



Town of Griswold



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GRISWOLD INLAND WETLANDS & WATERCOURSES CONSERVATION COMMISSION & AQUIFER PROTECTION AGENCY

SPECIAL MEETING MINUTES

MARCH 27, 2014

GRISWOLD TOWN HALL

I. SPECIAL MEETING (7:30 P.M.)

1. Call to Order

Chairman C. Kinnie called this special meeting of the Griswold Inland Wetlands & Watercourses Conservation Commission to order on March 27, 2014 at 7:35 p.m.

2. Roll Call & Determination of a Quorum

Present: Courtland Kinnie, Robert Parrette, Lawrence Laidley, Alternates Gary Serdechny, Lauren Churchill, Town Planner Mario Tristany, WEO Peter Zvingilas, Recording Secretary Donna Szall

Also present: Town Counsel Mark Branse and Caleb Hamel

Absent: Stacie Stadnicki, Edward (Jay) Waitte, Glen Norman, Dean Rubino, Clarence (Pete) Merrill,

C. Kinnie appointed G. Serdechny to sit for P. Merrill and L. Churchill to sit for S. Stadnicki. There was a quorum for this regular meeting.

3. Matter for Consideration

- A. **CC 05-14 Rochette, Stephen & Jennifer, 52 Myrtle Road, Griswold. CT.** Request approval for residential activity within a regulated area for a deck that was constructed without a permit exceeding the approved site plan of August 19, 2010. Property is zoned R-60.

C. Kinnie asked if there was someone to represent the applicant. Attorney Harry Heller, 736 Route 32, Uncasville, was representing Stephen and Jennifer Rochette. H. Heller stated that he has submitted, as requested by the town planner, an amended application that includes the dimensions of the deck and patio; a site plan that is a certified class A-2 accurate survey; and an overlay of what was approved in 2010 by this commission and the site plan submitted tonight. He stated that Demian Sorrentino, Soil Scientist, Boundaries LLC and John Faulise, Boundaries, LLC were also present.

H. Heller stated that this is an application for an upland review area permit for the after the fact construction of a portion of a concrete patio and the wood deck that is bolted into the side exceeds the scope of the 2010 permit. He stated that at the last meeting, a letter was submitted from Demian Sorrentino, certified soil scientist, there were no delineated wetlands on this property above the high water mark of Pachaug Pond.

H. Heller explained that the commission's evaluation the 2010 permit in 2010 for the installation of the floating dock and the construction of a concrete pad as an anchor and access to the floating dock was consistent with the permitting requirements of Section 10 of the Inland Wetlands Regulations. H. Heller stated that the level of evaluation of criteria for this application is 1) to determine if there are changes in circumstances to reconsider

that permit; and 2) exceeding the permit by construction of the additional concrete patio and the wood deck are different in nature from the originally permitted patio, and that would cause this construction to have an adverse impact on the watercourse; and 3) based on Section 10, whether the construction that has occurred has an adverse impact on wetlands or watercourses and whether there are any feasible and prudent alternatives. H. Heller cited appellate case law about the State Statute Section 22a-19 Environmental Intervener statute regarding no need for feasible and alternatives to an activity if the activity is not reasonably likely to have an adverse impact on the environment.

H. Heller stated that for whether there was adverse impact for the activity on the watercourse, he called Demian Sorrentino, certified soil scientist to give testimony of his review of the site.

Demian Sorrentino, certified soil scientist, Boundaries LLC stated that he visited the site prior to the field survey of the property in the presences of the land surveyor. He stated that there was ice on the pond at the time; at that time the improvements were well above the high water mark and are above the 159 elevation of the pond. He stated that the soils are well drained Agawam soils in direct contact with the watercourse itself. He stated that all the improvements are outside the high water mark and, horizontally and vertically, are also outside the limits of the watercourse. He stated that he saw photos of the site that showed an overgrown muddy bank in that area prior to construction; he stated that the property owners have stabilized the shoreline in addition to the construction that was done; and in his opinion is more stable than it was previously. He explained that the rocks do provide habitat for snakes and frogs that can go inside to seek shelter and cover. He stated that the ground that is taken up by the existing deck and concrete pad are minor in nature; water infiltration is not a concern and is outside of the scope of any impact of flood flow attenuation or nutrient loading. D. Sorrentino stated that, in his professional opinion, what is there does not have a direct impact on Pachaug Pond as a watercourse; and there are no adjacent inland wetlands soils, there is no impact to the inland wetlands.

C. Kinnie asked if any commission members had questions. L. Churchill asked there are any effects from of pouring concrete on the watercourse. D. Sorrentino stated that once concrete has cured there are no effects to the watercourses; but if there are effects while the concrete is being poured and it does not give off anything deleterious. P. Zvingilas asked what type of pressure treated wood was used for the supports for the deck. H. Heller stated that the decking is a composite decking. John Faulise stated that there are photographs of the decking in the file. There was discussion of this matter that the supports made of ACQ are not in contact with the water.

H. Heller explained the consideration for feasible and prudent alternatives. He stated that if the activity does not have any adverse impact on the watercourse based on the testimony of D. Sorrentino, then the need to requirement to demonstrate a feasible and prudent alternative.

H. Heller explained the next consideration for the short term and long term impacts on wetlands and watercourses and the maintenance and enhancement of long term productivity to watercourses. He explained the short term impacts of erosion and sedimentation going into the pond by the construction, and since this is an after the fact permit, if there were short term impacts, they would have been seen during construction. He stated that the photographs show that everything out there has been stabilized.

H. Heller explained the third criteria of irreversible or irretrievable loss of wetlands for watercourse resources. He stated that the activity is the upland review and there is no construction or filling in the watercourse and none is proposed in this application; and there is not irretrievable loss of watercourse function as a result of the construction of the patio and deck.

He explained the next consideration is the character and degree of injury to and interference with safety, health and the reasonable use of property which is caused or threatened by the proposed activity. He stated that the construction of the deck and patio that has occurred is entirely in the upland review area for this application with minimal disturbance.

H. Heller explained the final consideration is if the activity will have irretrievable e an impact on a wetland or watercourse outside of the area for which the activity is proposed and if the activity makes inevitable other consequences as a result of the construction. He stated that this is a small construction of a total of 127 square feet for the deck and patio and the materials are inert, and are entirely in the upland review area, and are 3 feet above the FEMA 100 year base flood elevation. He stated that there is no likelihood that the construction of this deck and patio would have any impact on a wetland or watercourse outside the immediate area of the construction.

H. Heller stated that this application complies with the permitting criteria in your regulations, and there was expert testimony that it will not adversely impact the wetlands or watercourse and he asked that the commission approve this application.

G. Serdechny asked that it is above the 100 year flood. H. Heller stated yes. G. Serdechny asked what the 100 year base flood elevation was. H. Heller stated 159. J. Faulise stated that it is identified on the plan. G. Serdechny stated that the plan shows that the elevation is 160 at the top of the concrete. H. Heller stated that it was 161.8. J. Faulise stated that the 160 is a contour label and showed it on the site plan. There was discussion of this matter.

C. Kinnie asked if anyone had other questions for the application. L. Laidley asked how far the scope of where the rocks were put was. J. Faulise explained that the rocks were already part of the protection of the slope and was already there that were moved by the ice and are put back. H. Heller submitted a photograph of the shore line at preconstruction and that the rocks already existed. There was discussion of this matter including that there was a stone wall there at the property line.

R. Parrette asked if the tree was still there. J. Faulise stated that the tree is identified as a maple tree clump on the site plan and that the tree is 3 feet above the concrete.

C. Kinnie asked if there were any other questions from commission members. Town counsel Mark Branse asked D. Sorrentino about the lack of impact of the activity as performed, and in the event that the commission denied the application and asked that the dock and deck and concrete be removed, he was not recommending that; if that was to occur, would that have any impact positive or negative on the watercourse. D. Sorrentino stated that the activity could, in the short term, expose soils that could be erodible and any impact from that activity can be mitigated with erosion and sedimentation control measures; removing it would subject the watercourse to impact that does not exist because the area has been stabilized to date. I fit is permitted as it is there is no further potential for erosion and sedimentation because it is already construction.

C. Kinnie asked for other comments from counsel and staff. M. Tristany stated that this process happened because of a right of way issue that residents for this property is a civil issue; He asked town attorney that if any of this construction that exists interferes with the right of way access, would it be under the domain of this commission. Atty. M. Branse explained that if those who claim that their right of way is obstructed and were to bring a civil action such as quiet title or trespass; and if the court agreed, and the court ordered the structures removed, then their removal would require a permit just like their installation; because there are impacts to construct it and impacts to demolish it. M. Tristany asked if the commission were to approve what is currently in place on this property and is later proved to impact the property, can the commission be held liable for taking that approval action. M. Branse stated clearly no, and cited case law regarding a dock on a pond and the appellate court concluded that it was on another's property and the permit was worthless. M. Branse stated that the commission can only look at it regulations there was no liability because the commission does not have jurisdiction There was discussion of this matter.

Someone in the audience asked if they could ask a question. C. Kinnie stated that this was not a public hearing. M. Branse explained that there is guidance from DEEP to avoid turning a meeting into a "de facto" public hearing. C. Kinnie stated that we took this as a written complaint and it was discussed in detail.

C. Kinnie asked if there was anything else that town counsel would like to add. M. Branse stated no unless there was more discussion of Mr. Tristany's question. P. Zvingilas stated that if the deck would require a building permit as a structure. He stated that the building code, as of February 28, has changed that structure under 200 square feet did not require a building permit. He stated that if a zoning permit was required for the structure and he will ask Planning and Zoning at their next meeting. M. Tristany stated that the deck is considered a structure which must comply with property line setbacks. M. Branse stated that this is a zoning issue and that will be reviewed at a later date.

C. Kinnie asked if the commission had any other questions for the applicant or for staff or town counsel. He stated that this application has been through two extensions and the commission can act on this application. M. Branse stated that there are two 65 day extension allowed for a total of 130 days. There was discussion of the date that the application was received and it was determined that the application was received at the November 21, 2013. M. Branse stated that the 130 days is for Monday, March 31, 2014.

MOTION: R. Parrette moved to approve CC 05-14 as presented on the site plan dated March 27, 2014. L. Churchill seconded the motion.

C. Kinnie asked for discussion. G. Serdechny stated that it was distressing that approval was given for a specific structure and that the applicant on his own exceeded the scope of the permit approved in 2010; and does not serve the public interest for a permit after the fact. L. Churchill stated that she agreed with G. Serdechny; however why we are here and that under our regulations of whether an activity affects wetlands and watercourses, there is no reason to deny approval of this application. G. Serdechny stated that we are here to approve something that has already been done beyond the scope of what we approved. There was discussion of this matter including what problems deconstruction may cause.

G. Serdechny asked Atty. Branse, that if the commission does not approve this permit, and we let it be the way it is, would it be considered a violation. M. Branse stated that there is no legal non-conforming structure under wetlands; that is zoning idea. He explained that if the commission denied the permit, nothing would happen unless the commission commenced an enforcement action; and the commission would begin a civil suit to order it removed. G. Serdechny asked if the commission was required do that. M. Branse stated no, the commission has discretion and is not required to do that. He stated that it will always be illegal; it will never become non-conforming.

M. Branse asked if the commission had any conditions or modification that would address these concerns. L. Laidley stated that we are considering approving something that went well beyond the scope and the applicant knew it was well beyond the scope that was intended by the permit. L. Laidley stated that it must be made perfectly clear to everyone involved that nothing else will be allowed to go further without an actual permit, the actual location of everything, no continued improvements, further extensions, nothing. He stated that if there was an impediment to the original location, an applicant should come back to the commission. H. Heller stated that was the reason that the commission asked for an A-2 survey. M. Branse suggested that the commission can impose a condition that if any expansion or alteration of this structure or any further regulated activity by the applicant on this property, that there can be a \$1000 per day penalty. He stated that the statutes do authorize up to \$1000 a day penalty; the commission can set any amount. H. Heller stated that it should state any further activity by the applicant.

M. Tristany stated that he spoke with Atty. Branse there is language in the regulations that the commission can pass on any fees to the applicant. M. Branse stated yes that is in you regulations, any fees from any non-town employee used to assist you in review of the application. M. Tristany suggested that the commission consider this step as a condition of approval.

C. Kinnie asked R. Parrette and L. Churchill to rescind your motion and second. M. Branse stated that that can be a motion to amend the motion on the table. R. Parrette stated that he has an issue at this stage of the game, that the fees are be paid by the applicant for this application; and if the applicant knew this in November.

M. Tristany stated that this is in the regulations. G. Serdechny stated that the applicant caused this entire situation. There was discussion of this matter.

R. Parrette amended his motion to include that if there is any further activity, construction or deconstruction, based on any other activity there, the applicant will be find \$1000 per day until it is corrected. L. Churchill stated that she would like to add the lawyer's fees. L. Churchill rescinded her second. R. Parrette rescinded his motion.

MOTION: L. Churchill moved to approve CC 05-14 as presented on the site plan dated March 27, 2014 with the condition that no other regulated activity, either construction or deconstruction, made by the applicant without a prior permit, the applicant will pay \$1000 a day until corrected; and the applicant will pay the town counsel fees. G. Serdechny seconded the motion. C. Kinnie asked for further discussion; hearing none he asked for a vote. There were 3 aye votes by C. Kinnie, L. Laidley and L. Churchill and 2 nay votes by R. Parrette and G. Serdechny. The aye carried. The motion was passed. M. Branse stated that the clients will be charged the municipal rate for town counsel fees.

4. Adjournment

R. Parrette moved to adjourn. L. Laidley seconded the motion. All were in favor. The meeting adjourned at 8:35 p.m.

Respectfully submitted,

Donna M. Szall
Recording Secretary