

Minutes of the Public Hearing and Regular Meeting of the Inland Wetlands Agency on April 1, 2009.

**A. Roll Call**

Present: Barbara Bell, Jim Connors, Ken Cowden, Jon Higgins, Lynne McNamee, Steve Munson, Jim Richard and Phil Fulco.

Absent: Allan Cegan, Joel Levitz and John Ludtke.

Fulco called the meeting to order at 7:30 p.m. and deemed Bell and Connors the voting alternates.

All stood for the pledge of allegiance.

Fulco reviewed the rules of the Public Hearing.

**B. Public Hearing**

1. **Application IW-A-09-001: 30 Lavery Lane, William German** – proposal to begin a farm, nursery and build 8 outbuildings for storage of equipment, tools, supplies and to shelter farm animals as well as pool and patio for existing house within 100' of a wetland in the Housatonic River Watershed.

The file contents list is on file and contains 30 items and 2 sets of site plans. The certificates of mailings have been received.

William German stated that he was here to review the rights and regulated and non regulated areas of farming and referenced Section 4.11 Q of the Connecticut General Statutes and that he based his plan on this guideline. There will be minor grading for the garden and staging area. He reviewed the proposed site plan dated 8/18/08 and received by the MIWA on 3/18/09. The proposed staging area and second driveway is for a turn around for the purpose of resale of products. The barn is for fertilizer storage, packing products, tools and the planting and mixing of soils. He proceeded to review the garden area. This will be for vegetables for personal use and the shed for tools of the garden (rakes, roto-tiller, etc.). The 10' x 10' shed closest to the house is for chain saws, gas and fuel, the expensive tools to be locked up. There will be dry wood storage with a canopy top. This is for long cut wood to be on shelving to stock pile for any needed repairs and irrigation pipes. The large shed is for firewood storage and a wood furnace to heat the greenhouse for starter plants. The next building is for animal shelter for 2 miniature goats and 2 miniature horses and next to that is a manure storage bin.

Fulco called for those **IN FAVOR** of the project:

There were none.

Fulco called for those **AGAINST** the project:

Attorney Steve Studer, 75 Broad Street, Milford stated that he was representing the neighbors; 55 Lavery Lane – Grimshaws, 44 Lavery Lane – Sifakis, 20 Lavery Lane – Marnel, 21 Lavery Lane – Reher, 11 Lavery Lane – Iosifidis, 39 Lavery Lane – Clark, and 881 Wheelers Farm Road – Marinaccio.

The site has a poor history of compliance. In 1993 there was extensive unpermitted fill of wetlands and watercourses and in April 1993 a Cease and Desist was issued. From this 5 points were to be addressed and on 6/29/04 per the IWA expert, Mr. Jontos the violation continued. In December 94/95 a 4 lot subdivision was proposed to appear as a solution and was withdrawn in 1995 and the violation was never corrected. Violation IWA 93-014 was referenced and this file was submitted. A lot of work was done; the wetlands were filled and the stream course was altered. In 1997 there was approval for a single family home with 2 conditions and they don't appear to be respected: 1 – a 25' buffer, natural and undisturbed, between the building envelope and the wetlands. There is clear evidence of this not being respected. 2 – plantings at 5' centers on the upland edge and there is no evidence of such today. In 2008 Planning and Zoning issued a Cease and Desist for non compliance and copies of this file were submitted as well as pictures showing disregard for the wetlands. This applicant has a clear history of poor credibility and past conduct showing disregard for this Agency. This property has been a junk yard with heavy construction equipment being stored there and it appears that these violations have been corrected. Today – work was begun in spring/summer 2008 for the garden area within 20' of the wetlands. There were no S & E controls put in or maintained, no permits and significant sedimentation has been observed in the stream. There is substantial clear cutting in the review area and pictures were submitted. He compared this to someone building a garage and then requesting a Planning & Zoning variance to fix it.

The permit for the single family home was submitted. There are flaws: - no signatures by all owners of parcel 1C. There is no scientist report other than Tom Pietras – no hydrology, biology of the area, effects downstream, etc. It has been a dry year but Studer reported that we are 50% down in rainfall, yet it is pretty wet on this property. Per Tom Pietras' revised report he indicated that a depression on the NE portion of the property is a potential vernal pool and needs to be looked at and he doesn't know if this is the time of the year. There is a question on intermittent watercourse and he thinks it is a mischaracterization. There is a farming exception under the regulations and he submits that this property doesn't meet it in whole but does meet it in part. He further submits that at least some portions of the application require a permit. He referenced the following case law: *Sacler v IWA Town of Woodbridge* – the activities of the property owner removing trees.

April 4, 2007 CT Superior Court Fairfield Conservation Comm. Vs Red 11 LLC the court concluded that the clear cutting was a regulated activity. (He will submit a copy of this case tomorrow). He further stated that not all activities are covered under a farm exemption. Case law is pretty clear as was the statute on

this: the staging area, fill, the driveway, excavation of the garden area, any building that is not directly related to farming is not exempted activities. He addressed the garden area stating that Mr. German said it would be for vegetables for family consumption, not for resale. This is not farming and not exempt. The buffer area – limitations have not been respected in the past and will result in a loss of wetlands. Past conduct is indicative of future conduct. The applicant is a contractor and Studer feels that farming on this property is a pretext; there is no credible evidence that it will be a farm and no evidence of his ability to farm. The application for the farm shows 3.19 acres for farm activity and this is not true; the IWA application shows less than 1 acre. No one is anti-farm, but this isn't a farm and needs to be looked at by experts. Exemption will swallow the rule. The 18' x 20' structure for fertilizer is too large and not near fields and is not appropriate. 2 tool sheds, 1 storage shed, a wood furnace (where will fuel for this come from), no fencing for grazing area. Exemption does not fit this situation or property. Studer also feels that feasible and prudent alternatives exist; a better design/layout, some consolidation. The driveway and staging area are not necessary. There is already a driveway and it is not necessary to have sales on site, people can be brought up by the garage. It was brought up that Mr. Sifakis's driveway is illegal and on German's property and this is not so, this was built in 1986 and is a valid claim to adverse possession. This was never dedicated as a future road. It is shown as access drive and is still technically a portion of lots 1&2. The IWA needs to balance the need and right to make use of the land with the need to protect the functions and values of the wetlands. There is no balance in this application and it appears to be a means to avoid the negative aspect of recent actions. As a farm, it could be more practical and efficient.

Susan and Roger Reher, 21 Lavery Lane stated that they are opposed to this project.

Charles and Kendal Grimshaw, 55 Lavery Lane stated that they are opposed to this project. Mr. Grimshaw stated that water runs on both sides now and he is concerned with flooding.

Phil and Renee Marinaccio, 881 Wheelers Farm Road stated that they are opposed to this project.

Mr. and Mrs. Sifakis, 44 Lavery Lane stated that they are opposed to this project.

Mr. and Mrs. Clark, 39 Lavery Lane stated that they are opposed to this project.

Mr. and Mrs. Iosifidis, 11 Lavery Lane stated that they are opposed to this project.

Barbara Marnel, 20 Lavery Lane stated that she is concerned with drainage in her backyard and farming vehicles being hazardous. She is opposed to this project – there is a lot of damage.

Constantine Marnel, 20 Lavery Lane stated that he works from his home and for over 5 years he has watched destruction. He can now see his yard from Wheelers Farm Road and he never could before. He has seen 50 dump trucks with piping, truckloads of fill, the altering of the property for at least 5 years and he knows he is entitled to peace and tranquility on his own property. The smell of diesel fuel and exhaust is filling his home. He wanted to know what happened to neighbors coming over and discussing things. No regard was given and he is opposed to this project.

### **REBUTTAL**

Mr. German stated that he is registered as a farm and it is definitely a farm. Regarding the staging area – product will be brought to the farmers market. He stated that the Marinaccio's have used his property as a landfill – dumping brush, etc. and have filled the stream with boulders to narrow it and have built an outbuilding 1 ft. away. They are hypocritical and have abused the wetlands without a permit. The Marnels run a dog kennel and have a permit for 1 dog and have 8 dogs at a time. Fulco stated that this line of speaking was not related. German proceeded to address the second driveway. There is an easement with permission from his brothers. The neighbor paved the driveway after he bought the house and he didn't and does not have a right to this. The shed is for fertilizer and supplies – peat moss, etc. He purchased the land from his father and the past is the past. He has planted a couple of hundred trees for buffer and he has a right to farm his property. He has reduced his plan and would like approval.

Attorney Studer stated that he doesn't know if the abuses were from the father but William German was cited on the cease and desist and he believes it is the same person.

### **COMMISSIONERS CONCERNS**

Munson asked if all of the required permits and conditions have been met. MaryRose stated that she has not compared the site to its original approved conditions but that there was a permit for construction of the house and the bond has been released so at the time of release the site was in compliance with the permit conditions. There was a Planning & Zoning violation in 2008 for a shed, pool and outbuildings in the rear that Mr. German contended were for a farm. This application was submitted in May and withdrawn in June. Mr. German has removed the items to be in compliance with Planning & Zoning. There are no violations on record and MaryRose is not sure if there are violations to previous approvals. Munson asked if the other owners of the property were Mr. German's siblings and if he has power of attorney to sign for them and questioned what a hobby farm is. German stated that they are and he does and a hobby farm is for his own consumption of food. Munson - regarding the vernal pool and the proposed horse grazing field – there are a number of pine trees that are diseased and he asked if all of those trees coming down. German stated that almost all of

the trees will be staying and most of them were planted by his family as part of a tree farm. Munson asked if based on this there would be no change in sunlight to the vernal pool area. German stated that that was correct and it has not been determined a vernal pool. MaryRose stated that Tom Pietras stated in his letter that he was there on 3/10/09 but it was too early in the season to tell but it has characteristics of a vernal pool. On the site walk this afternoon it was holding water, it is bowl shaped like a vernal pool and it is holding leaf litter. MaryRose did not see egg masses but that doesn't mean that it isn't a vernal pool. It may be too early to determine. It was requested for Tom Pietras to be here tonight but he apparently could not be. Munson stated that the intermittent watercourse looks like it can dry up. Connors stated that the other vernal pool on the adjacent lot had frogs according to the applicant. MaryRose clarified that this was off site. German stated that it is dry now and there is no breeding.

McNamee stated that over the course of these presentations the proposed garden area was addressed and tonight it was referenced as a hobby farm and she questioned this. German stated that at this point it is for personal use, when it is bigger and strong enough 3 years from now he would like to sell product. McNamee asked if in 3 years there would be any changes for this and if top soil would be brought in. German stated that there would be no change and there is no soil to be brought in. He feels there is 12" of thick, good top soil for gardening because it was a farm before. McNamee asked that in 3 years would there be additional trucks and traffic going on the proposed road with selling to the public without going through the wetlands. German stated that he would need to access from his septic system area – (south side) not driving through the wetland. McNamee asked what the staging area was for. German stated that it is to grow and then replant and then bring to the market. McNamee asked about fertilizer and soils. German stated that there would be peat and top soil mix that comes in bundles and they would be stacked in the barn. McNamee stated that the structure could be moved towards the property line further away from the wetlands. German stated that it could. Connors stated that the staging area does not look like it could hold much and turn around. German stated that he will make do.

Bell asked about the citing of court cases. Studer stated that he referenced the Conservation Commission vs. Red 11, LLC and will submit this tomorrow and the Goodspeed case was along the CT River. Bell asked if it was the intention to have Tom Pietras present or a report. There is no information on the function of the wetlands or impacts to the wetlands and she would like to know if a report is anticipated or will questions be answered. German stated that Mr. Pietras has done all of his work and gave his report. Fulco stated that we are not used to having our questions ignored – we are seeking information upon which to make a decision and if the information is not forthcoming then that will be taken into consideration in our decision. We don't have any of the other information we requested – just flagging and that there is an intermittent watercourse. German stated that in Pietras's report the vernal pool could not be determined at this time. Fulco stated that there are valid questions that need to be answered by your expert

or you may need another expert. We need his professional opinion regarding value, potential impacts of the proposal, etc. This is needed to make an informed and educated decision. German stated that he thought his report was enough and Mr. Pietras was unable to come tonight and he will be able to get the information this week. Bell questioned the proposed grazing field for horse – that is on there from the earlier map that we have. Goats were added and the horse became horses. Supposing that the grazing field is for all of those animals; when we first visited the property the Chair observed that the area in under large dense pine trees and strewn with pine needles. This is hard to remove and even if it could be removed it would be hard to grow grass. So you called it a paddock. Now it is back to a grazing field which is it. German stated that it will be a paddock area fenced. Bell stated that fencing should be shown on the plans. She further questioned the purpose of the second driveway as part of the farming operation. German stated that it would be for better access to the area and could perform a loop better way in and out – I could shut the shop door, chain it off, farm closed and it is our easement – trying to use it in a better way. Bell questioned that it is a preference matter and it would be better but not necessary to operation to the farm. German agreed.

Richard asked how many animals would be on the paddock area. German stated no more than 4. Richard stated that animal waste getting into the wetlands was a concern and asked if there were any prevention methods. German stated that it would be stored in the manure area and he is not planning a holding area. Richard asked if the Soil Scientist could address solid and liquid waste runoff and its impact. German stated that the Regulations state that grazing is allowed in a wetlands area so waste must have been considered.

McNamee asked if random people are going on site to purchase items. German stated that they would not. McNamee asked about the staging area activity. German stated that it would be for nursery products/plants and to mix peat with top soil with a little backhoe. McNamee questioned needing that much space. Connors questioned how there would be access to the building if it was all stacked with shrubs, etc. German stated that he would leave a little alleyway. Connors stated that it would be better placed adjacent to the driveway and asked if it would be a full time farm. German stated that it would be part time.

Fulco stated that the 2<sup>nd</sup> driveway initially was to be for the public to access your area to sell, now if not having public why it is necessary. As Connors pointed out the building would be better located adjacent to your driveway. Staging area could be turned to NS rather than EW to move it further from the wetland. If what is happening in the staging area is just nursery operation and no public this is still laid out like the original application when the public were going to drive in to park and shop. Now it doesn't make sense, it could be reconfigured in a more user friendly way.

German doesn't feel that he could make a swing around with a truck if configured another way. Connors stated that if it is filled with plants, a truck can't get through. Fulco stated that a hobby farm for vegetables whether for personal use or for sale, it seems bigger than for personal use. German stated that it is a lot of work to get approval and to get going. It will take a few years to get it ready and eventually bring to market. Fulco stated that it could be smaller. German stated that it is the size he wanted and he will be freezing produce. Fulco stated that the applicant is seeking exemption for the entire operation and asked if German felt it was all essential to farm or if it should be partially permitted. German stated that he considers it all exempt and essential to the farm, maybe a permit for the 2<sup>nd</sup> driveway which falls outside the 100' review area. Fulco stated that the top edge of the staging area and driveway are within the 100' review area from wetland flag 6 on the plan. Connors stated that there is a drainage swale between the 2 driveways as seen on the site walk today.

Bell stated that German is using the phrase as hobby garden then other times home garden and she asked what his understanding of the difference between a hobby and a home garden? Is it your notion that they are the same or pretty much the same? German stated that a hobby farm is large to eventually use to sell and bring to market. Bell asked then a hobby garden would be large and a home garden is small. German stated that he wants to do a hobby size garden that is for his own consumption and when it gets rolling it can sell. This is just a start; the perimeter can be the same size, just the amount to be produced would be larger. Fulco stated that a farm could be 1,000 acres and doesn't mean 1,000 acres would be farmed from the start. It could start with ¼ acre and 20 years later farm 1,000 acres and it doesn't matter if it is making money or not. Fulco asked German what he wanted. German stated that he wants to be a farm the size that is proposed. McNamee stated that this is a lot for one person to do and asked about future employees. Fulco stated that that doesn't matter. McNamee stated that it would be for future parking spaces. Fulco stated that that would have to come back before the IWA for approval. McNamee stated that if the paddock area is not for grazing what are they eating. German stated they would eat from hay bales in one of the storage areas. There is a hay farm around the corner on Herbert Street. McNamee stated that she is concerned with diesel and leaks from trucks with the driveway. German stated that he values the wetlands and he could have a spill container.

Fulco asked about the drainage swale between the existing driveway and the neighbor and if there was any information on its history. MaryRose stated that there is not and the contours on the plans do not reflect this. There was water from the last rain located in the location of the proposed driveway and it was suggested that Mr. Pietras could address this. Fulco stated that he would like this addressed for function and if it was lost what the consequences would be and clarification from Mr. Garcia.

MaryRose stated that when bags of peat and soil are taken out of the storage area and put in the staging area; this is 3' from the wetlands and she asked what would

prevent this from going into the wetlands. Germans stated that there could be a silt fence. Fulco asked if there would be top soil from off site. German stated yes, bagged top soil, no top soil pile. Fulco stated that Attorney Studer cited various violations and asked if there were any complaints. MaryRose stated that she could check the records but her only recollection was from 1 month ago.

Fulco stated that the Public Hearing should be kept open for: obtaining the history of violations; answers from Mr. Pietras regarding the intermittent watercourse, evaluation of wetlands, drainage swale, impact of animal waste and vernal pool clarification, impact on the wetland from removal of trees from the garden and vernal pool areas; Steve Studer submission of court documents on farming case; a clear written summery report on the proposed uses and why they are exempt under the farming exemption; fencing for the paddock area to be addressed; Cowden would like to see the proposed actual grading of staging area to describe the proposed grading, right now grade towards the wetlands how to control material and equipment from getting into the wetlands.

Fulco stated that the applicant should look at alternatives to the footprint to be as far away from the wetlands as possible. Higgins stated that the shed and staging area and what would be in there should be in the report; if they are in plastic bags don't need to be covered and therefore 1 shed could be removed.

A motion was made by Connors, seconded by Munson to leave the hearing open until May 6, 2009. The motion carried unanimously.

A five minute recess was taken.

**C. Public Comments**

None.

**D. New Business**

- 1. Pre-Applications IW-PA-09-005: 30 Lavery Lane, William German** – installation of a 15' above ground pool and 14' x 25' stone patio within 100' of a wetland or watercourse in the Housatonic River Watershed.  
This will be discussed at the next regular meeting. No action taken.
- 2. Application IW-A-09-003: 0 Marion Avenue, Ronald Standish** – proposal to construct a single family home within 100' of the Housatonic River Watershed. The applicant and his consultants are gathering the information requested by the IWA at the last meeting and asked that this item be considered at the next regular meeting. No action taken.



**E. Minutes**

A motion was made by Connors, seconded by Richard to accept the minutes of 3/18/09 as presented. The motion carried unanimously.

**F. Subcommittee Reports**

None.

**G. Staff Report**

- It is intended that the Bylaws rough draft will be ready for the next meeting.
- The hotel application on Plains Road – there have been some changes that were positive. It is further away from the wetlands with elimination of some parking. McNamee asked MaryRose to take a second look at this for runoff.
- MaryRose and Fulco met with the Sewer Commission Consultant regarding the West Avenue pump station and this work should commence next week.
- The Board of Aldermen budget hearing will be on 4/13/09. There has been a cut in overtime from \$4,000.00 to \$2,500.00. A discussion followed regarding the amount of meetings per year and the pros and cons of reducing meetings. Increasing fees was discussed. Bell discussed Stimulus funds for clean energy and energy efficiency through Block Grants and State Department of Energy fund that may be appropriate for the IWA.

**H. Chairman's Report**

- The Mayor cut \$2,000.00 from the budget and the Board of Finance cut another \$1,000.00. This is the 5<sup>th</sup> budget in a row where less was presented from the year before and there were still cuts.

The next regular meeting will be on 4/15/09.

There being no further business to discuss, the meeting adjourned at 10:40 p.m.

Respectfully submitted,

Lisa Streit

These minutes have not been accepted or approved.