

Prospect Inland Wetlands Commission
Unapproved Minutes
January 11, 2021 – Virtual Meeting

Board Members Present: Lorraine Dixon, Glenn Gruber, Charlie Wentworth, Tim Clark, Sandy Russell.

Board Members Absent: Ed Malaspina (alt.), Kevin O’Leary (alt.), Richard Tucker (alt.).

Others Present: Mary Barton - Land Use Inspector, Wendy Boroski – Clerk.

Chairman L. Dixon called the meeting to order at 7:00 p.m. The meeting was recorded. Roll call was conducted.

Enforcement:

Cease and Desist Order – 111 Waterbury Road, Prospect, CT

Property Owners Erjan Hoxha and Lori Hoxha of 330 Minortown Road, Woodbury, CT.

Lori Hoxha and authorized agent, Brian Cunningham of Robert Green & Associates appeared before the Commission. Mr. Cunningham presented maps and prepared a sequence for implementation of the remediation plan for 111 Waterbury Road which he read it into the minutes and reviewed with the Commission. After review, the Commission requested several changes to this remediation plan including more information on the material testing company, M. Barton’s presence for the soil testing and also copies of any reports for this testing to be submitted to the land use office. This matter has been tabled until the next meeting.

Motion by S. Russell, seconded by T. Clark to approve the December 14, 2020 minutes, as presented. **Unanimous.**

Communications: None

Old Business:

Application #09-2020 of Adam Kielczewski, 27 A Juggernaut Road to construct a 15 ft by 30 ft above ground salt water pool with a 12 ft by 20 ft deck and stairs to grade level and associated pool equipment, all within the 100 - foot upland review area located at 27A Juggernaut Road, Prospect, CT. The applicant did not appear at this meeting. After discussion, **Motion** by G. Gruber, seconded by S. Russell to **deny** Application #09-2020 Adam Kielczewski, 27A Juggernaut Road – Application to construct a 15 ft by 30 ft above ground salt water pool with a 12 ft by 20 ft deck and stairs to grade level and associated pool equipment, all within the 100 -foot upland review area located at 27A Juggernaut Road, Prospect, CT as stated in the attached resolution.

Vote is **Unanimous** therefore the application is denied.

b. Application #12-2020 Thomas and Lisa Dumond; Authorized Agent Jim Jones of Jones Engineering; Property Owner the Estate of Ralph Alessio c/o Davis Alessio, Executer, 7 Holley Lane - Application for proposed single-family home septic system: portion of the primary and reserve septic system, grading and filling for septic system within the 100 foot upland review area. Thomas Dumond, Lisa Dumond and Agent Jim Jones appeared before the commission. A site walk was conducted on Saturday, January 2, 2021 and attended by L. Dixon, G. Gruber, C. Wentworth, T. Clark, S. Russell, and M. Barton. Mr. Jones reviewed the submitted site plan with the commission. After discussion, **Motion** by G. Gruber, seconded by C. Wentworth to approve Application #12-2020 Thomas and Lisa Dumond; Authorized Agent Jim Jones of Jones Engineering; Property Owner the Estate of Ralph Alessio c/o Davis Alessio, Executer, 7 Holly Lane – Application for proposed single-family home septic system: portion of the primary and reserve septic system, grading and filling for septic system within the 100 foot upland review area with conditions. Vote is **Unanimous** therefore the application is approved.

New Business: M. Barton confirmed safety vest orders.

Public Hearings: None

Public Participation: None

Land Use Inspector’s Report: M. Barton stated she will send the budget worksheet to the Commission for review prior to the next meeting. She found no issues with the activities on the latest building inspector’s report. M. Barton met with agents from the Toll Bros. HOA group. She will be reviewing this file to be sure there are no outstanding conditions from this project.

Motion made by T. Clark, seconded by S. Russell to adjourn at 7:54 p.m. **Unanimous.**

Lorraine Dixon

Lorraine Dixon

Chairman

Resolution of Denial of Inland Wetlands Application

Property Owner: Adam and Michelle Kielczewski
 Applicant: Adam Kielczewski
 Application: Application #9-2020
 Property Location: 27A Juggernaut Road
 Date of Denial: January 11, 2021
 Date of Notice: January 12, 2021

Whereas: On August 5, 2020, the Prospect Inland Wetlands Commission (the “Commission”) received from Adam Kielczewski (the “Applicant”) Application #9-2020 dated July 31, 2020 and related documentation, as updated by an “Amendment Pool Application” dated August 10, 2020 (together, the “Application”), to conduct regulated activities at 27A Juggernaut Road (the “Property”);

Whereas: The proposed regulated activities include clearing, grading and filling in connection with construction of a 15’ x 30’ above-ground salt water pool with a 12’ x 20’ deck and stairs to grade level and associated pool equipment, all within the 100-foot wetland upland review area (the “Regulated Activities”);

Whereas: As proposed, the salt water pool will be located approximately 20’ from an on-site brook and 23’ from an on-site pond, and the deck, stairs will be approximately 10-16’ from the brook and 38’ from the pond and associated equipment will be approximately 30’ from the brook and 38’ from the pond;

Whereas: The Commission discussed the Application at its regular meetings of August 10, 2020, August 24, 2020, September 21, 2020, October 19, 2020, November 16, 2020 and December 14, 2020;

Whereas: The Commission conducted field inspections of the Property on August 15, 2020 and August 28, 2020;

Whereas: At its regular meeting of December 14, 2020, the Commission reviewed and accepted the conclusions and information in an “Application Review” dated December 4, 2020 prepared by Mary Barton, the Prospect Land Use Official and Commission staff (the “Application Review”) attached hereto as Exhibit A;

Whereas: The Application lacks numerous items required by the Town of Prospect Inland Wetlands and Watercourses Regulations (the “Wetlands Regulations”) as set forth in the Application Review;

Whereas: The Commission asked the Applicant to provide additional information, as set forth in the Application Review;

WHEREAS, the Applicant failed to provide the information requested by the Commission; and

Whereas: The Commission has considered the Application, the Application Review, all comments and documents submitted by the Applicant, and all applicable Sections of the Wetlands Regulations;

NOW THEREFORE, BE IT RESOLVED: that the Prospect Inland Wetlands Commission Hereby **Denies** the Application for the following reasons:

1) As described fully in the Application Review, regulated activities generally have the potential to negatively impact wetlands and watercourses, with the degree of potential impact dependent upon various factors;

2) The Regulated Activities proposed in the Application have the potential to negatively impact the on-site watercourses and nearby onsite wetlands (if any), both during and after construction of the pool, deck and stairs for the reasons fully set forth in the Application Review;

3) Due to the lack of information in the Application, the Commission lacks sufficient information upon which to evaluate the likelihood or potential degree of such adverse impacts;

4) Based upon the Flood Insurance Rate Map New Haven County Panel 139 of 635 Map #09009C0139H (effective date 12-17-10) the on-site brook and pond have a critical function and value in flood control; and

5) Because the Applicant has failed to provide the information required by the Wetlands Regulations and requested by the Commission, the Application does not contain “such information as is necessary for a fair and informed determination thereon by the Commission” as required by Section 7.3 of the Wetlands Regulations.

EXHIBIT A

Application Review

To: The Prospect Inland Wetlands Commission
From: Mary Barton, Prospect Land Use official
Re: IWWC Application # 9-2020 dated 7/22/2020
Date: December 4, 2020

Application Information:

Applicant : Adam Kielczewski

Property Address : 27A Juggernaut Road

Regulated Activities: Clearing, grading and filling in connection with construction of a 15' x 30' above-ground pool and deck within with the 100-foot upland review area (approximately 20 feet from a brook and 23 feet from a pond).

Summary: The Application lacks numerous items required by the Inland Wetlands and Watercourses Regulations (the "Regulations") as well as additional information requested by the Commission. The Regulated Activities have the potential to adversely impact the on-site brook and pond not only during construction but also after the pool has been constructed. Due to the lack of information in the Application, the Commission lacks sufficient information upon which to evaluate the likelihood or potential degree of such adverse impacts.

Documents reviewed:

- 1) IWWC Application;
- 2) Amendment to Pool Application dated 8/10/20;
- 3) Maps included in the Application hand-drawn on the Town of Prospect Assessor's Map and on the Town of Prospect aerial Photo 2016 from the Town of Prospect GIS;

- 4) Chesprocott Health District Approval with the above referenced maps plus aerial view of the property with the proposed pool in blue;
- 5) The Prospect IWWC Regulations;
- 6) Town of Prospect GIS maps; and
- 7) Town of Cheshire GIS maps for more detailed floodplain information.

Applicable Sections of the Prospect Inland Wetland Regulations: See Attachment A.

Findings:**I. Lack of Compliance with Regulations:**

The Application lacks the following information required by the Regulations:

1. A description of the land in sufficient detail to allow identification of the inland wetlands and watercourses, the area(s) (in acres or square feet) of wetlands or watercourses to be disturbed, soil type(s), and wetland vegetation. (7.5d)

The Application lacks specific information as to location of wetlands and watercourses, soil types and wetlands vegetation, nor have such features been flagged on-site. Additionally, the Application does not depict or state the exact area in square feet or acres of the upland review area proposed to be disturbed.

2. Proposed erosion and sedimentation controls and other management practices and mitigation measures which may be considered as a condition of issuing a permit for the proposed regulated activity including, but not limited to, measures to 1) Prevent or minimize pollution or other environmental damage; 2 maintain or enhance existing environmental quality; or 3) In the following order of priority: restore, enhance and create productive wetland or watercourse resource. (7.5e)

The Application does not include an erosion or sedimentation control plan or any description of measures that will be taken to prevent or minimize pollution of or environmental damage to the on-site brook and pond.

3. Alternatives which would cause less or no environmental impact to wetlands or watercourses and why the alternative as set forth in the application was chosen; all such alternatives shall be diagrammed on a site plan or drawing. (7.5f)

Although the Application pertains to a 5.73-acre property, it includes only one proposed location for the pool and discusses no alternatives. Based on the Applicant's oral statements, the proposed location was selected due to its location with respect to the house (i.e., for convenience). The Commission suggested an alternative location in a flat area surrounded by manmade berms. The suggested location was significantly further from the pond than the proposed location and the existing berm between the suggested area and the brook would provide some protection for the brook in the event that the pool should collapse or leak. The Applicant dismissed this suggested location.

4. A site plan showing the proposed activity and existing and proposed conditions in relation to wetlands and watercourses and identifying any further activities associated

with, or reasonably related to, the proposed regulated activity which are made inevitable by the proposed regulated activity and which may have an impact on wetlands or watercourses. (7.5g)

The Application does not include a site plan that shows proposed conditions in relation to wetlands and watercourses. Among other things, the conditions that should be shown on such a site plan would include existing and proposed contour lines. This information is relevant to the likely velocity and direction of surface water flow, which in turn, is relevant to the potential for siltation or erosion to adversely impact nearby wetlands or watercourses.

5. Other information the commission deems necessary to the understanding of what the applicant is proposing (7.5l).

The Commission asked the Applicant for the following information, none of which has been provided.

- a. The percentage of salt in the pool water;
- b. Site construction plan;
- c. Pool construction plan;
- d. The pool washout discharge location and confirmation as to whether that location is within a wetlands area; and
- e. Information demonstrating that the pool washout discharge plan is viable. The current plan is to pump the washout water through flexible piping to a location approximately 100 feet away and 30 feet higher in elevation.

6. As permitted by Section 7.6, the Commission, in its discretion requested the following additional information based on the nature and anticipated effects of the activity:

Section 7.6 a. site plans for the proposed activity and the land which will be affected thereby which show existing and proposed conditions;

Section 7.6 b. engineering reports and analyses and additional drawings to fully describe the proposed activity including any filling, excavation, drainage or hydraulic modifications to watercourses and the proposed erosion and sedimentation control plan;

Section 7.6 f. full disclosure of all fill materials deposited within the upland review area or beyond the regulated area where potential sediment erosion could impact a wetlands or watercourse.

None of the above information has been provided. Without it, the Application does not contain “such information as is necessary for a fair and informed determination thereon by the Commission” as required by Regulations Section (7.3).

II. Potential impacts to Wetlands and Watercourses

A. Regulated Activities generally have the potential to impact wetlands and watercourses. The Application does not state how such impacts will be avoided.

Clearing, excavating, filling and other construction activities in upland review areas can have significant impacts on adjacent wetlands and watercourses if not properly planned and executed. Such activities can result in erosion and sedimentation, which in turn can cause water turbidity, affecting water color and quality. Sediment often carries other pollutants, such as nutrients, heavy metals, organic chemicals, bacteria and other pathogens along with it. The Application does not state how these potential impacts will be avoided.

The degree to which Regulated Activities may impact wetlands or watercourses depends on various factors, including but not limited to the function and value of the wetland and watercourse, the distance between the activities and the wetlands or watercourse, how the activities are conducted, including materials used, the slope of the land in relationship to the wetlands and watercourses, and the type of soil adjacent to the wetlands and watercourses (is it compact or highly erodible). If the soil is highly erodible, then erosion and sedimentation control measures are especially critical. The Application does not address these factors.

While all wetlands have intrinsic value, some are more ecologically valuable than others. The applicant has provided no information as to the value of the brook, pond and any other wetlands (if any) on-site; however, based upon the Flood Insurance Rate Map New Haven County Panel 139 of 635 Map #09009C0139H (effective date 12-17-10) the brook and pond have a critical function and value in flood control.

The construction of a pool will alter surface water flow. Without information on proposed and existing topographical contours, however, the impact that the pool will have on existing water flow and any resultant impact on nearby wetland and watercourse resources cannot be fully determined.

B. The information provided suggests the potential for adverse impacts

Based on the limited information included in the Application, the proposed Regulated Activities have the potential to negatively impact the on-site watercourses and nearby onsite wetlands (if any), as follows:

1. The proposed location for the pool will require pool construction materials to be transported across the brook to a location within 10-20 feet of the brook and pond. The Applicant has not explained how construction will be undertaken in a manner that will avoid impacts to the brook and pond.
2. The Regulated Activities are in a Special Flood Hazard "A" Zone. Flooding events can cause structures to buckle or become dislodged by moving debris. In the case of a pool this could cause the water to spill out, either slowly or all at once. Should this occur, the escaping pool water would likely erode downgradient soils and pollute the brook or pond, depending on the direction of flow. The Applicant stated that the pool will contain 14,500 gallons of salt water which could negatively impact wildlife in the pond or brook and surrounding habitats.
3. The proposed pool location lies within a sloped area. If the pool is not constructed on a solid, level surface and in a manner that will ensure it remains level, the pressure of the pool water against the side of the pool could cause the pool walls to fail, with the consequences discussed above.
4. The Regulated Activities include the removal of grassy vegetation and at least one and possibly more trees. The resultant reduction in shading may increase the surface water temperatures of the brook, which in turn, may negatively impact its habitat.
5. Fill can cause pollution of nearby wetlands or watercourses due to its make-up or potential for erosion. The Applicant has provided no information on the content or characteristics of the fill.
6. The construction activities, if improperly executed, may destabilize the banks of the brook resulting in erosion, sedimentation and pollution.
7. Loose fill material placed along the banks of the brook may also cause destabilization and resulting erosion, sedimentation and pollution.
8. If the salt-water pool leaks or fails, or if construction activities or post-construction water flow cause sedimentation or siltation, this may result in loss or disturbance of the

riparian habitat of the brook and pond and diminished stream habitat value as well as disturbance of adjacent wildlife habitats.

The Application does not include information from which the Commission can conclude that the foregoing potential negative impacts will not occur.

III. Additional Information required from the Applicant

In order for the Commission to fully evaluate the Application and to determine the likelihood of the potential negative impacts discussed above, the Applicant must provide:

1. *A detailed site plan prepared by a professional engineer that includes, at a minimum:*
 - a. *Property boundaries;*
 - b. *Limits of wetland and watercourse areas;*
 - c. *Existing and proposed ground contours in the vicinity of the proposed Regulated Activities;*
 - d. *Limits of grubbing and clearing of vegetation;*
 - e. *Location and caliper of existing trees to be removed;*
 - f. *Limits of grading and filling;*
 - g. *The exact area in square feet of the upland area or wetlands to be disturbed by the proposed Regulated Activities;*
 - h. *The pool backwash discharge location;*
 - i. *The location of any subsurface utilities that will be installed to service the pool; and*
 - j. *The designation and location of any accessory pool equipment such as the pump.*

2. *A report prepared by a professional engineer including:*
 - a. *A detailed soil erosion and sedimentation control plan;*
 - b. *A detailed sequence of construction plan;*
 - c. *Details as to grading and filling including location, depth and square footage;*
 - d. *An evaluation of the impact of the Regulated Activities on surface water flow and drainage;*
 - e. *A description of the content and characteristics of the fill to be used (including its susceptibility to erosion);*

- f. A description of management practices or other measures to be taken to prevent or minimize pollution or other environmental damage that may be caused by the proposed Regulated Activities; and*
 - g. Information as to how the pool will be constructed in a manner that will ensure it will not buckle or otherwise fail due to flood waters or sloping ground surface (for instance, will it be constructed on a concrete pad? What measures will be taken to ensure it does not settle and become uneven?).*
- 3. A report prepared by a soil scientist or other qualified individual:*
- a. Locating the inland wetland boundaries;*
 - b. Identifying and mapping the soil types in the area of the proposed Regulated Activities; and*
 - c. Discussing the nature, function and degree of value of the onsite brook and pond.*
- 4. Wetlands flagging.*
- 5. A list of alternatives for the Regulated Activities that would cause less or no environmental impact to the brook or the pond.*

ATTACHMENT A – APPLICABLE REGULATORY SECTIONS

Applicable Definitions:

Buffer means an undisturbed natural area adjacent to the edge of a wetland and or watercourse.

Clearing means the removal of vegetation in a manner that significantly alters the natural or indigenous character of a regulated area.

Disturb the natural and indigenous character of the wetland or watercourse means to alter the inland wetlands and watercourse by reason of removal or deposition of material, clearing the land, altering or obstructing water flow, or pollution.

Regulated activity means any operation within or use of a wetland or watercourse or upland review area involving removal or deposition of material, or any obstruction, construction alteration or pollution of such wetlands or watercourses or upland review areas but shall not include the specified activities in Section 4 of these regulations. Furthermore, any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging of storm water on the land within 100 feet measured horizontally from the boundaries of any wetland or watercourse is a regulated activity.

Upland Review Area means the land within one hundred (100) feet measured horizontally from the boundary of any wetlands or watercourse.

Rendering unclean or impure means any alteration of the physical, chemical or biological properties of any waters of the state, including, but not limited to, change in odor, color, turbidity or taste.

Application Requirements:

Section 7.1 Any person intending to conduct a regulated activity or to renew or amend a permit to conduct such activity, shall apply for a permit on a form prescribed by the commission. The application shall contain the information described in this section and any other information that the commission may reasonably require. The applicant shall submit the original and eight copies of all application material to comprise a complete application unless otherwise directed by the commission.

Section 7.3 The application shall contain such information as is necessary for a fair and informed determination thereon by the Commission.

Section 7.5 All Applications shall include the following information in writing or on maps or drawings:

Section 7.5 d. the geographical location of land which is the subject of the proposed activity and a description of the land in sufficient detail to allow identification of the inland wetlands and watercourses, the areas in acres or square feet of wetlands or watercourses to be disturbed, soil types, and wetland vegetation.

Section 7.5 e. the purpose and a description of the proposed activity and proposed erosion and sedimentation controls and other management practices and mitigation measures which may be considered as a condition of issuing a permit for the proposed regulated activity including, but not limited to, measures to:

- (1) Prevent or minimize pollution or other environmental damage;
- (2) Maintain or enhance existing environmental quality; or
- (3) In the following order of priority: restore, enhance and create productive wetland or watercourse resources.

Section 7.5 f. alternatives which would cause less or no environmental impact to wetlands or watercourses and why the alternative as set forth in the application was chosen; all such alternatives shall be diagrammed on a site plan or drawing.

Section 7.5 g. a site plan showing the proposed activity and existing and proposed conditions in relation to wetlands and watercourses and identifying any further activities associated with, or reasonably related to, the proposed regulated activity which are made inevitable by the proposed regulated activity and which may have an impact on wetlands or watercourses.

Section 7.5 i. any other information the commission deems necessary to the understanding of what the applicant is proposing.

Section 7.6 at the discretion of the Commission or its agent, or when the proposed activity involves a significant impact, additional information, based on the nature and anticipated effects of the activity, including but not limited to the following is required:

Section 7.6 a. site plans for the proposed activity and the land which will be affected thereby which show existing and proposed conditions:

Section 7.6 b. engineering reports and analyses and additional drawings to fully describe the proposed activity including any filling, excavation, drainage or hydraulic modifications to watercourses and the proposed erosion and sedimentation control plan.

Section 7.6 c. mapping of soil types consistent with the categories established by the National Cooperative Soil Survey of the U. S. Natural Resources Conservation Service; the wetlands shall be delineated in the field by a soil scientist and the soil scientist’s field delineation shall be depicted on the site plans.

Section 7.6 e. a description of how the applicant will change, diminish, or enhance the ecological communities and functions of the wetlands or watercourses involved in the application and each alternative which would cause less or no environmental impact to wetlands or watercourses, and a description of why each alternative considered was deemed neither feasible nor prudent.

Section 7.6 f. full disclosure of all fill materials deposited within the upland review area or beyond the regulated area where potential sediment erosion could impact a wetlands or watercourse.

Section 7.6 g. management practices and other measures designed to mitigate the impact of the proposed activity.