

EAST LYME INLAND WETLANDS AGENCY
PUBLIC HEARING MINUTES

Monday, August 31, 2009 - 7:00 P.M.
Town Hall, 108 Pennsylvania Avenue,
East Lyme, Connecticut

Members Present: Ed Hafner, Chairman; Walt Prochorena, Cheryl Lozanov, Norman Bender, Chuck Reluga, Rich Gallagher, Seated Alternate Member Phyllis Berger

Also Present: Gary Goeschel, Director of Planning; Alternate Member Keith Hall; Robert Newton, Engineer for the Applicant; Architect Peter Argiros, Don Fortunato, Certified Soil Scientist

Call To Order

Pledge of Allegiance

- I. **267 Roxbury Road – AHEPA 250, Inc.** Construction of Housing and Associated Site Development.

MOTION 1: Ms. Lozanov moved to reopen the public hearing at 7:01 p.m. Seconded by Mr. Bender.

VOTE: Motion passed unanimously.

Mr. Newton gave an overview of the project and stated that the Town Engineer's comments about the drainage had been addressed and incorporated into the plans.

The following exhibits were entered into the public hearing record:

- Exhibit 12: Letter of extension from Terry Mitchell, President, granting a 60 day extension to hold the public hearing.
- Exhibit 13: Proposed site plan entitled AHEPA 250-V Elderly Housing Apartment, dated May 20, 2009 revised through 7/27/09 prepared by Purcell Consulting Engineers
- Exhibit 14: Memo from B. Scheer, Town Engineer, to G. Goeschel, Director of Planning dated August 31, 2009 with 3 comments

Mr. Hafner asked for comments from the audience. There were none.

Mr. Prochorena stated that he had questioned whether or not the building and parking lot could be moved closer to the other building. Mr. Prochorena stated that according to Zoning Regulations the building could be moved because lease lines are not property lines. The Zoning Official said the building could be moved without any problem.

Peter Argiros, architect for the project, stated that they had looked at moving the building and this location is the most prudent alternative. Moving the building would require bringing 10,000 yards of additional fill on the site and create additional runoff.

Mr. Prochorena asked if there is an alternate plan. Mr. Argiros stated that they did not bring one because one was not asked for. Mr. Argiros stated that 4000 S.F. of wetlands will be created as a mitigation measure. Mr. Argiros noted that it would cost an additional 50-60,000 dollars to move the building.

Mr. Prochorena stated that he had people look at this and he doesn't see why the building can't be moved.

Mr. Fortunato stated that Federal funding is involved in this project and the plans can't be changed and still meet budget requirements. There is no impact to the wetlands and they are creating wetlands. Mr. Hafner stated that if there are no impacts to the wetlands no alternatives are required; there will be very little human impact.

Mr. Reluga stated that he has been pushing for impervious surface of 11% and the current plan shows 20%. Mr. Newton stated that because it will be elderly/handicapped housing the need a hard surface.

Mr. Hafner asked for comments from the audience. There were none.

Mr. Goeschel suggested that the rear maintenance access could be pervious surface. Mr. Newton stated that area might be used as an ambulance lift surface. Mr. Newton stated that some of the driveway could be paved with a pervious material. Mr. Gallagher asked for an estimate of the amount of area on the driveway could be paved with a pervious material. Mr. Newton stated about 2000 S.F.

Ms. Lozanov asked is a planting report will be submitted. Mr. Fortunato stated that a report will be submitted yearly. Mr. Goeschel requested an as-built planting plan.

MOTION 2: Ms. Lozanov moved to close the public hearing at 7:29 p.m. Seconded by Mr. Bender.

VOTE: Motion passed unanimously.

II. Appeal of the Inland Wetlands Agent Decision – Modifications to permit #07-01, dated May 5, 2009, for property known as Map 11.4, Lot 189 on Atlantic Street, Niantic, Connecticut

Also Present: Gary Goeschel, Director of Planning; Alternate Member Keith Hall, Bill Sweeney, Certified Land Planner representing Diane McAndrews and her husband, Atty. Michael Cronin; J. Robert Pfanner, P.E., Maria Addabbo, property owner.

MOTION 1: Mr. Bender moved to reopen the public hearing at 7:30 p.m. Seconded by Ms. Lozanov.

VOTE: Motion passed unanimously.

The following exhibits were entered into the public hearing record:

- Exhibit 1: Letter dated 5/28/09 from TCORS
- Exhibit 2: Letter dated 7/29/09 from TCORS/Atty. Tobin requesting a continuation of the public hearing
- Exhibit 3: Letter from Gary Goeschel to Maria Addabbo dated May 5, 2009 approving a permit modification
- Exhibit 4: Legal ad published in *TheDay* on July 22 and 31, 2009
- Exhibit 5: Copy of site plan dated November 20, 2007 and revised to April 28, 2009

Mr. Hafner stated that this is an appeal of a decision that was made by Mr. Goeschel claiming that the wetlands impact of the revised plans is more than minimal.

Mr. Hafner read the section of the Inland Wetlands Regulations regarding appeals of decisions.

Mr. Sweeney stated that he is a Certified Land Planner.

Mr. Sweeney stated that they believe the nature of the permit modification were not eligible for approval by Mr. Goeschel and should have been approved by the Agency.

Mr. Sweeney thanked Mr. Goeschel for his help and patience and stated that he wanted to make it clear that they have the highest respect for him. Mr. Sweeney stated that he is not a lawyer and stated his credentials. Mr. Sweeney handed out copies of a section of the Inland Wetlands Regulations, a section of the State Statutes and photographs of the site.

Mr. Sweeney reviewed the history of the site and permit that was issued after a public hearing was held. Mr. Sweeney stated that his client was not involved in the original application process because she did not own the property at the time.

Mr. Sweeney stated that the abutting property owners will be most impacted by their loss of water views.

Mr. Sweeney reviewed each change that was made to the plans as part of the permit modification. Mr. Sweeney stated that the proposed garages will be used to park a dump truck which will harm the wetlands and there will be stockpiling and storage of hazardous materials. There will be maintenance of large commercial trucks without any containment.

Mr. Sweeney stated that the crushed stone driveway has been removed from the plan and will now be paved and include catch basins. Mr. Sweeney stated that there will be commercial vehicle traffic on the site. Mr. Sweeney stated that the revised plan was not reviewed by the Town Engineer.

Mr. Sweeney stated that the retaining wall has been shifted dramatically toward the pond. The Wall has shifted closer to the pond and grown vertically 8' taller above grade. The silt fence is shown to run through the pond. Mr. Sweeney stated that the plans need further review by Town staff.

Mr. Sweeney stated that Mr. Goeschel can only approve projects with minimal impact. The scope of this plan is beyond Section 12 of the Inland Wetland Regulations.

Mr. Sweeney stated that there is "no love loss" between Mrs. Addabbo and the neighbors but safety is the issue here.

Mr. Sweeney presented photos of flooding from 2007.

Mr. Sweeney stated that the Agency has a responsibility to review this. Mr. Sweeney stated that Mr. Geoschel's approval should be rejected and a new application should be submitted and a public hearing held. Mr. Sweeney stated that if the Agency feels Mr. Goeschel's approval is justified then at least address the concerns raised here today regarding storm water and flooding.

Mr. Sweeney reserved the right to rebut all comments.

The following exhibit was entered into the record:

Exhibit 6: Letter from Keith Hayden to Ed Hafner dated August 28, 2009 herewith submitted as Attachment A.

Atty. Cronin introduced Mr. Pfanner who has been the engineer for the project since the beginning of the plan.

Mr. Pfanner stated that the plans still call for a crushed stone driveway. The building was moved toward the wetlands because it was requested by the Crescent Beach Zoning Commission. The retaining wall was made shorter and ties into the detached garage. Mr. Pfanner stated that there will be no change in drainage or runoff. The level spreader has not moved.

Mr. Prochorena asked why the wall was moved. Mr. Pfanner stated that the wall was originally four feet when the plans called for a foundation under the house.

Mr. Cronin asked Mr. Pfanner if the approved modified plan poses any greater impact to the wetlands than before. Mr. Pfanner replied that there is no increased impact to the wetlands and stated that the silt fence will not be in the wetlands.

Exhibit 7: Permit dated 7/20/06 revised to 1/4/07.

Mr. Goeschel stated that the permit conditions do not state pond mitigation as a condition and condition no. 2 states that no pesticides, etc. will be used on the site. Mr. Goeschel stated that all previous permit conditions apply to the permit modification approval.

Mr. Hafner called for a five minute break.

Ms. Lozanov stated that she is concerned about the wall being 8 feet high and being held together from wave action. Ms. Lozanov stated that she is also concerned about commercial vehicles and the increase in the size of the garage and how much will be brought in for the garage. Mr. Pfanner explained the construction of the wall.

Mrs. Addabbo stated that the garage was made bigger for storage since they cannot have a basement in the house. They have a 21' long car and a small pickup truck that will be stored in the garage.

Mrs. Addabbo stated that they do not have any commercial vehicles.

Ms. Lozanov asked how much fill will be required since the wall is not eight feet high. Mr. Pfanner stated 600 C.Y.

Mr. Gallagher requested clarification of the drainage outlet. Mr. Pfanner stated that it is the same place as before.

Mr. Gallagher asked why there are three catch basins on the driveway. Mr. Pfanner stated that there will be no more volume of water coming through the catch basins.

Mr. Hafner asked for comments from the audience.

Barbara Williams of 12 Atlantic Street stated that when there is a big storm water comes across the road and spread all over the property and she is concerned about water washing back to her.

Doug Swanson, Swanson Family Trust, uphill lot. Mr. Swanson stated that they believe this should not have been made a building lot. They are raising the lot to 12' above sea level. The wall will be 5.5' and 7.5'. The plans call for artificial construction of a mound with a house on it. The house is on stilts just has a wash through area which will exasperate flooding. The plans have the appearance of a paved driveway. They want water to wash through. FEMA does not require the garage to be above sea level.

Robert Roseberry of 24 Atlantic Street stated that he is concerned about his property. He asked that a significant impact be defined. Mr. Hafner stated that definition could be looked up in the Wetlands regulations on the Town web site.

Mr. Hafner reminded that only the permit modification is being discussed.

Mr. Hafner stated that he would like for a public hearing to be scheduled for the changes.

Robin Seoul of 14 McElaney Drive stated that she is a co-owner of 24 Atlantic Street and she would like to retract her statement from the January 4 meeting. She is now concerned about flooding.

Douglas Brown of 22 Atlantic Street stated that he is concerned that the wall backfill will impact Little Indian Pond. No study has been done on the storm flooding impacts. This will make flooding worse. He is requesting a public hearing.

Emily Hayes of 14 Atlantic Street stated that as summer residents they did not know about this application. Very few summer residents know about this. She has lived there all her life and she thought the lot was not buildable because of flooding all along. A storm was not even a 100 year storm and the road was flooded. If people bought a building lot they may make it work for them but it is not a good building lot. There will be much runoff from the garage and roofs and it will drain into the pond. Everyone on Atlantic Street will get flooded by the runoff.

Mr. Sweeney stated that he believes there is still clarification for the driveway surface. He heard stone, paved and crushed stone. If it will be crushed stone he has this for 15 years and he has never heard of catch basins in a crushed stone driveway. If the surface is pervious why do you need a catch basin. Catch basins do not provide any storm water treatment. He does not know how deep the sumps are or if there will be an oil separator, etc. There is nothing on the plan showing water quality treatment. There is no restoration plan information shown on the plan. You can elicit this information in a full public hearing review. The modification as approved is a more intensive development. There is still a question about commercial use of the property.

Mr. Sweeney requested that it be in writing that large dump trucks with mulch will not be used on the property. Testimony was heard from a neighbor about flooding. The Agency must ensure the safety of people. There is no analysis of flood capacity change from the wall. Mr. Sweeney stated that they are asking for a full permit review. The Town Engineer should review all changes.

Mr. Sweeney stated that the Agency saw Mr. Pfanner struggle with his own plans – don't you think you should take more time to review the plans? Mr. Sweeney stated that he is looking forward to working with you [the Agency] on a full permit review.

Atty. Cronin stated that the original plan was for a crushed stone driveway and that is what is being put in. Atty. Cronin stated that Mr. Sweeney is requesting a public hearing. The permit has been modified and there were two expert's testimony stating that there is no significant change or increase in impact. The residents are looking for "a second bite of the apple." The Agency should accept the two expert's opinions.

Dan Addabbo of 8 Hillside Avenue stated that there will be no commercial trucks on the site. There is no room for a dump truck and mulch. They just want to build a house and come here to live.

Mr. Gallagher stated that he thinks this matter should be continued and it wouldn't hurt to have the Town Engineer review is.

Mr. Hafner stated that the Agency must decide to affirm Mr. Goeschel's approval or deny it and have a reemitting process.

Mr. Sweeney asked if the Agency was deliberating during the public hearing or closing the hearing. Mr. Hafner stated that this is an appeal. Mr. Sweeney recommended that is the public hearing is not closed it be closed and then deliberated.

Atty. Cronin stated that it is not technically a public hearing under the Wetlands Regulations but it may be in the best interest to close to public comment.

Ms. Lozanov stated that she does not think there is enough information and she would like information from the Town Engineer. She thinks this is beyond the scope of the original permit.

Mr. Hafner stated that the Agency must decide what they want to do at this point.

Mr. Gallagher stated that he would be happy if the Town Engineer just looked at the drainage. One small wall will not affect a storm surge from Long Island Sound. Mr. Reluga and Mr. Bender agreed with Mr. Gallagher.

Mr. Prochorena noted that none of the lots in that area should have been buildable. Mr. Prochorena agreed with Mr. Gallagher about the drainage. He does not see having a public hearing at all on the whole matter.

Mr. Hafner stated that he is not convinced that the change is not a significant change; however, this application was the subject of a public hearing so changes could be viewed as significant. It would have been his preference that a modification had been presented to the Agency. Mr. Hafner stated that on applications like this they should view it as a new application. Mr. Hafner stated that the hearing could be continued to get more information and then decide.

Mr. Sweeney stated if that carries he wants to review the documents submitted in the Spring of 2009.

Mr. Gallagher suggested that Mrs. Addabbo write a letter stating that there will be no commercial trucks on the site and noted that these plans were approved by the Crescent Zoning Board. Atty. Cronin stated that he Crescent Beach Zoning Board had also held their own public hearing on this application.

MOTION 2: Mr. Bender moved to continue the hearing to the October 5, 2009 meeting of the Agency. Seconded by Mr. Gallagher.

Mr. Gallagher noted that the Town Engineer be requested to review the plans.

VOTE: Motion passed unanimously.

Respectfully submitted,

Marilyn Wright, Recording Secretary