

**ZONING COMMISSION**  
**NOANK FIRE DISTRICT**  
**10 WARD AVENUE**  
**NOANK, CT 06340**

**APPROVED MINUTES OF THE REGULAR MEETING**

Date: Tuesday, February 16, 2021

Location: Zoom Meeting

The meeting was called to order at 7:00. Commission Members present: Rick Smith (Chairman), Beth Steele (Vice Chairman), Dana Oviatt, Blake Powell, Art Tanner, Alternate Member Larry Dunn and Alternate Member Lynne Marshall.

Consistent with Governor Ned Lamont's directives on the use of remote meeting technology during the coronavirus pandemic, the meeting was held on Zoom and the recording is available at the following link:

<https://www.youtube.com/watch?v=WsBkVZH-SUM&list=PLp4s6RQGCh5T9l68DGPVVGpN4hWxQqRqQ&index=1>

The supporting documents for the meeting can be reviewed at:

<https://1drv.ms/u/s!ArWm4wCa4MFlvypmThGullgpAAuD?e=JZYoXM>

The Chairmen read the introductory statement consistent with the Governor's Executive Order regarding remotely-held meetings.

**A. Public Comment on Subjects Not on the Agenda - None**

**B. Application for Coastal Site Plan Review and Special Permit:**

Consideration of Application of Docko, Inc. on behalf of the Town of Groton for Coastal Site Plan review and a Special Exception for beach sand replenishment at Esker Point Beach. Review Commissioners' Concerns and Consideration of Approval, Denial, or Approval with Conditions.

Commissioner Oviatt (at 08:00 into the recording), while in favor of public access to the water, expressed concerns about imposing conditions on the applicants because none of the Commissioners are experts.

Commissioner Powell (at 10:00) agreed with Oviatt and added that he feels it is difficult to reach a conclusion because the application's mitigating measures of planting additional sea grass and providing fencing, which would be seasonal, only addresses one area of the beach.

Commissioner Steele (11:45) agreed and felt that the Town of Groton had not provided a topological survey showing the impact that the addition of sand would have on the tidal area below the high-water line. She was concerned about the proposed use of fine grain as opposed to coarse grain sand, which is contributory to sand retention. She felt the paramount issue is the coast itself as opposed to incidental recreational activities and that the applicants need to complete a study showing how their plan will prevent further erosion and/or encourage sand retention. She was not comfortable with approving regardless of what conditions might be considered. She would need to hear the results of a study and the study hasn't been done.

Commissioner Tanner (14:38) agreed and added that a basis for denial that hadn't been discussed was Section 15.5.3.g in the Noank Zoning Ordinance:

*All excavating or depositing of material, as defined herein, shall be subject to the following minimum standards and conditions:*

*Except in locations involving rivers, streams, water courses, ponds and exposed ledge rock, that the top layer of arable soil for a depth of four inches will be set aside and retained on the lot and will be re-spread over the excavated or filled areas as the work progresses; that a suitable ground cover will be planted and grown to an erosion resistant condition upon the completion of the filling, excavation or removal operation in accordance with the approved contour lines; and that such work will be completed within one year from the date of approval. Upon written request the Commission may grant an extension of not more than one year;*

He noted that, after any activity that disturbs the earth, there has to be steps taken to prevent erosion within a reasonable amount of time after the activity has occurred. The goal is to end up with a situation in which erosion is minimized. His understanding was that there would be more grass plants put in place. The hope is that they will grow to provide significant erosion control. The grass to be planted this summer will not be a help until the plants have been in place for awhile. Tanner felt the application as presented was unacceptable as presented but he would like the applicant to resubmit a proposal which provides long-term fixes both in the volleyball area and the rest of the beach. There were ideas offered as to what could be done long term for the entire beach. Tanner also felt that at some point, the Commission would need to have its own expert to look at what is being proposed. Premature now. He would be comfortable denying the application as submitted for the reasons offered.

Commissioner Smith (19:15) agreed with most of the the concerns offered by other commissioners but disagreed with the conclusion suggested. He believed that the scope of the work was not enormous and that with the improvements that had been made in the application and the opportunity the Commission had to impose conditions on the approval of the application, the best way to handle the application as a self-contained unit was to approve the application with conditions much like the ones listed on the Commissioners 'list of concerns. There are ways of getting at the longer term issues without denying this application. Applicants made a good faith effort to revise during the hearing based on what they heard. Felt that there was a lot of latitude for the Zoning Enforcement Officer to work with the applicant and their expert to address the Commission's concerns and the use of best engineering technology available to address each condition. He thought the concerns could be addressed by a list of permit

conditions if we put our heads together. He understood the point that we were not the experts but we are the five elected zoning commissioners and we are supposed to make a decision based on what we heard in the record. As a judge, we can review the record and decide what kind of permit condition we should have. This would allow the town to use the beach for its intended purposes. So, commissioners all agree on the concerns. The Commission cares about the beach and cares about the impact to the Noble Avenue neighbors of the beach. Smith also felt that denying the application did nothing to solve the problems facing the Noble Avenue residents. Those problems were created fifty years ago. Smith noted that although the Commissioners are not experts, they are the elected Commissioners and they should point the finger in the direction of the solution the Commission would like to have accomplished and let the Zoning Officer and the applicant's expert come up with a technical solution. Smith was in favor of approving the application with conditions.

Commissioner Tanner (25:35) was not comfortable with the idea that we are qualified to craft conditions. We decided not to retain an expert of our own to provide comments and suggestions to us. Lacking that, reluctant to be one of the five people to specify appropriate conditions. Also reluctant to delegate this to Bill. Have a lot of respect for Bill but he is expert in land use. Tanner didn't know that the ZEO had the expert level background in the kinds of issues facing the commission in this instance.

Commissioner Steele (27:00) had two questions for Smith. Smith said we should require the applicant to use best technology to prevent the further loss of sand. Steele felt the applicant never told us what the best technology was. That's for the applicant to show us but they didn't. Also, Smith said it's up to us to point the finger in the direction of the solution that we want to have accomplished. Steele didn't think it's the Commission's role to do this. It's up to the town to put their proposal out there. Felt they didn't do that. There were studies that could have been done that weren't. The things they stated they were going to continue to do are the things they've done in the past but the sand continues to go. Very uncomfortable approving with conditions when they didn't present anything in the form of a study that just adding more grass and fixing a drainage pipe and putting up snow fencing would stop the problem because those things haven't solved the problem in the past. Even though it's only 500 yards, it's 500 this year and 500 next year and then 1,000. They need to come up with a plan to prevent the further increase of the problem that's been created. Steele had read regulation on adverse impacts on coastal resources including degrading erosion patterns. Concerned that placing the sand increases erosion into the water and the motion that the commission is supposed to consider claims the application is consistent with the applicable goals of state law, but she felt it was not. Didn't feel there was any condition that could be placed on this application without further studies as to what happens to this type of sand when it's placed in that area.

Commissioner Powell (31:15) felt it was not the commission's responsibility to re-engineer this and tell them what we want them to do differently. He was open to approval with conditions in the future as long as the commission has objective, definable conditions. Not sure the applicant provided them in this case. Uncomfortable with leaving it up to the ZEO to interpret what would be better for drainage or more mature grass. Being too vague doesn't do anyone any good. Unless the commission had specific, objective, definable criteria to attach to this, Powell would be uncomfortable leaving it as wide open as Smith suggests.

Commissioner Oviatt (32:15) agreed with Steele and Powell. If conditions are too specific, he'd be very uncomfortable because he's not knowledgeable to make those stipulations. Noted he has his opinions. If conditions are too generalized, such as the words "best technologies" Oviatt was not sure what those are so he'd be uncomfortable with both options.

Commissioners Tanner, Powell, and Steele indicated they would not be comfortable approving the application on a plan that's not known to them.

Commissioner Smith (33:10) informed the Commission of a post-hearing solution the applicant had come up with; however, he was unable to discuss it with the Commission but felt it would address concerns and provide long-term solutions to the drainage and erosion issues. The proposed solution was on drainage. Comfortable with ZEO working with applicant on a best approach. Requires a judgment call. Smith summarized his responses to the queries that had been posed to him but noted there was a pretty clear signal as to how the commission was leaning so he reminded the commission that the three choices facing it were approval, denial or approval with conditions and asked for a motion.

Commissioner Steele (36:48) asked if we could extend the timeframe allowed to hear more information? Smith stated this was not possible because the hearing had been closed. He noted it would have been beneficial to all concerned had the town come forth with all of the proposed ideas earlier. Noted that there were no guarantees on whether the proposed ideas will be successful. Sometimes one has to try an approach and, later, see if it worked.

Commissioner Powell (38:50) noted that, assuming the revised approach will work, is there any reason we can't just deny this proposal and open up a new public hearing and allow the residents to comment, and do it all quickly? Chairman said no, it has to be a new proposal, started over, which would take several months. Powell asked how expeditious it could be, since the commission already had a head start. Smith explained the steps in the process and that it would be about four months, without any continuations. Smith also noted that the commission was entering a very busy time during the next three or four months with the short term rental issue. We'll receive copious public comment and we'll have to review all of it. So he urged that the commission be sure this issue is what it wants to devote its time to because it will change the timing of other things on its agenda. Just because the commission is better informed now, it will still take several months.

Commissioner Tanner (42:10) agreed with Powell that the timelines could be expedited as much as possible. Felt we could have special meetings and that the chairman's stated timeline was a maximum.

**Action:** Motion (Tanner) – To deny the application recognizing that having heard all of our concerns the town may choose to come back with a different application that addresses the concerns that have been addressed and the denial of this application does not foreclose our willingness to consider another application that more adequately addresses our concerns.

Chairman Smith noted the parliamentary wording was to “move to deny the application without prejudice” so that the applicants could come back with a revised proposal in the future.

Commissioner Powell (43:45) agreed with Tanner’s caveats that the commission is fully open minded and optimistic that additional information will make it easier for us to make a decision.

Commissioner Oviatt (44:04) added he hoped the town understood that the commission wanted the most aggressive application of erosion control that it can have for that area.

Commissioner Smith (44:30) noted that, if the commission approved with conditions, it could specify those things and let the applicant and the ZEO work out the details. That’s how the process is supposed to work. Smith also disagreed that the timelines he offered could be shortened. It’s a contentious subject loaded with technical information and the commission will want its own technical expert and that will take time to bring someone on and get them up to speed and develop a working relationship. The commission is proposing something that will absorb well more than half of its time. And if it tries to do it by special meetings, they get in the way of the special meeting opportunities it has been using for the benefit of the whole community for two and a half years. Smith noted that he did not want to dismiss the residents’ concerns but suggested the larger priority was short term rentals. Smith noted that this application would not solve the residents’ problems because the sand was already there. Smith was very concerned that the issue not preclude continued development of what he felt to be the more important issue facing the commission since short term rentals had an impact on a far greater number of Noank residents.

Commissioner Tanner (46:37) strongly disagreed and thought that was absolutely the wrong priority. Acknowledged that the short term rental issue was important and would take a lot of time but felt short-circuiting the Esker issue because of concern that the short term rental issue impacted more people was wrong.

Commissioner Steele (47:03) noted she was not opposed to volleyball at the beach, she just felt it was not appropriate to approve an application on a “trust me you’ll like it when you see it” basis. The applicant may have a great plan but they didn’t produce it in the time required. For that reason she could not support approval. Steele hoped the applicant comes back with a better plan, and will be open-minded on it. The plan as disclosed and discussed does not prevent the problem that has going on for years and will continue on into the future until there is a solid new plan and more grasses established and better berms, and all of the drainage problems are addressed and they’ve actually got a study about where the sand is going.

**Motion Approved:** 4:1 Permit is denied without prejudice (48:45)

C. **Review of Minutes:** Regular Meeting of January 19, 2021. No Comments. Without objection, minutes approved.

D. **Zoning Enforcement Officer Reports:** January Zoning Enforcement Officer Report. No comments and without objection, Zoning Enforcement Officer Report approved.

**E. Old Business:**

1. Review of proposed text amendment for the interaction FEMA and Noank's 10-year "look-back" rules for remodeling homes in the flood zone.
2. Discussion took place concerning whether or not to start the clock on scheduling a hearing for the text amendment to the substantial remodeling look-back period from 10 years to 2 years.

**Action:** Motion (Steele) to go to hearing as soon as possible

Chairman Smith asked for the Commissioners' thoughts on whether they felt it would be prudent to push out the FEMA issue to mid-summer in order to lessen the load on the Commission given the schedule for the Short-Term Rental Issue.

There was a short discussion and a revised motion was initiated.

**Action:** Revised Motion (Steele/Powell) to start the process for FEMA in July, 2021.

**Motion Approved:** 5:0

1. Review of Process for Obtaining Public Input on the Short-Term Rental Issue.
2. Discussion took place and all agreed to scheduling an informal public workshop rather than a Public Hearing. Structure, format and the need for the Commission to manage the meeting for a productive outcome were among the topics discussed. The workshop will be tentatively scheduled for the end of March, 2021.

**F. New Business:**

1. The chairman gave a brief overview on the Special Meeting scheduled for March 4, 2021, and mentioned that Commissioners would be receiving a written document in advance of the meeting with Counsel's advice and Bill Mulholland's views. Discussion took place concerning whether or not this document would be for public viewing on the Commission's website or if it would be treated as an Attorney/Client Privilege document.

Adjourned at 8:40 PM (Motion: Powell/Steele, 5:0).

Respectfully Submitted,  
Susan Weber, Clerk