

IN THE MATTER OF

: APPLICATION NO. IW-2003-103

***WESTERN CONNECTICUT
STATE UNIVERSITY***

: AUGUST 23, 2004

FINAL DECISION

The hearing officer issued a *Proposed Final Decision* in this matter on May 19, 2004, in which she recommended that I grant the permit requested by Western Connecticut State University (WCSU). The intervenor Brian Lynch requested oral argument on his exceptions to that decision; I heard arguments on August 9, 2004.

WCSU seeks an inland wetlands and watercourses permit in connection with its planned extension of University Boulevard on its Westside Campus to provide access to a new magnet school to be constructed by the City of Danbury adjacent to that campus. DEP staff has determined that this proposed regulated activity, which would affect 0.113 acres of wetlands, would not have a significant adverse impact on those wetlands and has prepared a draft permit. (*Proposed Final Decision*, Attachment B.)

The required test for permit issuance in this instance is that I find there is no feasible and prudent alternative to the proposed action. General Statutes §22a-41(b)(1). A feasible and prudent alternative must be sound from an engineering and economic perspective and cause less or no environmental impact to wetlands or watercourses. §22a-41(a)(2).

The intervenor argues that because a driveway, which will provide access to the back of the school from Middle River Road, has received a permit from the City of Danbury, that driveway meets the standard of a feasible and prudent alternative. The intervenor specifically argues that because the wetlands impacts from that driveway have already been approved, building another road that will also impact wetlands is unnecessary, given the alternative of using that driveway. Contrary to the assertions of

Mr. Lynch, the hearing officer considered the alternative of using that driveway and outlined an alternatives analysis in her proposed decision. I agree with her analysis and her conclusion that use of the driveway is not a feasible and prudent alternative.

An alternative is feasible if it can be “constructed or implemented consistent with sound engineering principles”. §22a-38(17). The hearing officer considered evidence that confirmed that use of the driveway would not be sound from an engineering standpoint. This evidence included the fact that the elevation of the driveway where it enters the property of the proposed school is lower from the front of the building by seventeen feet and separated from that elevation by a retaining wall. There was evidence in the record, referenced in the proposed decision, that vehicles cannot drive to the front of the school from that driveway because of this difference in elevation. (Test. W. Buckley, 4/8/04, p. 46.) I agree with the hearing officer’s reasonable conclusion that using this driveway for primary access to the school, not possible without significant re-design, paving and other modifications, is not feasible from an engineering perspective.

A prudent alternative is “economically... reasonable in light of the social benefits to be derived from the proposed regulated activity”. §22a-38(18). Public Act 01-6 conveyed the property for the magnet school to the City. That legislation also provided state funding for associated infrastructure, including a road through campus for school access. As noted by the applicant, this reflects a legislative intent to mitigate traffic impacts on residential areas near the school. Using these available funds fulfills this intent and renders the chosen plan the most economically responsible and reasonable.

A feasible and prudent alternative must also cause less or no environmental impact to wetlands. §22a-41(a)(2). The City Director of Public Works, a professional engineer, testified that the City considered designing the project to provide access from Middle River Road, but that would result in a wetlands impact “an order of magnitude greater” than the wetlands impacts already approved by the City for the planned driveway. (Test. W. Buckley, 4/8/04, p. 92.) There is nothing in the record to indicate that the City would view the impact of a redesigned driveway on wetlands favorably,

impugning the driveway's interchangeability with the proposed project. While the magnitude of the redesign necessary to provide the required access may be uncertain, what is clear is that there would be additional impacts to wetlands associated with it. Therefore, based on the un-rebutted record on this point, it is my conclusion that the use of a redesigned driveway for access cannot be considered prudent and feasible.

The City Director of Public Works testified that wetlands impacts would be due in part to the need to widen Middle River Road "significantly in order to get the traffic [to the school]". (Test. W. Buckley, 4/8/04, p. 93.) Mr. Lynch objects to the "finding" in the proposed decision that "Middle River Road would also have to be widened to accommodate the heavy traffic going to and from the school". Although the record clearly supports the fact that the City considered the need to widen Middle River Road to accommodate increased school traffic, to the extent the hearing officer reached a conclusion on the ability of the road to handle heavy traffic, the redesign of Middle River Road is not directly pertinent to my decision and is stricken from the proposed decision.

With this one modification, I affirm the proposed decision of the hearing officer and adopt her recommendation. The application complies with relevant statutes and regulations. There are no feasible or prudent alternatives to the proposed activity, including the use of the driveway for primary access to the magnet school from Middle River Road. I grant the permit that is the subject of this proceeding.

August 23, 2004
Date

\s\ Arthur J. Rocque, Jr.
Arthur J. Rocque, Jr.
Commissioner