

Minutes of the Public Hearing and Regular Meeting of the Inland Wetlands Agency on January 23, 2013.

A. Roll Call

Present: Cathy Collins, Jim Connors, Ken Cowden, John Higgins, Justin Margeson, Brendan Magnan, Steve Munson and Aaron Sanner.

Absent: Alan Cegan, Michael DeGrego and Richard Lutz.

Also Present: MaryRose Palumbo and Lisa Streit

Collins called the meeting to order at 7:30 p.m.

B. Pledge

All stood for the Pledge of Allegiance.

C. Public Hearing

Collins reviewed the rules of a public hearing:

- Those wishing to speak **MUST GIVE NAME AND ADDRESS FOR THE RECORD**,
- Speak only to items in the jurisdiction of the MIWA - wetlands, brook, river, flooding, and wetland habitat. Zoning issue are not under IWA review
- All questions go through the Chair. There is no dialogue between the public and the applicant. The applicant will present their application, we will take comments for and then against. The applicant will be given a chance for rebuttal to answer any items brought up. There is a second call for those to speak in favor and against – Only those who spoke in the first for/against may speak again, and only to items discussed initially under for/against.

1. IW-A-12-072: Terrace Road, Robert and Claire Kerin – wetland line map amendment in the South Central Shoreline Watershed.

Collins reported that the file contents list is on file and available in the office.

MaryRose reported that the certificates of mailings have been received.

Buddy Field stated that he is representing Dr. Kerin and stated that they are here to establish the wetland line and introduced Otto Theall.

Otto Theall, Soil Scientist and Wetlands Scientist stated that he received his Masters Degree from Yale in 1984; 24 years experience in wetlands investigations; performed 4500 wetland investigations. On 3/20/12 he took 105 soil samples for this site. In October 2012 he took another 60 samples with Henry Moeller of Soil Services. The site was last flagged 15 years ago. Henry is unable to attend this hearing due to his

health. Henry has over 40 years experience. Duplicate soil samples were taken by Otto and Henry at every flag except by the playground. The wetland delineation was reviewed as well as why there can be variations. Otto's test hole map was reviewed with Otto's wetland line and the prior wetland line. Matrix Chroma was reviewed as well as the Munsell Color Chart. He explained the importance of using the color chart which is critical in getting accurate wetland delineation. Below the wetland line there were 2 matrix chroma; further out it is likely to be 1 the further into the wetland it gets lighter. He passed around the chart for review and explained that some people do not use the chart on site and this can be cause for error. A long flat area has more chance for error verses a sloped area. Some people take one sample for every 5 flags. For this site Otto took 160 samples for 20 flags and checked every sample with the Munsell Chart. More samples are better and wetlands definition is based on soils. Skunk cabbage was in question. No skunk cabbage was seen at the site walk. However, there was some in May. There will be a mixture of plants in wetlands and looking at vegetation is a good way to start with delineation. Skunk cabbage is an obligate wetland plant; 99% of skunk cabbage is in wetlands but 1% is not. The stream area was dredged and the material was taken 50' away near flags 12 – 15 and this was a seed source for skunk cabbage and it grew on the pile but is not a wetland. He did not find wetlands in the skunk cabbage based on using the Munsell Chart on site.

Otto proceeded to review/orient the plan to the public.

Collins called for those **IN FAVOR** of the application:

None.

Collins called for those **AGAINST** the application:

Diane Dumais, 21 Hilldale Court, asked to be an Intervener, stated that she bought her house on the marsh and was told that the marsh was a no build area and it has slowly been infringed upon and this is taking way from the buffer. From melting snow, storm surges; the water has to go somewhere. The IWA is to preserve and protect the wetlands and for the public interest. This proposal is not necessary and not desirable. She asked that the IWA please consider the consequences and there is no other reason for the wetlands line to be moved other than for building. She submitted her written statement. MaryRose asked if Ms. Dumais is a sworn Intervener and that it was a process to become an Intervener. Mr. Dumais stated that she is not. Ms. Dumais read a letter from Robert Weitzel, 131 Morningside Drive into the record and stated that he is concerned with the impact on the open space and destruction of habitat.

Lisa Jovanelly, 35 Little Pond Road, stated that she grew up in Morningside and is against this proposal. She has been a resident since 1957 and this area has always been a muddy mess and full of skunk cabbage. She used to put down 2 x 4's in order

to walk through the area. She walked through here to go to school; she ice skated here and has seen deer, fox, pheasant and wild flowers (Jack in the Pulpit). 21 years ago she built her house and had to put up a \$10,000.00 bond, put up a silt fence, she could not have a garage on the side of the house and had to come before the IWA. Terrace Road Extension was built 7 years later and they hired a Soil Scientist. She asked why the City couldn't buy this as open space.

John Amenta, 30 Parkland Place, stated that he has lived here since 1985 and plays with his kids in the marshlands and has seen them flood. He is a builder and a developer and can get an opinion by a Soil Scientist and have them in his court too. He is against this application and feels the IWA should get an objective opinion. He has seen the area flood a lot in 1995.

Rhonda Colborne, 40 Little Pond Road, stated that she abuts the property and feels the property is beautiful and protected by woods. She is concerned with moving the wetland line and the potential building and devaluation of her home. She spent a lot on her home and improvements. She sees deer all of the time. She walks her dogs there all of the time and it is always wet. She is against this application.

John Milachouski, 40 Little Pond Road, moved here in 2010 and has seen storms and dry seasons. He has a window on the side of the view and sees water in the wetlands especially in the fall and sees changes in the environment. He feels 6" is not deep enough to sample and needs to be deeper. He submitted pictures and a DVD of the site and wetland vegetation is not only in the wetland but on his property which is not a wetland. His basement gets water and he is afraid of further encroachment and water intrusion in homes. The area needs to be re-evaluated; there is a lot of money involved that sometimes plays into the equation.

Jim Dorney, 34 Little Pond Road, has lived here for 7 years and grew up in the area. There is standing water at certain times of year. Please consider the runoff, habitat and the community. His basement floods and he asked where the runoff will go. Morningside is on a hill and moving this wetland line will greatly impact the area. The other side was wetlands and was developed and he does not want the same results; shrinking the marsh. He is concerned with the environmental impacts and the neighborhood.

Tyler Morris, 30 Thompson Hill Road, is against this application; a lot of open space has been destroyed and this pushed wildlife into this area. There is a lot of drainage from the hill.

Axel Kirstein, 29 Hilldale Court, stated that he has lived here since 1982 and has watched flows and water go up and down 2 – 3'. His home borders the marsh. This application will significantly change the water flow in the area and it will wind up in basements. He is much more in favor of habitat; deer, turtle, fox, geese flying south.

It will be disastrous and the area should be kept the same for the critters and water and he is against this application.

Christopher Roberts, 4 Parkland Place, has lived here for 17 years and seen a lot of changes. He has seen negative effects to the wetlands and is concerned with the buffer zone.

REBUTTAL

Buddy Field stated that he was the Developer on Westmoor Road and had the NDDB report. They have not hired people to design the line. He has hired licensed professionals to clarify the line and any development has to be engineered and calculated and be approved by the City Engineer, Planning and Zoning, etc. Regarding the wildlife; they are not going into the wetlands, this is protected. Regarding the views; the neighbors do not own the property and the owner has the right to build. Experts are hired to do things correctly. The ground is frozen now so it is difficult for water to go through; when the ground thaws, the water can go into the ground. Soil Scientists determined the wetland line through testing and they have degrees and expertise. Regarding the issue raised with 6' soil testing; Soil Scientists go up to 2' to test the soil. Regarding wetland vegetation in yards; the gentlemen's yard is very beautiful and mowed and is not wetlands.

Otto Theall addressed flooding. The street elevation at Terrace Road and Little Pond is at elevation 20 and this area is at elevation 12-14; so water is flowing towards the wetlands, this is not a concern. This is not an application to build. Wetland plants can be found both in or outside of a wetland and it is a fact species that have a 50/50 chance to grow in a wetland. Some plants have a wide range in hydrology others do not. In response to the request to dig deeper; the water table constantly changes throughout the year that is why they use soil. The soil colors have been changing for thousands of years. The water table is a snapshot; the soils are a long term view of the area. When there is a huge rainstorm there will be standing water in non-wetlands areas. Regarding getting a Soil Scientist in your corner; he gets paid a fee and values his reputation of 24 years and would not ruin that for one job and finds this offensive. He is very objective and is confident many towns would give him good recommendations.

Diane Dumais, is concerned with the wildlife in general. They are looking to change the line and flooding is to be addressed later. If the line is moved it will flood. Regarding losing the views; when we bought our property we were told that this was wetlands and could not be built on. There will be more water.

John Milachouski, stated that the vegetation came up to his yard not in his yard. A significant amount of money has been spent by homeowners on their property and it was bought on the pretense that this area would never be developed. They want to change the line to build more and it will be our problem. He is against this. He

apologized if the Soil Scientists' judgment was questioned but he questioned the margin of error.

John Amenta, asked where does it end. He is a developer but never had to deal with wetlands but dealt with Planning and Zoning. You can never get wetlands back once taken. Where does the line in the sand end. He is against this application.

Axel Kirstein, last year Westmoor Road was developed and the area of habitat has been moved already. Soil samples are a guideline not cast in concrete. Sometimes marsh acts like a tidal pool; how can you guard against that. Everything keeps changing. You could take samples in Morningside and it is the same color and is not wetlands. This will affect the ecology of the whole area and he is against it.

Munson asked how deep the samples were. Otto stated typically the top 20", some areas hit a rock. The statute states wetlands are based on soils not visual. Regarding his motives being questioned; he started with Joe Codespoti in 1985 and was referred to as the Project Killer. It is not his job to move a wetlands line for a house.

MaryRose stated that wetlands are defined by soils only, per CT State Statute.

A five minute recess was taken.

Collins stated that she had expressed concern at the last meeting that we should have a 3rd party review because changing the map line is something that warrants a larger review and not having Mr. Mueller to question it seems appropriate. After some discussion, the following motion was made by Connors and seconded by Higgins:

That the following additional information be submitted for application IW-A-12-072: Terrace Road:

- Third Party review of the proposed wetland line by a certified soil scientist or professional wetland scientist.

The motion carried unanimously.

D. Public Comments

None.

E. Old Business

- 1. IW-V-11-023: Westmoor Road, Field and Son Builders, LLC** – clearing in and within 100' of a wetland or watercourse in the South Central Shoreline Watershed without a permit. Mitigation ongoing.

No new information.

2. **IW-V-11-049: 945 North Street, Barretta Realty Associates, LLC** – storage of wood, material and debris within 150' of a wetland or watercourse in the Wepawaug River Watershed without a permit.

No new information.

3. **IW-V-12-079: 161 Southworth Street, Eric Green, Jr.** – dumping of material and debris without a permit within 150' of a wetland or watercourse in the Wepawaug River Watershed.

MaryRose reported that this is a violation issued 11/27/12 to Eric Green Jr. of 161 Southworth Street for dumping of woodchips and material into a wetland and review area without benefit of a permit. At 12/5/12 meeting the Agency upheld the violation order and modified it to require a mitigation plan be submitted by 1/23/13. She spoke with Mr. Greens' Attorney, Tom Lynch yesterday and received a letter from him today stating that he has contacted Roman Mrozinski of the SWCD and he is hoping to meet with him to formulate a mitigation proposal in the next two weeks, weather permitting. She recommended that the Agency modify the order to require that a mitigation plan be submitted by February 20, 2013. That will give the conservation District sufficient time to view the property and recommend a plan to Mr. Green.

The following motion was made by Connors, seconded by Higgins:

That violation order IW-V-12-079: 161 Southworth St, be modified and the violator be ordered to:

- Submit a mitigation proposal to the Agency by 2/20/13.

The motion carried unanimously.

4. **IW-A-12-080: 400 Burnt Plains Road Building #2, Grace Baptist Church** - Proposal to enlarge foundation and replace existing 1328 s.f. structure with new 1590 s.f. structure, a shed and fire pit with construction, grading and work within 100' of a wetland or watercourse in the Indian River Watershed.

MaryRose reported that this is a proposal by the Grace Baptist Church to remove the existing house structure, enlarge the existing foundation and construct a new building on their building #2 at 400 Burnt Plains Rd. The proposed work is within 2' of the wetland at the closest point. The Agency walked the property on 1/8/13. At the 1/9/13 meeting the Agency requested that the Applicant submit the following information:

- A revised drawing showing the house cantilevered by Wetland Flag 8 to move the proposed disturbance away from the wetland.

- A revised drawing showing split rail fencing in the areas of wetland flags 11 to 1, 1 to 21 and 30 to 33 to mark the edge of disturbance, wetland line.
- The method of dealing with the roof runoff from the new structure.

New plans have been received this evening as well as the basement layout of the house.

Scott Farquharson stated that he has made the changes requested; he brought in the basement 3', is showing the split rail fencing and putting infiltrators in front of the house for roof runoff. MaryRose noted that the map shows the shed and firepit on site and the application has been expanded to include those structures. Sanner asked if the fence would be marked. Scott stated that there would be signage. Magnan asked about roof drainage. This was shown on the plans. Cowden stated that he has issues with brush and leaves dumped by wetland flags 26-22 that debris should be removed and the area planted and he suggested high bush blue berry, clethera, and pepper bush.

The following motion was made by Connors, seconded by Higgins:

After duly considering all relevant factors, I move to approve application IW-A-12-080: 400 Burnt Plains Rd Building #2 based on the plans entitled "*Grace Baptist Church Inc. property located at 400 Burnt Plains Road, Milford, Connecticut*" by Lewis Associates, 2 sheets dated: 11/14/12 Sheet 4 of 4 revised 1/10/13, the information in the file and presented this evening, for the following reasons:

This action will not have an impact or effect on the physical characteristics of the adjacent wetlands and watercourses. With conditions including:

- The Permittee will submit a construction plan *prior* to taking out the permit.
- Wetland notification to be placed on the asbuilt and in the property deed to give notification to property owners that permits are required from the MIWA to work on the site.
- Wetland boundary markers to be placed on the split rail fencing to notify the property owner that no storage or work can occur in the wetlands without additional permits
- Plantings on 5' centers from wetland flag 22 to 26, plantings to be 3 gallons in size.
- A permit condition bond to be calculated must be posted with the MIWA for S&E controls, wetland plantings and wetland, boundary markers, and an asbuilt showing finished 2' contours and locating all site utilities and structures. The bond may not be released until the site is stabilized, the asbuilt has been received and the site inspected and approved for compliance with the permit.
- A mitigation monitoring bond to be calculated for plantings and invasive controls along the wetland boundary, and 3 years of mitigation monitoring by a professional wetland scientist with reports to the Agency in the spring and fall on the status of the site and recommended amendments to the mitigation plan for best stabilization of the site. If the site is not stabilized by year 3 this bond may be held until such time as the site meets the design criteria.

- The Permittee must submit a certification by the project Engineer that the completed project meets the design intent of the approval prior to bonds being released.
- The permit is issued 1/23/13 expires 1/23/18 unless otherwise provide for in the Connecticut General Statutes.

The motion carried unanimously.

- 5. IW-A-12-083: 425 Buckingham Avenue, St. Mary's Church Corp.** – construction of an embankment for a burial area with work within 100' of a wetland or watercourse in the Indian River Watershed.

MaryRose reported that this is a proposal for clearing and filling within 100' of a wetland and a watercourse to expand the burial area at St. Mary's Cemetery at 425 Buckingham Avenue. The proposed work is 12' at the closest point to the Inland Wetland line and 18' at the closest point to the Indian River. The proposed work includes clearing of vegetation and grading. Ray Paier of Westcott & Mapes is here this evening to present the project and answer your questions.

Paier oriented the site and stated that it was primarily a lawn area with a wooded area as a buffer to the south. The northwest corner of the plan (14' x 40') is wetlands. This portion of the property is 4 acres. The purpose of this proposal is to establish grading for new burial plots. They are looking to maximize the number of plots while working with the shape of the property. The wetlands were flagged by Tom Pietres of Soil and Environmental Services. In walking the site with MaryRose it was determined that a vegetative buffer needs to be kept along the edges all trees of 8" caliper or larger to remain. Soil and erosion controls are a silt fence at limits of work as well as a construction entrance at the driveway. Paier contacted the DEEP and the Natural Diversity maps were reviewed and it was determined that there would be no impact with this project. Collins questioned the AE zone in relation to the work area with filling and asked if this is the old flood line or the one about to come into effect. Paier stated that this is based on the intended criteria after Storm Sandy. MaryRose stated that she walked the site with three Engineers from Westcott and Mapes and described the site. They grow/store soil here and have for many years. Her concern was with root mass but they have since modified their plan. Cowden was concerned with any disturbance under the canopy. Paier reviewed this on the plans.

The following motion was made by Connors and seconded by Higgins:

After duly considering all relevant factors, I move to approve application IW-A-12-083: 425 Buckingham Ave based on the plans entitled "*St Mary's Cemetery 425 Buckingham Avenue, Milford, Connecticut*" by Westcott & Mapes, Inc. 3 sheets sheet 1 of-1 dated: 8/31/12 revised 12/18/12, sheets C-1 & C-2 dated 12/17/12, the information in the file and presented this evening, for the following reasons:

This action will not have an impact or effect on the physical characteristics of the adjacent wetlands and watercourses. With conditions including:

- Wetland notification to be placed on the asbuilt and in the property deed to give notification to property owners that permits are required from the MIWA to work on the site.
- A permit condition bond to be calculated must be posted with the MIWA for S&E controls, wetland plantings and wetland, boundary markers, and an asbuilt showing finished 2' contours and locating all site utilities and structures. The bond may not be released until the site is stabilized, the asbuilt has been received and the site inspected and approved for compliance with the permit.
- Grass slope to be a no mow area.
- The Permittee must submit a certification by the project Engineer that the completed project meets the design intent of the approval prior to bonds being released.
- The permit is issued 1/23/13 expires 1/23/18 unless otherwise provided for in the Connecticut General Statutes.

The motion carried unanimously.

F. Minutes

A motion was made by Connors, seconded by Higgins to approve the minutes of 1/9/13 as presented. The motion carried unanimously.

G. Staff Report

- West Avenue and Gulf Pond pump station projects are ongoing.
- High Street Sewer job is almost complete.
- Indian River Interceptor continues to be on hold.
- Sanitary Sewer Infills No. 1 is ongoing.
- 134 Old Gate Lane – the restaurant work is ongoing.
- Prospect Falls site work is complete; the 2nd mitigation report has been received.
- Please remember to call or email if you are unable to attend a meeting, especially site walks and public hearings.

H. Chairman's Report

None.

The next regular meeting is on February 6, 2013.

There being no further business to discuss, the meeting adjourned at 9:55 p.m.

Respectfully submitted,

Lisa Streit

These minutes have not been accepted or approved.