommend at this time.

Mr. Sullivan made a motion to approve IW 1168 with the following conditions:

1. Relocation of the vent pipes - make sure they're away from the roof area.
2. Submit quarterly schedule for maintenance.
3. Adding to the quarterly maintenance schedule the use of the oil water indicator paste for the hydrocarbon test and inclusion of the hydrocarbon test for the oil content in the oil/water tank in the stormwater prevention plan.
4. Revise the grading in the area near the building to expand the area of collection for the two catch basin system.

Mr. Cabata seconded. Motion passed 7 to 0 on a roll call vote.

C. Information- IW#1161.1, application of Philip Doyle (LADA) seeking to modify an existing approval for stormwater improvements at the BJ's site (Spring Street)

Attorney Anthony Denorfia with offices at 133 Main Street representing the applicant presented. Tonight with me is Phil Doyle from LADA and George Logan, professional wetland scientist with REMA Ecological Services, LLC.

We're seeking a modification of a previously approved application for the BJs Wholesale Center on Spring Street. You're all familiar with this. The property in question contains approximately 20 acres in size and right behind it a related entity owns property of about another 40 acres to the west of the property.

The application before you is an amended application. And, in speaking with Dave Lavallee, I believe all of the previously submitted reports and Minutes are part of the record.

Those would include the:

- A-2 surveys provided by Jones Engineering dated March 25th and May 20th, as amended, 2009 which field located the wetlands flags.
- Reports by David Lord, soil scientist, dated March 24th, March 25th, March 31st, May 22nd, May 27th, June 24th and June 29th, 2009.

The application is to fill approximately 600 square feet of manmade isolated wetlands that were discovered once debris on the site was removed from the area. The other part of the application is for regulated activity within 100 feet of vernal pools on area that is already disturbed.

It is both Mr. Lord's opinion as previously testified and as contained in his report and as Mr. Logan will testify and stated in his report dated December 9, 2009, which is also in the record, that these activities will not cause a significant and adverse impact upon these or any other regulated resources on the property.

There are several reasons --- I'm sure you're wondering why we're back here so soon - one is to allow access to the property to the west which if this configuration were to be held true, would be severely limited. The second is if this were not granted and we would have to have an alternate access through the existing fee, there would be a significant wetlands impact and the third is the ability to use the pad site at the entrance to the project which was deleted on the previous application.

I'll let the experts speak to these points and certain existing conditions and the proposed conditions with some alternatives. I hope the commission realizes as we continue our presentation the significance and positive economic impact this project will have with the Town of Southington. The project approved alone will generate approximately \$300,000 in tax revenue to the Town per year. Very seldom does economics pay a part in your decision, but as you know, under Section 1 of your regulations and under Section 22A-36 of the CT. General Statutes, you are charged with balancing the economic growth of the state and the use of its lands with the needs to protect the environment and ecology.

I'd like to turn it over to George Logan who has his report (submitted in the record) based upon the proposed site plan. After that Phil Doyle will go into more detail concerning the proposed modifications to the plan and also some alternatives and then go through the reasons why we feel this is necessary.

Phil Doyle, Planner and landscape architect with LADA. Stated his professional credentials for the record.

He briefly outlined the proposal so George can explain what the potential environmental impacts would be. Most of you are familiar with the site as we've had numerous site walks.

We have an approval for BJ's and associated parking with an access drive from Spring Street. (Indicated on the map)

We have an approval for a stormwater basin in this area (indicating) slightly smaller than this stormwater basin (indicating). The one we have an approval for stops generally in this area

(indicating) and it preserves 600 sf of wetlands that was discovered when some old debris on the site was removed.

The current approval does not contain a storm basin in this area (indicating). It's an open field area before you get to the wood line and there are vernal pools identified (1,2 & 3). George has reports of potential ones known as 3A and 4.

The drainage for the current approval was explained.

The proposal now would be to enlarge the storm basin and have a smaller basin (Basin B) and to try to preserve this area as a future building pad. (Indicating) This basin is the closest basin to the identified vernal pools. The edge of disturbance would be about 110 feet back from the vernal pools.

(End of Tape #1, Side A)

(Beginning of Tape #1, Side B)

George Logan gave his credentials for the record, which is part of his report.

Discussed in detail his December 9, 2009 report which has been submitted with back up information. (Report on file in the Town Planner's office.)

His conclusion was there was no fear of any adverse impact to the vernal pools or their function. There is no potential adverse significant impact both short term and long term.

He stated he was very comfortable with this plan as to water quality.

He stated the planting plan is aggressive and complete.

Limited fertilizer application was discussed.

The Chair commented the study was not done during the time when we could truly assess the values and services and functions of the system. The Chair referred to his conclusion and how do you know that based on this study that was done that we're not diminishing the functions or the services of the wetland resources by what is happening with the change to this design. I think we've increased the area of impact in the regulated areas and vernal pools and we now have a wetland disturbance.

Mr. Logan explained the questions he asked himself in coming to these conclusions and his answers.

Discussion.

Discussion of the low fence barrier Mr. Logan suggested. (Drew a diagram on the blackboard.)

Habitat characteristics of the wood frog were discussed. Spotted salamanders were brought up and discussed.

(End of Tape #1, Side B)
(Beginning of Tape #2, Side A)

Further discussion of a barrier for wood frogs.

The Planner asked if there was a way to move the outlet of Basin B farther away from the vernal pool so you have a longer and more circuitous overland flow. That was a concern with the previous approval. Mr. Doyle responded the locations are uphill of the water flow out of the storm basins.

Discussion.

The Planner asked how the efficacy and the capacity of these two basins compare to the original basin. Mr. Doyle responded. The drainage design and basin shape was discussed per the original plan and this proposed plan.

Discussion.

A lengthy discussion took place regarding the access way to the back parcel.

Mr. Doyle gave an overall picture of what has happened and what is proposed to happen on the site regarding the two parcels.

Discussion.

Mr. Doyle noted the two issues they are trying to solve is access to the back parcel and we want to make sure we are somehow in the future able to preserve that pad.

Discussion.

The Chair commented that we don't typically have applicants come to us with more disturbances than less disturbances for a modification. Our original approved application had no wetland disturbance. Now we have proposed 600 square feet of wetland disturbance. The upland review area, originally we had 3900 square feet on our wetland area and now we are up to 18,503 square feet. A significant increase with this proposal. And, then our vernal pool upland review area, we had approved 9,000 square feet and now we're at 35,000 square feet.

Discussion.

Mr. Doyle felt we are presenting testimony now as to whether there is an impact or not and so far in any of the public hearings, I have not been aware there has been an overwhelming amount of contradictory professional testimony to suggest George or Dave is incorrect.

Discussion.

We have no other access to the 40 acres in the rear and we are not interested in losing the development potential of that parcel, commented Mr. Doyle.

Discussion.

The Town Planner pointed out it is possible to put the access back that was taken out during planning. The neighbors do want to connect to the site. Negotiations haven't been completed. That being said, in order to preserve the access to the rear of the parcel, you would need to modify storm basin A and you'd need to put in a retaining wall. But isn't it possible to secure the access to the rear parcel, modify storm basin A without putting in storm basin B?

Discussion.

Drainage for the pad area was discussed if basin B is eliminated.

Mr. Doyle added they believed this was a viable alternative and our expectation tonight was I wish we had thought about it two or three months ago. We'd like to start to move in that direction.

Discussion.

Discussion of why they want to preserve the pad area for future development --- no specific tenant, yet.

Discussion of whether there is some sort of an easement put on the property so that would be a long term, into the future, potentially. Attorney Denorfia discussed conservation easements which were used quite often in the past. Really, the regulations themselves are a conservation easement.

Discussion.

Mr. Conroy stated we currently have an approved plan that went through quite a bit of back and forth on the design. It also included a denial of the application at one point. We spent a lot of time and effort in commenting on the development envelope for this parcel, the limits of work, proximity to vernal pools and then impacts on wetlands resources and the regulated areas. That includes the utilities easements that are still on the plan. You're asking us at this point to revise that plan in order to provide access to a rear parcel we were not made aware of. And, to relocate the detention basin on the proposed pad site. Part of our deliberation during the last application, we were concerned that this was previously a much larger wetland system that had been disturbed over the years and that the proposed use currently shown on the approved plan and this new plan took away a lot of that "habitat" area that George was discussing earlier. We decided to choose the existing berm as a natural break point between the development and the protected areas. That did go into the regulated areas in a couple of spots, however, we decided as mitigation in order to preserve those areas we would allow that

development up to that berm. That required the relocation of the storm basin B and it also required an alteration to storm basin A. That's the approved plan.

You're coming back to us to say, whoops, we forgot about this access. That's fine and we can address that issue. The other ones, I'm a little more hesitant to address only because this is now the second time that this applicant has come back and said we forgot to tell you about something we were planning.

From a regulatory standpoint, it is disturbing that we are not allowed to see the entire vision that has the potential to affect the wetlands. First it was the gas station which wasn't included on the original application. Now it is the development of a 40 acre parcel that is owned by the same company. From our perspective, if it's owned by the same owner and he has development plans, we would like to see at least at a minimum what that development envelope would look like.

You have a subdivision plan like any that we would see. You'd show the proposed rough limits of disturbance. That's kind of what we would want to see.

With regards to the testimony tonight of the vernal pools, I second the Chair's comments this conclusion is based on an out of season review. The comments seem to be couched towards increasing development. And, pushing the boundary farther than we had agreed to during our discussion of mitigation on the previous application. I'm concerned about that.

Discussion.

I use the DEP guidelines in my own practice and I'm glad George mentioned them. They are a lot more rigorous than what we are requiring here. But we're bound by our regulations which say 200 feet.

As far as the testimony provided tonight, I haven't seen here other than the need for additional access that would lead me to say that we need to amend our previous approval. I think everything that was in the record stills stands with regards to the limits of development. We can work with you on the access part of it. I understand that.

As far as the rest of it goes, our job here is finders of fact. We have a record. We have an approval. We spelled out what we wanted to see as far as mitigation goes on that approved plan. I think storm basin B is a problem. The utility easement was a concern. We kind of relented on that a little bit as it was already in place.

I think we've given a great amount of consideration to the economic development portion of this project with allowing such a large dense highly impervious development to come in so close to a

very sensitive area. Not only are the vernal pools there, but this is one of the few remaining impervious parcels that are adjacent to a nearby river. We have quite a bit going on here.

We expressed those concerns on the application and to come back again with something that quite frankly looks very close to what was denied is a bit disturbing.

I'm willing to work with the applicant on providing access to that back parcel provided they provide us with a little bit more information. As for the rest of it, I don't see any compelling reason why we should overturn our previous approval.

(End of Tape #2, Side A)

(Beginning of Tape #2, Side B)

We are happy to entertain a revision to your application; however we have in the past delineated a few conditions through the previous approval. We modified those plans and this particular plan seems to go against those conditions. In the absence of some compelling reason why we should change our mind which in my mind hasn't been presented, yet, I'm just telling you where we are right now.

Attorney Denorfia responded that it is his understanding that it is your job as a commission to approve and disapprove wetlands impacts, not to regulate development. How a development occurs on a piece of property as it may affect inland wetlands, yes, but it is not your job to regulate development.

Attorney Denorfia offered an explanation of why the first denial was not taken to court and how this amended application evolved.

In any application we've presented, we submitted uncontradicted testimony that the proposed activities did not impact the wetlands and watercourses.

Discussion of the regulations concerning activity in a buffer.

We have a 600 square foot impact on a multi-million dollar project for the town. It is an impact of manmade, dug out, a piece of wetlands that was filled with debris. That's the sum total effect of this application. Your job is to weigh the two. It is not to say we made a decision and we're not going to turn around and go against it.

We presented you the application, gave you the testimony. If you want to deny it, deny it. We think all in all given all the testimony that we've submitted and all of the benefits that this will be to the town, to turn around and say we made a decision once and we're not going to turn around and relook at it.

The Chair pointed out since there is an alternative for a redesign to basin A, then that is something --- you need to look at prudent and feasible alternatives. We are not eliminating the 600 square feet, but we are eliminating potential diminishing of the wetland resource with the inclusion of basin B. There could be physical alterations to the wetland resource and we don't know of the indirect impacts, some kind of pollution or anything in the future, impacts that could alter and diminish the resource. You have not presented how the physical alterations to the resource would not occur.

Discussion.

Mr. Conroy, referring to the current design, noted you are proposing to destroy the natural barrier between the wetlands and the adjacent development. That does indicate impact from that activity. Mr. Doyle disagreed.

Discussion.

We do need to have a complete application to do a review. When you come back, we would like to see a comparison between the approved plan and what is proposed.

Extensive discussion.

Mr. DeMello made a motion to table. Mr. Borowy seconded. Motion passed 7 to 0 on a roll call vote.

Communications

Reports from Public, Press and Ex-Officio members regarding items other than those scheduled for action.

No response.

Conservation Issues/Unfinished Business/Miscellaneous

The Chair asked if the conservation commission would be involved with the PZC as the aquifer protection agency. The Town Planner said there may be and she explained the process what is planned for informing for property owners in this aquifer protection area. If there is a wetland on site, you would be involved. She agreed to keep this commission informed as this process moves along.

Discussion.

Mr. Lavallee left no concerns for this evening.

Discussion of the Cease & Desist Orders at Dean's Stove and Spa property followed regarding a question by the Chair.

(End of Tape #2, Side B)
(Beginning of Tape #1, Side A)

Mr. DeMello advised that they're bringing gasoline and gassing up and trucks at the construction site which is in back of the storage site on Old Turnpike Road. There are two separate things they own there. The gasoline overflows on to the ground.

Mr. DeMello said they're storing cars in the back garage there, too. Boats, and other things, too, back there. They're using the construction site for that.

Discussion.

Mr. Post said a fellow land trust member called him and said her neighbor had been putting construction debris into the wetlands. I'll go look at it on Saturday. After discussion, Mr. Post was advised the property procedure when there is a suspected or observed violation of a regulated area by this board, is to let the wetlands agent. He has enforcement abilities and can issue fines. He will go out and inspect. You need to provide the address. It may or may not be appropriate for you to get too involved because if there is a violation, staff orders restoration. Then there would be an application before this commission and you wouldn't want to have a conflict of interest.

Discussion.

Mr. Post then asked about televising the meetings. It was explained to him that this is a highly technical board. What the public sees as wetland issues and what we're actually allowed to regulate --- there is quite a gap there. Also, this is an appointed board and we don't want to discourage people who might want to be on this board. Also, the budget is quite tight.

Discussion.

Mr. Post indicated some suggested changes to the website concerning the Conservation Commission. After discussion, suggestion will be reviewed and we are continuing to update and work on our website.

Mr. Conroy made a motion to adjourn. Mr. Cabata seconded. Motion passed unanimously on a voice vote.

(Whereupon, the meeting was adjourned at 10:22 o'clock, p.m.)

