

Minutes of the Regular Meeting of the Inland Wetlands Agency on November 6, 2013.

**A. Roll Call**

Present: Cathy Collins, Jim Connors, Ken Cowden, Carol Dunn, Lily Flannigan, Richard Lutz, Brendan Magnan and Justin Margeson.

Absent: Allen, Cegan, Dave DeFlumeri and Steve Munson.

Also Present: MaryRose Palumbo and Lisa Streit.

Collins called the meeting to order at 7:30 p.m. and deemed Dunn the voting alternate and Margeson acting Parliamentarian.

**B. Pledge**

All stood for the Pledge of Allegiance.

**C. Public Comments**

None.

**D. New Business**

1. **IW-A-13-060: Terrace Road, Molly Land Co.** – proposal for 4 houses and driveways with work within 100' of wetlands in the South Central Shoreline Watershed.

This item is on the Agenda for the first time and can be discussed at the next meeting.

**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.

MaryRose reported that this is the June 2011 violation from Field & Son Builders on Westmoor Road. At the time they were doing site clearing for their Westmoor Road project they over cleared in and immediately adjacent to a wetland. At the July 6, 2011 meeting the Agency required that they mitigate by removing the invasive weed Japanese Knotweed and stabilize the area with a dense landscaping fabric, plantings and a conservation mix. The Agency also required that the site be monitored monthly the first year and twice a year for three years. The mitigation work was done in October 2011. She is scheduled to walk the site next week with Otto Theall, professional Wetland Scientist and Chris Field of Field & Son Builders for Mr.

Theall's report due in December. She visited the site last week and it is stable and the mitigation area is knotweed free. No action taken.

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 action at this time.

3. **IW-V-13-022: 37 Lakeside Road, Brad Frederick & Britnei Artz** – clear cutting trees and stockpiling material without a permit within 100' of a wetland and watercourse in the South Central Shoreline Watershed.

MaryRose reported that she walked the property on 11/4/13 with Britnei Frederick and the area seems fairly stable at this time. There is a picture sheet dated 11/4/13 being passed around in addition to the original violation picture sheet dated 4/24/13. At this time there is a question on planting vegetation this late in the season. At the 10/16/13 meeting the Agency required the Fredericks to submit a planting plan in addition to an erosion controls plan by 11/6/13. Conditional on approval of that plan, the plantings and erosion controls were to be installed by 11/20/13.

Mrs. Frederick asked if they could be allowed to plant in the spring when there is a better chance of survival for the plants. They are suggesting 1-2 Maple trees with 20 raspberry or blueberry bushes.

The Agency needs to decide this evening if you would like the plantings to go in by 11/20 as was moved at the last meeting or if you would like to extend the mitigation plantings until Spring 2014. MaryRose reported that she was with Mrs. Frederick on Monday and she stated she would be here this evening and she is not. No action taken.

4. **IW-A-13-033: 211 West River Street, Sydney M. Patchen** – placement of fill to raise a portion of the existing lawn area to the elevation of the residence with work within 150' of a wetland or watercourse in the Wepawaug River Watershed.

MaryRose reported that this is an application for an after the fact permit to allow fill to remain within 150' of a wetland in the Wepawaug River Watershed. As an after the fact application, the Agency needs to determine if they would have allowed the work had a request been received prior to being done and if allowed what modifications or conditions (i.e. location, plantings, erosion controls, reduction in size etc), if any, would have been required.

The Agency requested bids for a third party review of the structural integrity of the wall to determine if failure of the wall would deposit material in the wetland which is mapped immediately adjacent to the wall. She spoke with Aschettino Associates

and they told her if we were to give them the review tomorrow they could have a report to us by the 11/20/13 meeting. The Agency was concerned that the costs of such a review would approximate the costs of moving or rebuilding the wall, should that be the Agency's decision on the application, and wanted to discuss this with Mr. Patchen prior to hiring the Engineering firm at Mr. Patchen's cost. At the 10/16/13 meeting the Agency requested that Mr. Patchen attend to discuss the application. Mr. Patchen sent a letter that he could not be here this evening due to a class, but Mrs. Patchen would be representing them this evening.

The Agency needs to determine if the application had been received prior to the area being filled would it have been allowed as is or in a different form and what conditions would have been included in such an approval. The extension for this application expires on 11/24/13 we have one more meeting prior to the expiration.

Sydney Patchen, 211 West River Street stated that she is not here to answer questions. She has a statement that she is here to take down notes to give back to her attorney regarding questions that he put forth in a letter dated 11/5/13. She said that she answers no questions without her attorney present.

Collins stated that at the last meeting, this item came up on the agenda and no one was present to discuss it. The reason Mr. Patchen was asked to be present was that at the last meeting there were concerns; Lutz brought up the concern that if the Engineer was hired, the engineer would cost as much as rebuilding the wall or changing it and was concerned that if the parties came back and said that the wall was not structurally sound that that money could have been better spent.

Lutz stated that the IWA doesn't want the applicant to spent money for no reason, in other words if in fact the engineer comes back and says that the wall is not right and has to be taken down; the money spent on the Engineer could have been used on the wall. He further stated that the thought was that it might be worth offering it to the Patchen's; right now the motion is that the engineer would be hired and the Patchen's would have to pay for it. The thought was that the IWA would offer the choice of going that route or to say ok we will take down the wall and do a regular application we will submit plans for what the wall will be and redo it. You are taking a chance if you go in that direction.

Sydney Patchen stated that the specific question was will we have specs for the new wall or will the engineering firm simply be constructing the wall from the estimate they presented. Collins stated that the hiring of the third party is to review the structural integrity of the wall; not reconstruction of the wall. MaryRose read her letter to Mr. Patchen dated 10/29/13 into the record (copy attached). Mr. Patchen's letter to MaryRose dated 11/5/13 was also read into the record (copy attached). Collins further stated that after reading both letters in no way shape or form does it say that we were hiring someone to do your wall; we are hiring someone to review the structural integrity of your wall. The option was made to possibly use that money better spent in another way.

Collins asked if the Agency had any questions. She feels that it was pretty clear that we wanted the engineer to review the structural integrity and nowhere did it state that we hired somebody to redo the wall. The option was that the Patchen's could redo the wall. If the Engineer's report came back that the wall was structurally unsound then the Patchen's would have spent the money and would still need to redo the wall.

Collins stated that the IWA needs to decide as a board to hire Aschento or deny it and move on and ask them to reapply for a wall and take it down and proceed as if we are denying an application. Flannigan asked how the engineering firm could be hired without funds from the applicant. Collins stated that we had agreed that a third party would review it. MaryRose stated that the Engineer could not be hired until funds were secured. The third party review fee is part of the application fee. We cannot move forward if the application fee is not received. If the fee is not received then the application is not complete and we cannot move forward.

MaryRose reviewed that the Patchen's hired James Swift as their engineer and that report is in the record. The Agency had other questions and wanted a third party review. So we asked for a third party review and went through two rounds of looking for a third party review until we could get someone that was acceptable that didn't have a conflict with Mr. Patchen's work and could work in a reasonable time frame and was available to do such work. Once we had the quotes from the two firms we then got back to the crux of the matter which is the structural integrity of the wall is important to us if the wall is to remain in place to ensure that the fill and the wall don't wind up depositing themselves into the wetland at some point. What Richard brought up at the last meeting is a valid point; which is that we are looking at the tree and forgetting the forest. The bigger question is would we have allowed this had it been applied for before it was built? If we would have allowed it, would we have allowed it 45' from the rear of the house as it is or would we have perhaps allowed it 35 or 40' from the rear of the house giving more than the 0-2' from the wetlands to the construction of the wall. Had it been applied for, would we have required that the wall be 15-20' from the wetland line instead of 0-2'? While we are asking Mr. Patchen to give us the funds to allow us to determine if the wall could fall in the wetlands or not, we may have lost sight of the bigger question, would we have allowed it there or would we have pushed it back a little bit. If the Agency's feeling is that they would have pushed it back a little bit he would have wasted the money determining if the wall is structurally sound or not because it would have to be moved anyway.

MaryRose further stated that the IWA needs to decide if the structural integrity of the wall matters to the decision, if it is determined that the wall should be moved back then the integrity of the wall doesn't matter. The application is to leave the wall and fill the way they are. Mrs. Patchen is here to bring notes back to Mr. Patchen. We have two more weeks before a decision has to be made. If we were to hire the structural engineer by tomorrow they would have a report back to us by 11/20. If we

wanted to see the wall and fill moved back a plan would need to be submitted for review

Lutz asked if we deny it they are already in violation, do they have the option to reapply. Connors asked what happens if it is denied and they don't re apply and the wall stays there? MaryRose stated that the IWA would need to bring them in under a violation. They were noticed by Zoning in June 2012 that they were in violation. Mr. Patchen came in and spoke with the Assistant City Planner and herself in early July 2012 to review concerns. Our understanding was that he was going to remove the nonconformities; his was that he was going to apply to leave them. About a month later he got a survey and then he worked at getting an engineer and ultimately brought an application in March 2013. That application was extended and timed out at 130 days and was denied as incomplete. This application was received in July 2013 and expires November 24, 2013.

Magnan stated that the fundamental question remains whether or not we would have approved this application. In his opinion, it would not have been approved and therefore suggested denying the application. The rationale for his suggestion is based on the section 10.2.c the standards and criteria for decisions. On that basis it would have been denied based on the negative adverse affect on the water. Margeson agreed that it is so close that it would have been denied based on 10.2.c in the standards and criteria decision making process.

Cowden stated that there is a question if the wetland actually ran under the wall and if wetlands were filled. He personally wouldn't have approved a structure without a buffer and plantings to the wetland.

Lutz stated that as he understands it, the applicant is in no worse position if we are denying it at this stage of the game.

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

After duly considering all relevant factors, I move to deny application IW-A-13-033 211 West River Street based on the plans entitled "Topographic Survey prepared for Sydney M. Patchen 211 West River Street, Milford, Connecticut" by Richard W. Plain Land Surveyors, 1 sheet, dated 8/21/12, the information in the file and presented at meetings and this evening, because there may be feasible and prudent alternatives to the proposed activity which have a less adverse impact on the wetlands. This action will have an impact or effect on the physical characteristics of the wetlands and watercourses.

The applicant may investigate the following types of alternatives:

- Reducing the size of the footprint.
- Shifting the location of the fill and wall away from the wetland.

The motion carried unanimously.

## **F. Minutes**

Cowden noted in the minutes of 10/16/13, item #3 that he stated – it is too late in the season for the seed mix. A motion was made by Connors, seconded by Cowden to approve the minutes of 10/16/13 as amended. The motion carried unanimously.

#### **G. Staff Report**

The CACIWC Annual meeting is next Saturday, November 16 in Cromwell. There are 8 of us going; carpooling will be reviewed after the meeting.

- Grove St Pump station and sewer project is ongoing. They should be out of New Haven Av by next week.
- Indian River Interceptor will go back out to bid in a few months, the mitigation plantings are in and will be rechecked in the spring.
- Sanitary Sewer Infill's No. 1 is finishing up for the winter on New Haven Avenue and Dunbar Rd. The area has been hydro seeded; final paving will be in the spring.
- Cascade Blvd- Garden homes is ongoing, They requested that a portion of their sidewalk be waved due to a steep fall off from the proposed sidewalk into the adjacent wetlands. I did not have an issue with the sidewalk reduction. They are preparing for and expect to start the pervious asphalt parking area in about 2 weeks.
- Way Street is ongoing.
- Girl Scout Pool – has started.
- The budget for next year is being worked on.

Please remember to call or email if you are unable to attend a meeting.

#### **H. Chairwomen's Report**

- Flannigan, Collins, Munson and Dunn terms are up in December; please let MaryRose know of your intentions so she can process your requests.
- Carpooling for the CACIWC meeting was worked out.

The next regular meeting will be on 11/20/13.

There being no further business to discuss, the meeting adjourned at 8:20 p.m.

Respectfully submitted,

Lisa Streit

These minutes have not been accepted or approved.