

Minutes of the Regular Meeting of the Inland Wetlands Agency on May 20, 2009.

A. Roll Call

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

Absent: Allan Cegan, Ken Cowden, 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.

B. Public Comments

None.

C. New Business

1. **Pre-application IW-A-09-016: 30 Lavery Lane, William German** – proposal for determination of use under section 4.4 of the MIWA Regulations with work proposed in and within 100ø of a wetland in the Housatonic River Watershed.

Kathy Kutcha reported that this is an exemption determination request under MIWA Section 4 by Bill German for a proposal to use a 5,400 sq. ft. area of wetlands and upland review area to grow a variety of plants that can be harvested by taking offshoots, bulbs and spores without removing wetland soils. Planting and harvesting these types of plants will therefore not require any filling or changes to the wetland topography.

The Agency must first determine if the proposed activities are exempt under Section 4 of the MIWA regulations. If they are exempt then no further permitting is required. If a portion of the proposed activities is exempt and a portion is not. Then a permit can be required for the portion of the activities that the Agency feels does not fall under the exemption.

Mr. German's attorney, Janet Brooks, stated in her letter of 5/13/09 that the following activities are proposed in the parallelogram located on Lot 1C:

- Removal of approximately 20 trees averaging 4ø ó 5ø DBH leaving 80 trees of varying sizes. The area will not be clear cut.
- Planting of ornamental grasses which may include: Sweet flag, Japanese Blood Grass, Feather Reed Grass, Japanese Forest Grass, Silver Grass and Pampas Grass.
- Planting of varieties of decorative Indian corn.
- Planting of varieties of daylilies.
- Planting of shade-loving plants varieties of hostas, astilbe and ferns.

- An option to include a proposed woodchip containment barrier on the northeast edge of the area as shown on the attachment "A". The proposed 6' barrier will be 6' wide by 1' tall with blueberries.

As Ms. Brooks has outlined in her memo and Mr. German's pre-application the clearing of approximately 20 trees and planting of nursery stock that will not require the wetlands to be filled in order to grow and farm plants would be Uses Permitted as of Right under section 4.1 of the MIWA Regulations and therefore not require further permitting.

The 6' wide by 1' tall woodchip containment barrier with blueberries is proposed in the wetland as a berm between the planting area and the wetland. If it is to be constructed like the other proposed berms on the property it would require soil to be deposited into the wetland to form the base and give the blueberries a place to root and then the 6' wide by 1' high area would be covered in woodchips. This berm does not appear to fall into the exemption under Section 4.1 as it appears to change the grade of the wetland and would therefore be reclamation. The other proposed berms are located along the wetland lines as delineated in the field where this proposed berm is in the wetland.

Fulco questioned that based on the input from the last meeting why this is a pre-application and not a full application. Kutcha stated that section 4 of the MIWA regulations were reviewed and all activity appears to be exempt except the 6' x 1' berm. Fulco further stated it should be an application. Kutcha stated that the use has changed.

German stated that he eliminated all tree balling and proposes just host plants with no soil removal. The woodchip barrier is to protect the wetlands and is optional and if it requires a permit, he will remove it from the plan. All work will be done by hand.

Bell stated that at the last meeting she referenced page 5 of the minutes that this was the final plan and there would be no further alterations and this was voted on. Now there is a different use proposed for a specific area that was deemed not exempt. Fulco stated that this portion was not exempt based on that plan; rather than request a permit, the applicant is looking for a totally different use. Bell asked the applicant if it was true that he stated there would be no more changes. German stated that it is the same plan, he just refined the plantings.

Fulco stated that the last plan is done and settled. This is a new plan and has no bearing on what transpired before.

McNamee asked what else is involved with getting base plants put in. German stated that this field was farmed before and now has 40 maples that grew from non use. He would stump those, pull bulbs and pot and grow them for market. McNamee stated that this sounds like reclamation. German stated that it is not; he

is not digging anything up, he is grubbing the root and not changing the topography. Connors asked how there would be stump removal without digging. German stated that the original soils are there, he would shake off the root. Connors stated when there is a volume of roots then holes will have to be filled. German disagreed and stated that the original soil will still be there he is just cultivating. Fulco stated that clear cutting is allowed in order to expand crop land. Connors stated that this should be a full application and not a pre-application.

Bell agreed with Connors. Bell stated that there are different kinds of reclaiming; ditching and draining a wetland or raising a profile. And she feels this is definitely reclamation. Plants are really important in soils and wetlands determination of mineral content, bacteria in soil, bits of detritus in soil and plants mediate mineral properties in soil. This affects bugs in soil, leaves affect soil; if plants are changed this is changing the identification of the soil. Often changing trees is done. This changes the hydric qualities of soil. By planting herbaceous plants that are completely different than what is in a wetland this changes the soil. So this is a type of reclamation; not ditching or draining but reclamation. Bell read the definition of reclamation: to call back, to reduce from a wild to tamed state; reform, recover, restore, amend. Fulco stated that the definition in the regulations is from 30 years ago. However, certain plants like wetlands and some don't. If non wetland plants are being planted then this may alter the wetlands.

Bell compared the proposed plants and stated that sweet flag and ferns are wetland plants and the others that are proposed are not appropriate to wetlands. The proposed plants were picked for shade characteristics and they are not a reasonable choice to avoid reclaiming wetlands. Bell feels this proposal is not exempt and she recommends a full application. Connors agreed.

The following motion was made by Connors, seconded by Bell:
After duly considering all relevant factors, the sketch entitled "Attachment A" received 5/14/09 as part of a memo from Attorney Janet P. Brooks to the MIWA dated 5/13/09 regarding *Agricultural activities to be conducted at 30 Lavery Lane, Milford Request for determination of exemption by William German*, information in the file and presented this evening, I move that the following proposed activities in this application REQUIRE A PERMIT UNDER SECTION 2 of the MIWA Regulations:

- An option to include a proposed woodchip containment barrier on the northeast edge of the area as shown on the attachment "A". The proposed barrier will be 6' wide by 1' tall with blueberries,
- Removal of approximately 20 trees averaging 4"-5" DBH leaving 80 trees of varying sizes. The area will not be clear cut.
- Planting of ornamental grasses which may include: Sweet flag, Japanese Blood Grass, Feather Reed Grass, Japanese Forest Grass, Silver Grass and Pampas Grass.
- Planting of varieties of decorative Indian corn.
- Planting of varieties of daylilies.

- Planting of shade-loving plants varieties of hostas, astilbe and ferns. The motion carried unanimously.

D. Old Business

1. **Application IW-A-09-003: 0 Marion Avenue, Ronald Standish** – proposal to construct a single family home with construction and grading within 100ø of a wetland in the Housatonic River Watershed.

Kathy reported that this is a proposal for a single family home on a 0.64 acre lot with approximately 0.5 acres of wetlands. The house is proposed within 7ø of the wetland line at the closest point with a concrete landing area for the rear stairs approximately 9ø 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. He has also proposed a wetland creation area on the Southeastern portion of the lot and a rain garden adjacent to the driveway to handle the increased runoff from the site. These items along with the chain link fence and vegetative buffer are proposed to mitigate the impacts of construction within 7ø of the wetlands on the lot. Pictures were submitted to the file showing a house recently constructed with minimal clearance on either side. The IWA walked the site on 5/11/09 and Fulco walked the site on 5/12/09 with MaryRose and McNamee walked the site on 5/19/09.

Ron Standish and Otto Theall were in attendance to present the application. Otto stated that on the site walk a tree within the proposed creation area was discussed. From that discussion Otto suggests the same planting plan and removing the invasives without lowering the grade and the tree to remain. A split rail fence is proposed verses a chain link fence. Kathy stated that the idea of the chain link fence was to be temporary during construction for protection of the wetlands.

The photos of the other site with similar restrictions that Mr. Standish built on 240 Fresh Meadow Lane were distributed and reviewed. Standish stated that the pictures are from a 30ø lot with 4ø and 6ø around it. He dug from the inside of the lot out and removed fill and concrete and brought material inside the foundation as a barrier. There was no disturbance on the other property. He has been a contractor in Milford his whole life and feels he can do a nice job without disturbance and nice landscaping as well.

Bell asked about the southeast side and the large tree. Otto stated that it is possible to do some creation at the edge of the western point without disturbing the tree but he suggests saving the tree and mitigation can be done with planting without lowering the grade. (Flag 13 area) The wet/ponding area was discussed and the grade in this area.

Fulco stated that it is his opinion that lowering the grade in this area would not be good. He would want the water to stay in the wetland and the tree provides a

canopy and keeps the water temperature down. Kathy asked if it was possible to keep the tree and add wetlands type plants to absorb water. Otto reviewed the proposed planting plan and it would be more like an enhanced buffer.

Fulco stated that ponding is like a mosquito breeding ground and suggested purple martin or hummingbird houses. Otto stated that this could certainly be included as a condition and he would work with staff on this and he suggested bat houses as well. Bell stated that this was a great idea, but purple marlins don't like this type of area but the others suggestions were good.

McNamee asked if alternatives were considered. Otto stated that it is a 17' house proposed now and it would be undesirable if it were smaller. He could shift the house a bit north, away from flags 9 and 10 but that would move it closer to the northwest corner which is a wetter area. Runoff options were considered versus a rain garden. But the rain garden is preferable. Standish stated that the house location that is proposed is the best area for construction to work inside the foundation to keep the site contained during construction.

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

After duly considering all relevant factors, I move to approve this application based on the plans entitled "General Location Survey 0 Marion Street prepared for Ron Standish, Milford, CT" by Codespoti & Associates, 1 sheet dated 2/13/08 revised 5/5/09, the information in the file and presented this evening for the following reasons:

- There are no further options due to the size of the lot.
- The wetlands creation area will keep the tree and not lowering of topography.

With conditions including:

- Bird houses per the Compliance Officer.
- Chain link fencing is to be installed prior to construction to prevent inadvertent intrusion into the wetlands.
- Construction and mitigation bonds to be calculated must be posted with the MIWA for s & E controls, border plantings, wetland boundary markers and an asbuilt showing finished 2' contours and locating all site structures. The mitigation bond will be held for a period of 3 years to insure that all mitigation plantings survive. All 6 reports by the professional wetland scientist or biologist must be submitted in a timely manner for the release of this bond.

This action will not have an impact or effect on the physical characteristics of the adjacent wetland or watercourses.

The motion carried unanimously.

E. Minutes

Bell noted on page 10 of the 5/5/09 minutes that the 4th paragraph should read that the developer was in agreement with saving the tree if possible. A motion was made by

Connors, seconded by Bell to approve the minutes of 5/5/09 as amended and the minutes of 5/11/09 as presented. The motion carried unanimously.

F. Subcommittee Reports

Bell reported that the legislative session will be over on 6/3/09 and 2 Bills are in the plan. One is meaningless of the purpose of the State to preserve wetlands and watercourses with the burden on the applicant to prove protection of the wetlands. This was stricken. The second one is for a vegetative buffer within 100 feet of wetlands around all watercourses. This was watered down from a stricter Bill and may pass. This will not affect the MIWA's authority.

G. Staff Report

- The DEP training sessions are coming up. Those signed up, please note the dates.
- Please remember to call or email the office if unable to attend a meeting.

H. Chairman's Report

- Milford Earth Day will be on 5/23/09 at Eisenhower Park from 9:45 am to 3:30 pm and they are looking for volunteers.
- The Board of Aldermen voted on the budget last night; unsure of the outcome.

The next regular meeting will be on 6/3/09.

There being no further business to discuss, the meeting adjourned at 8:45 p.m.

Respectfully submitted,

Lisa Streit

These minutes have not been accepted or approved.