

TOWN OF SOMERS
Conservation Commission
600 Main Street



REGULAR MEETING
WEDNESDAY, MAY 5, 2021
7:00 PM – VIRTUAL MEETING VIA TELECONFERENCE (ZOOM)
MINUTES

I. CALL TO ORDER

Meeting called to order by Chairperson Joan Formeister at 7:01pm. Commissioners in attendance were Candace Aleks, Daniel Fraro, Greg Genlot, and Drew Kukucka. Also in attendance were Recording Secretary Tara Comrie and Wetland Agent Joanna Shapiro.

Greg Genlot made a motion to amend the agenda to reorder the agenda, moving item 1, Application #740 to the end, or until Town Attorney Carl Landolina arrives.

Candace Aleks seconded.

All in favor. Motion carried.

II. OLD BUSINESS

1. **Discussion/Possible Decision Application #746:** 21 Eleanor Road. Subdivision of property containing wetlands. Eleanor Road Business Center.

Agent Shapiro stated that there is no work being proposed. The site is already developed, and the plan is to simply subdivide two existing businesses on the property.

Greg Genlot made a motion to approve application #746: 21 Eleanor Road. Subdivision of property containing wetlands. Daniel Fraro seconded.

Mark Peterson of Gardner and Peterson Associates confirms that they are proposing a new lot line to divide the property in half with no site improvements.

All in favor. Motion carried.

2. **Discussion/Possible Decision Application #747:** 47 Avery Road. Construction of an above-ground pool in the upland review area. Edward and Barbara Czelazewicz.

Agent Shapiro stated that the applicant called after talking to the pool company. They will not have a chlorinated pool, but a salt water pool. The type of filter they will use won't require backwash, and an existing drywell will be used to drain water to as needed.

Greg Genlot made a motion to approve application #747: 47 Avery Road. Construction of an above-ground pool in the upland review area. Drew Kukucka seconded.

All in favor. Motion carried.

3. **Discussion/Possible Decision Application #748:** Watchaug Road. Replacement of Watchaug Brook culverts. Town of Somers.

Agent Shapiro stated that she received updated plans that show phasing and a plan to dewater and to leave the existing pipes in place during stages of replacement, and details. Todd Rolland stated that the project will be completed during the summer, either this summer or next summer, when school traffic will not be an issue, and there will be less flow.

Drew Kukucka made a motion to approve application #748: Watchaug Road. Replacement of Watchaug Brook culverts. Candace Aleks seconded.

All in favor. Motion carried.

4. **Discussion/Violation:** 11 Ninth District Road. Unpermitted vegetation clearing and construction of sheds in wetland along Gulf Stream.

Agent Shapiro talked to the property owner last week. They are making slow progress, and have had some delays. The fence on the town property line has been completed. They are working with the town to identify a suitable location for the shed, outside of the floodway. The owner will be planting alfalfa soon, and will work on an overall plan.

III. NEW BUSINESS

1. **Jurisdictional Ruling:** 459 Pinney Road. Timber harvest in the Upland Review Area. James Wysocki.

Agent Shapiro summarized the application and request. Agent Shapiro stated that in the early 2000s there was a wetland permit issued for a fire road on this property and a permanent crossing had been installed with a culvert. The applicant is looking to use the existing roads and run perpendicular to them for logging. It will not need any additional wetland crossings. They are going to avoid the wetland area entirely. The wetland was delineated previously and the current forester reflagged it. Trees will be removed in the upland review area but not in the wetland. They want to expand patch cuts and promote certain trees for a healthy forest.

Nate Gosselin from Connwood Foresters explained that the property owner has logged this property several times. Nate did the initial assessment of what the next step of improving the forest would be. The forest had experienced death of oak trees due to drought and moths. They plan to promote different species for a younger forest with wider variety.

Agent Shapiro was on site yesterday and Mr. Gosselin has been retained to monitor the logging job and ensure that waterbars and erosion controls are installed if needed. Both the landowners and Mr. Gosselin are very aware of important measures. The existing road is gravel and solid.

Commission members discussed prior activity and the current request. Agent Shapiro explained that a jurisdictional ruling/agricultural exemption is possible when no permanent crossings, clearcutting in a wetland, or filling in a wetland are proposed.

Greg Genlot made a motion that 459 Pinney Road falls into the agricultural exemption under their jurisdictional ruling. Drew Kukucka seconded.

All in favor. Motion carried.

IV. STAFF REPORT

For 18 Harvest Hill, Agent Shapiro communicated to the property owner that the commission's preference is that lally columns should be installed as a more permanent wetland boundary marker. They are working toward that and planting small trees as well.

The Eleanor Rd. development is well underway. Agent Shapiro visited the property and reported that the water quality basin along Eleanor Rd. has been constructed, both the basin and outlet with riprap. The area has been seeded and hayed. More plantings will be coming ultimately. They are working on the model units and monitoring erosion controls. Mike Mocko has also been monitoring the site on behalf of the developer.

Agent Shapiro stated that there have been lots of pools, decks, sheds, and other property improvement requests coming in.

Candace Aleks motion to accept the staff report. Daniel Fraro seconded.

All in favor. Motion carried.

V. CORRESPONDENCE AND BILLS

Agent Shapiro received a letter from Greg Genlot announcing that he would be moving and would be stepping down from the Commission effective July 1, 2021.

VI. MINUTES APPROVAL: April 7, 2021

Greg Genlot made a motion to approve the minutes from the April 7, 2021 meeting. Candace seconded. All in favor. Motion carried.

VII. AUDIENCE PARTICIPATION - None

VIII. OLD BUSINESS – CONTINUED – APPLICATION #740

1. **Discussion/Possible Decision Application #740:** 50 Hangdog Lane. Construct Driveway and Repair Drainage, involving work within both Wetland and Upland Review Area. Roulier Family Limited Partnership/Daniel R. Roulier.

Attorney Landolina explained that the Commission had originally received a verified signed petition, and explained that it includes claims that are within the purview of the Conservation Commission, acting as a Wetland Agency. All claims in the petition have been filed under the CT Environmental Protection Act CGS Section 22A, which includes enabling language for the commission to act on matters regarding activity in wetland, watercourse, and upland review areas. The commission has two things to do. The first is to act on the petition. Attorney Landolina recommended a separate vote on each of the 4 claims made by the intervenor, prior to the discussion on whether or not the applicant is entitled to a permit to conduct regulated activities pursuant to its application.

Attorney Landolina explained that the petition makes four claims that the proposed activity is reasonably likely to unreasonably pollute a natural resource. Any additional procedural and substantive issues raised, some of which may be outside of the scope of the intervenor's claim, should also be resolved when dealing with the application.

Attorney Landolina suggested that the Commission determine whether the intervenor has established that the proposed activity has a reasonable likelihood of unreasonably polluting the wetland as alleged in each of their claims. Agent Shapiro displayed the petition on the screen, and Attorney Landolina helped by suggesting potential motions that the commission might consider in response to each claim in the petition.

The Commission discussed claim A in relation to the public hearing record.

Greg Genlot made a motion that the Commission finds that the allegation in paragraph A is not factually correct due to the fact that the soil scientist from the intervenor and the applicant have agreed on an updated delineation, and therefore this statement is no longer a true statement. As a result, there's no evidence that the allegation establishes that there's a reasonable likelihood that the statement in part A would cause unreasonable pollution to wetlands.

Candace Aleks seconded. All in favor. Motion carried.

The Commission discussed claim B in relation to the public hearing record.

Drew Kukucka made a motion to reject the intervenor's claim B based on the inability to establish their allegations to be accurate based on the proposed work and that it does not demonstrate a reasonable likelihood that it poses a risk of unreasonable impairment to the wetlands. There has been a failure to contradict any expert testimony that was received during the public hearing.

Daniel Fraro seconded. All in favor. Motion carried.

The Commission discussed claim C in relation to the public hearing record.

Candace Aleks made a motion that the conservation commission believes at this time that it has sufficient information to consider approving or denying this application and therefore claim C fails to establish that there is a reasonable likelihood to cause unreasonable pollution to wetlands.

Daniel Fraro seconded. All in favor. Motion carried.

The Commission discussed claim D in relation to the public hearing record.

Drew Kukucka made a motion to reject allegation D based on information provided by the wetland application and information provided in public hearing that provides sufficient information to the Commission to demonstrate that there does not appear to be a likelihood of impairment to the wetland downslope of the watershed.

Greg Genlot seconded. All in favor. Motion carried.

Attorney Landolina advised that this completes the Commission's obligation with respect to the 22A 19 petition, and now the Commission can have their typical discussion about whether the applicant is entitled to a permit based on the evidence in the record.

Agent Shapiro inquired about how the petition raised the issue of a feasible and prudent alternative, and asked Attorney Landolina whether the fact that this was raised by the intervenor added any further responsibility to the Commission. Agent Shapiro stated that in typical proceedings without an intervenor, the Commission is not required to make a finding that a feasible and prudent alternative does not exist if the activity is not deemed a significant. Attorney Landolina explained that this does not appear to be an allegation of the intervenor's petition, but should be addressed relative to the merits of the application. Attorney Landolina referred to 22A41 Section A2 and B1 which specify the Commission's obligations with regard to alternatives. The commission is relieved of the obligation of making a finding that a feasible and prudent activity does not exist in the case that the activity is not deemed significant. However, all applicants must consider alternatives in order for an application to be complete. The Commission discussed how alternatives were considered by the applicant both on the application and during the public hearing, satisfying this requirement.

Agent Shapiro reviewed a letter submitted on behalf of the intervenor, dated March 11, 2021, to which Attorney Landolina had previously responded in writing, and summarized how the procedural and substantive issues raised have been either cleared up over the course of the hearing process, and/or are beyond the jurisdiction of this Commission.

Greg Genlot made a motion to approve application #740: 50 Hangdog Lane. Construct Driveway and Repair Drainage, involving work within both Wetland and Upland Review Area. Candace Aleks seconded.

Commissioners discussed the motion and the merits of the application, based on the relevant information on the record and potential impacts to wetlands.

All in favor. Motion carried.

IX. ADJOURNMENT

Candace Aleks made a motion to adjourn. Daniel Fraro seconded.

All in favor. Motion carried. The meeting was adjourned at 9:13 P.M.

Respectfully Submitted,

Tara Comrie, Recording Secretary

MINUTES ARE NOT OFFICIAL UNTIL APPROVED AT A SUBSEQUENT MEETING