

**TOWN OF SOMERS
CONSERVATION COMMISSION
P.O. BOX 308
SOMERS, CT 06071**

**CONSERVATION MINUTES
REGULAR MEETING
WEDNESDAY, NOVEMBER 1, 2006
7:00 p.m. TownHall**

I. PUBLIC HEARING

a. Wetlands Application #558, Driveway Crossing Wetlands for Single Family Residence, 99 White Oak Road, Richard A. McCullough, Inc. Builders

Chairman Joan Formeister opened the public hearing at 7:01 p.m. Wetlands Agent David Askew read the public hearing notice dated October 5, 2006 and published October 18 and 24, 2006 in the Journal Inquirer.

Attorney Joseph Caposella spoke on behalf of Richard A. McCullough, Inc. Builders. He provided a history of the application, explaining that previous applications to the Zoning Board of Appeals for a variance and an application to Conservation Commission for a wetland permit were denied. The existing lot is approximately 62 acres and is part of a previous subdivision with access from Hall Hill Road and Bridle Path Drive. The proposal includes splitting the lot into two lots of 42 acres and 16 acres. The 16-acre parcel would have access from Hall Hill Road and the 42-acre parcel would be accessed from White Oak Road with a crossing of wetland.

Recently, a variance was granted by the Zoning Board of Appeals after Mr. McCullough purchased a small piece of property at the end of White Oak Road. In addition, septic testing has been done on the lot. The plan includes a one-for-one replication of the proposed 5,000 square foot wetland disturbance.

Environmental Consultant Mike Mocko outlined his report to the Commission dated October 9, 2006. The proposal includes access to a single family residence with approximately 275 feet of driveway crossing a forested wetland. A number of the Commissioners walked the site previously and were able to see the proposed disturbed area of the wetlands. The driveway elevation will be 1 to 2 feet above the wetland, except at the cul-de-sac. It is proposed that less than one-tenth of one acre, or just slightly less than 5,000 square feet, of wetlands will be filled in order to construct the driveway. As mitigation for the loss of wetland, the applicant will provide a replication area in an upland site. Mr. Mocko explained in detail where the new wetland area would be situated and how the replicated area would be constructed.

Mr. Mocko explained that the crossing is on the fringe of the wetland and the proposal does not bisect the wetland. Mr. Mocko outlined the various alternatives to the plan that were considered, and he explained why each one was not chosen, including one which would bring a farm road across the middle of the wetland to use the upland 25 acres for agricultural purposes, such as horses. This alternative was cast aside because it would involve more extensive land clearing

Mr. Askew asked about a potential conservation easement. The applicant is agreeable to having a conservation easement placed on approximately 30 acres of the parcel. Mr. Askew noted that a conservation easement would protect the land would from certain permitted uses of right, such as pasturing horses or logging.

Concern was expressed about the potential for future re-subdivision and development of the parcel. It was noted that the length of the cul-de-sac would prohibit a road being constructed in the area. Also, the frontage requirements would not be met.

Discussion followed about the size of the parcel to be included in the conservation easement and the applicant was asked to consider extending the acreage to the eastern line of the wetland. Mr. McCullough stated that he would be agreeable to this. Mr. Askew suggested that the public hearing be kept open until the next meeting in order to allow time for the applicant to provide a map showing the exact location of the proposed conservation easement.

Karl Walton asked about the need for a turnout on the driveway and the specific requirements of the fire department were. Mr. Mocko had nothing in writing from the fire chief, but commented that he did speak with him and was told that a turnout is required. The driveway is approximately 600 feet long and the turnout is to be at 280 feet, which is situated just outside of the wetlands.

Todd Whitford asked why the mitigation area is being constructed disconnected from the natural wetland. Mr. Mocko explained that the 10-foot separation will allow the basin to act as a stormwater retention area.

Mr. Walton asked about the depth of fill at the cul-de-sac. Mr. Mocko explained the design and noted that the fill would be a depth of 5 feet at the deepest point. He also explained the drainage system and existing drainage patterns. His calculations have been done for a 100-year storm.

Mr. Askew discussed existing wetland functions in relation to the mitigation area. Typically, flood storage is a concern with headwater wetlands (the wetland is the headwater to Wrights Brook). However, this is a very large wetland and the loss of storage volume is minimal with the proposed road crossing. The mitigation area is not contiguous to the wetland, so it will not serve as a flood storage area.

Joan Formeister asked if there was public comment on the proposal. Following is a summary of public comment:

Anthony Liquori, 20 Valley View Drive, spoke to Mr. McCullough's character and gave a few examples of how Mr. McCullough had fulfilled a contract with him in the past. He also noted that Mr. McCullough is a fine neighbor and takes care of his property.

Denise Shewokis, 61 White Oak Road, spoke in opposition to the application and submitted a report for the record. She spoke about Section 211 of the Inland Wetland Regulations. She noted approving this application could have a significant adverse impact on the wetlands. She expressed concern about the size of the house and where the water runoff will go. She added that Mr. Watson, a neighbor not present, has

spoken to her about his concern for standing water pooling at the end of the cul-de-sac. She referred to Section 211-2, explaining that the wetland meets the criteria for continual flow. Water can be seen in the area for extended periods during the year. She also commented that the Commissioners' visit to the site occurred during the annual drought period. She submitted photos for the record showing water in the area. She is concerned about the endangered wildlife and endangered species in the area and what impact the loss of wetland area will have for them.

She noted that the taxpayers will have to pay the Town to ensure that the culverts are cleaned.

She also expressed concern about the impact of the project on Wright's Brook and the possible spread of Lyme Disease and West Nile Virus resulting from wildlife displacement. She noted that the applicant's newspaper advertisement highlights the property as a possible horse farm. She is also concerned about the impact this application will have on State owned land near the prison.

She presented maps from the somersnow.com website which show the area as being poorly drained and within an important conservation area. She added that the website states that protecting these areas is an objective of the POCD.

Mrs. Shewokis' White Oak Road neighbors, the Wojacks, have what appears to be a vernal pool, with ducks living on their property at least 8 months of the year.

Nancy Cox, 565 Hall Hill Road, asked that if Mr. McCullough doesn't receive his permit and decides to sell the property, will whoever buys it be able to do whatever they want to do without first coming before the Commission. She asked if the land will be more protected if kept as one parcel, as opposed to being divided and the proposed conservation easement being put in place. She was told the results would vary depending on what the landowner would seek to do with the land. Certainly, they would be expected to comply with all Town and State regulations.

Denise Shewokis, 61 White Oak Road, inquired about a note in the application file that the wetlands area had changed. Dave Askew replied that these resulted from a few discrepancies discovered when checking the wetlands in 2004. At the most, this would involve approximately 2 to 3 acres.

Ed Cunningham, 77 White Oak Road, whose house is at the end of the cul-de-sac, stated that his back yard, in the last 4 years, has been sinking. He has lived on the property for 26 years. He is concerned that if changes are made to the land, they will make his situation worse.

Attorney Caposella submitted letters included with the original application from Jerry Young, Anica Young and Linda Pease, all speaking in favor of the application. Mr. Walton commented that these letters addressed the previous application, rather than the current one.

Eileen Cunningham, 77 White Oak Road, stated that when the last house on the cul-de-sac was built, which is the one next to her home, her yard began getting water to the point where her shed now looks like a "boat house" and she has ducks all the time. They never had a water problem until that house was built.

Mr. McCullough stated that the home at 77 White Oak is about ¼ mile from the site proposed in the application. Mr. Mocko noted that all of the changes to the wetland will occur downhill of the area which the neighbors are speaking of. Mr. Mocko noted that the photos submitted do not involve the area of wetland area involved with this application. Discussion followed regarding the location of the photographs relative to the project area. Mr. Askew noted that entire area being discussed is all visible from the end of the cul-de-sac and that the location of the driveway is slightly up-gradient from the location of some of the pictures.

A motion was made by Karl Walton, seconded by Henry Broer and unanimously voted to continue the public hearing to December 6, 2006 at 7:00 p.m.

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II. CALL TO ORDER

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Chairman Joan Formeister called the regular meeting to order at 9:20 p.m. Members Candace Aleks, Henry Broer, Joan Formeister, Dan Fraro, Karl Walton and Alternate Member Daniel Fraro were present and constituted a quorum. Wetlands Agent David Askew and Eric Bedan were also present.

III. OLD BUSINESS

a. Discussion/Possible Decision: Wetlands Application #558, Driveway Crossing Wetlands for Single Family Residence, 99 White Oak Road, Richard A. McCullough, Inc. Builders

This item was deferred because the public hearing was continued.

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b. Discussion/Possible Decision: Wetlands Application #559, Dredging of Pond and Stream Inlet and Stream Bank Stabilization, 9 Somerset Lane, 392 Turnpike Road and 5 Somerset Lane, Driscoll and Gibbs

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Mr. Mocko, representing the applicant, stated that the plans are not yet available. He will submit a letter regarding an additional extension.

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c. Modification of Wetlands Application #528, 23-Lot Subdivision in Upland Review Area, Battle Street and Bailey Lane, KRL Builders

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Rick Leno stated that nothing has changed with regard to the application but he has questions regarding Mr. Strauss's comments with respect to proposed stormwater structures. David Askew felt that staff could address the issues and that the wetland application could proceed.

Mr. Askew explained that the application modification involves the relocation of the road closer to the wetland than previously approved. The centerline of the road was flagged in the field and Mr. Askew noted that the existing wooded buffer around the wetland will not be disturbed. Mr. Askew requested that the wetlands be permanently delineated in the field. The erosion control bond will be handled through the Planning Commission.

A motion was made by Karl Walton, seconded by Todd Whitford and unanimously voted to approve KRL Builders' modification to wetlands application #528 with the provision that the wetland boundary be permanently delineated at every 100 feet or at each significant turn.

d. Wetlands Application #562, New House in Hall Hill Estates Subdivision (Lot 18 Tabb Property) in Upland Review Area, 32 Applewood Drive, Dan Roulier & Associates, Inc.

Environmental Consultant Mike Mocko spoke on behalf of the applicant and explained that no changes have been made since the last meeting. Mr. Askew stated that he has no issue with the application and a motion was made by Karl Walton, seconded by Henry Broer and unanimously voted to approve Dan Roulier & Associates, Inc.'s application #562 for a new house at 32 Applewood Drive.

e. Wetlands Application #563, New Houses in Hall Hill Estates Subdivision (Lots 10 & 14) in Upland Review Area, 67 & 93 Brittany Lane, Dan Roulier & Associates, Inc. (application #565 added)

Concern was expressed that the lots should be submitted under separate applications and it was agreed to move forward. Mr. Mocko confirmed that separate applications and checks had been filed. Discussion followed about application numbers and it was decided to address **Lot 14, 93 Brittany Lane as Application #565** and would be discussed first.

Mr. Mocko explained that the proposed plan included the preservation of all wetlands on the site. The 100-year flood limit and the wetlands lines have been identified and designated on the plans. There will be a silt fence installed to ensure that no work is done outside of the designated areas. In addition, there is a deed of open space with an easement in favor of the Town. The applicant is observing a limit-of-work line that is inside of the open space easement.

Mr. Askew noted that he has no outstanding issues with the application.

A motion was made by Todd Whitford, seconded by Candy Aleks and unanimously voted to approve Dan Roulier & Associates, Inc.'s application #565 for a new house in the upland review area at 93 Brittany Lane, Hall Hill Estates.

g. Other – Application #563, New House in Hall Hill Estates, Subdivision (Lot 10) in Upland Review Area, 67 Brittany Lane, Dan Roulier & Associates, Inc.

Environmental Consultant Mike Mocko explained that the application is generic at this time because there is no definitive footprint for the house. All work is to be done within the buffer zone and they have identified the 100-year flood limit. The wetlands lines have been determined.

A conservation easement is delineated through the proposed back yard and the silt fence is approximately 30 to 40 feet uphill from the wetlands.

A motion was made by Todd Whitford, seconded by Candy Alecks and unanimously voted to approve Dan Roulier & Associates, Inc.'s application #563 for a new house in the upland review area at 67 Brittany Lane, Hall Hill Estates.

A motion was made by Todd Whitford, seconded by Dan Fraro, and unanimously approved to take **Item a, New Business**, out of order.

IV. NEW BUSINESS

a. Wetlands Application #565, ARH in Upland Review Area, 23 Eleanor Road, Eleanor Road, LLC

Becky Meier, Project Engineer from Design Professionals, spoke on behalf of the applicant. The project involves the 22.5-acre parcel of land remaining from the 2 residential lot subdivision. They propose using a 10.5-acre portion of the parcel for an age restricted housing development. The area is primarily deciduous woodland and a 6.7-acre portion of wetlands is associated with a stream that runs north to south.

The applicant proposes a 26-foot wide private cul-de-sac approximately 875 feet long extending from Eleanor Road. There will be 17 units, 33 bedrooms total, serviced by public water and private septic systems. The majority of the site drains around the higher edges of the perimeter into a channel that drains to the south. A small portion of the runoff drains into the adjacent industrial area. To handle any increase in water runoff, the applicant proposes a storm water pond. The pond is designed to receive all of the runoff from the newly developed areas via catch basins and yard drains, discharging into the storm water pond and eventually into the channel. The storm water pond will treat the water before allowing it to move into the channel and will have a maximum level of about one foot. Plants and grasses will be used to treat the water before it goes through a weir catch basin to an energy dissipater. The pond was designed to a 100-year storm event. A maintenance schedule has been included with the plan.

A 1.9-acre portion of upland review area will be disturbed. Erosion control fencing will be installed down gradient of all disturbed areas.

David Askew noted that the plans have been received by staff, but have not yet been thoroughly reviewed. He noted that there is no fee structure for ARH's currently in the regulations, but in the past a fee was determined by charging the \$180 base fee plus \$45 per acre of total disturbance. Ms. Meier will get in touch with David Askew to take care of payment.

Dan Fraro commented that he thought that Age Restricted Housing had to have public sewer and not septic and he suggested that this be looked into further by the applicant.

III. OLD BUSINESS (cont.)

f. Discussion: Possible Enforcement Action for Grower Direct

David Askew explained that at the last meeting he was asked pursue enforcement action. Karl Walton, Joan Formeister, and Mr. Askew met with the First Selectman after last month's meeting and pursuing the

issue with the Town Attorney was discussed. Attorney Landolina's recommendation was that court action not be undertaken unless a Cease and Desist Order is first issued.

Mr. Askew spoke with Attorney Landolina to discuss the specifics of a potential Cease and Desist order. He recommended that if the discharge is going anywhere other than where it was initially proposed in the application, then this would be an activity which the Commission can require to cease because the applicant is not in compliance with the original approval. Mr. Askew stated that the Town Attorney has suggested that if the Commission so requests, the next step would be to draft a Cease and Desist Order to be reviewed by Mr. Landolina before it is served. If Grower Direct does not comply with the Order, then additional enforcement action would be warranted.

Leonard Van Wingerden noted that the activities taking place on his site involve two other individuals. He added that he has done all the things he can that the Commission has asked him to do, but he cannot force the other individuals to comply with the regulations.

Mr. Askew noted that erosion controls that were proposed as part of the approved permit issued last December have not been maintained, including the stone berm along the main access route. He also noted that the sediment basin had not been constructed as proposed and that erosion was occurring within the basin. Silty discharge was noted from the pond in the last rain.

Mr. Van Wingerden noted that he met with Mr. Bealey, who showed him the affected pond. Mr. Van Wingerden assured Mr. Bealey that Mike Mocko would assess the situation and whatever damage caused by the activities of Grower Direct would be repaired. He is planning to submit permit requests for the pond dredging and repair once damages are evaluated and plans are made.

Mr. Van Wingerden has also written letters regarding the situation to both Herb Holden and Bruce Wood, and has asked for their cooperation in remedying the situation. Mr. Holden has built swales as required and Mr. Van Wingerden believes that all work will be completed on his property within a week.

Mike Mocko submitted his monthly report, commenting that the focus has been on eliminating any sediment. Cleaning Mr. Bealey's pond before the sediment issue is corrected would be unwise.

The gravel bank needs to be vegetated and it is his objective to trap all run off, directing it to a temporary swale and then sending it to a better location, while cleaning the water as it moves along. New floc logs will be added.

Mr. Askew asked for an updated site sketch, and Mr. Mocko will submit one.

Mr. Mocko added that this week they are working to resurface the road and to direct stormwater into treatment areas. They are providing bleed-offs at the edge of the road, which are directed into vegetated areas.

IV. NEW BUSINESS (cont.)

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b. Review/Adopt 2007 Meeting Dates

A motion was made by Karl Walton, seconded by Todd Whitford and unanimously voted to approve the 2007 Conservation Commission meeting dates as proposed.

c. Other – No other New Business was presented.

V. AUDIENCE PARTICIPATION – There was none.

VI. DISCUSSION: PLAN OF CONSERVATION AND DEVELOPMENT – There was no discussion on this item.

VII. STAFF/COMMISSIONER REPORT

David Askew presented the Inland Wetland Agent's Report for the Commissioner's review.

Mr. Askew reported that Eric Bedan has completed the required DEP classes, making him eligible for designation as an authorized agent for the Commission. A motion was made by Karl Walton, seconded by Todd Whitford and unanimously voted to designate Eric Bedan as an authorized agent for the Conservation Commission and also to approve Mr. Askew's report as written.

VIII. CORRESPONDENCE AND BILLS – No bills or correspondence were presented.

IX. MINUTES APPROVAL

A motion was made by Karl Walton, seconded by Todd Whitford and unanimously voted to approve the minutes of the October 4, 2006 Conservation Commission as presented.

X. ADJOURNMENT

A motion was made by Karl Walton, seconded by Dan Fraro and unanimously voted to adjourn the November 1, 2006 Conservation meeting at 10:39 p.m.

Respectfully submitted,

Lise Wood, Secretary

Robin Timmons, Recording Secretary

MINUTES ARE NOT OFFICIAL UNTIL APPROVAL AT A SUBSEQUENT MEETING.