

Minutes of the Public Hearing and Regular Meeting of the Inland Wetlands Agency on December 5, 2012.

A. Roll Call

Present: Cathy Collins, Alan Cegan, Jim Connors, Ken Cowden, Michael DeGrego, Jon Higgins, Richard Lutz, Justin Margeson, Steve Munson and Aaron Sanner.

Also Present: Buddy and Greg Field, Otto Theall and Bob Wheway.

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

B. Pledge

All stood for the Pledge of Allegiance.

C. Old Business

Collins reviewed the rules of a Public Hearing.

MaryRose reported that the applicant requested that items C1–C4 be heard together. A motion was made by Connors, seconded by Cegan to hear items C1 – IW-A-12-063, 28 Way Street; C2 – IW-A-12-064, 24 Way Street; C3 – IW-A-12-065, 27 Way Street; C4 – IW-A-12-066, 22 Way Street together. The motion carried unanimously.

- 1. IW-A-12-063: 28 Way Street, Warren Field Jr.** - Proposal for a single family home with construction, grading and work within 100' of a wetland or watercourse in the Housatonic River Watershed.
- 2. IW-A-12-064: 24 Way Street, Woodstock Development LLC.** - Proposal for a single family home with construction, grading and work within 100' of a wetland or watercourse in the Housatonic River Watershed.
- 3. IW-A-12-065: 27 Way Street, BAMF Homes LLC** - Proposal for a single family home with construction, grading and work within 100' of a wetland or watercourse in the Housatonic River Watershed.
- 4. IW-A-12-066: 22 Way Street, BAMF Homes LLC** - Proposal for a single family home with construction, grading and work within 100' of a wetland or watercourse in the Housatonic River Watershed.

Collins noted that the File Contents List is on file and available in the office. MaryRose reported that the certificates of mailing have been received.

Collins noted that 3 letters have been received in the office on this application. They are from Eugene & Martha Williams of 427 Meadowside Rd., the Williams of 100 Marion Ave and Nancy Szygiel of 441 Meadowside Rd. Copies have been given to the

Commissioners and the Applicants and the letters are in the files if members of the public would like to review them.

Warren Field Jr. Woodstock Development & BAMF Homes introduced his team of Otto Theall of Soil & Wetland Science, Robert Wheway of Codespoti & Associates.

Greg Field, 173 Kings Highway, submitted pictures of 110 Southworth Street and West Main Street as past projects of his that have worked very well. They have split rail fences with markers. 110 Southworth Street has a deck that is 7' from the wetlands and he has adhered to all rules and regulations.

Otto Theall, Professional Soil and Wetlands Scientist holds a Masters Degree from Yale in Environmental Studies and has done over 4,000 projects. He initially flagged the wetland at 27 Way Street on 5/13/09 and in 11/10 for lots 141-144. He also visited on 8/2 and 8/11 to flag the wetlands on the other side of the street. On 6/14/12 he made adjustments to the wetland line at 28 Way Street which Henry Mueller was in agreement with. He submitted test hole locations from the site. He returned Dec 3, 2012 to do a soils description and didn't anticipate defending the work to this degree when he first did the soils. He did descriptions of 24 test holes on Monday. There are a lot of fill soils and moderately drained natural soils and somewhat poorly drained soils. There are some blackened leaves, some ponding for short periods of time. He explained what defines wetlands and reviewed some test holes. There is no mottling and no ground water. He reviewed test holes 4, 5 and 6 which are natural occurring soils and reviewed soil types. Chromo matrix is either concentrations of iron or depletions of iron. A Munsell color chart was used to identify soils. Collins asked Mr. Theall based on his expert opinion if there are any wetlands in the building area. Otto stated that there is none. Impacts to the wetlands have been addressed in Henry Mueller's and Otto's reports. Otto stated that he received a letter from MaryRose in November with concerns. He found no swamp, bog or stream. There is no defined channel or flow or standing water beyond a rain event and no hydrophytic vegetation or erosion. Otto stated that Henry Mueller had a stroke last week and could not be here. Mr. Mueller has been doing soil investigations for 40 years and has 31 years experience as a Consultant and is a well respected Soil Scientist and he agreed that there are no watercourses and agreed with the delineations. There is no direct impact to the existing wetlands. Otto addressed concerns raised: fertilizer and pesticides – there is no measurable movement of nutrients; no measurable impact to wetlands. Otto referenced 282 West Main Street that he monitored for 3 years and is doing very well. In response to the concern that tree removal will dry out the wetlands; it will not, this was reviewed. Will this development raise the temperature in the wetland with tree removal? Otto does not believe so and this was reviewed. The inventory of existing vegetation is in his report. Animals that would use this property are possum, squirrel, skunks, deer, birds and these are human tolerant. The Red Tail Hawk was mentioned. Otto stated that this is on the increase in this area per Matthew Popp of Environmental Solutions.

Bob Wheway, PE from Codespoti and Associates reviewed Sheet SP1; 22, 24 and 28 Way Street. The drainage and grading was reviewed. The tree location inset on the drawing added the sizes of trees and which are to be removed and which are to remain. 27 Way Street plan was reviewed as well as the grading and drainage. There will be an

increase in impervious area and they are using the green approach. They are reducing the pavement for the roadway from 30' to 24'. The construction of the roadway was reviewed. A roadway is typically crowned. They have removed the crown and incorporated one cross slope and there will be no curbing on the north side. There will be a stone lined swale, (details on the plans) to put water back into the ground. An underground detention system with a 370' long 4' diameter pipe is proposed in order to have a zero increase in runoff. The city requires the design for a 25 year storm to have a zero increase in runoff and these plans are designed to do so. Everything is staying within the Housatonic River Watershed. All of the engineering issues from the IWA letter of 11/12 have been addressed. A trash rack has been incorporated and the outlet control structure was reviewed. A concern was how the pipe will be cleaned/maintained. All drainage systems require maintenance; a vac truck will be used for removal of sediment build up if needed and maintenance will be by the City of Milford as this is all in the City Right of Way. There was a question regarding any current similar drainage systems in the City and how they function. This plan is commonly used for commercial and retail sites and he referenced Devine Place, a residential subdivision that was done about three years ago with a similar system.

Greg Field addressed alternatives for #27 Way St; a 25' x 50' foundation was originally planned and this has been brought down to 22' and cantilevered the house to keep the distance to the wetlands. He also submitted the tree plan for 27 Way Street. Buddy Field stated that for 28 Way Street a bigger house was proposed and the size was reduced and pulled away from the wetlands.

Collins deemed the Public Portion of the hearing closed. It was noted that the IWA walked this site twice; once on 5/23/12 and once on 5/30/12.

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

None.

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

Anita Schmitz, 453 Meadowside Road, stated that she is afraid of flooding. Way Street is behind her property and the bulk of the area floods in the rain. She has lived here for 30 years. The area does not drain well. With Hurricane Gloria there was 8" of water in her yard. She submitted her letter. She does not feel the perc. test was done correctly; it was not done at the lowest point of the property but where the street is proposed. She feels the 48" drainage pipe will not be sufficient for the amount of water generated at the lower end of Avery and the Boston Post Road. Stevens Ford moved all of their vehicles 20' back in preparation for Storm Sandy (Photos submitted to the File). Now there will be more water added through Way Street and Avery to the Boston Post Road. The area has always been marshy and wet and her basement does get water. Who will be responsible for additional damage from additional water? Lutz asked when it floods, does it drain after how many days? Ms. Schmitz stated after a couple of days. Munson asked how much water she gets in her basement. When the sewer connections went in she had no problems; when a house was built on Avery she got more water and she is

concerned with more water with this project. Munson asked if her floor gets wet or is there inches. Ms. Schmitz stated it's quite a bit.

Nancy Szygiel, 441 Meadowside Road, read Tom DePolo's of 439, Meadowside Road's letter that states he has had issues for 56 years. Photos were also submitted. He is concerned with getting rid of trees and questions where will the water go. 10 years ago he dug for a garden; dug 1' and got water. Glen Behrle of Milford's Engineering Bureau agreed that there is a significant water problem. Nancy has lived here for 12 years and is concerned with the water table and water has been in her back yard and her basement for 12 years. From December 2010 through July 2011 there was water in her basement daily. In 2010 we had a lot of snow and there was water in her basement for 7 months; she petitioned the City Attorney, Planning & Zoning and the IWA. At the IWA meeting on 10/17/12 B. Wheway reviewed the proposed drainage system and no one could say it will be fool proof. This is permanent. Water comes from the center of her basement and the new homes will be on slabs; where will the water go? What recourse is there if the water gets worse? The drainage system is made for commercial property in a residential area due to the amount of water. 17 Way Street is behind her property and there is standing water; ducks have swam there, her kids have ice skated there. Lutz asked how long water stays. Ms. Szygiel stated that in 2010 it stayed for 7 months; that year there was a lot of snow.

REBUTTAL

Buddy Field, stated that he owns the property and he will be living here and it will be his neighborhood. He goes there everyday and has not seen standing water that they describe. He will be living at 28 Way Street.

Greg Field, stated that professionals, the City Engineer, Bob Wheway and Otto Theall, designed and approved the project so it will work. This project will help neighbors not hinder them. Based on the topography the site drains from Nancy's house down to the drainage system. He built Magellen Drive 25 years ago on slab. Years ago things were done differently; in the 1920's maybe those homes shouldn't have been built with basements, stone wasn't put under them.

Bob Wheway, stated that while he is sympathetic with the neighbors his charge is to not make the problem worse. The applicant cannot correct or fix existing problems. This project will not make the situation worse. Based on the field topographic maps used for the drainage calculations nothing from Way Street will flow to Meadowside. The fourth and fifth houses in from Avery are flat and have potential to pond. The flow was reviewed based on the Topographic work map WM-1. The Way Street watershed map was reviewed from the City's mapping. The Way Street drainage does not go to the Boston Post Road there is a high point in front of Stevens Ford; it goes to Avery and then to Meadows End and discharges past Jonathan Law High School. He has looked at the watershed area and drainage patterns. The elevation at the front of Meadowside is at 62'-64' and the elevation at Way Street is at 58.7; the flow does not go towards Meadowside.

Otto Theall, stated that on Monday he spoke with Mrs. Lepeska who has lived there for 50 years and has a deep basement and she has never had water. He is sympathetic to the residents but the basements are in the water table; which is why the applicant is not putting in basements. Ponding for a day or 2 after rain is not unusual with poorly drained soils. He has visited the site 9 times. 7 months of water is not consistent with what the soils are showing. It is not unusual to have some ponding for several days but 7 months seems unlikely given the soils.

Collins called for those **AGAINST** the application to speak again:

Anita Schmitz, stated that the length of ponding depends on how much water there is. A week or two after a rainfall the ground feels like you are walking on a sponge; it really gets wet back there.

Nancy Szygiel, asked if they are looking at the drainage from the state road through the marsh on Marion towards her property. Per the EPA/DEEP, when Red Tailed hawks are nesting, they are protected. They have seen a Red Tailed Hawk in this area. A huge tree fell in September and during Hurricane Sandy, two trees fell and their roots are all filled with water. She questioned the test holes; they are not in the lowest part of the ground and asked how close the wetlands are to the proposed buildings. There has to be water flow if it comes in her basement. She stated that two years ago Greg stated that they would not have to worry about water anymore. This is a long standing issue.

The public portion of meeting was closed.

Munson asked where the water is going to drain. Wheway reviewed the swale and contour to the wetlands system currently on the plans verses the proposed. They are not altering the flow paths and will not be increasing flooding. None of the water from the property flows onto Meadowside. The flow was reviewed on the plans. Munson questioned 27 Way Street. Wheway reviewed the drainage on the Zoning Location Survey plans that flow is toward the southerly wetlands system and across Way Street into the swale.

Lutz asked about the elevations. Wheway reviewed this on the plans. Lutz stated that an intermittent watercourse cannot be altered. Wheway stated that this is not an intermittent watercourse; it is a saddle area. Lutz stated that per DEP Training, the definition is that it holds water. Wheway stated that it does not hold water. Lutz asked that a saddle area be identified in the pictures submitted. Wheway reviewed the pictures and stated that the saddle area is not depicted in the pictures. Lutz stated that ponding water or watercourses are also covered not just wetlands. Otto stated that an intermittent water course has to have a defined channel in order to meet the definition of an intermittent watercourse and the edge of the wetlands is at elevation 60 and Meadowside is at the same elevation. MaryRose stated that the definition is a defined channel and bank. Otto stated that a small depression is not a defined channel. MaryRose referred to Section 2 of the IWA Regulations and an intermittent watercourse must have a defined channel and bank and

two or more of the following characteristics: (a) evidence of scour or deposits of recent alluvium or detritus, (b) the presence of standing or flowing water for a duration longer than a particular storm incident, and (c) the presence of hydrophytic vegetation. Otto stated that there is a high point and a swale and no defined channel. Since it does not meet the first condition that it must have under definition, the other conditions aren't applied. Wheway stated that it is similar to a bathtub fills up and overflows and is not a channel it is similar to sheet flow.

Collins asked how the trees were located and defined. Wheway stated that it was by a field survey crew. Greg Field stated that on 27 Way Street he located them. Collins stated that per public input red tail hawks are increasing. Otto stated that he is not a wild life expert but he spoke to Matthew Popp and there is no such setback from a red tail hawk; they are opportunistic and on the increase.

Munson asked how could the existing flooding be reduced or eliminated. Wheway stated that the short answer would be to drain the area and wetlands, but that would not address basement flooding, it would address surface flooding. The saddle area is in part backing water up on to the neighbor's property. If you drained the surface water and ground water, what would that do to the wetland; you would have to get the water level below the wetlands. If you tried to dry up the basement you would need a deep under drain which would be a significant project. Collins stated that if you drained all that water you would impact the wetlands. Wheway stated that to lower the water table may not dry out the wetlands; based on the test holes there are layers of hardpan which is likely creating the wetlands by preventing vertical migration because beneath the hardpan there is a fine sand. Lutz asked how deep the hard pan is. Wheway stated it is from 23" to 41".

MaryRose asked Otto to address the functions and values of the wetlands and the effect from building. Otto stated that they hold water as a function. They have some stormwater detention and will still perform those functions. There is some value for wildlife; food/cover. They are enhancing vegetation at edge of construction. He does not feel that the main functions of the wetlands will be impacted. Wheway submitted his storm water management report dated 11/15/12 that was submitted to the City Engineer.

A five minute recess was taken.

Connors stated that he feels the project is well engineered and the existing water on the property cannot be taken care of without lowering the topography and affecting the wetlands.

Higgins stated that he sympathizes with the water in the basements but does not feel this project will add to it. And basements are not the concern of the IWA the wetlands are and he does not see negative any effects to the wetlands.

Munson agreed.

Lutz stated that he just went to training and feels the wetland is flat and water will spread out and this moves the boundary of the wetlands by ponding and this project will be building on that. Cegan stated that there was just expert testimony that this is not a watercourse and feels this is a moot point. It was clarified that the definition of a watercourse must first be that there is a defined channel and bank and there is none so it is not.

DeGrego stated that flooding is a concern and if it gets worse whose fault would it be. Collins stated that per a letter from the City Engineer he met with the applicant and reviewed the engineering report and all issues have been addressed. The project will reduce runoff and eliminate some of that water.

A five minute recess was taken.

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

Based on the plans entitled "*Zoning Location Survey 22, 24 & 28 Way Street, 143-148 Way St./159-160 Waverly St. 'Prospect Lawn' for Woodstock Development LLC, BAMF Homes Limited, Milford, Connecticut*" by Codespoti & Associates, 2 sheets, dated: SP1-7/28/11, SP2-4/2/12 revised 10/15/12, and "*Zoning Location Survey 27 Way Street Lots 46-48 'Prospect Lawn' for BAMF Homes Limited, Milford, Connecticut*" by Codespoti & Associates, 1 sheet, dated 4/4/12 revised 10/15/12 information in the file and presented at the public hearing on this application, I move to approve IW-A-12-063: 28 Way Street // IW-A-12-064: 24 Way Street// IW-A-12-066: 22 Way Street// IW-A-12-065: 27 Way Street 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:
 - a. 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 There will be no adverse environmental impact on the wetlands/watercourses
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. The short-term impacts during the construction phase shall be mitigated by the following conditions:
 - Construction drawings must be submitted to the file prior to the permit being taken out.
 - There will be no disturbance within 5' of the wetland line and that will be the construction limit line
 - 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 migration monitoring bond to be calculated for plantings 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 permit is issued 12/5/12 expires 12/5/17 unless otherwise provide for in the Connecticut General Statutes.
 - An additional 16 trees 1.5"-2" caliper will be planted in consultation with the Compliance Officer.
- b. There is no irreversible or irretrievable loss of wetland/watercourse.

The motion carried unanimously.

D. Public Comments

None.

E. New Business

- 1. Violation 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. She spoke with Mr. Green on 11/30/12 and he stated that his intention was to use the woodchips as a buffer to his yard for his kids and dog that got Lyme disease. He stated he did not know that it was wrong but was trying to protect his kids. He told her that there is a 3-4' drop off and he was trying to use the woodchips to square off the yard after trees fell in Storm Irene last year. Mr. Green came in to the office on 12/3 and they reviewed his plot plan and he stated that there were too many chips to rake up to the upland area. He estimated that the amount of woodchips brought in were 15' wide by 50' long by 3'-4' deep. Mr. Green told her that it would be too costly to remove the chips and just as costly if not more to get the surveys done to apply to leave them in place. She has contacted the SWCD to see if they can assist in coming up with a mitigation plan for Mr. Green. She has not heard back from them yet. Mr. Green is here this evening to answer the violation. MaryRose distributed pictures from the City's GIS system and on site

Eric Green stated that it is an interior lot and to the left is stagnant mud. He has a 4 year old and a 2 year old and there are ticks and trees fell. He fenced off the other area; it was a safety issue; there are rats, possum and it is a skunky muddy

area. To remove it all is costly and would require heavy equipment. He has a third child on the way. He doesn't feel he did anything wrong. He has been living at this address for 6 years and is stressed; he is an outdoors person, loves animals and feels this was a safety issue. He got about 50 loads of woodchips for free from a tree company. There is no fill, it is just woodchips.

Collins stated that when you bought the house you knew there were wetlands there. Green stated he did not know the location. It was clarified that the house was built before IWA so there are no markers. Green stated that there are huge rats. Collins stated that 50 loads is a lot of chips. Mrs. Green stated that not all 50 loads went to the wetlands; it went on their property. It is a swampy water and they put a fence around for animals but there is one area to the right of the driveway that is dangerous.

MaryRose stated that the woodchips are from various vendors so it is unknown what is in there. Green stated that it was the same guy for all loads and it is a variety of hard woods. DeGrego stated that some wood is a problem with the emerald ash borer and there are quarantines. Green stated that he is aware of that and all of it came from Milford. Mrs. Green reviewed the pictures and stated that a lot of the woodchips are not in the wetlands. MaryRose reviewed the GIS map and pictures and stated that the IWA regulates wetlands and the 150' upland review area that protects the wetlands. MaryRose suggested a solution to rake them up to the top of the slope and Mr. Green stated that that was not feasible. MaryRose called the Conservation District and they can come out and suggest mitigation. Mr. Green stated that the woodchips could not be moved and that moving them would be like taking food from his kids. MaryRose reiterated that Mr. Green violated the law and the IWA is trying to work with him. Some violators have been made to hire a Surveyor, and a Soil Scientist to determine how much of the wetlands have been disturbed and what mitigation would be required. She had suggested the Conservation District which is a resource that the City pays for and would be free to them. Collins stated that the Conservation District can come out but Mr. Green needs to be willing to work with them or it would be a waste of everyone's time and resources.

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

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

- Contact and work with the Southwest Conservation District to come up with a solution to the violation.
- Submit a mitigation proposal to the Agency by 1/23/13.

The motion carried unanimously.

F. 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-11-49: 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-A-12-072: Terrace Road, Robert & Claire Kerin** – wetland line map amendment in the south Central Shoreline Watershed.

MaryRose reported that this is a request for a wetland line map amendment on Terrace Road in Morningside. The applicant is proposing to update the wetland line on the official Inland Wetlands and Watercourses Map, Milford, Connecticut. There is a provision in our Regulations to amend the official Maps through a public hearing process. Upon receipt of this application she issued a letter to the applicants informing them of items that are required in Section 15.3 of the MIWA Regulations which included:

The Application Form (original and 11 copies):

Item 4 – Requires square feet or acreage of entire site and wetlands on the property.

Item 5 – The reasons for the requested action.

Item 7 – Requires names and correct mailing addresses for adjoining property owners on all sides of the subject property, including across the street.

Map(s) (original signed and sealed and 11 copies):

Missing a topographic map of existing elevations at 2' contour intervals

Missing the existing wetland and watercourse boundary Line

Missing a map showing any proposed development of the land

Missing remainder of property lines, the whole lot is not shown on the submitted plan.

Reports by the Certified Soil Scientists who flagged the wetlands on their findings and why they feel the line should be changed. (12 copies)

Buddy Field stated that he is the prospective buyer of this property. He submitted new maps with 3 delineations on them; the survey, the GIS and a map from 20 years ago.

A motion was made by Connors, seconded by Cegan to schedule a site walk on 12/13/12 at 3:30 p.m. The motion carried unanimously.

- 4. IW-A-12-073: 0 Westmoor Road, Field & Son & Ryan James** – proposal for a single family home with work within 100' of a wetland in the South Central Shoreline Watershed.

MaryRose reported that this is a proposal for a single family home within 10' of a wetland in the South Central Shoreline Watershed. At the closest point Mr. Field is proposing to install the silt fencing within 2' of the wetland line, a split rail fence within ' and plantings within '. Warren Field his Engineer Robert Wheway and his Soil Scientist Otto Theall are here this evening to present the project and answer your questions.

A motion was made by Connors, seconded by Cegan to schedule a site walk on 12/13/12 at 3:55 p.m. The motion carried unanimously.

G. Minutes

A motion was made by Cegan, seconded by Connors to accept the minutes of the previous meeting as presented. The motion carried unanimously.

H. Staff Report

No Report

I. Chairman's Report

None.

The next regularly scheduled meeting is on 12/19/12.

The site walks are scheduled for 12/13/12.

There being no further business to discuss, the meeting adjourned at 11:00 p.m.

Respectfully submitted,

Lisa Streit

These minutes have not been accepted or approved.

