

MINUTES – SPECIAL MEETING  
SEYMOUR INLAND WETLANDS COMMISSION  
MONDAY, DECEMBER 14, 2009  
NORMA DRUMMER ROOM, SEYMOUR TOWN HALL

Members in Attendance: Steve Plotkin, John Conroy, Ralph Noel, Elise Wood

Also Present: Peter Jezierny, Inland Wetlands Enforcement  
Officer, Atty. Fred Stanek

The meeting was called to order at 7:00 p.m. by Chm. Steve Plotkin.

Bungay Estates Subdivisioin

John Conroy read the following statement into the record.

On May 24, 2004, the Seymour Inland Wetlands Commission denied the application by John and Anna Fanotto for a permit to conduct regulated activities in connection with the development of a twenty (20) lot subdivision. The applicant appealed the decision to the Superior Court. By Memorandum of Decision dated July 11, 2006, the Superior Court upheld the decision of the Commission and dismissed the appeal. The applicant filed a Petition for Certification with the Appellate Court. In an opinion dated June 3, 2008, the Appellate Court reversed the Superior Court and ordered that the Commission approve the application subject to reasonable conditions. The Supreme Court affirmed the decision of the Appellate Court. As a result of the Court's decision, the Commission is required by law to approve the application subject to reasonable conditions.

- MOTION: J. Conroy//R. Noel, to approve the application for Bungay Estates Subdivision subject to the following conditions of approval:
1. The Commission recommends that the applicant offer the Open Space depicted on the subdivision plan to the Seymour Land Trust or other similar entity;
  2. The applicant shall prepare and record a deed restriction for the open space indicating that it will remain in its natural state in perpetuity subject to the approval of the Town Attorney.
  3. The applicant must submit an engineered plot plan for each individual lot for the approval of the Seymour Inland Wetlands Commission prior to the issue of any building permit.
  4. The applicant must submit a bond in an amount to be approved by the Town Engineer.
  5. The applicant shall install sediment and erosion control measures along the wetland line on the eastern side of the property subject to the approval of Town Engineer and IWC Enforcement Officer.

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6. The applicant shall submit a detailed planting plan which was omitted from the original application.
7. The applicant shall install wetlands markers prior to the commencement of any site development.

Atty. Matt Ranelli, representing the applicant stated that these conditions are in violation of the Court's order and asked to speak on them. Atty. Stanek recommended that the Commission hear Atty. Ranelli's comments.

Atty. Ranelli stated that as far as Condition #1 to require the applicant to sell a property to anyone is beyond the scope of the authority of the Commission. He felt that there should be no requirement requiring that the property be sold to the Seymour Land Trust. He stated that the applicant may be interested in doing so but should not be a condition of approval.

He stated that as far as Condition #2, deed restrictions, this would be something that they would be willing to discuss with the Commission, but there has been no discussion.

Atty. Ranelli stated that Condition #3 is unacceptable. He stated that requiring an engineered plot plan is beyond the purvey of the Commission. He stated that the plans have been reviewed and the Court ordered be approved. He stated that the building official for the Town will get the plot plans and if there is anything on there that is a regulated activity that wasn't included in the initial plan would come back to the Commission. That would only be in the case if an activity is included that was not approved under these plans. Mr. Plotkin asked if that would be putting in a foundation. Atty. Ranelli stated that it would not be. The plans show the location of the homes. This Commission regulates activities not area and those activities are depicted on the plans. Mr. Plotkin stated that it has been done with other applications to get individual site plans. Atty. Ranelli stated that this Commission has jurisdiction over regulated activities. They applied for those regulated activities with a complete application and they were reviewed. The Court determined that those activities are deemed approved and only if we propose new activities would they come back to this Commission.

He stated that Condition #4 is a standard condition regarding the bond and would be acceptable.

He stated that installing sediment and erosion control along the eastern side of the property. He stated that the Court has spoken on this issue. There is no impact to the wetlands and no evidence of impact. If you look at the detailed site plan there is a silt

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fence installed along the entire perimeter of that area and in front of the rain garden. This was done at the request of the Town. He stated that this may be done but not an appropriate condition of approval. Mr. Plotkin stated that if the Commission feels that the silt fence is not enough then this is a reasonable condition in their opinion that it should be backed up. Atty. Ranelli stated that a reasonable condition has to be supported by evidence in the record and the Court has found no evidence in the record to support any finding of impact which was the basis of the decision. He stated that unless there is some support in the record why the silt fence has to be reinforced. Mr. Plotkin stated that it was a recommendation by town engineer. Atty. Ranelli stated that it was not in the record. He stated that the Commission is restricted to the record.

Atty. Ranelli stated that the original plan does contain a planting plan which shows the location of the plants. Mr. Plotkin stated that it only did it in the rain garden and no where else. He stated that this is a reasonable condition. Atty. Ranelli stated that the detailed plans show the location and varieties of plantings as part of the mitigation for the rain garden. He stated that to his knowledge there are no other plantings that this Commission would have jurisdiction over. The application was deemed when it was filed so it is incorrect to say something was omitted.

Atty. Ranelli stated that the wetlands markers are not an issue.

Atty. Ranelli stated that the Court is clear to approve with reasonable conditions and those reasonable conditions have to be supported by facts in the record. If they are not, then they are not reasonable. He stated that what is being approved tonight are all the regulated activities shown on the plans that were presented which includes any activity in the upland review area, the stormwater management system, all of the plantings that occur in the upland review area; all of the roadways or connections that occur in the upland review area; all of the drainage calculations that accompanied the application. Mr. Plotkin stated that stormwater management is a separate item and there is a separate application for that. Atty. Ranelli stated that this application was submitted prior to that ordinance being adopted and they are not subject to that. The plans contain a complete stormwater management plan with details and it is part of what the Court ordered approved.

Mr. Plotkin stated the Commission was told reasonable conditions and we spoke to an attorney and he agreed that these were more than reasonable. Atty. Stanek stated that Atty. Lee represented the Commission on this matter. Mr. Conroy asked if one contractor was going to build the homes. Atty. Ranelli stated that he did not know that. Mr. Conroy stated that if the Town has to deal with a number of different contractors on these small lot sizes it would be a burden on the Town to try to enforce the regulations

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and the type of drainage proposed. Mr. Conroy stated that the Commission is worried about protecting the wetlands. Atty. Ranelli stated that they are fully protected and there are detailed soil and erosion control plan that was part of the record submitted. Mr. Plotkin stated that is it not unreasonable to make sure that they come before the Commission to make sure that it is exactly what was allowed. He stated that they could change something that would change the regulated activity and something that the Commission should be allowed to see. If it stays the same, then the Commission would have no say; but if there is any change then the Commission to see it to make sure it is exactly as proposed. He stated that the entire area is a regulated activity so any change should come back to the Commission. Mr. Conroy stated that this is a condition that the Commission has on other applications.

Atty. Stanek stated that if there is new activity outside of the application then it would come back before this Commission. It would be up to the Enforcement Officer what is transpiring on a site. He stated that he has not had an opportunity to review the entire record and it has been reviewed with Atty. Lee, but he stated that with regard to this one condition (#3) he agreed with Atty. Ranelli that the only time a matter would come back for approval if there was activity outside of what was presented and what is part of the approval. It would be up to the Enforcement Officer to observe what is transpiring and if there is some new activity then it would come back. Mr. Plotkin stated that as long as it gets reviewed by someone and it stays the same, but if there is a small change it effects everything. Atty. Stanek stated that if the Commission wants to proceed utilizing this condition it is within the Commission's purview, but as far as this condition goes he agrees with Atty. Ranelli on this condition.

Atty. Stanek stated that the motion can remain as it is or it could be amended or a new motion proposed. Mr. Conroy stated that we have a plan that shows building locations but does not show driveways and he does not see how the wetlands rules can be enforced with that information. Mr. Plotkin felt that it was protection for the Commission to make sure that it is done as presented.

Ms. Wood asked Atty. Stanek why he agreed with Atty. Ranelli. Atty. Stanek stated that based upon the litigation the Commission has to approve the application presented to this Commission previously. The Court has allowed the Commission to impose reasonable conditions; however, the application and all the evidence that was presented and whatever was proposed during that process has to be approved. Any new requirements would be outside of the application has presented. He stated that he has not reviewed the entire record, but has given his opinion on that one condition. If there is any new regulated activity proposed on any lot, then an application would have to come back, but if not new regulated activity is proposed then it should proceed.

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Mr. Conroy stated that no precedent is being set, this has been done on all other applications. Mr. Noel stated that since there are no driveways on the plans now, when they propose the driveways they would have to come back to the Commission. Mr. Plotkin stated that these conditions were reviewed with Atty. Lee.

The motion was carried with a vote of 3-0-1 with Ms. Wood abstaining.

MOTION: J. Conroy/R. Noel, to adjourn the meeting at 7:30 p.m.  
Motion Carried: 4-0.

Respectfully submitted:

Maryanne DeTullio, Rec. Secretary