

Minutes of the Public Hearing of the Inland Wetlands Agency of May 6, 2009.

A. Roll Call

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

Absent: 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.

B. Public Comments

None.

C. 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, equipment, tools, supplies and to shelter farm animals as well as a pool and patio for existing house within 100' of a wetland in the Housatonic River Watershed.

Fulco reviewed the rules of a public hearing and noted that there are now 58 items in the file and 3 maps. It is on file and available from the office. This is a continuation of the public hearing. At the 4/1/09 meeting the public hearing was left open for the submission of information and clarification of the following:

MaryRose reviewed the issues and the applicants' response

Obtaining the history of violations; A violation was issued for filling on this property in Spring of 1993. A report by Bruce Laskey, Soil Scientist, was issued in 5/23/1994 determining the amount and area of fill. The Agency received an application to satisfy the filling with mitigation plantings and to construct a single family home on the site. The first application was denied. The second was approved. The house was built and the Agency conditions for plantings were satisfied.

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; Addressed in Tom Pietras' letter of 5/1/09.

Steve Studer submission of court documents on farming cases; received, copied to members and put in file.

A clear written summery report on the proposed uses and why they are exempt under the farming exemption; Addressed in Janet Brooks memo of 4/30/09.

Fencing for the paddock area to be addressed; Shown on the plan revised 4/20/09.

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. Berm to protect wetland is shown on plan revised 4/20/09.

Alternatives to the footprint to be as far away from the wetlands as possible. Alternatives are shown on the plan revised 4/20/09.

Attorney Janet Brooks representing the applicant submitted an advisory opinion from the State Department of Agriculture dated 5/1/09. She also submitted letters from the applicants' brothers consenting to this project as well as a drawing of clarification of the location of the inundated area. She then proceeded to review the newest plans: no fill is required and manure is to be used on the farm. She stated that if the IWA decides that the farming exemption means not allowing liming, fertilizing, etc. it would not be in line with the Legislature since it would only allow non-sustainable farming. Farming and gardening are both exempt and liming and fertilizing are both accepted practices in farming and are not fill under CGS1-1q. Mr. German prefers the location in row of buildings along the north of the property for the barn. Therefore, he withdraws option 2. They submitted a memo that will address the number of trees to be removed. Specifically the animal barn will require the removal of 2 trees. They responded to the IWA's letter of 4/6/09 regarding the driveway swale. Tom Pietras letter addressed this and if it is determined that the items proposed are agriculture; the IWA does not get to condition their use since they are an exemption. Due to the correction of the location of the shallow inundation area and since Mr. Pietras determined that it was not a vernal pool, they would like to withdraw option 2 of the berm in the area of inundation. Attorney Brooks further stated that since the applicant is only requesting exempt activities, it is not an appropriate line of questioning for the IWA to question the functions and values of the wetlands. Mr. German has put in some soil and erosion control measures. In response to Attorney Studer's inquiry on clear cutting, Mr. German submitted attachment E, which is a color coded and accurate map for the purpose of counting trees. It is on the previous version of the map and is a tree reference only. It is Attorney Brooks' opinion that this is not clear cutting based on the Model and MIWA Regulations' definitions. The employment status of the applicant does not weigh in on the application – only the activities. The Commissioner of Agriculture has final say and he reviewed all elements of a farm and concluded all activities fall within the meaning of agriculture. If the activities are agriculture than they are exempt and the IWA's

duties are done. The IWA can not rely on “I’m concerned” in general. They are not proposing a farm pond and that is the only item requiring “essential to the farming operation” criteria. In response to Steve Studer’s memo – Attorney Brooks doesn’t dispute anything in the law that he says; but he wasn’t aware that the Department of Agriculture had weighed in and that anything in a gray area had been removed from the application.

Fulco called for those **in FAVOR** of the application:

None.

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

Charles Grimshaw, 55 Lavery Lane – stated that he can look straight into the wetlands and there is underground water in the area and he is concerned with it coming onto his property. The stream is 12’ across.

Susan Reher, 21 Lavery Lane – is concerned with negative impacts and potential water problems and she would like clarification of the tests from Tom Pietras and what those results are. She asked about federal wetlands and what a regulated activity is. Fulco stated that the report shows no chemicals, that an intermittent watercourse does run through the property and there are no federal wetlands on site. Mrs. Reher asked what the impacts are of the intermittent watercourse. Fulco explained that it is intermittent. Mary Rose stated that all answers have been addressed by an expert and that there are federal wetlands on the property and they are not within the MIWA’s jurisdiction. Mrs. Reher questioned if all answers were addressed. Fulco explained that Mr. Peitras is an expert in his field and the IWA is bound by law to take his findings as fact and he is the only expert and there is no conflicting testimony. Mrs. Reher asked if the IWA every hired their own experts. Fulco stated that they have but it was not warranted here. Mrs. Reher stated that she is concerned with trees and regulated activities. Fulco explained that the IWA only issues a permit if there is a regulated activity; if an activity is deemed exempt then it can not be regulated; this is state law.

Rene Marinaccio, 881 Wheeler’s Farm Road – stated that the intermittent watercourse is on her property and is wet $\frac{3}{4}$ ’s of the year and she is concerned with tree removal and the effects of such to the water level. Also, pesticides and run off into the water are a concern.

Robin Harrington, 880 Wheeler’s Farm Road – stated that she lives across the street and the water table is tenuous. She is concerned with pesticides and run off. She has a history of cancer and this is a concern for her. She has witnessed a lot of tree removal over the years and the effects to the water.

Kendal Grimshaw, 55 Lavery Lane – the stream is across the street and goes all the way in the back and branches out and is on German's property and she is concerned with water. She does not want this in the neighborhood.

Barbara Marnel, 20 Lavery Lane – stated that it was in the minutes that this is to be a hobby farm and animals need full time care. She is also concerned with tree removal. She doesn't understand how this could be a part time farm for one person.

REBUTTAL

Attorney Brooks stated that whether there are federal wetlands or not is irrelevant and confusing; there are different definitions and this site follows CT guidelines. The definition of a regulated activity was read and this shall not include exemptions. A site is either regulated or exempt. This doesn't mean there are no rules. There are plenty of other laws and regulations; nuisance, trespass, etc. She addressed the issue of a part time farm. She met with the Commissioner of Agriculture and the DEP and the face of agriculture has changed. Without exception, people who do farming have outside jobs. Examples of farmers she has worked with are: shoe retailer, Financial Advisor, Contractor, someone retired from waste hauling interests. Cash flow is needed in order to sustain a farm and the Department of Agriculture understands this.

Fulco called for all of those **in FAVOR:**

None.

Fulco called for all of those **AGAINST:**

Barbara Marnel stated that she understands part time but there are probably other people working the farm. She doesn't want animal smells and disrepair.

Robin Harrington stated that she would like to know the impact for the 8 separate outbuildings and their foundations.

Commissioners

Levitz referred to the Red 11 case in Fairfield; page 13 – 22A 42 general statutes that states that buildings not directly related to farming or redirecting watercourse for farming – land can not be raised and there can be no roads. Attorney Brooks stated that there are no such proposals here. That case had relocation with continual flow and reclamation of Wetlands & Watercourses they wanted to drain and ditch and then raised the soil a number of feet – Mr. German is working with the soil contours that exist there. And has no roads but when he had them they were related to the farming operation. She feels that no things that made Red 11 having to get a permit are in play here.

Levitz has concern with chicken manure. Fulco stated that the animal waste is put to rest; if animals are allowed, waste is allowed.

McNamee referred to the letter from Attorney Brooks stating that the applicant provided the tree inventory and she questioned if this is appropriate since clear cutting is an issue and she asked if a second opinion is appropriate. Fulco stated that clear cutting is allowed if it is for an extension of crop land and the IWA needs to deem if this is exempt or not. He is asking for a nursery area. McNamee stated that the property has evolved. Fulco stated that it has finally gotten down to what it is to be. He feels it should have been withdrawn and a pre-application for exemption been submitted. This muddled the water and confused the issue. It would have been neat and clean if there was a clear plan from the beginning.

Attorney Brooks stated that there should not be an exact number of animals, specific plants, etc. This is proposed farming uses at this time, if additional buildings or cropland are proposed; he would have to come in as appropriate. Mr. German did not intend to be a regulated activity and should not have applied for such, it was a learning process and this is the final plan with no alterations.

Bell asked about the photos of the shallow area and who took them. MaryRose stated that Tom Pietras took the photos. Bell asked about the greenhouse and if it were by itself would it be exempt. Brooks stated that it would be and it is stated in 1-1q of the statutes greenhouses specifically. Bell asked if packaging and processing of material from animals and crop that were not raised on the farm were exempt. Brooks stated that it is. Bell asked if a feed lot – a lot to feed animals that do not live on the property is exempt. Brooks stated that it is based on the statutes – feeding livestock, production and harvesting for sugar or maple syrup. Bell asked about the grazing field and if grass will be grown there or will animals be fed hay and simply exercised like a corral or paddock. Brooks stated that both paddock and grazing fall within the exempt status – grazing specifically. German stated that the grazing area has been expanded to allow them to graze and eat hay and then replenish the grass. Bell asked if the proposed nursery area of 60' x 135 will occupy 60' x 90' of wetland. Brooks stated that that was correct. Bell discussed the staging area and the turn around area and the nursery area and the memo from 4/30 does not address the nursery and she asked if both were going to be used for growing plants. Brooks stated that she covered these areas in her memo as one area – “this area will be used to grow landscaping plants in part in the ground and in part in pots” and she advised Mr. German to apply for it as long as he is not draining and ditching or changing the profile of the wetland. Bell stated that the two areas are dependent upon each other and due to the number of changes she wanted this clarified. The previous plan stated plants were coming from an outside source to be repotted and asked if this is still the plan. Brooks stated it is as well as plants from the greenhouse. Bell further stated that certain farming activities are not allowed – such as filling or reclamation of wetlands – an altering of the wetlands from its original natural state. Wouldn't it seem to you

that reclamation of the wetlands would be going on in this nursery area? The soils are not suited to grow landscaping plants usually found in a nursery, also putting in pots and topsoil mixing are amending the soil in a nursery area to amend the plants wouldn't that fit into the definition of reclamation? Brooks stated that Steve Tessitore once said that reclamation is kind of a 1930's word – reclaiming so it can be productive land. In Red 11 the definition of reclamation is to drain it or build it up. Mr. German is doing none of the above – not building up, not draining. She does not feel amending soil is reclamation. Bell addressed the watercourse – German has stated that the watercourse is only a cut through with a bull dozer associated with farming activities. This watercourse is falling through the cracks and she asked if the applicant still considers it exempt and can be altered at will. The expert has not weighed in on this and it is arguably intermittent with continual flow per a neighbor. She asked what Mr. German considers it to be. If it is intermittent it would not be automatically exempted and if it is the intention to alter it then it would have to come before the IWA. Brooks asked German if there were any plans for alterations to the intermittent watercourse. German stated that there is not.

Fulco stated that previous discussion on the nursery and landscaping plants was that once he dug up the landscaping plant he would have a hole and he would have to fill the hole in the wetland and wetlands cannot be filled. Brooks stated that that would mean that all agriculture would be filling because if you plant a seed it is fill. The regulations say that agriculture is a permitted use as of right. It was clarified that there will be no clear cutting. Connors stated that if 50 shrubs were dug out of the ground each 1' deep, the ground would be down 3-4' in a few years. Brooks stated that plowing it under is a generally accepted farming practice, only if you take it to an extreme and do not allow sustainable crops can't raise the profile can't drain and ditch. Bell asked if the Department of Agriculture inspects farms to determine if they are carrying out farming or not. Brooks stated that she did not know. Bell asked if there are farming practices in an exempt area. Brooks stated that she is not sure that anything German is doing requires regulation.

Fulco stated that there was to be no road construction yet there are thoroughfares that go to the garden areas. Brooks stated that German can ride his tractor anywhere and does not need to show where there is access from one part of the property to another. McNamee stated that at the last meeting it was stated that this was for truck use. Brooks stated that there can be a truck on the property; any motor vehicle and he is using the present topography. Brooks asked German if there would be any change in the topography. German stated that there would not be.

MaryRose asked about the proposed blueberry berm by flags 51 to 53 and asked if it could be extended to protect from run off to be up to flag 56. German stated that it could be.

Fulco deemed the Public Hearing closed at 9:30 p.m.

After some discussion, the following motions were made:

A motion was made by Connors, seconded by Cegan:

After duly considering all relevant factors, the plans entitled "proposed site plan Germans Acres Lavery Lane, Milford, CT" by John Paul Garcia & Assoc., P.C., 1 sheet dated 8/18/08 revised 4/20/09 with hand drawn federal wetland lines submitted 3/18/09 information in the file and presented at the Public Hearing, and regular meeting, I move that the following proposed activities are permitted as of right under section 4.1.D of the MIWA Regulations:

14' x 24' stone patio lot 1G

15' diameter above ground pool lot 1G

The motion carried unanimously.

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

Mr. Chairman, after duly considering all relevant factors, the plans entitled "*Proposed Site Plan Germans' Acres Lavery Lane, Milford, Connecticut*" by *John Paul Garcia & Associates. P.C. 1 sheet dated 8/18/08, revised 4/20/09*, information in the file and presented at the Public Hearing, and Regular meetings I move that the following proposed activities in Application IW-A-09-001, 30 Lavery Lane, ARE PERMITTED AS OF RIGHT UNDER SECTION 4.1A of the MIWA Regulations:

9' X 175' access to Agricultural Cropland area Lot 1G

12' X 12' Tool Shed Lot 1G adjacent to Ag Cropland

4' X 4' Poultry Pen Lot 1G adjacent to Ag Cropland

Woodchip Containment Berm Lot 1G

50' X 125' Agricultural Cropland area Lot 1G

The motion carried unanimously.

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

Mr. Chairman, after duly considering all relevant factors, the plans entitled "*Proposed Site Plan Germans' Acres Lavery Lane, Milford, Connecticut*" by *John Paul Garcia & Associates. P.C. 1 sheet dated 8/18/08, revised 4/20/09*, information in the file and presented at the Public Hearing, and Regular meetings I move that the following proposed activities in Application IW-A-09-001, 30 Lavery Lane, ARE PERMITTED AS OF RIGHT UNDER SECTION 4.1A of the MIWA Regulations:

10' X 12' Tool Shed Lot 1G rear

8' X 12' Dry Wood Storage with Canopy top Lot 1G

18' X 20' Covered Storage Shed Lots 1G/1C

9' X 210' access Path to Barn/Greenhouse Lot 1C

20' X 20' Farm Animal Barn (option 1)

10' X 10' Covered Manure Storage Shed Lot 1C

Wood Furnace for Greenhouse Lot 1C

20' X 40' Greenhouse Lot 1C

4' High Fenced Enclosure Lot 1C
The motion carried unanimously.

McNamee stated that she does not feel that the portion of the nursery area that is in the wetlands is exempt and she referenced Red 11 page 13. Fulco stated that a trial decision is not case law and the applicant stated that he will not be clear cutting and reclamation is a gray area. MaryRose stated that plowing is part of normal farming operation and planting is an agricultural activity.

Bell stated that the activity proposed is farming or agricultural but her opinion is that this is reclamation and amending soil and it will require much altering to make it sustainable for planting and she is against the nursery in the wetlands area. If it is a permitted activity then the turn around area would not be related and this area would require permitting. Fulco agrees with this as a nursery area; if it were a cornfield there would be no problem but every harvest would need replenishment and have an effect on wetlands and would change the soil.

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

Mr. Chairman, after duly considering all relevant factors, the plans entitled *"Proposed Site Plan Germans' Acres Lavery Lane, Milford, Connecticut"* by John Paul Garcia & Associates. P.C. 1 sheet dated 8/18/08, revised 4/20/09, information in the file and presented at the Public Hearing, and Regular meetings I move that the following proposed activities in Application IW-A-09-001, 30 Lavery Lane, ARE PERMITTED AS OF RIGHT UNDER SECTION 4.1A of the MIWA Regulations:

Woodchip Containment Berm Lot 1C
Grassed Swale 1' deep by 1'-2' Wide (optional) Lot 1C
Concrete Block Surround for Topsoil Mixing Lot 1C
18' X 20' Pole Barn/Fertilizer Storage Lot 1C
Staging Area and Turnaround Lot 1C
The motion carried with Bell opposed.

A discussion followed regarding how much reclamation, altering of character of soil verses farming. Fulco stated that the nursery operation is the concern not clear cutting; changing the character of the soil, bringing in new fill to fill the hole from shrub removal for sale. A cornfield you would plow and just turn over the soil and replant; this proposal would be reclaiming. MaryRose stated that the Attorney mentioned plowing as an allowable activity. Fulco agreed but holes would have to be filled. He's not saying it can't be done he is just saying it is not exempt and will require a permit. Richard stated that per the regs. Page 12 Section 4.3 this is a regulated activity and requires a permit. Fulco stated that the whole point of the farm exemption is to be exempt from this regulation.

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

Mr. Chairman, after duly considering all relevant factors, the plans entitled *"Proposed Site Plan Germans' Acres Lavery Lane, Milford, Connecticut"* by John

Paul Garcia & Associates. P.C. 1 sheet dated 8/18/08, revised 4/20/09 information in the file and presented at the Public Hearing, and Regular meetings I move that the following proposed activities in Application IW-A-09-001, 30 Lavery Lane, REQUIRE A PERMIT UNDER SECTION 2 of the MIWA Regulations:

60' X 135' Nursery Area Lot 1C.

The motion carried unanimously.

A five-minute recess was taken.

2. **Application IW-A-09-009: 282 West Main Street, Two-Ninety-Six LLC –** proposal to fill 0.2 acres of wetlands to construct three single family homes within 100' of a wetland or watercourse in the Wepawaug River Watershed.

The IWA walked the site on 4/27/09.

The Chairman noted that there are 16 items in the file and 1 map and is on file and available in the office. Two maps were received today.

Otto Theall, Codespoti & Assoc. reviewed the invasive plant species on site. 1,000 sq. ft. of wetlands are proposed to be filled to give the lot a reasonable lawn area. There is a lot of debris on site. There was a question if there was a vernal pool on site. The criteria for such is that there is standing water past this time of year and it was dry at the site walk. There is not a vernal pool on site. The wetland has limited value; it would store some storm water, there is no vegetation, no wildlife or aesthetic value. A 20" silver maple is to be removed for the fill area. 20 trees are to be removed for construction and are shown on the plans. 1/3rd of these are smaller than 12" in diameter and some larger ones are in poor condition. About 6 of the larger trees are in good condition. 6 trees and 59 shrubs are proposed to be planted. Alternatives were considered and reviewed on the proposed plan. The wetland creation area was reviewed as well as the split rail fence for delineation. An alternative plan is to remove the deck from the small house. This is not prudent; it is trading deck for lawn area with no less impacts. 2 to 1 ratio of creation verses fill is usually required by the IWA. This can be met with proposed plantings behind parcel A; but by removing invasives and cleaning up the area trees would have to be removed and the applicant would rather maintain the site and remove the invasives.

A motion was made by Munson, seconded by Bell to continue the meeting past 11:00 p.m. The motion carried with Cegan opposed.

Fulco asked if the deck would be at ground level. Greg Field stated that it would be 8 or 9' above ground.

Fulco called for all those **in FAVOR** of the application:

James Attardo, 9 Peck Street, stated that he is the abutting land owner and feels the proposal is an enhancement to the neighborhood as it is a blighted eyesore now and he is in favor of the project.

Fulco called for all those **AGAINST** the application:

None.

Fulco asked if the deck is to be elevated what the purpose of removal was. Otto stated that it was closer proximity to the wetlands but if the wetlands are filled then it is moot.

A discussion on the deck followed. Moving the deck towards the middle of the house to save a healthy tree was requested. Levitz stated that based on the site conditions he would be happy with a 1 to 1 ratio for this site. Fulco stated that wetland creation and removal of invasives would be mitigation and this would be a little more than 1 to 1.

Fulco deemed the Public Hearing closed at 11:10 p.m.

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

Mr. Chairman, based on the plans entitled *“Proposed subdivision plans 282 West Main Street prepared for Two Ninety Six. LLC, Milford, Connecticut”* by Codespoti & Associates, cover & 5 sheets dated 3/18/09, information in the file and presented at the public hearing on application IW-A-09-009: 282 West Main St, I move to approve this application for the following reasons:

1. A feasible and prudent alternative does not exist because:
 - a. The applicant provided convincing documentation that no change in the size of the footprint, or the location of the footprint would decrease the impact.
2. After duly considering all relevant factors there will be a minimal adverse environmental impact which will be mitigated by the use of sedimentation and erosion controls as set out in the application
3. The existence of the building does not pose long-term adverse impact to the wetlands and the short-term impacts during the construction phase are adequately addressed by the report submitted in addition to the application

With the following conditions:

- Permit condition and mitigation bonds to be calculated.
- Standard conditions plus the mitigation as shown on Sheet Sp5.
- And the removal of the invasives species and a 3 year monitoring plan for the mitigation area and the mitigation area.

The motion carried unanimously.

D. Old Business

1. **Application IW-A-09-003: 0 Marion Ave., Ronald Standish** – proposal to construct a single family home within 100’ of the Housatonic River Watershed.

MaryRose reported that this is a proposal by Ron Standish for a single family home on a 0.64 acre lot with approximately 0.5 acres of wetlands. The house is proposed within 7' of the wetland line at the closest point with a concrete landing area for the rear stairs approximately 9' from the wetland line. The applicant has proposed a chain link fence, and a vegetative buffer on the wetland line to delineate the yard area from the wetlands on the parcel. Otto Theall of Soil and Wetland Science LLC is here to present the application. An extension (until 6/4/09) letter was received today from the applicant.

At the March 18th meeting there was concern with the proximity of the house to the wetland line and the difficulty that will be involved in constructing the house without impacting the wetlands that are 7-9' away from the excavation and construction in some locations. You asked for the following information:

- Additions to site plan:
 - Soil Erosion and sedimentation controls locations and details.
 - Location of utilities and street drainage.
 - Soil Scientists Signature on the plan.
- Clarification of amount of wetlands on the property and property size.
- Planting details including lawn and fertilizer requirements.
- Location of downspout discharges, how site drainage will be handled.
- A report by your soil scientist containing a description and characterization of the wetlands on the parcel, a determination if watercourses or vernal pools are on the site. The report should discuss the function and values of the regulated areas on site as well as the potential impacts of the proposed work on these resources.

Otto reviewed the plans and stated that he has been to the site in April and May. There are developed residential lots abutting this property and commercial in the rear. The vegetation on site was reviewed. This is a fairly flat site with some ponding patches on site. Deeper water is needed for a vernal pool. There is 3" of water in some areas. The watercourse on site was reviewed. This is 160' away and he does not feel there is impact to it. There is 7-10' of clearance around the proposed house. The applicant (Ron) has pictures of a similar house he built that was 5' closer with no damage to the wetlands. The area around the wetlands was reviewed. Otto feels that based on Ron's history this project can be done without damage to the wetlands. There is an extensive planting plan proposed and this was reviewed. There will be a thick buffer. A rain garden is ultimately proposed. The rain garden function was reviewed. There will be 24" of porous sand underneath it and a narrow buffer around the house. The impact from the lawn would be negligible. 800 sq. ft. of created wetlands is proposed and would benefit wildlife.

A motion was made by Connors, seconded by Levitz to hold a site visit for this application on 5/11/09 at 4:00 p.m. The motion carried unanimously.

The next regular meeting will be on 5/20/09.

There will be a site visit on 5/11/09.

There being no further business to discuss, the meeting adjourned at 11:50 p.m.

Respectfully submitted,

Lisa Streit

These minutes have not been accepted or approved.