

MINUTES
ZONING COMMISSION
JULY 3, 2013 – 7:00 P.M.
TOWN HALL ANNEX – COMMUNITY ROOM 2

I. ROLL CALL

Regular members present: Marquardt, Sutherland, French, Hudecek
Alternate members present:
Absent: Sayer
Staff present: Glemboski, Murphy, Carey, Galetta

Chairperson Sutherland called the meeting to order at 7:01 p.m.

MOTION: To change the order of the public hearing to hear Item 3 – Special Permit #334, 175 Industrial Drive first.

Motion made by French, seconded by Marquardt, so voted unanimously

II. PUBLIC HEARING

1. Special Permit #334, 175 Industrial Drive (CAM), PIN 169816942199, IA-40 Zone. Proposal is to excavate 775 cubic yards of contaminated material and to fill 775 cubic yards of clean material to remediate freshwater wetlands. Review is per Section 7.1-10 of the Zoning Regulations. (Electric Boat Corporation, Applicant)

The Public Hearing was opened at 7:03 p.m. with Chairperson Sutherland reading the legal ad.

Project Manager Eric Axelrod of Woodard & Curran introduced the project. His firm is representing EB Corporation, which does not currently own the property but has received permission from Amtrak, the current owner, to conduct these activities. The permit is for the remediation and restoration of freshwater wetlands area at the former Midway Area located at 175 Industrial Drive. There are 3 regions within the wetland area that will be addressed: the Western Pond, the drainage swale to the Western Pond, and the Southern Drainage Area. Standard excavator equipment will be used to conduct the activity and will access the wetland area from the upland area. Decontamination pads, stock pile areas and temporary storage areas will be used for the excavated material prior to removal and off-site disposal. New material consisting of sandy loam and organic soil will be brought in. The imported material has been identified by wetlands scientists as the best to replace wetlands value. The area will be monitored for five years to make sure whatever is planted stays alive. The contaminants are metals, primarily cadmium, lead, zinc and copper. The impact to the wetlands occurred from particles attached to stormwater materials. The risk from the contaminants is to ecological receptors rather than humans, for example the bugs living in soil. The intention is to complete the remedial activities during the dry time of the year. The excavated material being de-watered will be taken off site. All federal and state requirements will be followed for disposal.

Commissioner Hudecek disclosed that he works for EB but has no financial interest nor is he impacted by the work. He questioned the applicants that the timeframe for the project is approximately 30-days and a workday is presumed to be 7:00 a.m. – 3:00 p.m. with no work conducted on weekends or holidays.

Total material to be removed is estimated at 775 cubic yards and the total estimated to be put back will be 775 cubic yards. The new material will come from Running Brook Farms in Killingly, CT and the intent is to replicate what is taken out in order to take on same wetland values.

A Coastal Site Plan Review is also required because the Freshwater Wetland Area is located in the CAM zone. There are no adverse impacts due to this work and better materials will be used for the remediation.

Staff noted that a staff summary sheet, special permit compliance information, and a CAM application were distributed. Deb Jones, OPDS Environmental Planner, was the project planner for Special Permit as well as the Inland Wetlands Permit. She worked with the applicants for several months to design an appropriate operation with storm water and erosion controls in place. No major issues with the project have been identified and based on the final design should work out as described.

Staff noted a referral and no comment from the Economic Development Commission. The Planning Commission reviewed the application at their May 28th meeting and supported the application.

OPDS Director Michael Murphy noted that the applicants had worked well with all the outside agencies and that it will be good to have them clean up the neighborhood. In addition to local agencies they are also working with the Army Corp of Engineers and at the State level.

In response to the question of who initiated this project, the applicants explained Electric Boat purchased the site in 1960 from the railroad. Over time the land transferred to several other entities then returned to Amtrak ownership in 2012. Two outside agencies, the Resource Conservation and Recovery Act Corrective Action Program and the Connecticut Property Transfer Act, have determined that EB is responsible for remediation of the site. EB has been working on the site since it was sold to the Mashantucket Pequot Tribe in 1995. This is the last piece of the remediation work.

Commissioner French stated that this area drains into Long Island Sound and part of the floodplain and is an important project to have completed.

Chairperson Sutherland asked for public comments for or against the application.

Jim Furlong, 57 Fishtown Lane, spoke in favor of the application. He also stated that contamination has a source and questioned what the source is and whether it has been taken care of.

Jeff Hamel, Senior Vice President of Woodard & Curran explained the source which is stormwater drainage from the site and some surface trash and other debris. He reiterated that the levels are low and not a threat to human health. He noted that there are no additional active sources.

The public hearing was closed at 7:23 p.m.

2. REGA #13-02, Proposed Zoning Regulation Text Amendment to Section 8.5-8(B) (CAM). Proposal is to modify provisions concerning variances to the Zoning Regulations

The Public Hearing was opened at 7:27 p.m. with Chairperson Sutherland reading the legal ad.

Staff noted a memorandum included with the application that explains the application and the text amendment proposal. The memo also includes Attorney Carey's memorandum explaining the background for the proposal. Attorney Carey attended a ZBA meeting a number of months ago and during his presentation he suggested that, based on the Appellate Court's decision, it would be best if the Zoning Commission were to revise the regulations relative to the subject language.

Murphy noted that the Court finding is problematic. Attorney Carey picked up on it and it makes sense to stay closer to the Statutes.

Attorney Carey further explained that, during his research for an Appellate Court case, he found that a variance decision was not upheld based upon the application of the subject regulation. The Court found it was beyond the Town's authority to apply this subject section. He mentioned the case to the ZBA and the application process began to change the text.

Sutherland submitted a GIS plot plan from Town of Derby where the case occurred showing the subject property.

Hudecek questioned whether a property owner would have no recourse if they had a lot that would not meet the setbacks of the zone.

Attorney Carey felt it would make it easier in that instance to make a case for hardship; however, the standard for a variance is such a hard one to meet that it will not be easier on the whole to receive a variance.

Chairperson Sutherland asked for public comments for or against the application, and there were none.

The public hearing was closed at 7:37 p.m.

3. REGA #13-01, Proposed Zoning Regulation Text Amendments to Section 1.1 (Purpose & Authority), Section 8.3-1 through 8.3-12 (Special Permit Requirements) and Section 8.4-5 (Site Plan Objectives) – Continued

Chairperson Sutherland declared the hearing continued from the last Zoning Commission meeting.

Staff noted that, since their last meeting, a memorandum was sent to the Commission with additional information including the proposed regulations with modified language as discussed at the last meeting. The memo also contained language that is still recommended by Staff to be included. Staff reviewed the edits on pages 3, 8, and 12 with the Commission. Staff is still proposing to follow the Town Attorney's recommendation that the regulation say "shall be met by" instead of "shall include". Staff indicated that a memorandum from the Town Attorney was also attached along with text from CTDEEP website. Staff has discussed these additional attachments with

Town of Groton Environmental Planner, Deb Jones. Staff concluded that some of these items are done by the Town already, and others could be discussed during the POCD and Municipal Coastal Program updates.

Murphy reiterated that the Town is doing much of this already and noted that Attorney Carey's memorandum is entered for the record.

Attorney Carey also noted that Attorney Callahan of his office is working on an Illicit Storm Water Ordinance with the Public Works Department.

Commissioner Sutherland noted that the Commission would like a summary of what is currently being done. With regard to 8.3 H, Sutherland stated that (1) is broad whereas, (2) is more specific.

French noted that she is still unclear about the difference between "shall be met by" and "include".

Attorney Carey explained that the idea behind the more specific language would be to avoid any arguments during public hearings about what the rules are.

Jim Furlong, 57 Fishtown Lane, proposed alternate language of his own that could be used and spoke in favor of doing new things now rather than at some time in the future.

The public hearing was closed at 7:57 p.m.

III. APPROVAL OF THE MINUTES OF meeting of June 5, 2013 and meeting of April 3, 2013 as amended.

MOTION: To approve the minutes of June 5, 2013, as amended.

Motion made by French, seconded by Marquardt, 3 in favor, 1 abstention (Hudecek). Motion passed.

MOTION: To approve the minutes of April 3, 2013 as amended.

Motion made by French, seconded by Hudecek, so voted unanimously.

IV. CONSIDERATION OF PUBLIC HEARING

1. REGA #13-02, Proposed Zoning Regulation Text Amendment to Section 8.5-8(B) (CAM). Proposal is to modify provisions concerning variances to the Zoning Regulations

MOTION: To approve zoning regulation amendment application (REGA13-02) to amend section 8.5-8B, Town of Groton Zoning Board of Appeals, applicant, based on the following:

1. These amendments are being made at the recommendation of the Town's legal counsel, based on recent State Court decisions concerning the standards a municipal ZBA is authorized to apply in acting on a variance application.

2. The amendments are consistent with the Town's 2002 Plan of Conservation and Development and the Town's Municipal Coastal Program.
3. The amendments are made in accordance with a comprehensive plan and provide for reasonable consideration of the environment in accord with the applicable statutory provisions of CGS 8-2.

The effective date of this amendment shall be September 1, 2013.

Motion made by Hudecek, seconded by French, so voted unanimously

Attorney Carey noted that Commissioner Hudecek was not present at the last meeting and should not vote or deliberate REGA 13-01.

2. REGA #13-01, Proposed Zoning Regulation Text Amendments to Section 1.1 (Purpose & Authority), Section 8.3-1 through 8.3-12 (Special Permit Requirements) and Section 8.4-5 (Site Plan Objectives) – Continued

The Commission was concerned about making regulations that will be in place for next 10 years.

Attorney Carey noted that three affirmative votes would be needed to pass the proposed amendment, and as there were only three voting members present the Commission may want to consider if they should vote tonight or wait until the next meeting when they will most likely have full membership at the next meeting. Non present members at either the last meeting or tonight's could listen to the tapes to qualify for voting.

Murphy recommended that the Commission table the Item if they were not going to take action tonight.

Staff noted that they recommended the proposed amendment become effective September 1, 2013.

MOTION: To table the deliberation and vote to the next regularly scheduled meeting August 7, 2013.

Motion made by Sutherland, seconded by French. So voted unanimously.

3. Special Permit #334, 175 Industrial Drive (CAM), PIN 169816942199, IA-40 Zone. Proposal is to excavate 775 cubic yards of contaminated material and to fill 775 cubic yards of clean material to remediate freshwater wetlands. Review is per Section 7.1-10 of the Zoning Regulations. (Electric Boat Corporation, Applicant)

The Commission felt this was a good project, with a 5-year monitoring period and no identifiable negatives.

MOTION: To approve Special Permit #334, 175 Industrial Drive, for the excavation of 775 cubic yards of contaminated material and to fill with 775 cubic yards of clean material to remediate freshwater wetlands.

The Commission finds that this application complies with the special permit objectives in Section 8.3-8 of the Zoning Regulations in that it is in harmony with the surrounding neighborhood, does not conflict with the normal traffic of the area and that it will have a positive impact on natural resources on and near the site.

Motion made by Marquardt, seconded by Hudecek, so voted unanimously

MOTION: To approve the Coastal Site Plan for the remediation of the wetlands at 175 Industrial Drive because it is consistent with all applicable coastal policies and includes all reasonable measures to mitigate adverse impacts on coastal resources.

Motion made by Marquardt, seconded by Hudecek, so voted unanimously

V. PUBLIC COMMUNICATIONS – None

VI. OLD BUSINESS

1. Buildable Land

Staff noted that there has not been time for staff to work on this project.

2. POCD Update Report

Staff noted that the Steering Committee has cancelled its July meeting, but they will meet in August. The Municipal Coastal Program was discussed at the last meeting.

3. Land Use Regulation Update Project

Sutherland noted that she has received a response from the Director of OPDS and will have a report at a later date.

VII. NEW BUSINESS

1. Report of Commission

French noted that she read an article in Connecticut Wildlife May/June issue on the importance of Long Island Sound. Staff will make copies for the Commission.

2. New Applications

- a. Special Permit #335, Greg Fedus, Fedus Engineering, 27 West Main Street (CAM)

A public hearing date was set for September 4, 2013.

VIII. REPORT OF CHAIR – none

IX. REPORT OF STAFF

Staff noted a recent conversation with the applicant from Pizzetta's and the lack of neighborhood complaints with the new music system.

X. ADJOURNMENT

Motion to adjourn at 8:22 p.m. made by Hudecek, seconded by Marquardt, so voted unanimously.

Mariellen French, Secretary
Zoning Commission

Prepared by Lynda Galetta
Office Assistant II