

CONSERVATION COMMISSION

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TOWN HALL

238 Danbury Road

Wilton, Connecticut 06897

WILTON CONSERVATION COMMISSION

Wednesday, March 6, 2019 – 7:00 P.M.

TOWN HALL ANNEX - ROOM A

MEETING MINUTES

RECEIVED FOR RECORD  
TOWN OF WILTON  
2019 MAR 12 P 2:40  
BY: (K)

PRESENT: Susan DiLoreto (Chair), Brice Chaney, Jackie Algon, Frank Simone, Jade Hobson,

ALSO PRESENT: Pete Gelderman, Bercham, Moses, P.C.; Mike Conklin, Director Environmental Affairs; Doug Bayer, Bayer & Black, P.C.; Robin Clune, Friends of Ambler Farm; Mike Russnok, Deer Committee; Scott MacQuarrie, Deer Committee; Matt Ellenthal, Deer Committee; Suzanne Knutson, Tree Committee

ABSENT: Colleen O'Brien (notified of intended absence) Jeff Lapnow (not notified of intended absence)

- I. CALL TO ORDER: Ms. DiLoreto called the meeting to order at 7:05 pm.
- II. DISCUSSION OF FOIA & COMMISSION PROCEDURES – TOWN COUNSEL

Mr. Gelderman provided information to the Commissioners about the Freedom of Information Act and answered questions about conflicts of interest.

III. PLANNING & ZONING REFERRALS

- A. SP#452, Friends of Ambler Farm, Inc., 257 Hurlbutt Street, to modify the conditions of the Resolution for approval within Special Permit #288D pertaining to noise restrictions, types and frequencies of meetings/events allowed on site, to allow pigs on the farm, and restrictions on attendance numbers (cont.)

Mr. Conklin reminded the Commission that this item was discussed at the last meeting and more detailed information was requested by the members. He asked the Applicant and their agent to attend the meeting tonight to present the application and answer any questions.

Mr. Bayer explained a Special Permit was issued in 2007 to allow events on the property, which were limited to non-profit organizations. The Friends of Ambler Farm are asking for private events to be allowed. He confirmed there is no request to change the lighting, parking, noise, or changes in available meeting locations. They are requesting an increase of evening meetings from six events per year to ten events with 100 people or more in a calendar year. The Friends of Ambler Farm are proposing to limit the number of events during the daytime where there is no limit currently.

When asked about the parking areas available, Ms. Clune stated there are 15 spots in the gravel area by the carriage barn and a few spots on the side that are paved. She confirmed the field can fit close to 100 parked cars but most events are 100 people or less with many being couples, so 50 cars is more likely. She noted there have been issues with parking for the soccer fields but that does not have anything to do with the request for Ambler Farm.

Mr. Bayer stated all of the Conservation Commission's concerns were considered in 2007 with the existing permit and they are not looking to change any parking. He added that the parking area is regularly inspected for any maintenance issues and these issues are addressed immediately based on the original 2007 permit.

Ms. Clune explained the Special Event Permits are difficult and time consuming so they wanted to circumvent this process for each event. Mr. Bayer explained that the applicant is conceding that this will not be approved so a revised proposal will be submitted to Planning & Zoning at their next meeting.

Ms. DiLoreto asked about the septic system as she was concerned about it failing during large events. Ms. Clune stated they bring in porta potties for larger events based on the criteria of the town's Health Department. Ms. DiLoreto was concerned about compacting the field with cars being parked.

Mr. Conklin advised a letter was submitted to the Commission by a neighbor, and asked everyone to read it. Mr. Chaney confirmed the only changes being requested are to allow ten events per year in lieu of the original six events, and these events do not have to be non-profit groups. He stated he would not want the price to increase with the non-profits but it is not conservation related.

Ms. DiLoreto stated she wanted to be consistent with the approvals that are granted in relation to Millstone Farm. Mr. Bayer explained that Millstone is an entirely different situation and cannot be compared to Ambler Farm. He confirmed Millstone Farm is a residential use that is attempting to add a commercial use. He described they wanted to impose town-wide zoning regulations to allow for certain commercial uses anywhere by a private land owner. He said this is much different as it is a town facility that is open every day from dawn to dusk and anyone can use or walk the property. There are educational opportunities and mentoring for children; and Ambler Farm needs a means to continue to benefit the town without effecting the taxpayers. Mr. Bayer confirmed there is no intent to change the way the farm currently operates. He added that the town is not contributing to the operation of the farm so they would need to cut back services or find alternate ways to continue services without meaningfully changing the impact to the farm.

Ms. Algon asked why this Commission was not granted permission to have a nighttime event at the farm for the Night Sky Watch. Ms. Clune stated there were issues with safety for this event, which they take very seriously. She showed the current survey and stated the area near the carriage barn is lit and this is where they hold meetings and can erect a tent. These are inspected by the Fire Marshall and Building Official. She described the one night event they hold annually is a Parks and Recreation Event and they erect additional lighting for this event. The Sky Watch was not allowed due to having that number of attendees being spread across the property without proper lighting to show the way, which is unsafe. The existing Special Permit controls where events can take place and the sky watch was not conducive to this area. The soccer fields cannot be used for these purposes.

Ms. Dunn, of Ambler Lane, is asking for more information about the proposal. She was

involved with the existing Special Permit and stated 50% of those restrictions are requested to be removed. She is concerned that the removal of the Special Event Permit requirement will be detrimental. She said dramatic effects will take place and will affect the neighborhood. She stated the Department of Public Health has approved a new septic system in addition to the one that exists and will allow for 400-500 people per day. She noted that the Planning & Zoning request also includes a parking lot for 146 cars in the transit area behind the red barn with access past the white house and into the back. She reported that the First Selectwoman defined this area as overflow from the soccer fields. This access will be through the farm and not the fields. She asked that this Special Permit request be seriously considered as this is not in the interest of the Conservation Commission, or the town. The restrictions are being lifted based on the need for more money for commercial enterprises. She stated the revenues of the farm are in the hundreds of thousands and she is not sure why they need more. She commented that an approval would be catastrophic for the neighborhood, and not the intent when the land was purchased.

Mr. Simone stated this request comes with an increased use of the land just like Millstone Farm and their Agritourism request. He stated the town has easements on Millstone that are being scrutinized. He realizes this is not a town-owned site, but there are town rights. Mr. Bayer stated the Millstone proposal is not only designed for the land encompassed by Millstone Farm, but any property in town.

Ms. Hobson asked about noise limits. Mr. Bayer stated there are conditions in permit they were originally asking to relax, but after receiving feedback, those items will remain in the Special Permit. He confirmed that public craft shows or antique shows will not be permitted.

The Commissioners agreed that the proposal is an extensive use of land. The members were concerned about the compaction of parking area and increase of lighting which is now being removed. The Commission is not in favor of approving the Special Permit request.

- B. SP#454, Adams & Ruxton Construction/Bank of America, 117 Old Ridgefield Road, to remove an existing teller window and replace with a drive-thru ATM with new canopy and for additional exterior lighting**

Ms. DiLoreto stated the Wilton Village District Design Advisory Committee will be looking at this application. Ms. Algon requested that the large deciduous tree nearby is protected during construction. She also asked that construction equipment be properly stored during the construction process.

#### **IV. INLAND WETLANDS REFERRALS**

- A. WET#2559(S) SIKRI – 19 Cardinal Lane – proposed remodel of house from fire damage**

Mr. Conklin advised this application was just submitted and has not received a full review by staff. The owners had a fire in the home and they are asked to rebuild and asking for a garage. He confirmed there is a septic system that goes through a wetland and watercourse. This pipe will be double-sleeved to ensure no leaks into the wetland during any potential failure. The Commissioners asked that the hearing be kept open until such time that it is reviewed by staff.

#### **V. ONGOING BUSINESS**

**A. Parks Reports – Ms. DiLoreto confirmed she sent a report for Bradley issues that Zen took care of already. Frank stated he walked Belknap and all is well. A discussion ensued about blowing leaves off trails. The members agreed it is good to have delineation of the trails. Mr. Conklin noted positive feedback was received on the recent Vista walk as residents could see where they were going. Mr. Conklin also reminded the members that Zen is utilizing a battery operated leaf blower.**

**B. Conservation Activity Log Updates**

**Horseshoe Pond Long-Term Management Plan – Nothing new to report.**

**Park Walks & Talks – Ms. Algon confirmed there is a talk at the Library on March 13<sup>th</sup> for the Pollinator Pathway. She stated the meeting would be a 6:30pm kick-off and talk at 7pm in the Brubeck Room. There is a scheduled walk in Belknap on March 17<sup>th</sup> with Ms. O'Brien and Mr. Simone. Ms. Algon stated she will provide a press release to staff. An April walk was not scheduled as there are many events during the month already.**

**Kent Pond Management – Nothing new to report.**

**Schenck's Island Plan – Nothing new to report.**

**C. Work with other Commissions/Committees**

**A. Tree Committee – Ms. DiLoreto noted she is not sure if the grant will be awarded. If it is not, they may cancel the Tree Canopy program. Ms. Algon confirmed the Committee is coming up with new procedures as there are so many new members. She added that they are now doing an Annual Report and will request for a budget next year. The Committee is in the process of working with private owners of trees in the center to ask them for permission to assign the maintenance by a professional, and billed at an agreed rate as most trees are currently being pruned improperly.**

**B. Deer Committee – Nothing new to report.**

**C. Planning & Zoning Liaison – Nothing new to report.**

**VI. NEW BUSINESS**

**a. eNewsletter – Mr. Conklin stated there is nothing new to report.**

**b. Zero Waste Faire – Mr. Conklin advised that Wilton Go Green has requested if this commission wants a table at the event on March 23rd. He confirmed the following day is a SIMM Charette Meeting. The Commission agreed there is no time for the event with all the other responsibilities and events at this time of year.**

**c. POCD Discussion – Nothing new to report.**

**VII. APPROVAL OF MINUTES**

**a. Meeting Minutes 2/6/19**

Mr. Simone requested the following revisions:

- Section IV, Planning & Zoning Referrals, 2<sup>nd</sup> Paragraph – replace the word “concessions” with “restrictions”.
- Section V, Ongoing Business, section C.C replace the word “Agrotourism” with “Agritourism”.
- Section VI, New Business, section d – replace “...walked the trail and they reported *items* were not built” to “...walked the trail and reported *trails* were not built.”

Mr. Simone MOVED to APPROVE the Meeting Minutes as amended, SECONDED by Ms. Algon and CARRIED 3-0-2 with Ms. Hobson and Mr. Chaney abstaining as they was not present.

**XI. ADJOURN** – The meeting adjourned at 10:08 pm.

Next meeting will be April 3, 2019.

Respectfully submitted,  
Liz Larkin, Secretary, Environmental Affairs

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**FREEDOM OF INFORMATION ACT OVERVIEW**

**TOWN OF WILTON  
LAND USE AGENCIES**

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March 6, 2019

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## **INTRODUCTION**

The Freedom of Information Act (the "FOIA"), Conn. Gen. Stat. §§1-200 through 1-241, inclusive, represents Connecticut's commitment to open government and a strong policy in favor of public access to meetings and records. The laws concerning access to public meetings are strict and it is suggested that the Town of Westport take a very conservative approach in the interpretation and implementation of those laws.

Subject to narrow exceptions, the FOIA mandates that the public has access to the meetings of public agencies. The following is an overview of the FOIA to the extent it relates to the public's access to the meetings of boards, commissions, committees and subcommittees.

### **I. MEETINGS OF PUBLIC AGENCIES**

#### **1) What is a public agency?**

Conn. Gen. Stat. §1-200 defines a public agency as any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, *including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official*, and also includes any judicial office, official, or body or committee thereof, but only in respect to its or their administrative functions.

Note that the definition of public agency includes any "committee" created by the public agency (i.e., a board or commission). Committees and subcommittees are subject to the same requirements of the FOIA.

#### **2) What is a meeting?**

Conn. Gen. Stat. §1-200 defines a meeting as any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power.

A conference call or other communication by means of electronic equipment may constitute a meeting (See Paragraph 4)

In general, there is a meeting anytime a quorum of a public agency convenes to discuss or act upon a matter for which it has responsibility. But note however, that the definition actually describes three kinds of gatherings that can constitute a meeting. The FOIC has viewed gatherings of less than a quorum to trigger FOIA requirements.

3) **What isn't a meeting?**

There are several statutory exclusions in the definition of "meeting". They are:

- a) Meetings of a personnel search committee for executive level employment candidates.
- b) Chance or social meetings not for the purpose of discussing official business.
- c) Strategy or negotiations with respect to collective bargaining.
- d) Political caucuses.
- e) An administrative or staff meeting of a single-member public agency (e.g. the First Selectman).

Also note that a quorum of one public agency who are present at any event which has been noticed and conducted as a meeting of another public agency under the FOIA shall not be deemed to be holding a meeting.

4) **Do e-mail communications constitute a meeting under the FOIA?**

Yes. If distributed among a quorum of the body and the communications relate to a matter over which the body has supervision, jurisdiction, control or advisory power.

**Question:** Could you ever properly conduct a meeting by email communications? The Commission has stated that it is unlikely that email communications among agency members would be able to be conducted in a manner that comports with the open meeting requirements of the FOIA because those persons interested in attending the meeting would not have the opportunity to hear or see the discussion and actions as they transpired at the meeting.

5) **Participation by Electronic Means.**

- a) When can/should a member participate in a meeting by telephone/Skype or other similar means?
- b) Agency should have a policy.
- c) Consider pros and cons.

6) **Types of Meetings; Notice of Meetings**

The FOIA recognizes three types of meetings.

- a) **Regular Meetings** are those for which the public agency must file a schedule with the Town Clerk by January 31 for the ensuing year. These are meeting whose times, dates and places do not typically change.
  - Agendas must be available to the public at least 24 hours in advance.
  - New business may be added to the agenda upon a 2/3 vote of the agency



members present and voting.

- b) **Special Meetings** are those not included on the list of regular meetings.
  - Notice of the meeting, including the time and place and the business to be transacted must be filed with the Town Clerk at least 24 hours in advance. (Notice, as described, is the equivalent of an agenda.)
  - No new business may be added.
  - Must post special meeting agenda on the Town's website.
- c) **Emergency Meetings** may be called in an emergency without advance notice (the term "emergency" will be strictly construed).
  - The content of the meeting and any action taken is limited to the matter that required the emergency meeting.
  - Minutes must be filed with the Town Clerk within 72 hours.

Failure to follow proper procedures can result in voiding a public agency's action.

## **II. EXECUTIVE SESSIONS**

Under certain circumstances, a public agency may exclude the public from a portion of its meeting by calling an executive session.

Executive Sessions are only allowed for:

- 1) Appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting.
- 2) Strategy and negotiations with respect to pending claims or pending litigation to which the public agency or a member thereof, because of the member's conduct as a member of such agency, is a party.
- 3) Security issues.
- 4) Discussion of the selection of a site or the lease, sale or purchase of real estate when public discussion would cause a likelihood of an increased price.
- 5) Discussion of any matter which would result in the disclosure of certain other public records (e.g., police records).

There are specific requirements for conducting business in executive session:

- 1) Only agency members may attend, except for persons invited to testify or give opinion (attendance is limited to the time during which persons are providing

testimony or opinion).

- 2) 2/3 of those members of the public agency present must vote at a public meeting to go into executive session. *Must always convene in public to go into executive session, even if the meeting is only for an executive session.*
- 3) Must state the reasons for adjourning to executive session. It is not enough to simply recite the executive session exemption of the FOIA on which the public agency is relying. For example, simply saying: "It is anticipated that the Board will go into executive session to discuss litigation." However, based upon Freedom of Information Commission rulings and court decisions (see Lizotte v. Town of Enfield Planning and Zoning Commission, 1999 WL 712820; Durham Middlefield Interlocal v. FOIC, 1997 WL 491574), it is recommended that the notice specify the case which is being discussed. For example, the Chairman should state the following: "It is anticipated that the Board of Finance will go into executive session to discuss the case of Bloom v. Town of New Canaan." Adding the name of the case will more consistently follow the Act and the Commission's rulings.
- 4) No action taken in executive session. Only discussion is permitted. Any votes are taken in open session.
- 5) No minutes are taken during executive session. Minutes are taken only during the public portion of the meeting. The minutes of the public meeting must include the vote to go into executive session; the reason for the executive session; and the names of the persons in attendance at the executive session. The minutes should also include what time the public agency convened to go into executive session and the time it adjourned and resumed the meeting in public.

#### IV. MISCELLANEOUS MEETING REQUIREMENTS

##### 1) Agendas

The FOIA doesn't provide any clear guidance as to the level of detail that is required in an agenda. However, the agenda should adequately identify the business to be transacted and the date, time and place. If possible avoid items such as:

- "Other business" or "new business" without specific items listed beneath those headings.
- Do not use items above for special meetings (items cannot be added).
- When convening in an executive session is a possibility, the agenda should say "it is anticipated that the Board/Commission will go into executive session" and list the potential exceptions for executive session as specifically as possible.

##### 2) Minutes; Filing of Minutes

Generally, minutes must be available for public inspection within seven (7) days of the meeting to which they refer (Conn. Gen. Stat. §1-225(a)). Minutes should include, at a minimum, the following:

- When the meeting was convened and adjourned.
- Time and place of the meeting.
- Which members of the public agency were present and how they voted.
- Statement of each issue discussed or acted on.
- Purpose of any executive session and who attended.

Hard copies of the minutes must be maintained and filed with the designated person in the department which oversees the particular board, commission, committee or subcommittee.

For those boards, commissions and committees for whom the Town Clerk is not the custodian of the minutes, it is nevertheless recommended that a paper copy also be sent to the Town Clerk's office to be preserved in the Town's archives.

### 3) Votes

The votes (as distinguished from the meeting minutes) of all members of the public agency must be reduced to writing and be available for public inspection within forty-eight (48) hours of the meeting. The votes shall be recorded in the minutes of the session at which taken.

## V. Rules Governing the Conduct of Public Meetings

- 1) Members of the public have the right to attend the open portion of all meetings. Members of the public may not be required to register or sign in as a condition of attendance. The FOIA does not, by itself, give the public the right to participate in meetings.
- 2) Members of the public and the media have the right to record or broadcast meetings; however the agency may, in advance establish procedures for broadcasting.
- 3) If a member of the public creates a disturbance, the agency may remove him or her; if the disturbance persists the public agency may order the room cleared and continue in session. (The media except any members participating in the disturbance must be allowed to remain in attendance.)
- 4) Meetings may be adjourned to a specified time and place. Written notice of the time and place must be posted at the door of the place of the adjourned meeting within 24 hours of the time of adjournment. If a hearing is continued within 24 hours, posting at the place of the adjourned meeting must be immediate.