



TOWN OF RIDGEFIELD Inland Wetlands Board

DRAFT RESOLUTION OF DENIAL **PLENARY RULING APPLICATION**

Plenary Ruling Application for construction of thirteen multi-family residential buildings, one community meeting house, outdoor pool amenity space, stormwater management system, vehicular access using existing entrance which crosses onto this site via newly constructed stream channel crossing, associated site work within the upland review area of wetlands and watercourses.

0 Ethan Allen Highway

Assessors ID: G10-0057

Owner/Applicant: Ridgefield Professional Office Complex LLC

File IW-23-6

WHEREAS, on 3/6/2023 the Inland Wetlands Board of the Town of Ridgefield received a Plenary Ruling Application for construction of thirteen multi-family residential buildings, one community meeting house, outdoor pool amenity space, stormwater management system, vehicular access using existing entrance which crosses onto this site via newly constructed stream channel crossing, associated site work within the upland review area of wetlands and watercourses on 27 ± acres; and

WHEREAS, a public hearing was held on 4/27/23 and continued on 5/11/23, 5/25/23, 6/8/23, 6/22/23, 7/13/23; and was closed on 7/27/23, after receiving proper extensions from the Applicant; and

WHEREAS, the following documents were submitted by the applicant, peer reviewers, and office staff:

1. Regulatory drawing set, dated March 3, 2023, prepared by SLR Consulting.
2. Proof of Notice by Applicant to South Norwalk Electric & Water, submitted March 6, 2023.
3. Proof of Notice by Applicant to the Commissioner of Public Health, submitted March 6, 2023.
4. Proof of notification of any conservation or historic easement holder on the subject property, submitted March 6, 2023.
5. Wetlands and watercourse delineation/soil report by a soil scientist, prepared by Down to Earth Consulting, LLC, dated January 23, 2023.

6. Drainage Report, dated March 3, 2023, prepared by SLR Consulting.
7. Description of the ecological communities and functions of the wetlands or watercourses and the effects of the proposed regulated activities on these communities and wetlands functions, dated March 25, 2023, prepared by JMM Wetland Consulting Services, LLC.
8. 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 of the alternatives, and a description of why each alternative considered was deemed neither feasible nor prudent, dated May 4, 2023, prepared by SLR Consulting.
9. Analysis of materials to be deposited within the affected property, submitted April 21, 2023.
10. Measures which mitigate the impact of the proposed activity, submitted April 21, 2023.
11. Proof that notices of public hearing were mailed to all property owners within 100 feet of the subject property no less than (10) days prior to the hearing, submitted April 17, 2023.
12. Written narrative of proposed activity, submitted on March 6, 2023.
13. Location Map, submitted April 17, 2023.
14. Plenary –Existing Conditions Site Plan, submitted April 17, 2023.
15. Plenary - Erosion and Sedimentation Control Plan, submitted April 20, 2023.
16. Plenary - Biological narrative of existing conditions and impacts, dated March 7, 2023, prepared by Haley Aldrich.
17. Evidence of compliance with the Town of Ridgefield Drainage Manual, dated March 3, 2023.
18. Wetlands Permit Fee Schedule, submitted March 7, 2023.
19. Authorization Letter, dated April 11, 2023, prepared by Ridgefield Professional Office Complex, LLC.
20. Legal Notice, dated April 13 and 20, 2023.
21. Flagged Wetlands Area, submitted April 18, 2023.
22. Plant Schedule, submitted April 20, 2023.
23. Detention System, submitted April 20, 2023.
24. Site Report JMM Wetlands, dated May 8, 2023, prepared by JMM Wetland Consulting Services, LLC.

25. Open Space Declaration 901 Ethan Allen, dated February 28th, 2013.
26. Peer Review Consultant Fee – Biological Evaluation, dated May 15, 2023, prepared by Edward Pawlak.
27. Peer Review Consultant Fee – Engineer, dated May 12, 2023, prepared by Dainius Virbickas.
28. Extension Letter, dated May 25, 2023, prepared by Robert Jewell.
29. SLR Response to Inland Wetlands Board Comments, dated May 31, 2023, prepared by Jason Williams.
30. Engineer Peer Review Report, dated June 6, 2023, prepared by Dainius Virbickas.
31. Biological Evaluation Peer Review Report, dated June 5, 2023, prepared by Edward Pawlak.
32. Vegetated Buffer Zones Review of Literature Revised 4/26/2019, submitted June 8, 2023.
33. Extension letter, dated June 6, 2023, prepared by Ridgefield Professional Office Complex, LLC.
34. Correspondence – US Supreme Court Sackett v. EPA Water of USA, submitted June 13, 2023.
35. Correspondence 1, submitted June 14, 2023.
36. SLR – Wetlands Presentation, dated 6/16/2023, prepared by SLR Consulting.
37. Revised Drainage Report, dated March 3, 2023, revised June 16, 2023, prepared by SLR Consulting.
38. SLR Response to Biological Evaluation Peer Review, dated June 19, 2023, prepared by SLR Consulting.
39. Correspondence 2, submitted June 20, 2023.
40. Correspondence 3, submitted June 20, 2023.
41. Notarized Affidavit for Signage, dated June 7, 2023, prepared by Andrew Kenny.
42. SLR Response to Engineer Peer Review, dated June 18, 2023, prepared by SLR Consulting.
43. Correspondence 4, submitted June 21, 2023.
44. Correspondence from DEEP, submitted June 21, 2023.
45. Alan Pilch Resume, submitted June 21, 2023.

46. Biological Peer Review Report, dated June 22, 2023, prepared by Edward Pawlak.
47. SLR Response to Biological Peer Review Comments during Conference Call, dated June 22, 2023, prepared by SLR Consulting.
48. SLR Response to Wetland Commission Questions, dated June 22, 2023, prepared by SLR Consulting.
49. Tracey Miller Resume, submitted July 13, 2023.
50. Extension Letter, dated June 23, 2023.
51. Regulatory Drawing Set, dated March 3, 2023, revised May 31, 2023, revised June 20, 2023, revised June 26, 2023.
52. Biological Evaluation Peer Review Consultant Fee – Additional Materials, dated June 26, 2023, prepared by Edward Pawlak.
53. Revised Drainage Report, dated March 3, 2023, revised June 16, 2023, revised July 7, 2023, prepared by SLR Consulting.
54. Regulatory Drawing Set, dated March 3, 2023, revised, May 31, 2023, revised June 20, 2023, revised June 26, 2023, revised July 7, 2023.
55. Letter from Dave Goldenberg, dated July 3, 2023, prepared by Dave Goldenberg.
56. Summary of Changes – Site Plan and Drainage Report Submission, dated July 10, 2023, prepared by SLR Consulting.
57. Ridgefield Village Development Energy Analysis, submitted July 11, 2023, prepared by Marchetti Consulting Engineers.
58. Design Process Slides, submitted July 11, 2023.
59. Extension Letter, dated July 14, 2023, prepared by Ridgefield Professional Office Complex, LLC.
60. Engineer Peer Review Report, dated July 17, 2023, prepared by Dainius Virbickas.
61. Biological Evaluation Peer Review Report, dated July 26, 2023, prepared by Edward Pawlak.
62. SLR Response to Engineer Peer Review Comments, dated July 26, 2023, prepared by SLR Consulting.
63. Landscape Operations and Maintenance Manual, dated July 2023, prepared by SLR Consulting.

64. Revised Drainage Report, dated March 3, 2023, revised May 31, 2023, revised June 20, 2023, revised June 26, 2023, revised July 7, 2023, July 14, 2023, prepared by SLR Consulting.

65. SLR Response to Biological Evaluation Peer Review Comments, dated July 27, 2023, prepared by SLR Consulting

WHEREAS, the Applicant modified the project plans and amended numerous times in reaction to Board concerns and questions as well as the opinions of its experts but did not, when specifically asked by Board members, demonstrate that there was no feasible and prudent alternative to locating water quality basins within the 100' upland review area in close proximity to wetlands and watercourses, construction of which will require significant grading and removal of mature trees in a steeply sloping area.

In his document dated June 5, 2023, Edward Pawlak of Connecticut Ecosystems LLC stated that, in his professional opinion, a 100 foot wide undisturbed vegetated buffer is required to protect the Little Pond wetland system and Ridgefield Brook, both of which are functioning at a high level.

He stated: "Considering the extensive amount of earthwork proposed within very close proximity of the on-site wetlands and watercourses, much of it on steep slopes, it is my professional opinion that there will be a very high likelihood of specific impacts to the physical characteristics and functions of these regulated resources." He goes on to describe the likely negative impacts and some feasible and prudent design element alternatives that would significantly lessen the risk of impacts.

Based upon the credible testimony and other evidence in the record, short-term impacts would involve damage from erosion, turbidity, or siltation during heavy rain events during construction, and long-term impacts relate to the location of the basins themselves, which provide very little buffer between the overflow discharge and the wetlands. The long-term loss of tree canopy in the upland review area in proximity to the water quality detention basins constitutes a permanent change in the physical characteristics of the vegetative buffer that is intended to afford protection during times when excessive runoff will necessitate more direct discharge toward the wetlands.

Irreversible and irretrievable loss of wetland or watercourse resources which would be caused by the proposed regulated activity, including the extent to which such activity would foreclose a future ability to protect, enhance or restore such resources, and any mitigation measures which may be considered as a condition of issuing a permit for such 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. This requires recognition that the inland wetlands and watercourses of the Town of Ridgefield are an indispensable, irreplaceable and fragile natural resource, and that these areas may be irreversibly destroyed by deposition, filling, and removal of material, by the diversion, diminution or obstruction of water flow including low flows, and by the erection of structures and other uses.

The nearness of this excavation to the down-gradient wetland and watercourse system of the site and adjacent to wetlands and watercourses will, based upon the evidence and testimony in the record, adversely impact the groundwater and surface water in terms of quantity, flow, turbidity

and chemical composition, to which would be added a thermal effect generated by the loss of thousands of square feet of forest canopy as deduced from the plans submitted.

Board Members asked specifically if the applicant could provide a feasible and prudent alternative to the location of the water quality detention basins in close proximity to wetlands. The applicant's Alternative Report, dated May 4, 2023, provided a narrative of prudent and feasible alternatives for the stream crossing that is necessary for access to the site. It did not address the location of the water quality detention basins and later requests from the Board were not directly answered.

NOW THEREFORE BE IT RESOLVED, that the Inland Wetlands Board of the Town of Ridgefield hereby Denies the Plenary Ruling Application for regulated activities in conjunction with site work, erosion control, and storm water management for the construction of the above-referenced project.

Considerations and Reasons:

The Board concludes, based upon all of the evidence in the record, that it is likely that the proposed activity will have an adverse and detrimental impact on the subject wetlands and watercourses, both short-term and long-term. This is based upon the substantial evidence in the record including, but not limited to, the credible evidence presented by the Board's expert, Edward Pawlak.

In evaluating this application, the Inland Wetlands Board considered the "Standards and Criteria for Decision" in Section 10.2 of the IWWR and "Feasible & Prudent Alternatives" in Section 10.3 of the IWWR and determined that, upon consideration of all of the credible evidence and testimony, including evidence and testimony submitted by the wetlands, soils and environmental experts, the proposed construction will very likely have a detrimental effect and adverse impact on the wetlands and watercourses located on or off-site. In accordance with the above, the Board has also determined that there exist feasible and prudent alternatives to the final plans submitted by the Applicant, given the evidence and testimony and the Board's requests for changes to the location of the water quality detention basins, and the lack of specific responses as to why that could not be done.

10.7 (measures to mitigate, etc) The applicant, through his various consultants, has proposed measures to mitigate or attempt to mitigate the adverse effects of his proposal on the wetlands. Whereas the Board appreciates these efforts, it turns finally to Sec. 10.4 of the IWWRegs, specifically: "The applicant has the burden of demonstrating that his application is consistent with the purposes and policies of the Inland Wetlands and Water courses Regulations of the Town of Ridgefield and sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes. The applicant has failed to meet this burden and the application is denied.

Draft:

Adopted:

Published:

Effective: