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EAST LYME INLAND WETLANDS AGENCY 20 17 AT 12:00 AM/PM
SPECIAL MEETING OF MONDAY 7 AUGUST 2017 *Sellen ATC*
EAST LYME TOWN CLERK

PRESENT

Members: Cheryl Lozanov, Vice Chairwomen, Phyllis Berger, Secretary, Harold Clarke, Jessie Baldwin, Kim Kalajainen, David Pazzaglia, and Jack Chomicz

Staff: Gary Goeschel II, Director of Planning/Inland Wetlands Agent

Absent: Ex-officio – Paul Dagle

CALL TO ORDER: C. Lozanov called the East Lyme Inland Wetlands Agency Special Meeting of August 7, 2017, to order at 6:06 p.m.

PLEDGE OF ALLEGIANCE - The Pledge of Allegiance was observed.

C. Lozanov introduced the members of the Commission, Recording Secretary, and Staff.

C. Lozanov announced that there would be no comments from the public at this special meeting. A decision on this application needs to be rendered by August 29, 2017.

I. PENDING APPLICATIONS

A. Twin Valley 25-Lot CDD Re-subdivision at Green Valley Roads & Spring Rock Road; Frank & Rajko Maric Owners, Real Estate Service of CT, Inc. c/o Bob Fusari Jr. Applicant. Application to conduct regulated activities within the 100-foot upland review area from wetlands and watercourses associated with the construction of a proposed subdivision road. *(Date of Receipt: 4/17/17; Public Hearing Opened 5/1/17)*

G. Goeschel said to start and guide the conversation he has asked that Mark Zmarka speak to the Commission. G. Goeschel has the Memo Exhibit OOO dated 7/24/17 from G. Goeschel to the Commission to use as a reference. It was handed out at last meeting and was made part of the record.

M. Zmarka asked for a few minutes with the Commission to touch on some things that will make the discussion and the decision making process a little easier. The first thing to remember is that the Commission is here for two separate and distinct purposes.

1. The first is the application to conduct regulated activities.
2. The second is to report on a proposed subdivision plan and report back to the Planning Commission.

These are two separate things. By the time this is all over this will be two distinct and different findings. Now a couple of things that have come up during the course of these proceedings are:

1. What exactly is it that the Agency is being asked to decide on?
2. What is the scope of the application?

A lot of this has come up in terms of the phrased "segmentation" that you have heard from around here.

The application and the applicant are contending that they are looking for a permit to conduct only the road and intended improvements. The narrative that was attached to the application is what was set out to do. The narrative also references the erosion and sedimentation plan and that narrative indicates that the application is for road improvement only. Lots, septic, etc. on the plan are conceptual only and that is the testimony that is offered by the applicant.

The Intervenor, on the other hand, would ask you to consider the entire subdivision and not just the road and improvements. A good way to go about looking at this is to first start with your own regulations.

As Gary's Memo (Exhibit 000) pointed out he sets out things that you are required to consider when making your decision and specifically in Section 10.2.f - *"The Commission should consider future activities associated with or reasonably related to the proposed regulated activity which are made inevitable by the proposed regulated activity and which may have an impact on wetlands and watercourses include future lot build out."*

The statute 22a-41 under which the Agency operates states the same thing. M. Zmarka read the Berger case which was attached to the Memo provided by the applicant's attorney T. Harris.

The next step is for the Agency to consider the Conceptual Drawings of the entire subdivision.

- The Agency is obligated under the statute to consider any future activities or impacts to the best of your ability.
- Agency can and should consider feasible and prudent alternatives. M. Zmarka read from Section 10.3 which defines a feasible and prudent alternative.
- 22a-41(b)(1) – which is another statute the Agency works under. When the application is the subject of a public hearing pursuant to either: a) a petition, or b) a finding of the significant impact, the Agency shall not issue a permit unless the agency makes a finding that feasible and prudent alternative improvements do not exist.
- Finding feasible impactment is not necessary.
- What is feasible and prudent? There are case law definitions. He did not expect the Agency to remember them all. He wanted to put them out in front of the Agency so they are aware. For example, the applicant proposed 24 feet versus 30 feet roadway, this is a feasible and prudent alternative.
- Whatever decision the Agency makes, they must have substantial evidence from the record to back it up.
- Environmental impact has to be supported.
- There were a lot of experts and testimony. Fact finder discretion can be decided by the Agency.

K. Kalajainen asked what if the testimonies cross each other out, does the Agency have the power to get a third party expert. M. Zmarka said no because the public hearing is closed.

J. Baldwin had a question about feasible alternatives. I believe the applicant feels he submitted the most feasible alternative. Can we ask for a feasible alternative? M. Zmarka said no because the public hearing is closed, you have to base your answer on the information submitted. G. Goeschel said the Agency can modify and add conditions. J. Baldwin asked if the Agency had to go on record with the reasons why. M. Zmarka said yes.

C. Lozanov brought up a question she had from the last meeting. She attended a Planning Commission meeting and found out if a subdivision has 20 lots or less an emergency access road is not required. She sees a feasible alternative by changing the number of lots so they could remove the fire access road. G. Goeschel responded that the applicant is able to apply for 25 lots, it's their right. He could have done 28 lots as another alternative. They have a CDD which allows for flexibility. The question is do you reduce the size of the existing lots to bring the land away from the wetlands. It is not uncommon to have wetlands on lots and/or property.

K. Zmarka recommended referring to Gary's Memo (Exhibit 000) on page 2, Item 4. If the Agency uses this as a guideline and goes through all the items a, b, c, d, e, and f, they could start their discussions from there.

C. Lozanov agrees with M. Zmarka and feels the Agency should read through each item and discuss.

4. *Pursuant to Section 10.2 of Regulations, Criteria for Decision, the Agency shall take into consideration all relevant facts and circumstances, including but not limited to:*

a. *the environmental impact of the proposed regulated activity on wetlands or watercourses.*

H. Clarke wanted to read through his comments that he put together and the impact he sees will happen.

- 1) The portion of the parcel proposed for roadway development is a significant land area that drains stormwater runoff and groundwater flows to the adjacent inland wetlands and
 - a) that said stormwater runoff will be:
 - **permanently altered in flow volume** due to changing the pervious characteristics of the contributing area;
 - **permanently altered in temperature** due to tree canopy removal and the introduction of impervious surfaces;
 - **permanently altered by the introduction of new pollutants** due to a new roadway for motor vehicle traffic use, said new pollutants including but not limited to petroleum products, antifreeze, rubber particles, and sediments dropping from motor vehicles, non-biodegradable trash discarded onto the road by people in cars including but not limited to cigarette butts, fast-food packaging, plastic shopping bags; the use of deicing agents on the road in the winter which introduces metals, chlorides, phosphorus, organics with high Biochemical Oxygen Demand and sediments;
 - **temporarily and or permanently altered** due to the introduction of sediment laden storm runoff caused by removing the existing groundcover and exposing erodible soil surface during roadway and other public improvement construction.
 - b) and that said groundwater flow will be:
 - **permanently altered by the introduction of new pollutants** due to the installation of new roadway Stormwater runoff infiltration systems, said new pollution including but not limited to nutrients phosphorus and nitrogen and also biochemical oxygen demand.
 - **permanently altered in flow pattern** due to:

- changing the soil density caused by operating construction equipment over some areas of the site, within and beyond the area of actual roadway footprint, by excavating, and/or backfilling and compacting new and existing soils in varying patterns and densities;
- changing soil particle gradations at different depths of the soil profile by removing existing soils and placing coarse more freely draining structural soils in locations of road construction and utility trenches;
- installing a stormwater collection system to pipe potential groundwater to other areas of the site or directly to the Four Mile River.
- installing infiltration systems to change surface water to groundwater;
- over some areas replacing the existing varying thickness organic topsoil layer and groundcover with a different thickness of a different organic topsoil layer and different groundcover thereby altering the pervious qualities and absorption rate of surface water to groundwater.

G. Goeschel said that when you are talking about changing flows from ground water to surface water discharges, they have to somehow connect it the wetland and how this will adversely affect the wetlands. H. Clarke said that would be the first part of what he read he had omitted the prelude part of his write-up and will include that now.

Upon review of the plans titled Twin Valley 25 lot CDD resub division, prepared for real estate service of Connecticut, Inc., Green Valley Lakes Road, Map 14.0 lot 45, East Lyme Connecticut by Bennett and Smilas Associates, Inc. and Indigo Land Design LLC, ~~dated 3-31-17, revised 6-5-17~~, which depicts a 25 lot residential subdivision which is nearly completely surrounded by Inland wetlands or Four Mile River and which every proposed lot abuts wetlands and is graded to direct runoff to wetlands.

J. Baldwin said he believes what G. Goeschel was asking is if we are going to say we having a finding of this we need to back it up with facts.

G. Goeschel said that Mr. Trinkaus, Mr. Danzer, and Mr. Wescott do allude to this in their testimonies. G. Goeschel is not saying they cannot use their own expertise as well.

C. Lozanov said the Applicant believes this is not the case. H. Clarke said we have to back it up.

K. Kalajainen said that in Gary's Memo, (Exhibit OOO) when he talks about the environmental impact, she assumed he meant that we are attaching it to our rules and regulations as to define a significant impact. Because in her opinion, those seven things are our guidelines. Meaning not just environmental impact but, significant impact is defined by those seven things.

J. Baldwin said the lots are directly above wetlands, the home owner will build a house, grow grass, trees and will fertilize and it will be a direct runoff into the wetlands. There is testimony of a vernal pool and no matter what size there will be an effect on it.

G. Goeschel said that in Mr. Trinkaus's Exhibit NN he says as proposed, the stormwater management system for this project will result in increased rates of runoff, increased volumes of runoff as well as increased pollutant loads being discharged into and permanently damaging the wetland/watercourse systems on or near this site.

J. Baldwin said that S. Trinkaus said these are not infiltration basins. These are designed to take the first flush so some of those items that are caught behind the first flush and in the

100-year storm those are going to run off into the wetlands. What he is saying is Basins A and B didn't have a proper sediment trap per the DEEP regulations. They are supposed to trap 10% or be able to contain 10% volume.

K. Kalajainen said in G. Goeschel's Memo he recommends the 25-foot easement be increased to 30 feet (below). K. Kalajainen is going back to the data table. She says it shows 20 of the 25 lots have such small acreage impacts of the upland review area. What would changing the 25-ft easement do to the 20 lots? Like H. Clarke said to just trim back the acreage, as post development we would have no way to stop them from developing.

G. Goeschel said if they trimmed back those lots they wouldn't have enough room for the septic systems. This is where the test holes were done and the septic systems were designed in those areas. G. Goeschel said if we trimmed the acreage someone would still come in and put a septic there.

H. Clarke said none of these lots are ready today. Additional testing would have to be done before anything could be built or put in on any of these lots.

J. Baldwin asked if there were any regulations or setback guidelines in East Lyme for wetlands. He mentioned that he found out Waterford has a 75-foot setback for wetlands for septic systems.

G. Goeschel said that under the CDD, the regulation requires a 100-foot building setback from the wetlands, but there is not a septic setback from the wetlands.

J. Baldwin has the concern that the nitrates coming from the septic systems will end up overloading the wetlands. He was searching for some scientific answers on how far back the septic systems need to be from wetlands and didn't get very far.

G. Goeschel said that there was a nitrogen loading analysis done on Lot 3 and that is the only lot they analyzed. He thinks the analysis falls a little short there having only considered one lot. The consensus was that they probably did the test on that lot because it has wetlands on it.

J. Baldwin said if we approve the application we should have a stipulation to have a conservation easement along the backside of lots 14-24 so potential buyers will know they couldn't put in a septic system there and could not cut down trees.

J. Baldwin is concerned about the Geo System they have in their proposal. Yes, it takes up less square footage but is it the best one. He said there was a case in law on Cape Cod where the Commission could stipulate what kind of septic system was installed.

J. Chomicz said we should talk to some different people about different types of septic systems. G. Goeschel reminded the Commission regardless of the system used, it still needs to be suitable to the Ledge Light Health District.

J. Baldwin said that there are concerns that if the Commission accepts the plans with stipulations and somebody purchased a lot exactly as shown on the diagram they wouldn't have to come before the Commission for approval. Gary, is that your understanding?

M. Zmarka responded that no, that is not the case; the application is for a road with conceptual designs for each lot. Each lot would need to go through a Wetlands review for approval.

J. Baldwin asked D. Pazzaglia if he had any input. D. Pazzaglia responded that he was in agreement with J. Baldwin and was under the impression that if someone bought the lot and built what was proposed as the conceptual design they didn't have to come in front of the Wetland Commission for approval.

M. Zmarka said to remember they are proposing the road improvements and not asking for approval of the conceptual drawings of lots. Depending on what the Commission does, you can stipulate in your motion, if you approve, conditions that this applies only to the road and does not apply to any of the lots.

M. Zmarka reminded the Commission that decisions made must be supported by substantial evidence. Findings must be harmful to the environment and general impact thereof. It cannot be just a general impact; it has to be substantial impact based on evidence proposed. If you're going to base your information on the conceptual design there have to be substantial evidence in the records showing that those specific things would have a specific adverse impact on the environment.

J. Baldwin said the biggest sources of information they have on both sides, probably strongest on the Intervenor side are the potential impacts of runoff from the water basins, and concern about whether those are properly sized and properly functioning. There is the most evidence in the record, testimony at least on that issue and the water quality which is part of what is being proposed, given the design for this road, these driveways, and conceptual designs. Mr. Trinkaus believes they are not properly designed to properly treat water quality. The Applicant stated that these were designed within these guidelines with the only change being the water basin sediment weren't properly sized.

J. Baldwin said when he asked Mr. Trinkaus for a better option he said the best option would be the stormwater management which is designed for the upland runoff. There are better alternatives to treat stormwater than the basins. J. Baldwin asked being that the one proposed by Applicant are approved and accepted by DEEP and within their standards, we will need guidance on this area.

C. Lozanov read from the remaining items in (Exhibit OOO).

- b. the applicant's purpose for, and any feasible and prudent alternatives to, the proposed regulated activity which alternatives would cause less or no environmental impact to wetlands or watercourses.*

C. Lozanov said the Applicant said doing nothing was not prudent, but a feasible alternative.

H. Clarke asked about the plans someone from the public mentioned there had been a 15 lots proposed many years ago. G. Goeschel said he has never seen it. C. Lozanov said she heard about it and was told it was never submitted.

H. Clarke would like to have fewer lots, like less than 25, and they would be narrow lots. He thinks a lot size of 120 x 60 is feasible.

C. Lozanov is concerned about emergency road because of the impact to the wetlands while doing construction. She asked if we could put in a condition to not use the road for construction. J. Baldwin said he is not worried about the emergency road and it shouldn't be much of our concern because it's pervious.

The concern is if the town will have to maintain the road and will they put salt down or

deicing agent. G. Goeschel said the homeowners association will need to maintain the emergency access road. If there is a 911 call and they cannot access the road due to snow the town will send a plow and clear it.

J. Baldwin asked what are the circumstances that someone would have to use the road. G. Goeschel said if access to Green Valley Lakes is blocked.

C. Lozanov feels the width of the road is a concern. If there is an emergency and the road is narrow and multiple vehicles need to use it at the same time.

H. Clarke feels the 50-foot width right of way is a concern t, if we were to make a change we should change emergency road to 25 feet.

J. Baldwin said Lots 13, 12, 11, 10 – if we eliminate these lots most concerns go away. H. Clarke said they meet 3 of the 6 concerns for septic issues.

G. Goeschel said that in S. Danzer's Exhibit TT – he says recommends the elimination of these lots.

C. Lozanov asked if we could deny the application based on Lots 10-13 with Intervenor Steve Danzer's testimony. G. Goeschel said we could either deny it or condition it.

G. Goeschel referenced Exhibit BB (Steve Danzer Memo (page 8 of 9)) about the vernal pool. He doesn't agree with it in its entirety.

G. Goeschel spoke about feasible prudent alternatives and how do we know there are impacts to wetlands? Danzer and Trinkaus say yes – Russo and Wren say no.

H. Clarke questioned what would happen if the road is being built and several people are building their houses and we get a big storm and there is damage to wetlands. G. Goeschel answered that it depends if house construction or the road construction caused the damage. G. Goeschel said this concern could be included in the report to the Planning Commission along with their other concerns (i.e., building of lots, E&S bond, etc.)

K. Kalajainen's recommendations wanting to consider Trinkaus Engineering Memo dated 7/10/17. She believes it outlines a number of areas in which the plans from 6/23/17 were incomplete. It talks about the stormwater management, regulated activities in the upland review area. She didn't have time to cross-check with the 7/20/17 plans but believes they are still relevant. G. Goeschel says that the grading is not shown on E&S plan. He also said the applicant provided the 7/20/17 plan on the Thursday prior to the last public hearing and did not know if Trinkaus had or did not have a chance to review it.

G. Goeschel feels at this time they have enough information where they can draw up some motions. They will draw up a draft motions both pro, con, as well as for an incomplete application. K. Kalajainen asked if the Commission denies the application, will there be another public hearing. G. Goeschel answered that if denied and the applicant re-applied the Commission would most likely receive another petition from the public for a public hearing.

D. Pazzaglia asked G. Goeschel if the application is complete in his opinion. G. Goeschel answered that in his opinion the applicant answered and provided everything needed.

C. Lozanov talks about Item 12 from Victor Benni's memo. Reduction of stormwater results in enhanced water quality which will recharge ground water which is what

applicant has said. Trinkaus is opposed to this. He says that watershed map is incorrect because boundaries are drawn at wetlands.

J. Baldwin asked G. Goeschel - Does the Commission do ground water quality monitoring before and/or after completion of projects? G. Goeschel answered yes; the Commission just recently approved the Costco project with groundwater monitoring wells.

K. Kalajainen mentioned that J. Wren and S. Trinkaus have worked together in the past and why didn't they come together to get this correct instead of getting a third party opinion from Waldo Associates. G. Goeschel said he doesn't know why.

C. Lozanov spoke to 4. - Items e. and f. from G. Goeschel Memo (Exhibit 000).

e. the character and degree of injury to, or interference with, safety, health or the reasonable use of property which is caused or threatened by the proposed regulated activity; and

K. Kalajainen said the analysis done was on Lot 3 only – not much to go on. They did the minimum amount of clearing. The homeowner may choose to clear out more. G. Goeschel said that doesn't have anything to do with safety and isn't worried about it.

f. impacts of the proposed regulated activity on wetlands or watercourses outside the area for which the activity is proposed and future activities associated with or reasonably related to, the proposed regulated activity which is made inevitable by the proposed regulated activity and which may have an impact on wetlands and watercourses.

S. Zmarka and G. Goeschel said that they will draft a resolution for and against in an effort for the Agency to render a decision by August 28, 2016. Zmarka and Goeschel will work on the following for discussion at a Special Meeting on August 17, 2017 at 6:00 pm.

- First drafts – one approving – one denying.
- Draft report for Planning Commission.

M. Zmarka asked the Agency to read into the record which meetings members attended and whether they have read the minutes, listened to tapes and had otherwise familiarized themselves with the record.

C. Lozanov attended 6/12/17, 6/26/17, 7/10/17, and 7/24/17.

P. Berger attended 6/12/17, 6/26/17, 7/10/17, and 7/24/17.

H. Clarke attended 6/12/17, 6/26/17, 7/10/17, and 7/24/17. H. Clarke was late to the 7/10/17 meeting but read all the notes and exhibits so he knows the same information as the rest of the commission.

K. Kalajainen attended 6/12/17, 6/26/17, 7/10/17, and 7/24/17. K. Kalajainen had to leave early at the 7/10/17 meeting but read all the notes and exhibits so she knows the same information as the rest of the commission.

D. Pazzaglia attended 6/12/17, 7/10/17, and 7/24/17. D. Pazzaglia missed the 6/26/17 meeting but read all the notes and exhibits so he knows the same information as the rest of the commission.

J. Baldwin attended 6/12/17, and 7/24/17. J. Baldwin missed the 7/10/17 meeting but read all the notes and exhibits so he knows the same information as the rest of the commission.

J. Chomicz attended 6/12/17, and 7/24/17. J. Chomicz missed the 7/10/17 meeting but read all the notes and exhibits so he knows the same information as the rest of the commission.

MOTION (1): P. Berger moved to hold a special meeting on Thursday 8/17/17 at 6:00 pm to continue the Twin Valley 25-Lot Application. Seconded by H. Clarke. Motion passed (6-0-0) unanimous.

Next scheduled regular meeting is Monday 8/14/17 at 7:00 pm.

ADJOURNMENT

MOTION (2): H. Clarke moved to adjourn the meeting at 8:52 pm. Seconded by K. Kalajainen. Motion passed (6-0-0) unanimous.

Respectfully Submitted:
Mary Jane Gaudio
Recording Secretary

A handwritten signature in cursive script that reads "Mary Jane Gaudio". The signature is written in dark ink and is positioned to the right of the typed name and title.