

OFFICE OF ADJUDICATIONS

IN THE MATTER OF

: APPLICATION NO. IW-2003-103

**WESTERN CONNECTICUT
STATE UNIVERSITY**

: MAY 19, 2004

PROPOSED FINAL DECISION

***I*
SUMMARY**

The applicant Western Connecticut State University (WCSU) has filed an application for a wetlands permit with the Department of Environmental Protection (DEP) Inland Water Resources Division (IWRD). General Statutes §22a-39. This permit is required for the extension of University Boulevard on the WCSU Westside Campus to provide access to a new magnet school to be constructed by the City of Danbury adjacent to that campus. The DEP 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.

Hearings in this matter included an April 7 hearing to receive public comments on the WCSU campus in Danbury. The hearing continued on April 8 at the DEP in Hartford, and concluded with a meeting on the record at the DEP on April 27, 2004.

On May 7, 2004, pursuant to my post-hearing directive, the applicant filed an agreed draft decision for my consideration.¹ (*Attachment A.*) This document reflects the comments of reviewers IWRD staff and the City of Danbury, an intervening party. The intervenor Brian Lynch also reviewed drafts of this document and, as provided for in my directive, filed separate comments on May 14, 2004.

¹ Although titled “Proposed Final Decision”, this document is an agreed draft decision submitted for my evaluation as provided by the DEP Rules of Practice. Regs., Conn. State Agencies §22a-3a-6(1)(3).

I have reviewed the draft decision and the record, including documentary evidence and testimonies, and have assessed the application with regard to relevant statutes and regulations. General Statutes §22a-41; Regs., Conn. State Agencies §22a-39-6. As set out in the following findings of fact and conclusions of law, I have also evaluated and addressed the comments of Mr. Lynch. §22a-3a-6(1)(3)(B).

II
FINDINGS OF FACT AND CONCLUSIONS OF LAW
REGARDING COMMENTS OF INTERVENOR BRIAN LYNCH

A
FINDINGS OF FACT

1. The site plans for the proposed magnet school include a gravel driveway to be constructed by the City. This driveway, which has already received local approval, would provide access to the back of the school from Middle River Road for deliveries and for teacher parking in a 51-space lot. The elevation at the point where this driveway enters the school property is approximately seventeen feet lower than the elevation of the property where the paved extension of University Boulevard enters the property at what would be the front area of the school. A retaining wall separates these two levels of elevation. (Exs. APP-9, 10, 13; tr. 4/7/04, N. Marcus, pp. 43-47², test. 4/7/04, B. Lynch, pp. 56-57; test. 4/8/04, W. Buckley, pp. 46-48.)
2. The City considered a plan to provide access to the school from Middle River Road that included moving the school closer to the road and widening the road to meet standards to accommodate the increased traffic. The wetlands impacts from this option were significant. Residents were also concerned about traffic if Middle River Road provided access to the school entrance and exit. This concern and the question of the ability of Middle River Road to handle heavy traffic were reasons legislative action was pursued to provide for access through the WCSU campus. (Test. 4/7/04, M. Boughton, p. 52; test. 4/8/04, W. Buckley, pp. 92- 93.)

² The presentation of Mr. Marcus, counsel for the intervenor Mr. Lynch, was not considered as evidence. However, he did present information, later corroborated, that is relevant to this finding of fact.

3. The 2001 legislative act that conveyed the magnet school property to the City from the State provides state funding for infrastructure improvements required to support the school. These improvements include the extension of University Boulevard on the WCSU Westside Campus. Use of this Boulevard is intended to promote accessibility to the proposed magnet school from WCSU, which is close to Interstate 84 and other major routes to provide easier community and regional access to a needed educational resource. (Exs. APP-1, 11a; test. 4/7/04, T. Carlone, pp. 10-12, M. Boughton, pp. 51-53; test. 4/8/04, T. Carlone, pp. 96-97.)

B
CONCLUSIONS OF LAW

Subsection (b)(1) of §22a-41 of the General Statutes provides that where a wetlands and watercourses permit application has been the subject of a hearing, the Commissioner must find there is no feasible and prudent alternative to the proposed action before he issues a permit. The intervenor Brian Lynch contends that using the planned driveway from Middle River Road is a feasible and prudent alternative to the proposed extension of University Boulevard. Mr. Lynch claims that because that driveway, which will result in impacts to wetlands, has already received a permit from the City, building another roadway that will also impact wetlands is “unnecessary and duplicitous”, given the alternative of using that driveway. Mr. Lynch’s argument is, however, flawed as a matter of fact and law.

An alternative is feasible and prudent if it is sound from an engineering standpoint and is economically reasonable in light of the social benefits to be derived from the planned activity that is the subject of the permit application. *Woodburn v. Conservation Commission*, 37 Conn. App. 166, 174, cert. denied, 233 Conn. 906 (1995). The alternative proposed by the intervenor is neither of these.

Using the planned driveway would not be a sound decision from an engineering perspective. The elevation of the driveway where it enters the school property is significantly lower than the front of the building and is separated from that area by a retaining wall. It is reasonable to assume that a re-design or other modification of the

driveway from Middle River Road would be necessary for this driveway to be used as the main entrance and exit of the school, especially as it would have to accommodate a significant amount of cars, vans, buses and other vehicles. It is also logical to conclude that the driveway would need to be a paved road and not dirt or even gravel. A road that is paved with impervious material would have an impact on wetlands and most likely affect the approved plans for storm water management. Middle River Road would also have to be widened to accommodate the heavy traffic going to and from the school.

Using the driveway or any roadway for access from Middle Road is also not the most economically reasonable alternative, given the financial resources available from the state for the extension of University Boulevard. Special Act No. 01-6, *An Act Concerning the Conveyance of Certain Parcels of State Land*, which conveyed the property for the school to the City, provides that roadway improvements and extensions on the Westside Campus necessary to carry out the development of the magnet school will be eligible for school construction funding³.

Fulfilling the purposes of the *Act* requires a roadway from the WCSU campus for access to the magnet school. Therefore, even if the facts showed that a driveway from Middle River Road was a feasible and prudent option from an engineering and economic perspective, the law -- the language of the *Act* itself -- reveals the clear intent of the legislature and refutes any possible argument in favor of that alternative.

Given the characteristics of the wetlands in the area and the applicant's purposes for building the road, the chosen roadway extension of University Boulevard is feasible and prudent. The DEP has approved the application with its roadway for access from the WCSU campus to a necessary and important educational resource.

³ Infrastructure improvements necessary for the magnet school, including any access roadway on the WCSU campus, were designated as eligible for state funds in §26 of the *Act*. Subsection (d) provides in relevant part that "off-site infrastructure improvements...that are required for the development of the regional magnet school and are constructed on the portion of the Westside Campus of Western Connecticut State University ...shall be deemed eligible costs for school building projects under chapter 173 of the general statutes and said regulations." These infrastructure improvements "shall include a roadway...."

An argument opposed to the extension of University Boulevard out of concern for wetlands impacts appears specious at best when the alternative championed would likely result in more impacts to wetlands than those considered and reviewed in the present application. In addition, school ingress and egress by way of Middle River Road would significantly increase traffic, a concern of residents that was addressed by the legislative action providing for access to the school from the WCSU campus. These facts, and this legislative mandate, render moot the argument that the option of using a driveway from Middle River Road is an alternative to the planned extension of University Boulevard.

The direction of the General Assembly and the guiding principles of feasibility and prudence required the applicant to select the chosen plan to extend University Boulevard and to reject the alternative supported by the intervenor. The extension of University Boulevard is the best choice to provide access to the school while avoiding significant adverse impacts to wetland resources.

III ***CONCLUSION***

The application complies with the relevant criteria outlined in General Statutes §22a-41 and relevant regulations. There are no feasible or prudent alternatives to the proposed activity, including the use of the planned driveway or any driveway or roadway for primary access to the magnet school from Middle River Road. I therefore adopt the applicant's draft decision as my Proposed Final Decision and recommend its affirmation by the Commissioner. (*Attachment A*.) I also advise the Commissioner to issue the permit that is the subject of this application. (*Attachment B*).

5/19/04
Date

/s/ Janice B. Deshais
Janice B. Deshais, Hearing Officer