

Town of East Hampton
Inland Wetlands and Watercourses Agency
Regular Meeting
February 22, 2017 – 6:30 P.M.
East Hampton Town Hall Meeting Room

DRAFT MINUTES

Present: Chairman Jeff Foran, David Boule, Scott Hill, Vice Chairman Joshua Wilson, W. Dean Kavalkovich, Harold L'Hote and Jeremy DeCarli (P & Z)

Absent: Peter Wall, Robert Talbot and Alternate Member Jacqueline True

1. Call to Order: The meeting was called to order at 6:30 P.M. by Chairman Foran

2. Seating of Alternates: Harold L'Hote was seated upon his arrival at 6:35

3. Approval of Minutes:

A) January 25, 2017 Regular Meeting: *Mr. Boule moved, and Mr. Kavalkovich seconded, to approve the minutes of the January 25, 2017 regular meeting. Voted 4-0 in favor (Mr. Wilson & Mr. L'Hote were not present during this vote).*

4. Communications, Enforcement and Public Comment: Mr. DeCarli noted that the Agency received a copy of an application to DEEP regarding the pond on White Birch Road at Nelson's. It is to be treated for algae and invasive species with pesticides. DEEP will regulate the activity.

There were no enforcements and no public comment.

5. Agent Approval:

A) Application of James Marino, 18 Flanders Road to install Underground Propane Tank in the Upland Review Area – Map 06A/Block 59/Lot 31B:

Duly Authorized Agent Foran noted that they would like to place a 500 gallon propane tank off the left rear corner of the house, approximately 10' from the house. Material from digging will be removed off site.

6. Reading of the Legal Notice: None

7. Continued Applications:

A) Application of Clark Hill Estates, 109 Clark Hill for a re-subdivision. Map 11/Block 39/Lot 2-4:

Pat Benjamin, Civil Engineer at Bascom & Benjamin, 360B Main St., Durham, CT, was present. He noted that since last month, the conservation easement on the property was added to by 1 acre making the total easement 19.29 acres, or 27% of the property. An area for roof water drainage was added to the proposed barn on lot 5; this is a modified rip rap area that will retain 1.5" storm water that the gutters will be directed into. It is an 18" deep, 5' x 5' area lined with stone which is 25' from the wetlands at the closest point.

It was noted that conservation easement and wetland tags will be placed. This property is not in the lake watershed. After discussion, the Agency asked that the barn on Lot 5 be shifted away from the wetlands and Mr. Benjamin noted that it could be brought another 25-30 feet away.

A motion was made by Mr. Wilson, seconded by Mr. Boule, to accept the application using the standard short form with the condition that the garage be moved to no closer than 60' from the wetlands at the nearest point and also that the associated infiltration gallery be moved accordingly. Voted 6-0 in favor.

B) Application of Tom Burdick, for Peter Minoli, 135 Middle Haddam Road, Directional Drilling of Water Line from House to Cistern – Map 02/Block 18/Lot 21:

The discussion started with Agency members stating that it is unlikely that a decision would be made this evening as items were presented to them the evening before and they have not had time to make a thorough review. This matter has been sent out to a third party since there are two opposing opinions being presented.

A motion was made by Mr. Wilson, seconded by Mr. L'Hote, to assess a fee to the applicant for the third party review. Voted 6-0 in favor.

Attorney Tom Crosby, representing the applicant Mr. Minoli, stated that based on the letter from Mr. Allan of Landtech on February 13, 2017, there is little risk of wetland disturbance. He reviewed the particulars of the plan for directional drilling and the pipe, and stated that Mr. Minoli's current 705 ft. well is incapable of getting a good draw. A 500 gallon cistern in the basement will have a control valve installed on it, and the water will be used to water a 1 acre area from April – October. He requests that the third party expert is allowed to investigate the site to make a further determination.

Attorney John Bennett, representing the Throckmortons who are the interveners that live at 136 Middle Haddam Rd., was present in lieu of Mr. Willis. He stated that his clients are happy to give the Commission review time. He stated that CT regulations require the Agency to consider alternate plans, and that none have been

provided. He stated that Mr. Minoli does have alternates to use. Attorney Crosby disagreed and stated that Mr. Minoli doesn't need to show alternative mitigations if there are no impacts to the wetlands.

Michael Klein, Biologist & Soil Scientist for Mr. Minoli, stated that the Landtech consultant concurred with his opinion that the construction itself would have no negative impact on the wetlands. He feels the hydrology of the wetland is sufficiently robust and the draw on the wetland is sufficiently small that in his opinion there will be no adverse impact. In order to have more quantitative information, Leggette, Brashears & Garham, Inc. (LBG) was retained to create a water budget, as asked for by Landtech. Their detailed, conservative calculations support his opinion. They found that the demand will be less than on half of one percent of the available supply during average conditions and that it will be two percent during severe drought conditions. Mr. Klein also stated that he has submitted a letter in response to the Rema report. He stated the Rema report raises distracting/obfuscating issues that he called "red herrings" – such as the fragmentation of sensitive wildlife and vernal pool amphibians. He also stated that the Rema report contains several deficiencies and errors, and some contradictory conclusions.

Rob Good, Hydrogeologist and Principal of LBG, provided a water budget analysis. He reviewed and explained his analytical matrix and methods, and explained processes and factors in his calculation. He has calculated that this site will yield a positive water demand; it will produce 32,000 gallons/day in a drought condition and the use, or demand, is 2,000 gallons/day. He stated that this will have no potential for significant adverse impact based on his analysis. He also noted that there will be controls on the cistern, and that valve will only be open when there is a demand on that irrigation supply; not flowing continuously. Per Chairman Foran, this is not what the Agency had originally been told. Mr. Good stated that having a control valve on the pump is the plan now as he understands it. Also noted was that these figures only apply if the amount called for for these irrigation standards is used, seasonally April - October – not if it is continuously flowing 24 hours/day (as it is a gravity-fed pipe).

Joanna Chester, Geologist & Hydrologist employed by the Throckmortons, asked if the water budget is for the entire basin or for the spring, and asked if Mr. Good could tell her how much the spring produces (whether it can meet the demand). Mr. Good stated that he could not, and that amount will vary seasonally. He stated he has been asked to evaluate only the resource for enough water available in the system, and that they will not be pumping directly from the spring, it will only take what water is there. Mr. Wilson asked how the spring is being fed; Mr. Good stated that it will vary seasonally and on the variable permeability, at times will be direct runoff,

at other times some of the till will recharge the spring. He does not have that data, and that is difficult to ascertain without a long period of study, which is why the budget analysis is used as a qualitative assessment. Mr. Good stated again that he is confident that this is a significantly positive case with a low demand.

George Logan, of Rema Ecological Services, Soil Scientist for the Throckmortons, stated that in his opinion, 50% or more of the contribution to the perennial stream area comes from overflow of the cistern and less comes from other sources. He explained his methods of calculation and stated that the flow is 14 – 33 gallons/minute at the three stations they measured February 18, 2017 with a flow meter, which is about two times as much water as he calculated in July of 2016. There was discussion on the size and flow of the proposed and existing pipe. Chairman Foran clarified that there will be a 1.5” pipe into the cistern, but the main pipe will be 2”. Mr. Logan disputed that the discharge rate from the pipe will be 16.7 gallons/min, as was stated by the engineer for Mr. Minoli in a previous meeting. He believes it will be 43 gallons/min. Mr. Logan suspects a significant impact on the wetlands because they will be using more water than 16.4 gallons/minute (as was stated in data at a past meeting).

In response to Mr. Good’s water budget, Mr. Logan stated that Mr. Good does not have empirical data and does not know what is going on in the spring. So in essence the entire analysis has a fatal flaw in the yield calculation and the ability to keep up with the demand. Mr. Logan detailed sub-water sheds, acreage and how he would perform calculations on yields and sources of water. He believes that his report is the only report that includes empirical data on where the discharge from the cistern comes from.

Mr. Logan asserted that the issue of the existing eroded pipe is being overlooked. He stated the client will need to replace the pipe and would have to cross and disturb the wetland in a well-developed seep area that includes salamanders and invertebrates to do so. He stated digging the trench is a significant activity with potential for adverse impact. There is also a high risk of something going wrong, and it will be difficult to restore.

Mr. Logan addressed Mr. Klein’s report and response to his own original report. He disputed some of Mr. Klein’s findings and stated that Mr. Klein’s report includes technical egregious errors that call into question the report. He stated Mr. Klein saying that Mr. Logan’s report includes red herrings, it is a convenient argument he used because he has no cogent counter argument available. He discussed the vernal pool as a potential habitat for species. Mr. Logan then refuted Mr. Klein’s report referencing the same book that Mr. Klein also referenced in his report. There was

detailed discussion about the specific species (box turtles, salamanders, catts flies and more), how far away they can be from a source, which are keystone species, etc.

Mr. Kavalkovich asked about the gravity fed pipe flow calculations – it was clarified that a 2’ drop is asserted, though Mr. Logan measured a 24’ drop. Mr. Hill clarified the fact that the applicant has a 500 gallon tank with a valve; which enables them to only fill up the tank to capacity. Mr. Logan stated that at the last meeting the applicant stated the overflow would go into a pond. Mr. Burdick, contractor for Mr. Minoli then stated that they will not be filling a pond with the overflow as the pipe to the pond no longer exists and that the cistern will be closed with a valve.

Mrs. Throckmorton felt that there was some question as to whether box turtles existed on the site of the wetlands. She stated that she has seen box turtles since before this issue arose. This has been documented with photos and reported to the DEEP. People from CT State University, and weed scientists from the extension center have come to her site to try and work with the invasive species, although they are not touching anything in the wetlands while this is going on. She stated they really care about their property, they bought it because of wildlife and wetlands, and would like to see it stay that way.

Attorney Bennett asked the following questions of the applicant through Chairman Foran:

- Will this water source be used for anything other than lawn irrigation, such as for the swimming pool? Answer – it will not be used for the pool.
- Cost of project? Per one of the statutes in the IWWA regulations under 22A-41, need to examine reasonable alternatives to proposed activities, and one of the judgments of the alternatives is the cost. He mentioned drilling vertically on the client’s property for another water source, and this might be appropriate and also less expensive. Answer – Commission members originally stated that was probably not their business and Atty. Crosby stated that until they find a reasonable threat of environmental harm they do not have to provide alternatives.
- What is the useable capacity of the storage tank? Answer – about 400 gallons (Exact amount included in written report)
- Is there a pond on the property and how much water can be withdrawn from it without a permit? Answer – Half a shared pond is on the applicant’s property and the answer to the draw question is not known.

Joanna Chester, Geologist for the Throckmortons, explained that based on the measurements of the well it has a capacity of 977 gallons of water, which recharges at a rate of 3 gallons/minute and would take about 5 hours to recharge. The well

exceeds the yield for a domestic well. She stated that 50,000 gallons/day can be drawn from the pond without getting a water diversion permit.

Mr. Wilson asked if anyone has submitted a NDDDB request for the data on box turtles? The answer is no. The Throckmortons will submit what they have submitted to the DEP, which predates this process. Mr. Klein stated that he is not suggesting that the Throckmortons did not see box turtles. His point was that there will be no effect on box turtles because of this work, and that Mr. Logan never presented data that he found box turtles or amphibian breeding.

Mr. Wilson stated that he thinks an alternatives analysis is required, even without evidence of significant activity based on the IWWA criteria for decisions in section 10.2(B). If there are alternatives that can be taken that can result in less disturbance to wetland they should be considered, such as getting to the spring supply and to filling up the cistern to pump the irrigation water. Some alternatives need to be described and provided so the Agency can recognize that all efforts have been made to avoid the physical disturbance to the wetlands based on this project. Atty. Crosby stated that they have applied to do directional drilling and that the process has gone amiss as the scope has been expanded. Reports state that the directional drilling will have no impact on the wetlands. He believes you do have to make a threshold determination whether they have to present prudent feasible alternatives. There was then further discussion regarding the pond ownership and whether Mr. Minoli can draw water from it.

Further discussion occurred on feasible/prudent alternatives as part of the regulations. Mr. Burdick stated that there will be no physical work in the wetlands. The trench crosses a non-wetland area to find and tie into the pipe. The alternative contingency plan if that doesn't work involves digging a trench, but they do not believe it will be necessary. Mr. L'Hote suggested they check the pipe first because if it is failed they will be trenching through wetlands. Mr. Klein stated that they don't have access to the property to check the pipe. Discussion occurred on the timeline of when the pipe was last in use and whether it will be useable. Mr. Hill noted that there is a disagreement regarding whether prudent and feasible alternatives need to be provided and that the Agency's council needs to provide an opinion; also they need the necessary information as to whether they will actually be impacting the wetlands or not (based on whether the pipe needs to be replaced). Mr. Klein noted that the directional drilling will include a 4' x 4' pit. There is a large non-wetland area through which the pipe passes, therefore they have demonstrated that there is room to do the work without any physical impact to the wetland. Further disagreement occurred amongst the Attorneys whether the applicants need to provide prudent and feasible alternatives.

Chairman Foran stated that his opinion is that the applicant has applied to drill to connect to a pipe. If they can do it and the pipe is intact, he doesn't think it is a significant activity and that they do not need to show prudent & feasible alternatives. He reiterated that there are conflicting stories from the applicant and interveners, and the third party expert needs to be involved to give an opinion one way or the other.

Mr. Wilson asked if the pipe size was being increased from the spring to the house. The pipe is 1.5" aperture coming out of the spring house, coupled into a 2" pipe, and there is no increase in the amount drawn from the spring house. This pipe does not work as of today. Discussion occurred on the last time the pipe was used with Mr. Minoli saying that he had a draw on that pipe in 2012. Attorney Bennett stated that he believes the pipe was severed in 2003. Background was given. Discussion occurred on possible pipe repairs in the future.

Discussion occurred amongst Agency members on questions that still remained in their minds, prudent and feasible alternatives and whether they should be provided, the need for the third party expert opinion, questions on water usage, whether the application is structured so that the applicant would have to come back if there are future issues, etc. Chairman Foran asked the Attorneys for both parties to give written consent to Mr. DeCarli that the application may be continued until next month's meeting. It was reiterated that the application is for work outside of the wetlands. If work does need to be done in the wetland that would require another application.

Mr. Kavalkovich moved and Mr. Wilson seconded to continue this application to the next regular meeting of March 29, 2017. Voted 6-0 in favor.

8. Public Hearings: None

9. New Business:

A) Application of East Hampton Housing Authority, 18 West Drive, Bellwood Court – Site Plan Modification to Improve Parking Area and Drainage – Map 04A/Block 39A/Lot 2A:

Paul Magyar, Professional Engineer, of Lenard Engineering was present. He stated that the existing driveway is disintegrating, this will be removed and a new driveway and parking lot will be constructed. The lot is less than 5 acres, of which 0.81 acres is wetland. This will reduce the impervious area by about 2,000 square feet. Grass line swales will be constructed to direct the water into two catch basins which will be piped into a proposed manhole, out letting once. There is no proposed

activity in the wetland, only a disturbance of about half an acre in the upland review area.

E&S controls will be provided; silt fencing will stay until the proposed vegetation area is established. It was noted that now there are unmaintained catch basins, so this will be an improvement for water runoff purposes. There is no water retention, it runs through. Mr. Wilson asked if the 18" catch basins be hooded, to which Mr. Magyar stated that they can be and they can be raised a couple of inches. Mr. Magyar was asked why grading was occurring in the Southwest corner, and that is because the existing grading is irregular.

Tom Denman, Chairman of the Housing Authority, stated that this project will reduce the discharge and the proposed vegetation will slow down the velocity, which goes ultimately to Christopher Brook.

A motion was made by Chairman Foran to continue this application to the next regular meeting on March 29, 2017. Second by Mr. Wilson. Voted 6-0 in favor.

B) Application of Sheila Mullen, 47 Tartia for Parking Area at Fat Orange Cat Brew Co. – Map 27/Block 55/Lot 2:

Sheila Mullen and Michael Glusnik proposed a parking lot on their property to support the traffic from their brewing company that is open to the public on weekends. The lot will be permeable crushed stones. There is currently no runoff problem but a swale will be put on the corner in case of torrential rain. There is a natural vegetative barrier that they will not touch. This property is in the Salmon River watershed and there is no direct wetland impact, but this is partly in the upland review area, which is now grass, moss, and one tree that will come down (but which is outside the upland review area).

A motion was made by Mr. Hill and seconded by Mr. Wilson to designate this application as an agent approval. Voted 6-0 in favor.

C) Application of David & Lori Barillaro, 46 Meeks Point Road for 10 x 32 addition in Upland Review Area – Map 10A/Block 82/Lot 5:

The agenda listed an incorrect name for the applicant (Patricia Schwarm).

A motion was made by Chairman Foran, seconded by Mr. Wilson, to correct the name on the agenda item 6C of New Business. Voted 6-0 in favor.

This application is for a small addition on the front/street side, away from the lake by 96'. It is to include possible future wheelchair access for Mrs. Barillaro, who has MS. The excavated dirt for this project will be in a stockpile area, and any leftover after backfilling will be removed from the site. Silt fence will be employed. There are no gutters on the home, but crushed stone process will be around the new foundation to absorb runoff.

A motion was made by Mr. Wilson to designate this application as an agent approval. Second by Mr. Hill. Voted 6-0 in favor.

D) Application of Michael Tanca, 15 Wangonk Trail for 10' x 7' addition to kitchen
- Map 09A/Block 70C/Lot 20:

The applicant was not present. Discussion included that this project was small (70 square feet), so it will have minimal impact. There will be no foundation, the addition will be on sonotubes.

Mr. Hill moved, and Mr. Wilson seconded, to designate this application as an agent approval. Voted 6-0 in favor.

10. Old Business

A) Discussion: Seawalls and Lake Shore Treatment: In order to adopt the standard practice into the regulations there will need to be a public hearing. It was generally agreed to do this at the April meeting.

Discussion occurred on making a motion at the beginning of the March regular meeting to move new applications up before the application of Tom Burdick for Mr. Minoli as that may be a long application.

B) Review Open Permits: Mr. DeCarli reported that not much has changed since last month and he would be happy to answer specific questions.

11. Public Comments: None

12. Adjournment: *Mr. Wilson made a motion, seconded by Mr. L;Hote, to adjourn at 9:55 P.M. Voted 6-0.*

Respectfully submitted,

Eliza LoPresti
Recording Clerk