

MINUTES
INLAND WETLANDS AGENCY
OCTOBER 22, 2008 - 7:30 P.M.
TOWN HALL ANNEX - COMMUNITY ROOM 2

I. ROLL CALL

Agency: Ashworth, Furlong, Scott, Sutphen
Staff: Jones, Silsby

The meeting was called to order by Chairperson Scott at 7:30 p.m.

II. PUBLIC HEARING

1. Konover Acquisitions, LLC, 481, 489, 491, 495, 592, 553, 571 Gold Star Hwy,
0 Antonino Road

Chairman Scott noted that this hearing is continued from the September 10, 2008 and October 8, 2008 meetings.

Staff reviewed the latest documents that the Agency has recently received. Later in the meeting, she will read a letter into the record on behalf of Michael Brown. She noted that information on soil borings is now available.

Attorney Diane Whitney from the firm of Pulman and Comley in Hartford represented the applicant Konover Acquisitions, LLC. She gave a list of all documents that she has recently submitted, some of which included documents from F. A. Hesketh and Associates, LLC and Town Engineer Debra Marshall-Baker. She spoke about the three wetland areas being considered in the application. She stated that proof exists that peak flow will be lower than what currently exists today. She reviewed the pre-application meeting between her and Agency members, at which she was given direction on how to proceed. She noted that this meeting was recorded and she submitted the transcript of the discussion that took place on June 25, 2008.

Guy Hesketh, P.E., of F.A. Hesketh & Associates, a licensed professional engineer in the State of Connecticut, spoke on behalf of the applicant. He presented a map showing the overall plan of the site and identified the three wetland areas that are the subject of this application. He explained how roof runoff will be captured and conveyed to an underground detention galley system. The galley system would be surrounded by 4 feet of crushed stone. He submitted new supportive documentation which confirms that roof runoff is clean and also confirms the effectiveness of infiltration. He stated that even though the applicant will be treating the roof storm water, the roof runoff is clean prior to being treated. He defined the specifics of each wetland area. He gave details about the various storm water treatment areas relating to infiltration and stated that the applicant is in compliance with DEP's requirements. He reviewed the storm water treatment train for each discharge point. He pointed out that he is following "best management practices". He reviewed the detailed erosion sediment control plan. He stated that sedimentation structures will be used as required by DEP. Rock removal and the processing of on-site materials will also occur during construction.

Robert Sonnichsen, a registered professional engineer and Principal at Waldo and Associates, LLC in the State of Connecticut, explained that he has been working with the applicant as a peer review consultant. He submitted a memo he wrote to substantiate Hesketh's memo dated September 26, 2008. He disagrees with some of the

statements and conclusions included in a letter written by Steve Trinkaus to Attorney Shansky in regards to review of the storm water management system. Sonnichsen stated that the 2004 Storm Water Manual was used to design the storm water system and that the Trinkaus letter fails to say that best management practices remove vast amounts of pollutants from the site. He stated that the system being devised for this site will have no negative impacts to downstream receiving waters. The plan is to remove well in excess of 80% of Total Suspended Solids for all pavement runoff. Roof runoff will be treated even though such measures are not required. Discussion ensued about removing metals, salts and nutrients. It was noted that diluted salt will pass through the system and no salt will be stored or used on site for de-icing of the parking lot.

Attorney Whitney reviewed the best management practices and sweeping schedule for the site as documented in a recent submittal.

Dr. David Mitchell of ENSR Corporation submitted a memorandum regarding storm water pollution. He spoke about surface water and the concentration of PAH's. He referred to Dr. De Santo's demonstration with water samples and explained why this information is not relevant. He explained why traffic-generated runoff is not an issue and referred to other so-called speculations presented by Dr. De Santo that are outdated and not applicable. He referred to some of Dr. De Santo's exhibits and questioned his findings. He stated that the DEP 2004 Storm Water Manual's best management practices will be used. He explained why roof runoff is not a threat to the reservoir.

In regards to Chairman Scott's question about salt, metals, and nutrients, Dr. Mitchell explained that salt would go through the system untreated and it would be important to look at de-icing materials allowed on the site. In response to Furlong's question about having Material Data Safety Sheets (MSDS) on roof materials, Dr. Mitchell stated they could be provided. Furlong would like to review the MSDS. A copy of the MSDS was presented and staff will make copies for Agency members.

Attorney Whitney explained that she has been gathering scientific information with the hope of convincing the Agency that roof runoff is clean. There is nothing to indicate roof runoff is not clean and there is nothing in EPA and DEP requirements that says it's not clean. Whitney referred to Dr. Mitchell's resume and asked the Agency to note that information had been mailed to members regarding a court case relating whether increased traffic is a regulated activity. She reiterated that there are no parking lots that are part of this application. She would like to question Trinkaus and De Santo later in the meeting.

On behalf of E. Zell Steever of 81 Main Street in Noank, Sydney Van Zandt distributed documents to the Agency. She read his statement and submitted a copy of the Trust for Public Land's Source Protection Handbook.

On behalf of herself, Sydney Van Zandt of 3 Front Street, Noank distributed comments and exhibits into the record. She spoke about protecting Hempstead Brook. She questioned information submitted by Attorney Whitney, and she expressed her concerns with the current application. She referred to discrepancies on the map between what was approved in the 2006 application and what is proposed on the current application. She noted the importance of considering impervious surfaces and the total analysis of the detention basin. She gave her concerns about a proposed Memorandum of Understanding (MOU). She requested that the Agency deny this application.

Attorney Marjorie Shansky of New Haven, representing the interveners Kathy Ross, Claiborne (Sandy) Van Zandt, and Peggy Burdo, introduced Mr. Trinkaus.

Steven Trinkaus, a licensed professional engineer in the State of Connecticut, submitted a copy of his letter to Marjorie Shansky and outlined his concerns with the erosion control plan, water quality issues, and the storm water management plan. He stated that high intensity storms would affect runoff and reviewed the benefits of green roofs. He referred to the differences between the map of the 2006 approved plan and the currently proposed plan.

Dr. Robert De Santo, Director and a Principal of the Institute of Environmental Stewardship LLC., Waterford, spoke about dangers to the native brook trout living in Hempstead Brook. He summarized a letter from the director of Trout Unlimited and submitted a Trout Unlimited Report about Eastern Brook Trout. He explained how negative impacts can affect natural sources. He spoke about the scientific reasoning for his concerns regarding the quality of roof runoff. He noted that parking lots are the highest generator of PAH's and spoke about the dangers of PAH's. He spoke about scientific research that has been done in other parts of the country. Various exhibits and reference materials were submitted for the record and he requested that the Agency read through all of his materials.

Chairman Scott called for a 5 minute break at 10:34 p.m.

Attorney Marjorie Shansky explained that the map submitted with the current application has been changed from the 2006 approved plan. She referred to a 1992 court case involving Bradley vs Bradley and Sections 6.6 and 6.8 of Inland Wetland Regulations. She gave her concerns about pollutants from vehicles and roof runoff that will negatively impact the wetlands and reservoir. She believes that this application should be classified as a major application. She suggested that the Agency deny this application and request that the applicant come back with a fully developed plan.

Robert Sommer, 136 South Rd, spoke in opposition to the application. He expressed his concerns about the public drinking water and the blasting that will be done. Additional concerns were raised about local wildlife habitat.

Mr. Hesketh spoke about the rainfall that occurs in various storm event stages. He reiterated that the applicant is in compliance with DEP requirements. He explained that hydrodynamic separators are only one part of the storm water treatment train. He stated that routine street sweeping alone will result in 80% of TSS removal. He disagreed with some of Mr. Trinkaus' comments and stated that roof runoff is relatively clean. Discussion followed about roof runoff and the purpose of the storage basin. Scott asked about a plant survival plan for the large basin. Hesketh stated that a monitoring program for plantings is on the plan. Hesketh explained that the storm water management plan was not developed by him personally. It was developed using DEP's methods and requirements. The Town has reviewed it and stated that it conforms to industry standards.

Dr. Mitchell scanned Dr. De Santo's submittals, noting that these documents appear to be a literature review. He spoke about bio accumulative compounds and made corrections to De Santo's testimony, for the record.

Chairman Scott inquired about the pad sites shown on previous plans. Attorney Whitney replied that Konover and Wal-Mart have no plans to develop pad sites. Staff explained that that original concept was a subdivision and there is currently no subdivision on this property.

Due to time constraints and instead of cross examining, Attorney Whitney read a list of questions that she would have asked Trinkaus and De Santo. She questioned De Santo's testimony noting that most of it was outdated. She rebutted many of Mr. Trinkaus' comments relating to impervious surfaces, runoff pollutants, PAH's, infiltration in bedrock, treatment train, detention basin, and WQV calculations.

In summary, Attorney Whitney stated that Mr. Steever's comments are only his opinions and are not substantive. Many of the comments made throughout the public hearing have been speculation and are unsupported. Though a Memorandum of Understanding (MOU) is not required by the Agency, Wal-Mart will be happy to enter into such an agreement with Groton Utilities. She acknowledged that this would be a good enforcement mechanism between Konover and Groton Utilities. She stated that Groton does not regulate volume, it regulates peak flow. In closing, she stated that the applicant has done what the Agency has asked them to do. She is confident that this is an excellent plan. There is no danger to water quality and no increase in peak flow. She stated that no negative comments have been made by the Town's Engineering Department or Groton Utilities. She asked the Agency to close the public hearing and approve the application.

Staff noted the receipt of a letter of opposition from Michael Brown of 54 Spyglass Circle. She will provide a copy to Agency members.

Staff noted that Chairman Scott had asked for traffic counts for Route 184 near the site. The Southeastern Connecticut Council of Governments reported that 2007 Average Daily Traffic (ADT) is 13,100 vehicles. She stated that this application is a modification to the permit approved in 2006. She explained that this process has been used consistently by the Agency, the most recent application being the Groton Highpoint Subdivision. That applicant applied for a permit for minor changes to the approved plan as required by the Planning Commission decision and the Agency did not re-review the entire project in that case. She clarified that the MOU is between Groton Utilities and the owners of the property. It will be Groton Utilities' way of monitoring the sites.

Attorney Shansky found it objectionable that experts were not able to respond to cross examination.

MOTION: To close the public hearing

Made by Sutphen, seconded by Ashworth, so voted unanimously at 11:37 p.m.

III. PUBLIC COMMUNICATIONS

IV. APPROVAL OF THE MINUTES of October 8, 2008

MOTION: To approve the minutes of October 8, 2008

Motion by Suthpen, seconded by Ashworth, so voted unanimously

MOTION: To approve the minutes of October 16, 2008

Motion by Sutphen, seconded by Ashworth, so voted unanimously

V. NEW APPLICATIONS

1. Hannah Enterprises, 530 New London Road, Mystic

Staff explained that this is the old Cumberland Farms property on Fishtown Road and Route 1. The applicant plans to re-open the gas station and install a sidewalk. The existing repair bays will not be used. She added that it will include a small convenience store. Staff review has not been done yet. Storm water treatment systems will be upgraded as part of the plan.

VI. PENDING APPLICATIONS – None

VII. OLD BUSINESS

1. Crandall Property, 0 Lambtown Road

Staff stated that this is a continuation of a “show cause hearing” that began on August 27, 2008. She reported her numerous conversations with Mr. Crandall regarding the status of the wetland flagging. To date, the wetlands have not been flagged.

Crandall stated that flagging began today October 22, 2008.

Staff summarized the “stop work order” dated August 18, 2008. She noted that the site walk was held on October 16, 2008 and showed that no wetland flagging had been done anywhere on the property. Staff explained that the order requires that the wetlands be delineated by a soil scientist and a restoration plan presented to the Agency within 45 days of Mr. Crandall’s receipt of the order. She noted that the 45 day limit has now expired and no flagging has been done. At this point, Crandall is not in compliance.

Crandall spoke about recently hiring a soil scientist to flag his property. He stated that he had not done any intentional filling of any wetlands and hopes that the Agency gives him ample time to complete the flagging. He hopes to eventually turn the property into a farm.

Discussion ensued about Crandall having hired a surveyor. Crandall explained that the front section was flagged just today. He referred to having a cash flow problem.

Sutphen spoke in detail about what the Agency witnessed at the property during the site walk. She is of the opinion that there has been no indication that any caution had been used by Crandall when moving large amounts of material around the site.

MOTION: To close the show cause hearing

Motion made by Sutphen, seconded by Ashworth, so voted unanimously.

Staff noted that the Agency can allow the order to remain in effect, modify the order, or withdraw the order. Scott would prefer to uphold the order. Furlong suggested that the Agency needs the information a soil scientist will provide. Sutphen is very concerned about the large amount of fill at the back of the property. She explained that a lot of siltation and sedimentation has been flowing down near the cranberry bog.

Discussion followed about the process if the Agency chooses to uphold the order. Staff explained that this issue would be sent to the Town Attorney. She noted that a good faith effort in complying with the order would be in Mr. Crandall's favor.

MOTION: To uphold the order as written

Motion by Ashworth, seconded by Sutphen, so voted unanimously

VIII. NEW BUSINESS

1. Report of Chair – None
2. Report of Staff – None
3. Meeting Schedule for 2009 - Tabled

VII. ADJOURNMENT

The meeting adjourned at 12:03 a.m. on 10/23/08.

Eunice Sutphen, Secretary
Inland Wetland Agency

Prepared by Robin Silsby
Office Assistant II