

AGENDA  
PLANNING COMMISSION  
OCTOBER 25, 2016 - 7:00 P.M.  
TOWN HALL ANNEX - 134 GROTON LONG POINT ROAD  
COMMUNITY ROOM 2

I. ROLL CALL

II. APPROVAL OF MINUTES

1. September 13, 2016\*

III. PUBLIC COMMUNICATIONS

IV. SUBDIVISIONS

1. East Farm Subdivision, Noank Road - Acceptance of Public Improvements and Reduction of Bond\*

V. SITE PLANS

1. Four Winds at Mystic, 0 Noank Ledyard Road - Request for Extension for Start of Construction\*

VI. OLD BUSINESS

VII. NEW BUSINESS

1. Referral from the Zoning Board of Appeals for a Public Hearing on November 9, 2016 - ZBA#16-14 - 25 Amherst Court, William and Susan Parsons/Owners, Advanced Improvements, LLC/Applicant
2. Adoption of 2017 Meeting Schedule\*
3. Report of Commission
4. New Applications

VIII. REPORT OF CHAIRMAN

IX. REPORT OF STAFF

X. ADJOURNMENT

Next regular meeting: November 22, 2016

\* Enclosed

NOTE: NO NEW BUSINESS WILL BE CONSIDERED AFTER 10:30 P.M.

MINUTES  
PLANNING COMMISSION  
SEPTEMBER 13, 2016 – 7:00 P.M.  
TOWN HALL ANNEX – COMMUNITY ROOM 2

Chairman Pritchard called the meeting to order at 7:00 p.m.

I. ROLL CALL

Regular members present: Kane, Munn, Pritchard, Steinfeld, Zod  
Alternate members present:  
Absent: Fitzgerald, Tarbox  
Staff present: Jones, Gilot

Chairman Pritchard noted that Zod had been appointed a regular member of the Planning Commission.

II. APPROVAL OF MINUTES

1. August 9, 2016

MOTION: To adopt the minutes of August 9, 2016, as amended.

Motion made by Kane, seconded by Steinfeld, so voted 4-0-1 (Munn)

III. PUBLIC COMMUNICATIONS

Pritchard said he received email from OPDS that the Committee of Chairs will host a Freedom of Information presentation at the Town Hall Annex on October 19<sup>th</sup>. All land use commissioners are welcome.

Gil Ward, 8A Godfrey Street, spoke in favor of the Mystic River Residential modification to use a noise abatement wall and trees rather than a concrete wall. He said the approved concrete wall would be out of character with the neighborhood and the proposed wall should be high quality with professional noise abatement.

Truman Kelly, 10 Godfrey Street, said he was opposed to a concrete structure at Mystic River Residential, which would be out of character with the neighborhood.

Irene Weiss, 17 Godfrey Street, said she resides across the street from Mystic River Residential, which is currently very noisy. She read a letter from Guy Herman that was addressed to the Commission. She said there was no detail on plantings or sound attenuation on the proposed plan.

Tina Patrella, 9 Godfrey Street, a neighbor of Mystic River Residential, said it is noisy, spoke against plantings and any uncharacteristic wall. She said details should be provided for noise attenuation. She was also concerned about vegetation.

IV. SUBDIVISIONS - None

V. SITE PLANS

1. Parking Lot Improvements (SIT15-10), 721 Long Hill Road – Start of Construction Extension

Staff said the plan was approved in September, 2015, and was recorded. The applicant would like to keep the site plan active in the event the use changes from a furniture store to a retail use. The applicants requested a one year extension to September, 22, 2017.

**MOTION:** To grant an extension for start of construction for the parking lot improvements at 721 Long Hill Road (SIT15-10) to September 22, 2017.

Motion made by Pritchard, seconded by Kane, so voted unanimously.

2. Mystic River Residential (SIT16-11), 14 Godfrey Street - Modification

Clint Brown, DiCesare Bentley Engineers, 100 Fort Hill Road, Groton, represented the applicant, Mystic River Residential Care. He introduced Elaine Cole of Mystic River Residential Care and John Kwasmiewski, the contractor. Mr. Brown presented the application for a modification to the masonry wall required in the conditions of the original site plan #09-09 approved on October 15, 2009. He detailed the location of the 50 ft. long, 8 ft. high concrete block retaining wall, and the approved landscaping, a double row of evergreens. Starting at the finished grade at the driveway immediately east of the site, an 8 ft. concrete retaining wall would not look very residential. Mr. Brown detailed the requested modification to eliminate the concrete block wall, and replace it with a combination of landscaping and a board and batten wood fence. The 8 ft. wood fence would start at the same place and would shield the generator and dumpster. He noted the generator is not shielded on the original plan. The number of arborvitae would be increased to 17. A transformer proposed on site had been relocated on a utility pole on the street, providing more room between the landscaping and the neighboring driveway. The generator on site would have a steel enclosure. Mr. Brown detailed the proposed board and batten wood fence. He said there had been no testimony about the attenuation characteristics of the concrete wall at the time of the original approval.

Staff reviewed the history of the application and a subsequent modification and noted that the commission was concerned about the wall and sound attenuation at that time. The commission asked about the mass of the boards proposed. Mr. Brown said they would be 1" x 8's. The commission said there were no acoustic attenuation properties in 1" x 8's, and arborvitae provided no sound attenuation.

The commission asked about the frequency of the noise. Elaine Cole provided a detailed schedule of the trucks that come to the site, as early as 6:30 in the morning. She said they are attempting to reduce the number of deliveries by trucks, and where the deliveries are being made (less on the east side). The commission felt that some of the noise may be part of a construction situation. The construction staging in the area was reviewed.

Mr. Brown and the commission discussed the wooden wall as proposed. They agreed that the sound attenuation properties could be increased with a thicker wood fence. The noise from the generator was discussed by the commission.

**MOTION:** To approve a site plan modification (SIT16-11) for Mystic River Residential Care, 14 Godfrey Street to allow the installation of a board and batten fence with similar noise attenuation properties as the

previously approved masonry wall and 17 Arborvitae in lieu of the masonry sound attenuation wall as required by condition 4 of the 2009 Site Plan approval.

Motion made by Pritchard, seconded by Zod. Motion passed unanimously.

VI. OLD BUSINESS - None

VII. NEW BUSINESS

1. Referral from the Town of Ledyard for a Public Hearing on September 8, 2016 – Site plan review for a bed & breakfast facility

Staff explained the referral. The Commission had no comment.

2. Referral from the City of New London for a Public Hearing on September 15, 2016 – Zone Regulation Amendment to modify Section 550.2 (Waterfront Commercial-Industrial Zone (submitted by Attorney G. Videll)

Staff explained the referral. The Commission had no comment.

3. Referral from the City of Groton for a Public Hearing on September 20, 2016 – Subdivision and Zoning Regulations proposal

Staff explained the referral for the update to the City's Zoning and Subdivision Regulations. Staff said that no city commercial zone abuts any town residential zone. The Commission had no comment.

4. Report of Commission

Zod said he attended "Mystic Eats" and the Spicer Mansion was one of the vendors. He felt they were promoting their restaurant as a stand-alone business.

Kane asked about the trees in the Aldi shopping center. He said that some appeared to be dead and should be replaced. Staff said they are dead and expects a plan to replace them.

Steinford said there was a blight notice in the paper recently, noting that some enforcement is taking place. Staff said they are trying to address blight complaints, but the department is without a Code Enforcement Inspector. Staff discussed the revised job description for the Code Inspector/Planner 1 position.

Steinford asked staff to check on activity at 420 Long Hill Road. There are wood chip piles on the site.

5. New Applications - None

VIII. REPORT OF CHAIRMAN - None

IX. REPORT OF STAFF - None

X. ADJOURNMENT

Motion to adjourn at 8:15 pm was made by Kane, seconded by Zod, so voted unanimously.

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Margil Steinfeld, Vice Chairman/Secretary  
Planning Commission

Prepared by Debra Gilot  
Office Assistant III

NOT APPROVED

PC AGENDA  
10/25/16 10/11/16 - IF READY.  
New Venture, LLC  
P.O BOX 864  
Old Lyme, CT 06371

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September 28, 2016

Deb Jones  
Town of Groton Planning Department  
134 Groton Long Point Road  
Groton, CT 06340

**RE: East Farm Subdivision, Noank Road  
Acceptance of Public Improvements**

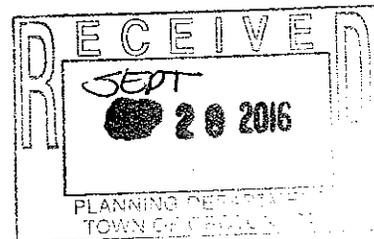
Deb:

Let this letter serve as a formal request for the acceptance of the public improvements for the above described subdivision. Please arrange for a final inspection and let me know when I can meet the designated person from the town who will verify our status. If you have any questions or if you need additional information please let me know.

Thanks for your help and consideration.

Sincerely,

*Michael Franklin*



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Phone: 860-460-8144 Fax: 203-413-7368 E-mail: [michael.franklin@cbmoves.com](mailto:michael.franklin@cbmoves.com)

\*  
EAST FARM  
- SUBDIVISION

**Glemboski, Diane**

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**From:** Jones, Deborah  
**Sent:** Tuesday, October 18, 2016 9:49 AM  
**To:** Glemboski, Diane  
**Subject:** FW: East Farm

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**From:** Hanover, Greg  
**Sent:** Tuesday, October 18, 2016 9:47 AM  
**To:** Jones, Deborah  
**Subject:** RE: East Farm

Deb,

 The bond may be reduced to the 10% maintenance amount (\$5,830).

There is still some work he needs to do to the driveway apron, so it is not ready for acceptance yet.

Greg

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**From:** Jones, Deborah  
**Sent:** Tuesday, October 18, 2016 9:33 AM  
**To:** Hanover, Greg  
**Subject:** East Farm

Is it ready for acceptance or bond reduction? The next Planning Commission agenda will go out Thursday. Thanks, Deb

Deborah Jones  
Assistant Director  
Planning and Development  
Town of Groton  
134 Groton Long Point Road  
Groton, Connecticut 06340  
860.446.5972

# CONWAY, LONDREGAN, SHEEHAN & MONACO, P.C.

ATTORNEYS AT LAW  
38 HUNTINGTON STREET, P.O. BOX 1351  
NEW LONDON, CONNECTICUT 06320-1351  
(860) 447-3171 / Fax (860) 444-6103  
www.conwaylondregan.com

PC  
MTG  
10/25/16

KEVIN W. CONWAY *OF COUNSEL*  
FRANCIS T. LONDREGAN (1935-2008)  
THOMAS J. LONDREGAN *JD*  
MICHAEL W. SHEEHAN  
RALPH J. MONACO *JD*  
BRIAN K. ESTEP *+* †  
JEFFREY T. LONDREGAN *JD*  
ERIC J. GAROFANO  
VICTORIA S. MUELLER

THOMAS J. LONDREGAN  
[tlondregan@clsmlaw.com](mailto:tlondregan@clsmlaw.com)

*JD* ADMITTED TO US SUPREME COURT

\* BOARD CERTIFIED TRIAL ATTORNEY

† ALSO ADMITTED IN NY †

‡ ALSO ADMITTED IN PA

October 12, 2016

OCT 12 2016

Town of Groton  
Diane Glemboski  
134 Groton Long Point Road  
Groton, CT 06340

Re: Four Winds at Mystic/ Noank-Ledyard Road, Groton, CT/Ron Bonvie-Developer  
Extension of Time

Dear Diane:

The purpose of this letter is to request an extension of the permit issued by the Planning Commission on September 8, 2004, to extend the start of construction under your local regulation. The Planning Commission permit is good until 3-26-2020; however your local regulation has a "start of construction" requirement in addition to the time limit on the original permit. The start of construction was extended by the Commission to November 26, 2016.

Your records will indicate that in addition to the Town's approval the applicator had to apply to the ACOE for a permit. The issue recently is confirming that the ACOE permit is still valid. The client cannot start construction without knowing the status of the ACOE permit. Enclosed are emails between ACOE and attorney Greg Sharpe of the Murtha Cullina law firm in Hartford. As you can see from the emails, the data base for the ACOE had an error. ACOE posted that the archeological work was done and therefore a new permit was not needed. When told the work has not yet been done the ACOE said the file was missing! Attorney is working with the ACOE to obtain a new permit.

This application was contested by an organization known as GOSA (Groton Open Space Association). Throughout the appeal process we each year applied for an extension of the start of construction per your local regulation. The developer would like to extend the start of construction for one additional year.

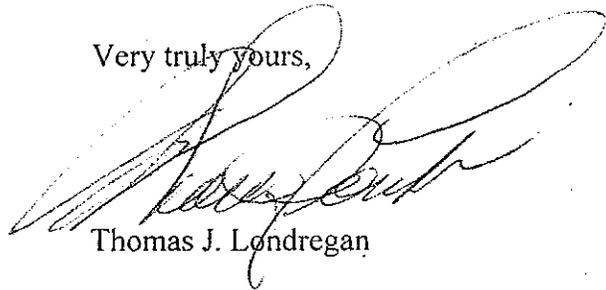
Four Winds Extension

We have each and every year met with commission to discuss the plans and status of the development. We are prepared to do so again this year. My client has every intention of proceeding to construction in the immediate future.

I would appreciate it if you would schedule this matter before the planning commission for its last meeting in October which I believe is October 25, 2016, so that I can attend. My client resides on Cape Cod where he has a similar development. Unfortunately he will not be able to attend but will send a representative I am sure. There will still be one more meeting of the P & Z before November 26, 2016.

If you have any questions regarding this request, please advise.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Tom Londregan', written over a large, faint circular stamp or watermark.

Thomas J. Londregan

TJL:djk

cc: Ron Bonvie  
82 Meadowbrook Road  
Mashpee, MA 06249

FOURWINDS

FOUR WINDS PC AGENDA 10/25/16

**Glemboski, Diane**

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**From:** Thomas Londregan <TLondregan@clsmlaw.com>  
**Sent:** Tuesday, October 18, 2016 3:30 PM  
**To:** Glemboski, Diane  
**Subject:** MYSTIC ACATIVE ADULT  
**Attachments:** GREG SHARP 10.18.16.pdf

Attached is a memo from attorney Greg Sharp who is handing the ACOE permit. As you can see the regulations and permit application were not even published until this past August 2016. This was the soonest we could have requested a new construction period. The ACOE has a "start of construction" much like the Town of Groton. As I understand it, no permit expired but when no construction takes place in a certain time period one must obtain approval for a new "start of construction." The ACOE just wants to make sure there has been no change in the plans. We are in the process of confirming that for the ACOE. The fact that the ACOE lost the file has not been helpful but Clint Brown will get them what they need. Please note that attorney Greg Sharp notes that without ACOE permission we cannot begin construction in wetlands regulated by the ACOE. See you on the 25<sup>th</sup>. Please share with the commission.

Thomas J. Londregan, Esq.  
Conway, Londregan, Sheehan & Monaco, P.C.  
38 Huntington Street  
New London, CT 06320  
860-447-3171  
860-444-6103 (fax)  
[tlondregan@clsmlaw.com](mailto:tlondregan@clsmlaw.com)

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GREGORY A. SHARP  
860.240.6046 DIRECT TELEPHONE  
860.240.6846 DIRECT FACSIMILE  
GSHARP@MURTHALAW.COM

October 18, 2016

Planning Commission  
Town of Groton  
134 Groton Long Point Road  
Groton, CT 06340

Re: Mystic Active Adult, LLC

Members of the Planning Commission:

My client, Ron Bonvie, has requested that I provide you with a summary of the history of the regulatory status of the Mystic Active Adult, LLC project in Groton with respect to the U.S. Army Corps of Engineers, New England Division, for activities proposed in wetlands within the jurisdiction of the Corps under Section 404 of the Federal Clean Water Act.

By way of background, beginning in 1996, the New England Division of the Corps adopted a General Permit ("GP") for Connecticut under the federal Section 404 wetlands program. The GP provided for a streamlined program to process applications with less than one acre of wetlands impact and which were determined not to have a significant adverse wetland impact.

The initial GP, and each GP adopted by the Corps thereafter, had a term of five years. If a project qualifies for coverage under the GP, the permit requires that construction commence within the five year life of the GP. When the term of the GP expires, so does the authorization for the activity, unless construction has commenced. If construction has commenced within the term of the permit, the Corps allows an additional one year grace period to complete the construction.

The GP provides for two categories of eligibility. Projects with less than 5,000 square feet of total wetland impact are eligible for Self-Verification, referred to as Category I in the early GPs, and do not require an application to and affirmative approval from the Corps. Projects with wetlands impacts of more than 5,000 square feet, but less than one acre, are eligible for the Pre-Construction Notification process, referred to as Category II in the early GPs, which requires an application to, and written

approval from, the Corps. Projects with more than one acre of impact are not eligible for coverage under the GP but must go through the Corps' Individual Permit process.

The activities proposed by Mystic Active Adult, LLC in wetlands regulated by the Corps would have an aggregate wetland impact of less than 5,000 square feet. This fact would appear to have made the project eligible for processing under Category I, not requiring specific Corps approval.

However, in 2003, following discussions about my client's proposal among representatives of the Corps, the Groton Open Space Association, and the U.S. Fish and Wildlife Service, the Corps advised my client in a letter that, for reasons not specified, the project was not eligible for Category I, but would be reviewed under Category II of the GP. As noted, a project reviewed under Category II requires a formal application.

Accordingly, in February of 2004, an application was submitted to the Corps for approval under Category II. On July 7, 2006, the Corps approved the application to fill 0.10 acres of freshwater wetland for the construction of two road crossings (a bridge and a culvert) and a pedestrian walkway. (See Attachment A).

The GP under which the authorization was issued was adopted by the Corps on May 31, 2006 and expired by its terms on May 31, 2011. Construction of the project was not commenced during that period, so the approval expired with the GP. There is no process for extending an approval under the GP, other than the grace period for projects commenced prior to the expiration the permit.

The Corps adopted a new GP for Connecticut, with similar provisions, which became effective on July 15, 2011 and expired on July 15, 2016. My client requested and received a second authorization from the Corps under the 2011-2016 General Permit dated August 9, 2011. (See Attachment B)

My client was unable to commence construction prior to the expiration of the 2011 GP, and on August 30<sup>th</sup> of this year, the Corps posted a notice on its website that it had adopted a new Connecticut GP, with provisions similar to the previous two, which became effective on August 19, 2016 and expires on August 19, 2021.

After seeing the notice, on behalf of my client, I wrote to Diane Ray of the Regulatory Division of the New England District in September requesting that a new authorization be issued under the new GP, as the project plans had not changed, and the terms of the GP were similar to those of the GPs previously issued by the Corps under which prior authorizations had been granted. The file has been assigned to a permit reviewer, and I am optimistic that, in view of the two previous approvals, the similarity of provisions in the current GP to the previous two GPs, and the fact that the

Planning Commission  
October 18, 2016  
Page 3

project plans have not changed, an approval will be forthcoming in the near future. However, until a new authorization is received, my client cannot lawfully commence construction in the Corps-regulated wetlands.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Gregory A. Sharp, Esq.

Enclosures

cc: Thomas J. Londregan, Esq.  
Mr. Ron Bonvie

FOURWINDS



DEPARTMENT OF THE ARMY  
 NEW ENGLAND DISTRICT, CORPS OF ENGINEERS  
 696 VIRGINIA ROAD  
 CONCORD, MASSACHUSETTS 01742-2751

REPLY TO:  
 ATTENTION OF:

July 7, 2006

Regulatory Division  
 CENAE-R-PEB  
 Permit Number: NAE-2004-499

Ronald Bonvie  
 Mystic Active Adult, LLC  
 82 Meadowbrook Road  
 Mashpee, Massachusetts 02649

Dear Mr. Bonvie:

We have reviewed your application to place fill in 0.10 acre of freshwater wetlands for the construction of two road crossing and a pedestrian walkway for the project known as the Mystic Active Adult Community, off Noank-Ledyard Road at Mystic-Groton, Connecticut, as described on the enclosed plans entitled "APPLICATION BY: MYSTIC ACTIVE ADULT, LLC, AT: GROTON, NEW LONDON COUNTY, CONNECTICUT", on 14 sheets, and dated "1-06-04".

Based on the information you have provided, we have determined that the proposed activity, which includes a discharge of dredged or fill material in waters or wetlands, will have only minimal individual or cumulative impacts on waters of the United States, including wetlands. Therefore, this work is authorized under the attached Federal permit known as the Connecticut Programmatic General Permit (PGP). This work must be performed in accordance with the terms and conditions of the PGP and also in compliance with the following special conditions:

1. The permittee shall execute and record the attached conservation easement to protect the land shown on the attached plan entitled, "EASEMENT PLAN, APPLICATION BY: MYSTIC ACTIVE, LLC. AT: GROTON, NEW LONDON COUNTY, CONNECTICUT" and dated 3-09-06", in perpetuity. A copy of the executed and recorded document must be sent to the US Army Corps of Engineers, Regulatory Division, attn: Chief, Policy Analysis and Technical Support Branch, 696 Virginia Road, Concord, MA 01742-2751 within 120 days of the permit's issuance, but no later than 10 days after the date of the recording.
2. The permittee shall ensure that a copy of this permit is at the work site whenever work is being performed and that all personnel performing work at the site of the work authorized by this permit are fully aware of the terms and conditions of the permit. This permit, including its drawings and any appendices and other attachments, shall be made a part of any and all contracts and sub-contracts for work which affects areas of Corps of Engineers jurisdiction at the site of the work authorized by this permit. This shall be achieved by including the entire permit in the specifications for work. If the permit is issued after the construction specifications

FOURWINDS

but before receipt of bids or quotes, the entire permit shall be included as an addendum to the specifications. If the permit is issued after receipt of bids or quotes, the entire permit shall be included in the contract or sub-contract as a change order. The term "entire permit" includes permit amendments. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be obligated by contract to comply with all environmental protection provisions of the entire permit, and no contract or sub-contract shall require or allow unauthorized work in areas of Corps jurisdiction.

3. This permit does not allow any temporary or permanent filling of wetlands/waterways for anything other than the road crossings shown on the attached permit plans without further written approval from the Corps of Engineers.
4. The permittee shall comply with all the terms and conditions of the attached "Memorandum of Agreement" signed by the Mystic Active Adult, LLC and dated "4/4/05", Corps of Engineers, dated "4-18-05" and the Deputy State Historic Preservation Officer, dated "5/6/05".
5. The interior connecting road located between the two seasonal road closure gates shown on sheet # 5 shall be closed for a pre-determined time as determined by a biologist/Soil Scientist hired by the applicant or its successor in interest, with a specialty in vernal pool habitat migration periods. These periods can range from 10 pm to 6 am from March 1 to May 1 and again from September 15 to October 15 of each year to protect the migration of amphibians using this area. Signage shall be placed in such a manner that persons wishing to use this road are given prior notification of this closing. This signage shall be done in accordance with that shown on the sheet entitled "Four Winds at Mystic, Mystic Active Adult LLC, Conservation Easement Area Sign" in one sheet and dated "1-11-06".
6. No construction activities shall be performed within 100' of the areas of the connecting road between the two seasonal road closure gates during the dates and times of the closure mentioned above for the protection of amphibians located within the road crossing shown on Sheet # 5.
7. A pre-construction meeting with the permittee, consultants and contractor shall be held prior to construction with a representative of the Corps of Engineers. Notification of this meeting shall be made to the Corps no later than two weeks prior to construction.

You are responsible for complying with all of the PGP's requirements. Please review the attached PGP carefully, in particular the PGP conditions beginning on Page 10, to familiarize yourself with its contents. You should ensure that whoever does the work fully understands the requirements and that a copy of the permit document is at the project site throughout the time the work is underway.

The Connecticut Department of Environmental Protection (DEP) has issued a Water Quality Certification (WQC) for this project, as required under Section 401 of the Clean Water Act, based on their review at our Federal/state screening meeting. Therefore, a separate application to the Connecticut DEP for WQC is not required.

This authorization expires on May 31, 2011, unless the PGP is modified, suspended or revoked. You must complete the work authorized herein by May 31, 2011. If not, you must contact this office to determine the need for further authorization before continuing the activity. We recommend you contact us *before* this permit expires to discuss a time extension or permit reissuance.

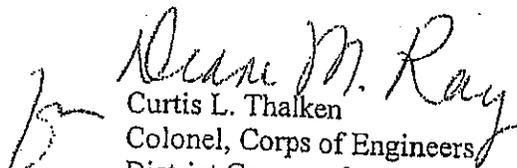
If you change the plans or construction methods for work within our jurisdiction, please contact us immediately to discuss modification of this authorization. This office must approve any changes before you undertake them.

This authorization requires you to complete and return the enclosed Work Start Notification Form to this office at least two weeks before the anticipated starting date. You must also complete and return the enclosed Compliance Certification Form within one month following the completion of the authorized work (including any required mitigation).

This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law, as listed on Page 2 of the PGP. Performing work not specifically authorized by this determination or failing to comply with any special conditions provided above or all the terms and conditions of the PGP may subject you to the enforcement provisions of our regulations.

Please contact Stephen D. DiLorenzo, Senior Project Manager, at (978) 318-8373 if you have any questions.

Sincerely,

  
Curtis L. Thalken  
Colonel, Corps of Engineers  
District Commander

Attachments

FOURWINDS



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS  
696 VIRGINIA ROAD  
CONCORD, MASSACHUSETTS 01742-2751

August 9, 2011

Regulatory Division  
CENAE-R-PEB  
Permit Number: NAE-2004-499

Mystic Active Adult, LLC  
Attn: Ronald Bonvie  
82 Meadowbrook Road  
Mashpee, MA 02649

Dear Mr. Bonvie:

We have reviewed your application to construct two road crossings and a pedestrian walkway at the Mystic Active Adult Community. As a result of the project, 0.10 acres of non-tidal wetlands will be impacted as a result of the placement of fill. The work will take place off of Noank-Ledyard Road, Mystic-Groton, Connecticut, as described on the enclosed plans entitled "APPLICATION BY: MYSTIC ACTIVE ADULT, LLC, AT: GROTON, NEW LONDON COUNTY, CONNECTICUT" (14 sheets) and dated "1-06-04."

Based on the information you have provided, we have determined that the proposed activity, which includes a discharge of dredged or fill material in waters or wetlands, will have only minimal individual or cumulative impacts on waters of the United States, including wetlands. Therefore, this work is authorized under the attached Federal permit known as the Connecticut General Permit (GP). This work must be performed in accordance with the terms and conditions of the GP and also in compliance with the seven special conditions outlined in the previous July 7, 2006 Corps authorization letter.

You are responsible for complying with all of the GP's requirements. Please review the attached GP carefully, in particular the GP conditions, to be sure you understand its requirements. You should ensure that whoever does the work also fully understands these requirements and that a copy of the permit document and this authorization letter are at the project site throughout the time the work is being performed.

The Connecticut Department of Energy & Environmental Protection (DEEP) has issued a Water Quality Certification (WQC) for this project, as required under Section 401 of the Clean Water Act, based on their review of the project. Therefore, a separate application to the Connecticut DEEP for WQC is not required.

*FOUR WINDS*

This authorization expires on July 15, 2016, unless the GP is modified, suspended, or revoked before then. You must commence or be under contract to commence the work authorized herein by that expiration date and complete the work by July 15, 2017. If not, you must contact this office to determine the need for further authorization before beginning or continuing the activity. We recommend you contact us *before* this permit expires to discuss a permit reissuance.

If you change the plans or construction methods for work within our jurisdiction, please contact us immediately to discuss modification of this authorization. This office must approve any changes before you undertake them.

This authorization requires you to complete and return the enclosed Work Start Notification Form to this office at least two weeks before the anticipated starting date. You must also complete and return the enclosed Compliance Certification Form within one month following the completion of the authorized work (including any required mitigation).

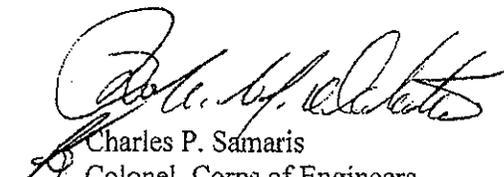
This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law, as listed in Section 1 of the GP. Performing work not specifically authorized by this determination or failing to comply with any special condition(s) provided above or all the terms and conditions of the GP may subject you to the enforcement provisions of our regulations.

This authorization presumes that the work as described above and as shown on your plans noted above is in waters of the U.S. Should you desire to appeal our jurisdiction, please submit a request for an approved jurisdictional determination in writing to this office.

We continually strive to improve our customer service. In order for us to better serve you, we would appreciate your completing our Customer Service Survey located at <http://per2.nwp.usace.army.mil/survey.html>

Please contact Amy Bourne, of my staff, at (978) 318-8651 if you have any questions.

Sincerely,



Charles P. Samaris  
Colonel, Corps of Engineers  
District Engineer

Attachments

Copy Furnished:  
SAS

FOURWINDS

PLANNING COMMISSION

2017 REGULAR MEETING SCHEDULE

Regular meetings are held at 7:00 p.m. in Community Room 2 at the Town Hall Annex on the second and fourth Tuesday of the month except as noted.

January 10, 2017  
January 24, 2017

July 11, 2017

February 14, 2017  
February 28, 2017

August 8, 2017

March 14, 2017  
March 28, 2017

September 12, 2017  
September 26, 2017

April 11, 2017  
April 25, 2017

October 10, 2017  
October 24, 2017

May 9, 2017  
May 23, 2017

November 14, 2017

June 13, 2017  
June 27, 2017

December 12, 2017

DRAFT

2017  
MEETINGS

PC

# CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

Fall 2016

Volume XX, Issue 4

## PRIVATE PARTY MAY BRING ZONING ENFORCEMENT ACTION BUT MUST PROVE IRREPERABLE HARM

An owner of a shopping plaza appealed the issuance of a certificate of zoning compliance to the zoning board of appeals. A liquor store tenant in his plaza had moved to a recently constructed retail plaza less than 500 feet away. Due to required separation distances, this would prevent the owner from obtaining another liquor store tenant for his plaza. The basis for the appeal was that the new location of the liquor store was within 500 feet of a church, something not permitted by the zoning regulations. The Zoning Board of Appeals declined to hear the application, claiming it was untimely. A private court action to enforce the zoning regulations followed.

Under Connecticut law, there is a cause of action for private zoning enforcement. The person bringing the action must prove that in addition to a zoning violation and that he or she is personally harmed by the violation, he must also show irreparable harm. In his private zoning enforcement action, the retail plaza owner proved there was a zoning violation and that he would be personally harmed as he would lose the ability to have a liquor store tenant.

His case to obtain the injunction, failed because a private enforcement action requires that the complaining

party prove that without the injunction, imminent, substantial and irreparable harm will befall him. In this case, only personal harm was shown, which was insufficient to obtain the injunction. It should be noted that when a zoning enforcement officer seeks an injunction, the harm is presumed, requiring only proof of the zoning violation. See *Steroco Inc. v. Szymanski*, 166 Conn. App. 75 (2016).

## UNDEFINED TERMS AND WORDS TO BE INTERPRETED IN FAVOR OF PROPERTY OWNER

An application for a special permit to construct and operate a stone processing plant was denied as the planning & zoning commission decided that such a plant did not constitute a manufacturing use, which was a permitted use in the zone wherein the stone processing plant was to be located.

The zoning regulations did not define manufacturing or processing. However, processing was included within the description of permitted uses in another zoning district. This description of uses included the following: rock crushing, screening and other processing. The Commission held that stone processing was included within the terms rock crushing and screening and thus was a different use than manufacturing.

While a trial court agreed with the commission that rock processing was

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# CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

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not a manufacturing use, the Appellate Court disagreed. The Appellate Court relied heavily on the rule that zoning regulations are to be strictly construed in favor of the property owner in finding in favor of the applicant's position that stone processing comes within the term manufacturing. The court found that ambiguous terms in zoning regulations deprive property owners of certainty over the use of land – something to be avoided – and thus should be interpreted in such a way as to benefit the property owner.

One response to this case would be for zoning regulations to contain a lengthy glossary of terms. Another solution is to reference an outside source, such as "The Illustrated Book of Development Definitions" for any terms not defined in the regulations themselves. See *Kobyluck Brothers LLC v. Planning & Zoning Commission*, 167 Conn. App. 383 (2016).

## FIRE PROTECTION CAN BE CONDITION OF APPROVAL FOR SUBDIVISION

A residential subdivision application was approved with several conditions, including that the developer provide fire protection in the form of a cistern or a sprinkler system. The imposition of this condition was done pursuant to a section in the subdivision regulations. The developer appealed the decision, challenging this condition as

being beyond the statutory authority of the Planning & Zoning Commission.

The court found that this condition was consistent with Connecticut General Statute Sec. 8-25 as it served one of the powers of a planning commission which is to provide for the subdivision of land without danger to health or public safety. Testimony before the commission at the subdivision hearing stated that the basis for this condition was that there was not an adequate water supply within the town for fire protection, thus necessitating that a developer provide for such protection.

Since this was an on-site improvement, the court distinguished this case from other cases where public improvements, such as sidewalks, cannot be required if they are off-site of the proposed subdivision. See *Sammartino v. Planning & Zoning Commission*, 61 Conn. L. Rptr. 879 (2016).

## NOTICE REQUIREMENTS APPLY TO ALL PROPERTY AFFECTED BY AN APPLICATION

Pursuant to the zoning regulations, notice of an application was to be mailed to owners of property adjoining the land affected by the application. The application in question concerned the conversion of an old boarding house into apartments. The required parking would be accommodated by spaces on the same property as well as on another parcel.

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When an owner of property abutting the parcel to be used only for parking appealed, she raised the issue that she had not been served personal notice as required by the zoning regulations.

The court found that this owner was entitled to personal notice as both parcels - the one for the proposed apartments as well as the one to be used for parking, were affected by the application. Thus, owners of property that adjoined either parcel were entitled to personal [mailed] notice of the application. *Kellogg v. City of Norwalk*, 62 Conn. L. Rptr. 502 (2016).

## HOUSING BLIGHT ORDINANCE APPLIES TO ENTIRE FARM AND NOT JUST THE FARM HOUSE

A Superior Court found that a town's blight ordinance could be applied to a farm, including those areas devoted to the farming use of the property. A question was raised because the State Statute authorizing a municipality to adopt blight ordinances, Connecticut General Statutes Sec. 7148(c)(7) refers to 'housing blight'.

While the farm owner conceded that his farm house came under the authority of the town ordinance, the court agreed with the town that the blight ordinance also extended to the entire farm property. *See Straska v. Town of Rocky Hill*, 61 Conn. L. Rptr. 700 (2016).

## ANNOUNCEMENTS

### **Membership Dues**

Notices for this year's annual membership dues were mailed March 1, 2016. The Federation is a nonprofit organization which operates solely on the funds provided by its members. So that we can continue to offer the services you enjoy, please pay promptly

### **Workshops**

If your land use agency recently had an influx of new members or could use a refresher course in land use law, contact us to arrange for a workshop. At the price of \$175.00 per session for each agency attending, it is an affordable way for your commission or board to keep informed.

The Federation now has workshops for inland wetlands and watercourses commissions as well as historic district commissions. A member can schedule a workshop for one of these commissions.

## ABOUT THE EDITOR

*Steven Byrne is an attorney with an office in Farmington, Connecticut. A principle in the law firm of Byrne & Byrne LLC, he maintains a strong focus in the area of land use law and is available for consultation and representation in all land use matters both at the administrative and court levels.*

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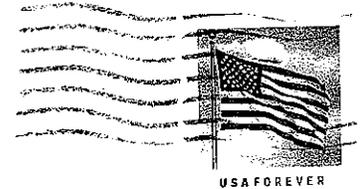
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