

SOUTHINGTON INLAND WETLANDS AGENCY  
Public Hearing & Regular Meeting  
Thursday, April 1, 2010  
7:00 pm - Town Hall Council Chambers  
75 Main Street, Southington, Connecticut

MINUTES

The Southington Inland Wetlands Agency held a public hearing & regular meeting on Thursday, April 1, 2010. Chairperson Theresa Albanese called the meeting to order at 7:00 o'clock, p.m.

The following Commissioners were present, viz:

James Sullivan, Ted Cabata, Kevin Conroy, John DeMello & Dennis Palmieri

Alternates: Richard Post

Ex-officio members present were as follows, viz:

David Lavallee, Assistant Town Planner  
Louis Martocchio, Assistant Town Attorney

Absent: Chris Borowy, Commissioner  
William Camp, Alternate

The Chair seated Mr. Post for Mr. Borowy this evening. A quorum was determined.

**PUBLIC HEARING**

4. Public Hearing Items:

A. Map Amendment MA #135 - Application of Central CT Contracting seeking to amend the Southington Inland Wetlands Maps to include the findings of Soil Scientist Cynthia Rabinowitz, property located at the end of Smoron Drive; Maps 156, 155 and Parcels 006 and 001.

Stephen Giudice of Harry Cole & Son, Plantsville, CT represented the applicant. He noted this is the second or third public hearing on this map amendment for this area of town.

Mr. Giudice acknowledged people in the audience wishing to speak at this public hearing. He asked the commission to stay on topic of this public hearing which an amendment to the town mapping and it has nothing to do with the sports complex and the probate issue.

Cynthia Rabinowitz started flagging the site over a year ago. My office did perform a field survey and located all the wetland flags. The map before you demonstrates the difference between the Town of Southington mapping and the flagging in the field.

We have areas where the lines have been moved further away from the wetlands (indicating). We have increased the area of wetlands in some areas (indicating).

We have come before this commission to ask an amendment of the mapping to keep the records of the Town of Southington up to date.

Cynthia is here and she'll talk to you a little bit about what she found when she flagged the site. There were two little farm ponds located on the site (indicating). The first pond had the most interest as to whether this was a vernal pool, or not. Cynthia, Mr. Lavallee and I did walk the site yesterday to take another look.

I believe that although we don't technically consider either of those as vernal pools, but we did find another area that had habitat for certain wildlife.

Cynthia Rabinowitz, Bethlehem, CT. On the site walk, we looked at the wetlands on the site and I'll keep my comments to the new revelations that we observed yesterday. I will answer questions about the wetlands in general, as well.

She pointed out two farm ponds and explained the smaller one has sometimes had water in the bottom, but mostly with no water in the bottom. The other pond has been inundated every time I've been on the site. The vegetation around the perimeter does seem to abate in the center where it seems to be too deep for aquatic plants to take hold.

In neither of these ponds were we able to find any wetlands issues. Inspect larvae and that type of thing was in the larger pond. In the other smaller pond, to the east, we didn't find any living organisms.

Discussion.

The water quality is poor throughout the whole area because of the cattle manure, et cetera, all over the farm and all through the wetlands. And, the use of vehicles moving around on the farm.

The wetland boundaries are delineated on this map. Explained.

Mr. DeMello asked Mr. Giudice who actually owned the property. Mr. Giudice said it is under the Trustee's name. Mr. DeMello asked if

the commission can act on an application while the ownership is in probate.

Mr. Lavallee said he consulted with Town Attorney Mark Sciota and he stated that there is no difference between this and any other application under contract and we will proceed as such.

Extensive discussion.

The Chair reminded everyone the public hearing focus is on the map amendment.

(Those speaking in favor of the map amendment application)

In response to a question by Mr. Conroy, the Ass't Planner said he agreed with 99 percent of what was said. The minor modification would be there was some mosquito larvae in the smaller ponded area - certainly not a protected species.

He indicated he would like to see the smaller pond one more time and then check the viability of the egg masses that were seen. There is a lot of sediment that has been introduced into that small area. (Passed photos)

Discussion.

(Those speaking in opposition to the application)

Bonnie Sica, President of the Southington Land Conservation Trust. She asked the commission to table their decision tonight until the probate ownership issue is resolved.

John Wastik, 536 Spring Street. My property abuts this for 25 years. Spoke about the amount of frogs in the area, so much so that you can't sleep with your windows open this time of the year. There are vernal pools coming right below one of the high tension wires.

Discussion.

The commission will re-evaluate those areas.

(Rebuttal)

Mr. Giudice again stated the purpose of this public hearing is to deal with the map amendment for the wetlands on site. It has nothing to do with probate.

Discussion.

Ms. Rabinowitz again stated to the commission how a wetlands delineation is done.

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

Mr. Sullivan made a motion to adjourn the public hearing portion of the meeting. Mr. Palmieri seconded. Motion passed unanimously on a voice vote.

(Whereupon, the public hearing portion of the meeting was adjourned at 7:31 o'clock, p.m.)

### REGULAR MEETING

THERESA ALBANESE, Chair, presiding:

The Chair seated Mr. Post for Mr. Borowy for this regular meeting this evening. A quorum was determined.

#### **Approval of Minutes - Regular Meeting: March 4<sup>th</sup>, 2010.**

Mr. Palmieri noted a change on Page 17. At the end it says a motion was made to adjourn the "Town Council". It should read to adjourn the Conservation Commission.

With that change so noted, Mr. Palmieri made a motion to approve the Minutes. Mr. Sullivan seconded. Motion passed unanimously on a voice vote.

#### **Treasurer's Report**

Mr. Cabata gave the Treasurer's Report to date. Mr. Sullivan made a motion to approve the Treasurer's Report as read. Mr. Palmieri seconded. Motion passed unanimously on a voice vote.

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

Bonnie Sica spoke again regarding her request to table any action on this item until the probate/ownership issue is resolved.

Extensive discussion about whether or not the commission is acting correcting on this application procedure.

Mr. Post offered his interpretation of the regulations and the commission's duty. (See attachment)

Attorney Martocchio referred to the regulation in Chapter 7, which mirrors the general statutes, subsection Chapter 7, states: you shall take into consideration all relevant facts. Land ownership is not a relevant fact for this board.

Discussion.

The Chair advised there is going to be no difference in the way we treat this application to any other.

Stephen Giudice stated regarding ownership of property, your approval, denial or tabling of this application, the only way the applicant can actually build, cut any trees or work on the property is when he has clear to the title property and that will not happen until the probate is decided. It's a moot point.

Discussion.

Arthur Cyr, 103 Berlin Avenue, Southington. I feel obligated to speak since according to your agenda you are the Conservation Commission, Inland Wetlands and Watercourse Agency. I will disagree with Mr. Post and Ms. Sica that you are not the Southington Tree Commission. And, quite frankly, if on nonwetlands area, you can take down as many trees as you want.

I have a real problem listening to some of the stuff that's gone on at this meeting. I ask that everyone that's going to vote on this, remember it is a Inland Wetlands and Conservation Commission and not the tree commission.

The Chair advised the commissioners are aware of their roles here this evening.

## **7. Items from the Public hearing**

A. Map Amendment MA #135 - Application of Central CT Contracting seeking to amend the Southington Inland Wetlands Maps to include the findings of Soil Scientist Cynthia Rabinowitz, property located at the end of Smoron Drive; Maps 156, 155 and Parcels 006 and 001.

There is a request for a 65 day extension, advised Mr. Lavallee. Mr. Conroy made a motion to approve the extension. Mr. Palmieri seconded. Motion passed 7 to 0 on a roll call vote.

Mr. Conroy made a motion to table the application, MA135. Mr. DeMello seconded. Motion passed unanimously on a voice vote.

## **8. Inland Wetland/Floodplain Filling Applications**

A. Information/Action - IW #1170, application of Central CT Contracting, LLC seeking to disturb wetlands and u.r.a. in association

with the construction of a sports complex and associated improvements, property located at Smoron Drive and Spring Street.

Stephen Giudice, Harry Cole & Son, represented the application. At the last meeting we talked about the items on the site walk the commission had concerns about. Since that last meeting we made revisions to the plan and we have addressed the Ass't Town Planner's comments and we've also incorporated some alternative plans for your consideration.

We will be requesting a table of this item because the map amendment hasn't been acted on and this application cannot move forward.

Some of the revisions we made, including revising our outlet to this detention basin (indicating). We installed a drop manhole and reduced the pitch of the outlet pipe and we also provided some armoring of the bank on the watercourse on the other side.

We made some revisions to this detention basin (indicating) made it outside of the upland review area.

One of the main things we discussed at the last meeting was the placement of this road (indicating) in relation to this possible vernal pool (indicating).

One of our alternative plans has the roadway coming out around this finger area of wetland (indicating).

Getting into the Smoron Drive discussion, it is our intention that most likely the alternative plan for the proposed access way is the plan we would like to move forward with. We would move that road slightly to the north to avoid this very minor wetland impact of 365 sf.

Explanation of Alternative P-1 and Alternative P-2 for the access drive.

Discussion of Smoron Drive and the town requested improvements.

We still have some issues we think this commission needs to consider. It is our hope that you would probably want to walk Smoron Drive as we do have impacts along Smoron Drive that we didn't have when we first put in the application.

Discussion.

Alternative P-3 shows the sanitary sewer line off of Smoron Drive. There are two small impacts to the wetlands but there is more impact to the upland review area.

Drainage on Smoron Drive was discussed.

Mr. Giudice went through Mr. Lavallee's comments explaining what revisions had been done to the plan to address them. A lot are minor in nature.

Regarding Smoron Drive improvements, we could have more wetland impact. We have a drainage swale that runs along the side of Smoron Drive. We have floodplain on the east side that we want to avoid. So our proposal really takes Smoron Drive and shifts it slightly to the left to avoid those floodplain and wetland issues along the Quinnipiac River corridor.

You can make a better judgment after you walk the site.

Ms. Rabinowitz is here if you have questions. She will be on the site walk, as well.

Mr. Conroy asked Mr. Giudice to go over the location of the wetland impacts currently on the site. Are they all along Smoron Drive? Mr. Giudice answered right now there is only one wetland impact on the site and that is the 365 sf wetland in this location (indicating). Our alternate plan moves this a little bit to the north and eliminates that wetland impact in its entirety. So the only wetland impact on this property are on Smoron Drive completely.

Engineering has not commented about the road as of yet.

Mr. Conroy asked the applicant to provide the commission with plans that delineate with hatch and the table with wetland impacts. Discussion.

Mr. Conroy made a motion to approve the 65 day extension requested. Mr. Cabata seconded. Motion passed 7 to 0 on a roll call vote.

Mr. Sullivan made a motion to table IW 1170. Mr. DeMello seconded. Motion passed unanimously on a roll call vote.

Site walk set for Thursday, April 15, 2010.

## **9. Communications**

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

No response.

## 10. Conservation Issues/Unfinished Business/Miscellaneous

### A. Extension Request - IW #1041, 118 Flanders Road

Mr. Lavallee reported this was approved in 2006. There was a conservation easement as part of the conditions, which as far as I can tell, has not been filed, yet. I think we should hold to this extension until we get that filed.

Discussion.

Mr. Giudice advised his office is doing the description and we will get that done.

Mr. Lavallee reported on Plantsville School. The playground existing they redid and it go into the upland review area. It is something I can approve administratively. I just wanted you to be aware of it.

Also, as part of the Marion Highland Sewer there is a snag in the river, a tree had fallen down. They happened to be near with some equipment and they would like to take it out. They offered to do it. I think if they take it out, some of the root ball, may disturb the bank, so they can rip rap it as part of the project. I will watch it.

The Chair agreed it could be considered maintenance.

Attorney Martocchio reported back. At the conclusion of last month's meeting you had asked specifically could I research and give an opinion on to what extent the board can actually request an applicant regarding access to property adjacent to and around the applicant property to avoid wetland impacts.

I don't have a formal opinion for you as of yet. It does not appear as though that issue has ever has ever been clearly defined our published. I have found some relative documents, but I prefer to reserve my response to give you a more accurate complete answer.

I will have an answer within a week.

Site Walk: Thursday, April 15, 2010 at 5:00 pm.

**11. Adjournment**

Mr. Palmieri made a motion to adjourn. Mr. DeMello seconded. Motion passed unanimously on a voice vote.

(Whereupon, the meeting was adjourned at 8:30 o'clock, p.m.)

**Smoron Drive Property Wetlands Applications**  
**Table Approval Until Court Decision**

**ISSUE: POTENTIALLY UNETHICAL CHANGES TO MRS. SMORON'S WILL ARE TO BE REVIEWED BY A JUDGE AND COULD RESULT IN APPLICANT LOSING RIGHTS TO THE PROPERTY. ANY SITE WORK DONE PRIOR TO THE COURT'S DECISION COULD CAUSE IRREVERSIBLE HARM TO THIS ECOLOGICALLY IMPORTANT OPEN SPACE IN SOUTHINGTON.**

**RECOMMENDATION: TABLE WETLANDS APPLICATIONS APPROVAL - UNTIL COURT DETERMINES LONG TERM OWNERSHIP OF PROPERTY.**

**Ecological Importance of Property**

- Thickly wooded site with 50+/- year old trees – irreplaceable in our lifetime
  - Trees provide evapotranspiration and runoff control up slope from vernal pools, watercourse
  - Local habitat for multiple species making up the properties ecosystem
- Contains vernal pools, wetlands, brook/watercourse
  - Recent discovery of obligate species (wood frog egg masses)
- One of few larger open spaces left in Southington
- One of few remaining farms left in Southington

**Issues if Applicant Loses Rights to the Property While Site Work is in Progress**

- Town would have to restore and maintain site conditions to support ecological protection of the land and control erosion and runoff
  - Existing business & Town roadway down slope from the property
  - Poor use of Town's resources even though covered by bond
- Irreversible ecological resources damage if trees cut in heavily wooded portion of subject properties
- Potential litigation might involve Town, inefficient use of Town's resources?
- Eyes sore if existing farm buildings were removed and site restoration incomplete

**Decisions on Wetlands Applications Before Court's Decision**

- Recommended Decision: Table until court decision determines long term ownership of property
- Alternate Decision: Conditionally approve limited site work but no tree cutting until Court decision; not the best from a conservation perspective

**UNCONDITIONAL APPROVAL OF THE WETLANDS APPLICATIONS BEFORE THE COURT  
DECISION ON MRS. SMORON'S WILL IS AGAINST THE RESPONSIBILITIES OF A  
CONSERVATION COMMISSION.**

**(applicable Town of Southington wetlands regulations – see reverse side)**

Submitted at Conservation Commission meeting April 1, 2010 by  
Richard Post, CPG, PG, Alternate Commissioner

**Town of Southington Regulations – Supporting Tabling Applications Until Court Decision:**

**Subsection 7.1: Criteria for decision.** *In carrying out the purposes and policies of sections 22a-36 to 22a-45, inclusive, of the CT General Statutes, including matters relating to regulating, licensing and enforcing of the provisions thereof, the Agency [e.g. Conservation Commission] shall take into consideration all relevant facts and circumstances, including but not limited to:*

- *(c) The relationship between 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 and 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 (A) prevent or minimize pollution or other environmental damage, (B) maintain or enhance existing environmental quality, or (C) in the following order of priority; restore, enhance and create productive wetland or watercourse resources.*

**The heavily wooded area that requires extensive tree cutting is part of the overall ecological setting that affects the viability of the wetlands and nearby watercourse.**