

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

HEARING REPORT

In the Matter

- Of -

the application for a Tidal Wetlands Permit
pursuant to Article 25 of the Environmental Conservation Law
and Part 661 of Title 6 of the New York Compilation of
Codes, Rules and Regulations to construct three one-family
homes at Fairlawn Avenue between Mansion Avenue and
Great Kills Harbor, Staten Island, Block 5202, Lot 173 by

HAROLD DONALD.

DEC Application ID # 2-6404-00400/00004

/s/

Helene G. Goldberger
Administrative Law Judge

at I.S. 24 Myra Barnes Intermediate School
225 Cleveland Avenue
Staten Island, New York 10308

February 21, 2012 – 7:00 p.m.

Pursuant to the requirements of Article 70 (Uniform Procedures) of the Environmental Conservation Law (ECL) and Part 621 of Title 6 of the New York Compilation of Codes, Rules and Regulations (6 NYCRR), the New York State Department of Environmental Conservation (DEC or Department) convened a legislative public hearing to provide an overview of the proposed application of Harold Donald for a tidal wetlands permit (ECL Article 25 and Part 661 of 6 NYCRR) and to receive comments on the application. In November 2008, Mr. Donald applied for a tidal wetlands permit to develop property located within the Sandy Hook-Staten Island watershed on Fairlawn Avenue between Mansion Avenue and Great Kills Harbor, Staten Island, Richmond County, New York (Block 5202, Lot 173).

Based upon the comments originally received on the project and the Department staff's concerns regarding the original proposal, the applicant revised his plan to reduce the density of the project (from two family homes to one family homes), eliminating proposed patios and increasing the setback between the proposed structures and the tidal wetland. The applicant presented the revised site plan to DEC staff on December 14, 2011 and the staff tentatively decided that it is appropriate to issue a tidal wetlands permit and to grant a variance from the 30 foot setback requirements contained in 6 NYCRR Part 661. As mitigation for the project, the applicant proposed to create a 10 foot vegetative buffer consisting of native species along the boundary of the development (0.13 acres), enhance the finger wetland area that runs parallel to Mansion Avenue (0.06 acres) and include a deed restriction prohibiting development of the mitigation areas, tidal wetlands vegetation, and open water (1.6 acres). The total project area is 2.132 acres and the area of development is 0.53 acres.

The legislative hearing was advertised in the February 9, 2012 *Staten Island Advance* and the February 1, 2012 *Environmental Notice Bulletin*. The hearing was held, as noticed, on the evening of February 21, 2012 at the I.S. 24 Myra Barnes Intermediate School, 225 Cleveland Avenue, Staten Island, New York 10308.

The hearing was attended by approximately 100 people not including the DEC representatives and the applicant's counsel and environmental consultants. There were 25 speakers in addition to the applicant's representatives and Mr. Drescher. Excluding Mr. Drescher, DEC Region 2 Assistant Regional Attorney, who spoke on behalf of DEC staff and Greg Fleischer, PWS for Carpenter Environmental Associates, Inc. and Glen Cutrona, architect, both representing Mr. Donald, all of the speakers were opposed to the project except for one speaker. In addition to the speakers, a number of individuals offered written comments to the staff. The comment period ends on March 9, 2012.

Below is a summary of the comments received at the hearing which concluded at 8:45 p.m. after all the individuals who asked to speak were accommodated.

Mr. Cutrona, the applicant's architect, began the hearing by explaining that the project was small with low density and the plans were environmentally sensitive to the area. He stated that the project would occupy less than 25% of the site leaving the majority of the site undeveloped and that a portion would be restricted for no land alteration. He explained that only

one house of the three would be in the 30 foot setback area and the encroachment was limited to 624 square feet. He explained that areas that were to have terraces or patios as well as the driveways, sidewalks, and the cul-de-sac will have pervious surfaces allowing the water to drain. Mr. Cutrona emphasized that earlier the project had been permitted for nine town homes but after a zoning change the project was scaled down. He concluded by speaking about the replanting of the wetlands with native species and the use of pervious materials for driveways and other surfaces.

Greg Fleischer of Carpenter Environmental Associates also spoke for the applicant. He described the project as being in two main sections with one being the area of development off Mansion Avenue and constituting 25 percent of the total 2 acre site and the remainder of the site – open water and wetland – to remain untouched. He stated that the finger of wetland within the site was currently filled with invasive species and that the applicant would mitigate this condition by using native species to restore this area to a tidally functioning wetland in addition to the ten foot buffer of plants that the applicant would install. Mr. Fleischer emphasized that 600 square feet of one home will be 16 feet away from the wetland – 1% of the development would encroach on the adjacent area and that is what the variance request addresses.

DEC Assistant Regional Attorney Drescher explained that the Tidal Wetlands Act balances the goals of preserving wetlands with residential development. He stated that permits were granted in 1995 for 9 attached homes that would have resulted in greater density. He concluded by stating that the current application meets the Department's development restrictions resulting in the changed tentative position of the staff to grant the permit.

Assemblywoman Nicole Malliotakis of the 60th A.D. thanked DEC for holding the hearing. However, she stated that despite clarifications by Carpenter Environmental Associates in the response to comments, she still was not 100 percent convinced that the current plan reflects the best use of the property. She urged that all regulatory authorities address sewage issues, flooding, and stormwater drainage. The Assemblywoman described flooding that already is ongoing even after regular rainfalls and raised concerns that further development would only increase these problems. She raised concerns that the possible opening of Fairlawn Avenue would result in drastically altered traffic levels. The Assemblywoman stated her respect for the DEC process but wants to be sure that property owner does not negatively affect others through this project. She expressed her appreciation for the concessions made by Mr. Donald but maintained concerns regarding storm drainage and traffic.

Anthony Reinhart spoke for Senator Andrew Lanza also thanking DEC for holding the hearing. He emphasized the importance of the wetlands and the potential for project impacts to the harbor and wetlands. The Senator maintains his continued opposition to the encroachment on the 30 foot buffer. He ended by stating that the United States Park Service may have an interest in acquiring the parcel and encouraged discussions between the Park Service and the property owner.

Many of the speakers stated that the appropriate use for the property was to add it to the Gateway National Park. Some commenters noted that the advent of climate change resulting in the rise of sea level will cause these and other homes to flood. In addition, many of the speakers

stressed that granting this variance will allow other applicants to also obtain the same waiver. Anthony Somma, a fisherman who writes the fishing column for the *Staten Island Advance*, stated that there is a great variety of fish and other wildlife in the area all of which would be negatively affected by this project. He also explained that Mansion Avenue was a dead end street with parking allowed on both sides. He said this would have to change with this project resulting in problems for businesses and residences.

A number of speakers including Mr. Somma questioned the accuracy of the applicant's responses to questions on the New York State Department of State Coastal Management Program Federal Consistency Assessment Form (CAF) particularly with respect to significant habitat (# 19); discharges (#25); draining of sewage overflow (#26); landfills; potential for contamination on site (#40).

Ellen Pratt of Protectors of Pine Oak Woods said that it was unfortunate that so much money was spent on making this land developed instead of maintaining it for a park. She represented that the Trust for Public Land was willing to help purchase the property by the Federal government and add it to the Gateway National Park and that PPOW would assist in that effort as well. She noted that the health of the creek in the area is a critical nursery to fish, crabs, and turtles and that silting from this development will negatively affect this resource. Ms. Pratt stressed that based upon 6 NYCRR 661.2(m), the critical values served by wetlands should not allow for the creation of this building site.

Michael Katsoris expressed concerns about the fate of natural areas that serve as a buffer to filter manmade pollutants. He also referenced a report by the National Park Service (May 2010) regarding the discovery of radon contamination in areas of Gateway National Recreation Area and stated that given the proximity of the project site to Gateway, there may be contamination there as well. Mr. Katsoris said that allowing development of the site might open up pathways for contamination that would end up in waterways and wildlife food chains.

James Scarcella of the Natural Resources Protection Association commented that in approving this application DEC would be negligent in its enforcement of the Public Trust Doctrine – the right of the people to access the littoral zone. He recommended that given the more rural character of Staten Island, the Department should consider revising the tidal wetland regulation to require a 75 foot buffer like the rest of the State. Mr. Scarcella stressed that given sea level rise, these homes will be flooded and all taxpayers will have to bear the burden of that eventuality. He questioned the value of the deed restriction without the imposition of a bond. Mr. Heap noted that the development would open up an area that up until the present has been difficult to access and thus protective of wildlife habitat. He said this opening would encourage people to walk through sensitive areas resulting in harm to wildlife. James Egan of the Waters Edge Homeowner's Association maintained that the addition of this development would contribute to further erosion of the shore. Irving Kratz stated that radiation contamination in Great Kills Harbor could extend through the development of this property. Dee Vandenburg of the Staten Island Taxpayers Association stated that U.S. Army Corps of Engineers found that the shorefront was losing 5 inches a year and that she was totally opposed to this project because it would set a bad precedent and storm damage would be borne by the taxpayers.

Charles Koehler pointed out that the applicant had noted on its application that the site was not compatible with residential development and questioned the progress of the project. He also questioned how the developer or homeowners would get financing for the project or any homes.

Douglas Adamo of the National Park Service represented Superintendent Linda Canzanelli and read her letter that stated that his agency had provided comments reiterating its support for wetland protection and interest in property acquisition. He stated that there should be a 50 foot buffer from the tidal wetland and she asked that there be a buffer zone of vegetation of at least thirty feet from the salt marsh prohibit construction including any impervious surfaces within the fifty foot wetland buffer zone. She requested a response from DEC Region 2.

Robert Miltello stated his wish that he didn't have to come to hearings every few years to fight development of the tidal wetland. He emphasized that turtles, night herons, horseshoe crabs, black skimmers, osprey, and miniscule organisms used this area for their home. He maintained that with this development, these creatures would be lost as would views of harbor seals, dolphin and black pilot whales.

Esther LaRubio was the only member of the public to speak in favor of this project. She explained that she moved to Mansion Avenue for the wildlife habitat but that the area was congested due to the marinas that park boats and trucks all over the street. She expressed her dissatisfaction with the marina and concluded that the area might improve with this development.

The hearing concluded with two speakers – April Entreieri and Ann Grande – who stated that there appeared to be different rules for developers and individual property owners.