

NORWALK CONSERVATION COMMISSION MINUTES

CITY OF NORWALK

NORWALK CONSERVATION COMMISSION

AUGUST 26, 2008

PRESENT: D. Seeley Hubbard, Chair; Ed Holowinko; Emily Wilson; Matthew Caputo; Anne Cagnina; Gwen Briggs; Elizabeth Ackerman

STAFF: Alexis Cherichetti; Yari Bletsas

OTHERS: Leslie Lawrence; Neil Moskow; Fred Canaveri; Herb Neporent; Seth Benjamin; John Picco; Peter Torrano; Lori Torrano; Laura Skutch; Kent Pierce

I. CALL TO ORDER

Mr. Hubbard called the meeting to order at 6:00 pm.

II. ROLL CALL

Ms. Cherichetti took the roll call.

III. PERMIT MODIFICATION or EXTENSION

- a) #S07-319A – 18 Range Road – Lawrence – Modification of permit to include demolition of existing residence and construction of new residence adjacent to a wetland and watercourse

Ms. Cherichetti showed the proposed plan and explained that the applicant had been approved in June, 2008 for an addition to the existing residence.

Leslie Lawrence, the applicant, stated that she had decided that building a new residence was a better alternative than making an addition. She discussed the details of the proposal, including solar panels and a rain garden. She said that the house would be moved further away from the pond.

Ms. Cagnina asked if the applicant had a more detailed planting plan. Ms. Lawrence said that she did, pointing it out on the landscaping plan.

Mr. Hubbard asked when the construction would begin. Ms. Lawrence said it would begin in one month.

Ms. Ackerman asked if the rain garden were new to the proposal. Ms. Lawrence said yes. There was a discussion of the rain garden.

Ms. Cherichetti discussed certain details of the proposal, including the location of the silt fence and a pump chamber. Ms. Cagnina pointed out that the plans for the rain garden should include dimensions, as well as the number and type of plantings. Ms. Cherichetti agreed to add these details as condition #7.

Ms. Ackerman asked if the new residence were the same size as the other residence. Ms. Lawrence said that it would be slightly larger.

** MR. HUBBARD MOVED TO APPROVE THE PERMIT MODIFICATION WITH CONDITIONS #1 THROUGH #6 OF THE ORIGINAL, PLUS CONDITION #7 AS OUTLINED TONIGHT.

** MR. CAPUTO SECONDED.

** MOTION PASSED UNANIMOUSLY.

IV. DISCUSSION &/or DECISION I

- a) #S08-325 – 29 Bonnybrook Road - DiPasquale – Deposition of boulder revetment in and adjacent to Five Mile River

Ms. Cherichetti stated that the applicants had not submitted the requested information regarding the amount of material to be deposited at the site. She also said that they had not yet paid the filing fee. Mr. Hubbard asked if an application were deemed incomplete if the fee has not been paid. Mr. Caputo asked if the fee waiver had been rejected. Ms. Cherichetti stated that it had been rejected on July 22, 2008. Mr. Hubbard pointed out that the applicant had only presented a hand-drawn, incomplete plan.

Ms. Cherichetti explained and described the potential impact on bank stabilization and flow velocity.

** MR. CAPUTO MOVED TO DENY THE APPLICATION WITHOUT PREJUDICE, BECAUSE OF THE APPLICANT'S FAILURE TO PAY THE FILING FEE AND BECAUSE OF THE INCOMPLETENESS OF THE APPLICATION.

** MS. ACKERMAN SECONDED.

** MOTION PASSED UNANIMOUSLY.

- b) #S08-326 – 115 Maywood Road – Barringer – Corrective Action deposition of woodchips in and adjacent to a wetland and watercourse

Ms. Cherichetti stated that she had not heard back from the applicant.

- c) #S08-327 – 85 Maywood Road – Sheed – Installation of a replacement on-site septic system adjacent to a wetland and watercourse

Ms. Cherichetti stated that the application had already been approved and apologized for the application's reappearance on the agenda.

Ms. Cherichetti requested an amendment to the agenda to include a discussion of the bond involving Rowayton Woods Condominiums.

** MR. HUBBARD MOTIONED TO AMEND THE AGENDA.

** MS. ACKERMAN SECONDED.

** MOTION PASSED UNANIMOUSLY.

The Commission discussed Rowayton Woods Condominium's request to post an insurance bond, as it was ready to begin work on the overflow channel at the site. Ms. Ackerman asked what the downside of granting the bond would be. Mr. Caputo explained that if the work were not performed, the bond would then need to be called. He also discussed concerns about setting a precedent as far as granting bonds. Ms. Cherichetti stated that since the Commission had changed the regulations, they had granted one non-cash bond and that, unfortunately, there have been difficulties with that application and bond.

The Commission discussed the issue of the bond. Mr. Caputo emphasized that the Commission was being asked to cover for the Condominiums, with no presentation.

** MR. CAPUTO MOTIONED TO REJECT WITHOUT PREJUDICE THE APPLICANT'S REQUEST BY TELEPHONE TO CHANGE A BOND REQUEST FROM A CASH BOND TO AN INSURANCE BOND.

** MS. CAGNINA SECONDED.

** MOTION PASSED UNANIMOUSLY.

The Commission took a five-minute recess.

V. PUBLIC HEARINGS (to begin at 7:00 p.m.)

- a) #S08-324 – 379 Chestnut Hill Road – Canevari/Vey – Corrective Action clear cutting and preparation of land adjacent to a wetland

Mr. Hubbard opened the public hearing. Ms. Cherichetti took the roll call.

Attorney Moskow discussed the cease and desist order, stating that the applicant had originally taken an appeal. He said that he believed that no permit was required to take action on the property, as far as permitting grazing, farming and harvesting of crops. Moskow said that the applicant had maintained a barrier of approximately 25 feet between the wetland and the grazing area. He also presented a document showing the remaining trees and the removed trees, as of January, 2007.

Mr. Hubbard asked if there was a count as to how many trees had been taken down. Mr. Moskow said there was not a count.

Mr. Moskow described the details of the application. He provided photographs of horses grazing at the site, explaining that the horses graze there from May to October.

Ms. Ackerman asked about a structure in the photographs. Mr. Moskow said that it was a neighbor's house and that the property does have an irregular shape. Mr. Hubbard asked how big the western area of the property was. Mr. Moskow stated that it was $\frac{1}{2}$ acre altogether. Ms. Cherichetti clarified that the area that was cut was over $\frac{1}{2}$ acre and that the entire property was 2.8 acres. Mr. Moskow said that he stood corrected.

Ms. Cagnina asked why there was a concern now, if the horses had been grazing there for years. Mr. Moskow explained that the horses had not been grazing there when the trees were on the property. He explained that the highlighted area on the site plan indicated what remained on the site, not what had been removed.

Mr. Hubbard asked if any trees had been cut in the wetland. Mr. Moskow said no, adding that all activity had taken place in the upland review area, not in the wetland.

Mr. Canaveri described his own acquisition of the property in 1998. He stated that there had been livestock on the property all along, including during the time that his daughter had owned the property. Mr. Moskow asked how Mr. Canaveri identified which trees would be cut and which would remain. Mr. Canaveri discussed the rocky area of the property, which was a concern to him due to the risk of the horses stumbling and becoming injured on the boulders. He also explained that he had planted Timothy grass there, as it was the horses' preferred food.

Mr. Canaveri described his experience with a tree-cutter who mistakenly removed a number of trees that the applicant had wanted to remain on the property.

Mr. Hubbard asked what needed to be done to plant the Timothy grass. Mr. Canaveri said that the trees needed to be removed, but that the stumps could remain in place to rot. Mr. Moskow said that the hazard to the horses was the fallen trees, not the stumps.

Ms. Cherichetti asked what would be done next to the land. Mr. Canaveri said that when the frost hit, he would throw down seed for the Timothy grass.

Ms. Cagnina asked what the maximum number of horses on the property would be. Mr. Canaveri said that there were four horses, all of which leave the property in the winter months. He added that the area would allow year-round grazing, but that the horses were moved due to his own preferences for winter habitation.

Ms. Cherichetti asked if any improvements were needed to get trucks down to the area. Mr. Canaveri said no.

Mr. Moskow discussed a similar case, Sackler, stating that the applicant's use was within statutes.

Ms. Cagnina asked how long Mr. Canaveri planned to have the horses on the property, stating that farming develops over time. Mr. Canaveri said that he had owned horses for 25 years and that he felt that her question about his future plans was unfair.

Ms. Briggs asked if there were any other structures on the property. Mr. Canaveri said that there were mobile structures.

Mr. Neporent, 5 North Wind Lane, an adjacent property owner, stated that he was concerned about the impact of the horses on the immediate ecosystem. He said that there was some blight on the property, including logs, an overgrown area and woodchips. He said that there needed to be coverage between the two

properties to reduce the visual impact. Mr. Neporent also stated his concern about wells in the area.

Mr. Benjamin, 1 North Wind Lane, an adjacent resident, stated his concern with the eventual intent of the applicant, as well as the environmental impact of the horses. He also said that he was concerned that the application could be paving the way for making new homes in the area.

Mr. Pico, the president of the Four Winds Farm Association, discussed the property's effect on the water table. He also discussed the blight of on the property, adding that he believed that the blight had impacted the sale of a nearby property. He said that his opinion of the use would be affected by what kind of barrier could be put up between the property and its neighboring properties. Mr. Pico added that he was speaking on behalf of 24 nearby homeowners.

Ms. Cagnina said that the Commission could only regulate what occurs to the wetland, stating that it had no jurisdiction regarding what happens with barriers between properties.

Ms. Cherichetti discussed the nature of permitted, as-of-right activities and regulated activities.

Ms. Wilson asked if there was anything from Corporation Counsel on the item. Ms. Cherichetti said no, though she had discussed components of the application with counsel. Mr. Caputo stated that the Commission should have a chance to discuss the item with Corporation Counsel prior to the closing of the hearing. Ms. Wilson added that the Commission should specifically discuss case law and Connecticut statutes, as well as Conservation Commission regulations.

The Commission agreed to leave the hearing open and reconvene at the next meeting on September 9, 2008.

- b) #S08-328 – 104 Dry Hill Road – Torrano – Corrective Action construction of low retaining wall, filling and grading in and adjacent to a wetland and watercourse

Mr. Hubbard opened the public hearing. Ms. Cherichetti took the roll call. She said that she had received the receipts notifying residents of the hearing.

Mr. Torrano said that he had put together a planting plan. He gave a background of the property, explaining that nine houses had been built across the street, causing a heavy rise in the water level on his property. He said that the water sometimes came to within 20 feet of his house and that trees were dying and soil was eroding on his property. He showed photographs and described the site, particularly the railroad ties which were now exposed due to heavy erosion. Mr. Torrano explained that he had been advised to put down cinderblocks and gravel for drainage.

Ms. Cherichetti described an aerial photograph of the property, indicating the location of the wall on the wetland line.

Mr. Torrano reiterated that the object of the wall was only to prevent soil from running off his property. Following questions from the Commissioners, Ms. Cherichetti discussed the difference between disturbed soil and wetland soil. She presented a letter from Ms. Skutch, dated August 5, 2008.

Ms. Skutch, 102 Dry Hill Road, an adjacent property owner, passed around copies of her letter. She said that she was glad to be informed of the applicant's intentions initially and did not pay much attention to the work until it was being conducted on her own property. She explained that she had retained an expert to get an opinion on the watercourse, which flooded frequently. Ms. Skutch debated the need for the wall, which she described as 20 inches, rather than 10 inches, in height.

Ms. Skutch read her letter, which discussed the watercourse and flooding. She added that Mr. Torrano did not submit the necessary information about the

proposed activity and its impact. She also said that the wall had been constructed of poor materials, which would collapse over time.

Ms. Skutch answered questions from the Commission about the nature of her property. Mr. Caputo asked if Ms. Skutch believed that the wall was increasing the water on her property. Ms. Skutch said yes, pointing out her loss of flood storage. Mr. Holowinko asked what Ms. Skutch would ideally like to see done. Ms. Skutch said that she wished for the problem to be properly identified and to determine whether the rationale for building the wall was reasonable. She added that her expert believes that the wall was “overkill” for a condition (erosion) that did not really exist.

Mr. Pierce, an arborist and president of Green Cross, discussed tree health issues and showed photographs of flooding that occurred in April, 2007. He explained that flooding does not kill red maples (the same type of tree that is on the applicant’s property). Mr. Pierce showed photographs that indicated no obvious erosion at the bench on the property, despite flooding in the area.

Ms. Cagnina asked what the difference was between the two properties. Mr. Pierce discussed a small tributary in the area, as well as root systems and topsoil.

Mr. Torrano stated that he found it curious that Ms. Skutch’s argument seemed to focus on *why* he was doing the work on the property, rather than on the actual effect of the work. He also described the angle of the two properties, pointing out that his property was uphill and tended to flood after Ms. Skutch’s property. He stated that the waterway comes closer to her property. As a result, Mr. Torrano said, things tend to settle on her property, while they wash away on his own. He also disputed Ms. Skutch’s assertion that the wall was 20 inches high. Mr. Torrano stated that he did not believe that the wall affected the wetland, since he was simply retaining soil on his property.

** MS. CAGNINA MOVED TO CLOSE THE PUBLIC HEARING.

** MR. CAPUTO SECONDED.

** MOTION PASSED UNANIMOUSLY.

VI. DISCUSSION &/or DECISION II

- a) #S08-324 – 379 Chestnut Hill Road – Canevari/Vey – Corrective Action clear cutting and preparation of land adjacent to a wetland

The Commission agreed to postpone a decision.

- b) #S08-328 – 104 Dry Hill Road – Torrano – Corrective Action construction of low retaining wall, filling and grading in and adjacent to a wetland and watercourse

The Commission agreed to postpone a decision.

VII. ENFORCEMENT ACTIONS

- a) SHOW-CAUSE HEARING (continued) – Cease & Restore Order #V08-814 – 4 Little Fox Lane – Giapoutzis – Filling, grading, removal of vegetation, construction of patio & stone wall structures, alteration and obstruction of flow in and adjacent to a wetland and watercourse

The Commission agreed to discuss the item at the next meeting.

- b) SHOW-CAUSE HEARING (continued) – Cease & Restore Order #V08-815 – 147½ East Rocks Road – Zacklewicz – Filling, grading, and removal of vegetation in and adjacent to a wetland and watercourse

Ms. Cherichetti said that she had been unable to contact the owner.
Commissioner Caputo suggested that she ask Attorney Maslan how to proceed.

VIII. MINUTES

- a) August 12, 2008 minutes

Ms. Cherichetti stated that the minutes had not yet been finished.

IX. COMMENTS OF STAFF

There were no comments from staff.

- a) **Minor Permits and Enforcement Actions**

There were none tonight.

X.COMMENTS OF COMMISSIONERS

- a) Report of Commission Chair

There were none tonight.

XI. ADJOURNMENT

The meeting was adjourned at 9:31 pm.

Respectfully submitted by Charlene Smith.

