

**NORWALK CONSERVATION COMMISSION MINUTES**

**APRIL 22, 2003**

**ATTENDANCE:** MATT CAPUTO,  
VICE CHAIRMAN; MARNY SMITH;  
ANNE CAGNINA; ED HOLOWINKO;  
KAREN DESTEFANIS; LARRY LOSIO

**STAFF:** ALEXIS CHERICHETTI,  
SENIOR ENVIRONMENTAL OFFICER;  
MIKE GREENE, DIRECTOR OF  
PLANNING & ZONING; CHERYL  
VALLERIE

The Chairman called the meeting to order at 6:15 p.m.

**RECEIPT & DISCUSSION**

- a. **16 Woodchuck Lane – Dragovic - #S03-142** – Construction of a new in- ground pool adjacent to a wetland and watercourse

Ms. Smith was concerned about putting a pool in an area that was wet much of the time. She said there was a lot of wetland in that area. Mr. Dragovic said he had had a meeting with the builder, who had encountered a similar situation. The builder said if there were concrete in the bottom of the pool, there would always be water on the bottom unless the area was real high. However, he saw no problem in this case. Ms. Smith asked Mr. Dragovic if he had thought of plantings. She thought it would be beautiful to have native plants. He said presently, there is poison ivy along the brook; but he would like to plant rhododendrons about six feet apart along the brook. Ms. Cagnina asked if the wooden fence that ran along the beach would be removed. Mr. Dragovic said moving the fence would not be a problem. Ms. Cagnina then asked how high the brick wall would be. Mr. Dragovic said the wall would be 24 inches high, and would be about 12 feet away from the brook, on the left side of the driveway entrance. Mr. Losio asked if the Commission had officially received the application. Ms. Cherichetti said there had not been a motion to receive the application. Ms. Smith said she thought they had received it at a previous meeting. Ms. Cherichetti said it had been discussed at the last meeting, but not accepted.

**\*\* MR. LOSIO MOVED THAT APPLICATION, NO S03-142, BE ACCEPTED.**

**\*\* MS. DESTEFANIS SECONDED THE MOTION.**

**MOTION CARRIED UNANIMOUSLY.**

Ms. Smith asked if the purpose of the buffer was to keep fertilizer and pesticides from going into the brook. She said rhododendrons spaced six or eight feet apart were not going to be an adequate buffer. She said he needed to plant flowers, grasses, ferns – native plants. Mr. Dragovic said that would be no problem. He said they kept the brook area nice and clean; and they would do anything that needed to be done. There were no further questions or comments.

**DISCUSSION & DECISION**

- b. **7 Allen Road – Pinsky - #S03-139** – Construction of two rear additions and removal of a shade tree adjacent to a pond

Ms. Desiree Dagle represented the Pinskys. Mrs. Claudine Pinsky was also present. Ms. Dagle said the applicants had submitted a planting plan and an alternate plan. She was there to answer any questions the commissioners might have. She distributed a preferred site plan, and said her clients still wanted to remove the oak tree. The alternate plan would shorten the distance to the pond by one foot. The other plan would require more in the way of removal of trees that were not as close to the pond. She said there was a cement pylon blocking that would protect the pond. Ms. Smith asked if the Pinskys had considered relocating the fence and making it a different kind of fence. She said there were other kinds of fences that could give a see-through to the pond and still act as a barrier, *e.g.*, a post and rail fence with wiring behind it. She said plants could be placed between the fence and the pond. Ms. Dagle said there were two fences that bordered the pylon line – one four feet high and one six feet high. They proposed to remove both existing fences so they could gain several more inches on the pond. The applicants were concerned that trees and greenery might grow into the fence, but said they would reevaluate it. Ms. Smith asked if privacy or safety were the issue. Ms. Dagle said the property was raised above the pond by several feet; and there were fencing alternatives that would provide both privacy and safety. Ms. Cherichetti said vegetation falling from the plants would not be a problem to the watercourse. She said any healthy watercourse is lined by herbaceous and woody vegetation; but any plant acting as a buffer would have to be directly adjacent. Ms. Dagle had sketched in a grass area as opposed to a pea stone area. She said the property had a rock garden in the back. There were no further questions or comments. The Chairman thanked the applicants for coming out.

- c. **Crooked Trail – City of Norwalk, Dept. of Public Works - #S03-140** – Installation of a sanitary sewer pipe in and adjacent to a wetland

Ms. Cherichetti said, at the last meeting, there had been a decision that the applicant did not warrant a public hearing; and there was little discussion on that

among the commissioners. She said everyone except Mr. Losio was at the presentation. The Chairman did not recall any opposition to the application.

**\*\* MS. DESTEFANIS MOVED TO APPROVE #S03-140 WITH THE FOLLOWING**

**SPECIAL CONDITIONS: (1) THE SILTATION FENCING AND TREE PROTECTION IS TO BE INSTALLED, SECURELY ANCHORED, AND CHECKED BY THE CONSERVATION STAFF IN THE FIELD BEFORE COMMENCEMENT OF ANY WORK ON SITE; (2) THE PROJECT'S LIMIT OF DISTURBANCE EXTENDS NO MORE THAN 10 FEET ON THE WESTERN SIDE OF THE PROPOSED SANITARY SEWER LINE; (3) ALL DISTURBED AREAS MUST BE SEEDED WITH A NATIVE SEED MIX AND STABILIZED WITHIN ONE WEEK OF PROJECT COMPLETION; (4) ONCE WORK ON THE PROJECT COMMENCES, ALL ACTIVITY UNDER THIS PERMIT IS TO BE COMPLETED WITHIN ONE YEAR.**

**\*\* MS. CAGNINA SECONDED THE MOTION.**

**MOTION PASSED BY A VOTE OF 5 TO 0, WITH MR. LOSIO ABSTAINING.**

- d. **101 Perry Avenue – Vigneault - #S03-141** – Installation of new drainage pipe in and adjacent to a wetland and watercourse

Ms. Cherichetti said this application was presented at the last meeting by a professional wetland scientist. The drainage pipe would be constructed in such a way that the elevation would not be altered. She said there were six special conditions attached to this application. The Chairman said he did not remember any controversy concerning this application.

**\*\* MS. SMITH MOVED TO APPROVE ITEM #S03-141 WITH THE FOLLOWING**

**CONDITIONS: (1) A \$500.00 PERFORMANCE BOND IS TO BE POSTED PRIOR TO COMMENCEMENT OF ANY ON-SITE PERMIT RELATED ACTIVITY. THE BOND SHALL BE ELIGIBLE FOR RELEASE ONCE INSTALLATION IS COMPLETE AND THE DISTURBED AREA IS STABILIZED WITH VEGETATION. ALL SPECIAL CONDITIONS OF THE PERMIT MUST BE SATISFIED PRIOR TO RELEASE OF ANY BOND MONIES; (2) ALL DISTURBED AREAS MUST BE SEEDED WITH A NATIVE SEED MIX AND STABILIZED WITHIN ONE WEEK OF PROJECT COMPLETION; (3) ONCE WORK ON THE PROJECT COMMENCES, ALL ACTIVITY UNDER THIS PERMIT IS TO BE COMPLETED WITHIN SIX MONTHS; (4) MACHINERY SHALL NOT ENTER THE WETLAND ADJACENT TO THE PIPE INLET; (5) NO CONSTRUCTION, FILLING, EXCAVATION OR RELATED ACTIVITIES MAY OCCUR WITHIN 50 FEET OF ANY WETLAND OR WATERCOURSE, WITH THE EXCEPTION OF THE SPECIFIC ACTIVITIES ILLUSTRATED ON THE PLAN ENTITLED "PROPOSED SITE DRAINAGE PLAN," DATED 11/04/2002, AS PREPARED BY LAND-TECH CONSULTANTS; (6) THE ELEVATION OF THE PIPE INLET (TO REMAIN AT 98.2 FEET) SHALL BE CERTIFIED BY A PROFESSIONAL ENGINEER OR SURVEYOR WITHIN THREE (3) MONTHS OF PIPE INSTALLATION.**

**\*\* MR. HOLLOWINKO SECONDED THE MOTION.**

**MOTION CARRIED BY A VOTE OF 5 TO 0 WITH MR. LOSIO**

**ABSTAINING.**

**ACCEPTANCE OF MINUTES**

**a. April 8, 2003 Minutes**

Page 3, Item B. 7, 1<sup>st</sup> par., line 3 – "**Commission**" should be "**applicant.**"

Page 3, Item B. 7, 1<sup>st</sup> par., last line – "**the permit**" should read "**that construction.**"

Page 3, Item B.7, 2<sup>nd</sup> par., line 2 – "**and extra bedroom and closet**" should read "**an extra bedroom closet.**"

Page 5, Item C., 1<sup>st</sup> par., "**that this application**" should read "**that a previous application.**"

Page 7, Item E., 1<sup>st</sup> par., "**Landtek**" should read "**Landtech.**"

Page 11, 6<sup>th</sup> par., line 2 "**has been made and that all motions . . .**" should read "**has been made and seconded and that all motions . . .**"

Page 11, 6<sup>th</sup> par, line 3 "**about the motion except . . .**" should read "**about the motion or they do not carry . . . .**"

Page 11, last par., line 5 – "**regulatory**" should read "**declaratory.**"

Page 12, 3<sup>rd</sup> par., last line – "**turn**" should be "**turning.**"

Page 13, subheading A, 1<sup>st</sup> par., 1<sup>st</sup> sentence – should read "**Mr. Holowinko proposed that a letter be sent to the state legislators supporting the changes to the Siting Council as outlined in substitute bill 6508, known as the Energy Facility Planning Bill.**"

**\*\* MS. SMITH MOVED TO ACCEPT APRIL 8, 2003 MINUTES AS**

**CORRECTED.**

**\*\* MS. CAGNINA SECONDED THE MOTION.**

**MOTION CARRIED BY A VOTE OF 5 TO 0, WITH MR. LOSIO**

**ABSTAINING.**

b. **April 15, 2003 Minutes**

Page 1, Attendance – It should be noted that Mr. Larry Losio arrived at 6:15.

Page 1, subheading A, 2<sup>nd</sup> par. – **"to read the maps"** should read **"of instructions relating to the maps."**

Page 1, last par. – **"form a municipal"** should read **"from a municipality."**

Page 2, 3<sup>rd</sup> par., line 1 – **"track"** should read **"tract."**

Page 2, 5<sup>th</sup> par., line 1 – **"Comstock Avenue"** should read **"New Canaan Avenue;** 4th line, **"structure"** should read **"structures."**

Page 2, 6th par., line 2 – **"tracks"** should read **"tracts."**

Page 2, 8<sup>th</sup> par., line 1 – **"work"** should read **"word."**

Page 3, 9<sup>th</sup> par., line 1 – **"ff"** should read **"staff."**

Page 3, last par., first sentence should read **"Mr. Losio questioned what the objectives are in this discussion relative to what they were actually doing with the topic of open space; and he strongly felt there would be a clear indication of what open space is first before going any further with the subject."**

Page 2, last par., line 3 – **"pint to inventory was very important"** should read **"point was an inventory of open spaces."**

Page 4, 1<sup>st</sup> par., line 3 – **"open is"** should read **"open space is."**

Page 4, 5<sup>th</sup> par., **"Ms. Cocillo"** should read **"Ms. Corcillo"** throughout the document.

Page 4, last par., line 3 – **"people are doing"** should read **"people are unwittingly doing."**

Page 5, 4<sup>th</sup> par., line 3 – **"write"** should be **"contact,"** and **"State"** should be deleted.

Page 5, 5<sup>th</sup> par., line 1 – **"a good to allow"** should read **"because it would allow."**

Page 5, 6<sup>th</sup> par. - second sentence should read **"Mr. Holowinko said he has done some research and determined it was a field in 1946."**

\*\* **MS. CAGNINA MOVED TO APPROVE APRIL 15, 2003**

**MINUTES AS CORRECTED.**

**\*\* MR. LOSIO SECONDED THE MOTION.**

**MOTION PASSED UNANIMOUSLY.**

**COMMENTS OF STAFF**

**a. Declaratory Permits and Enforcement Actions**

Ms. Cherichetti said, since the last meeting, there had been violations and warnings sent out to the property adjacent to 442 Main Avenue, 2 French Farm Road, and Knowalot Road. She felt there was a problem with wetland encroachment. Such violations carry a \$50.00 fine.

**Progress Report**

At a previous meeting, Mr. Holowinko had proposed that a letter, as outlined in substitute bill 6508 (known as the Energy Facility Planning Bill) supporting changes to the Siting Council, be sent to state legislators. Ms. Cherichetti informed the Commission that the letter was sent out on April 9, 2003.

**b. Review of General Meeting Procedures**

Ms. Cherichetti circulated **General Statutes Of Connecticut, Vol. 8**, which outlined the Commission's duties as inland wetland agents; and said the Norwalk statutes were based on state statutes. She said the city applications were slightly different from the model of the state. She also circulated excerpts of a DEP publication, the **Inland Wetlands Commissioners' Handbook**. Ms. Cherichetti said this was a state publication that contained environmental statutes for inland wetland agencies, and that it should answer any questions the commissioners might have. Ms. Cagnina referred to page 17, "Public Hearings" and asked if it held for a summary application that came to a meeting as well. Ms. Cherichetti said they should be careful denying a summary application on that basis alone. She referred them to the flow chart at the back. Mr. Losio, also referring to page 17, said at the class, they handed out some examples of approvals; and that the approvals always began with some text to the effect that a reasonable and feasible alternative did not exist. Ms. Cherichetti said when making decisions to approve or deny an application, the Attorney General would want a statement to be made each time there was an approval. She said it had to do with whether a feasible and prudent alternative were looked for but not found. Mr. Losio said he was still not comfortable with it. He said doing nothing to a piece of property was not a feasible alternative within the context of the applicant's stated objectives. Ms. Cherichetti said a vacant lot was an existing building lot; and that it would be a taking if the Commission did not allow any construction on the lot. She said a feasible and prudent alternative would be not to construct anything on the lot because it would not be prudent to do so; and that it becomes more difficult as you get into additions. She said the issue of prudent and feasible alternative would have to be decided by the Commission. Mr. Losio said, in

segment 2, they would evidently go over more issues of that sort. Ms. Cherichetti said in segment 2, there would be an assistant attorney general present to go over denying permits and what reasons would be legitimate and what reasons would not be.

**Receipt of Application and Regulatory Timelines** explain how an application date is determined. Ms. Cherichetti said the date of receipt is technically the date of the next meeting following the submission to the Conservation office. Receipt does not technically require a motion on the part of the Commission. For example, if Mr. Dragovic submitted his application on March 25<sup>th</sup> and the next meeting following this was April 8<sup>th</sup>, the formal date of his application would be April 8<sup>th</sup>. Ms. DeStefanis noted that since the receipt did not require a motion on the part of the Commission, the Commission did not have to make a motion to accept. Ms. Cherichetti said that when an applicant brings an application, she looks at it for completeness. If it is incomplete, she strongly urges the applicant not to submit it; but she cannot insist on this. If the applicant insisted on submitting it, she would have to accept it and, once accepted, the clock would start to run. She said if it were incomplete, it would be denied with prejudice at the next meeting. She said the Commission has 65 days from the date of receipt to make a decision. Mr. Losio said if the applicant did not submit a complete application and its necessary service reports, etc. on time, the application should be denied. He asked if application fees had gone up with the fee revisions that had been made. Ms. Cherichetti said a revision to the fee schedule would have to be voted on by the Commission. Mr. Losio asked if fees having to do with land use applications had gone up. Mr. Greene said they had, but that Planning and Zoning would have to hold a hearing on the increase. Mr. Losio wanted to know if, in addition to application fees being changed, had any consideration been given to violations fees. Ms. Cherichetti said there had been. Ms. Smith asked what the fees were. Ms. Cherichetti said she would include a current fee schedule in the next package.

**Permit Conditions** deals with factors for consideration in granting or denying a permit. Referring to page 3, Ms. Cherichetti said special permit conditions are divided into lawful and unlawful ones. "A lawful permit condition relates directly to the regulated activity and the resource, wetlands and watercourses, for which the municipal inland wetlands agency has authority." Ms. Smith asked if, for example, an applicant could be denied the privilege of building a swimming pool during a four-year drought. Ms. Cherichetti said it could not be done. For example, there would be no connection between the pool and the drought; and the pool's water might not be related to the well adjacent to it. Mr. Losio asked what about a tree. Ms. Cherichetti said that would be okay. Ms. Smith said this was difficult because the Commission had to wear two hats at the same time. Ms. Cherichetti agreed that it was difficult. She then referred to the unlawful conditions on page 4. Mr. Losio asked if, in those instances when the Commission was developing conditions and going to make a decision, the applicant had to agree with the conditions. Ms. Cherichetti said the applicant had to agree only to those conditions that might take away property rights. She said they would not have to agree to plant 50 shrubs, for example. Ms. Smith then asked if, for example, requiring an applicant to put a six-foot buffer along a stream would be a taking. Ms. Cherichetti said it would not. Ms. Smith said the applicant could exercise his option not to do the construction. Ms. Cherichetti read B. Section 22a-41(a)(4) **Factors for consideration**, saying there had been a long history of inland



agencies requiring buffers. She said this did not mean one had to protect all watercourses the same. She also said there should be very little wriggle room concerning when you get a permit and under what circumstances. Ms. Smith asked when did an applicant find out they needed a permit to do something on their property. Ms. Cherichetti said when an applicant went to get a building permit, he or she had to get other approvals as well. The Zoning Department had to review the application, and determine if it was likely a wetland. It would then be referred to the Conservation Commission. Ms. Cherichetti said the handouts from the DEP inland wetland agency dealt with wetland basics: i.e., what a wetlands and watercourses are. Mr. Losio again asked about segment 2. Ms. Cherichetti said she would provide him with the information he needed. Mr. Caputo asked if there were anything else in that section. Ms. Cherichetti said there was not. She asked Mr. Losio if he had received handouts that had been distributed at the last meeting, and gave him material on meeting procedures. Ms. Smith said sometimes, during the making of a motion, there are several instances when there are only six commissioners present. Ms. Cherichetti said if there were a motion to deny and the vote was 3/3, the motion would fail. If there were a motion to approve and the vote was 3/3, that motion would fail also. The application would not be approved in either case. Ms. Smith then asked if the applicant would have the option of bringing the application back when there were seven commissioners present. Mr. Caputo said no. The application would be dead. Ms. Cagnina asked how could such a situation be avoided. Ms. Cherichetti said when there are only four members present, the chairman lets the applicant know that it has to be a unanimous decision. Ms. Smith asked if it would be appropriate, after each item on the agenda, to ask what the deadline for the decision is. Ms. DeStefanis said it would be on the agenda. Ms. Cherichetti said it might be best to make the decision to approve or deny well before the 65 days. She said in certain circumstances, an application is received, which is technically complete, but she may feel additional information is needed, such as a drainage report. In such a case, the application is complete but a deadline cannot be given because the applicant would have just found out they needed the report. In such a case, if an applicant missed the deadline, the Commission could deny the application with prejudice.

Ms. Cherichetti said the soil scientist field was a very limited field; and none of them had come there. Ms. Smith asked that the Commission be informed if one did come. Ms. Cherichetti said the Commission could always ask the applicant to provide a second opinion. She said there was a small budget for special services; so if the Commission wanted to have its own expert, it could do so.

## **COMMENTS OF COMMISSIONERS**

Ms. Smith said the handbook had a very good section about the need to have a natural resource inventory as well as an index of open space land. She strongly suggested that each commissioner read it. Ms. Cherichetti said she would provide Mr. Losio with a copy of the handbook as he was not present at the previous meeting. Ms. Smith asked if the Commission should be looking at land that was being auctioned by the tax collector. Mr. Losio said he looked through the list and did not see any undeveloped acreage listed. Mr. Caputo said he had noted an estate on the list that was to be sold. He said he hoped there

were no elderly people being thrown out of their homes because they could not pay their property taxes, when the town would not stand to collect taxes if there were a foreclosure. He said the City was making 18% interest on these debts; and that in years past, it had provided an annuity for the City under a state mandate. Ms. Cherichetti said at the first meeting in May, she would bring a list for middle meetings and distribute additional information that might help guide the discussion. Ms. Smith asked Mr. Greene to be present at the next meeting.

Ms. Cagnina said that in the minutes of the April 15<sup>th</sup> meeting, a profile article on Alexis Cherichetti had been mentioned. Ms. Cagnina asked Ms. Cherichetti if she would be willing to be the subject of such an article. Ms. Cherichetti said she would.

**\*\* MS. SMITH MOVED THAT THE MEETING BE ADJOURNED.**

**\*\* MS. DESTEFANIS SECONDED THE MOTION.**

**MOTION CARRIED UNANIMOUSLY.**

The meeting adjourned at 8:25 p.m.

Respectfully submitted,

Linda Maddox

Telesco Secretarial Services

