

A. Roll Call

Present: Brendan Magnan, Daniel Bedeker, Ranjit Bhawe, Jim Connors, Matthew Connors, Dave DeFlumeri, Heather Donaldson-Gladue, Steve Munson, Gerry Panico.

Recused: Lisa Tryon as she lives at Caswell Cove.

Also Present: MaryRose Palumbo and Lisa Streit.

Magnan called the meeting to order at 7:30 p.m. and deemed M. Connors the voting alternate and reviewed the guidelines in hosting remote meetings to ensure business runs efficiently and that all statutory and administrative rules are followed:

1. In accordance with the Freedom of Information Act and Governor Lamont's executive orders, this meeting is being recorded and will be made available on the City of Milford website.
2. During this meeting, if members of the Inland Wetlands Commission would like to speak, please utilize the "raise your hand" feature via Zoom. All participants will be muted during the meeting unless recognized by the Chair.
3. After being recognized to speak, please state your name and address prior to making a statement.

B. Pledge

All stood for the Pledge of Allegiance.

C. Public Comments

None.

D. Public Hearing

Magnan called the Public Hearing to order and reviewed the following explanation of rules:

- As a public hearing there was a sign-up list for speakers. When it comes to the public hearing portion, we will recognize those individuals who signed up to speak on the public hearing list on the website and then will recognize individuals by raise of hand (found in the controls on the Zoom screen or by hand).
- We would like to have a civil discourse. We expect everyone who is participating to conduct themselves in a civil and respectful manor. Everyone will have a chance to be heard. Those who are not respectful of others or disrupt the meeting will be ejected from the meeting.
- Please remain muted if you have not been recognized by the Chairman.
- YOU MUST GIVE AND SPELL YOUR NAME AND ADDRESS FOR THE RECORD.
- Please speak only to items in the jurisdiction of the Inland Wetland Agency. These include work in or within 100' of - wetlands, brooks, rivers, and wetland habitat landward of the Mean High-Water Line (MHW) and flooding of inland wetlands and watercourses. Zoning Issues and tidal wetland issues are not under our review.
- If necessary, we will interrupt and remind you to please keep your comments to the matters before this Agency.
- If someone before you has stated what your concerns are or what you wished to say you can agree with their statement instead of having to restate the point.
- Under Section 8.14 of the Milford Inland Wetland Agency Bylaws, the Chairperson may limit the time frame for public comments to five (5) minutes per speaker.

1. **IW-A-21-0086: 1500 Windward Road, Primrose Companies, LLC, and Caswell Cove Condominium Association Inc.** – proposed 6 building condominium expansion with construction, grading and drainage work within 100' of a watercourse in the Housatonic River Watershed.

Magnan reported that the File Contents list for this application is available in the document links on the Agenda and in the MIWA office.

MaryRose noted that the Certificates of Mailing have been received from the applicant and are in the document links on the Agenda and in the MIWA office.

This application came before the Agency as a referral from the Planning and Zoning Board. The Agency needs to determine their Jurisdiction under the State Statutes and their regulations, if any, and report that and make recommendations to P&Z.

- MIWA jurisdiction is for inland wetlands and watercourses within their Regulatory boundary.
- Along tidal watercourses the inland wetland Agency's regulatory boundary is Mean High Water (MHW).
- Work proposed in an inland wetland or watercourse *landward* of MHW is in the Agency's jurisdiction.
- Work proposed *waterward* of MHW is considered territorial waters and is under the jurisdiction of CT DEEP.

*The Agency is not regulating the resource, they are regulating the proposed activity. They are regulating **if** that activity affects the wetland or watercourse that lies within their regulatory boundaries.*

Applicant Presentation:

Attorney Stephen Bellis, The Pellegrino Law Firm, P. C., 475 Whitney Ave, New Haven, CT. stated that he represents the property owners of Caswell Cove Association and Primrose Development who has an agreement to develop this parcel if approved. In the 1980s they had approval to develop in three (3) phases 300 units. The permit was amended in 1987, a special permit within 25' of the wetlands. In 1989 the plan was amended to 264 units. In 1992 was for 168 units and the City Planner said any amendments would need to come before Planning & Zoning. Primrose Development is proposing to amend to 44 units. There is no activity in the wetlands, the wetlands commission has the right to review the activity in the upland review area. Under CT General Statutes when you obtain a special permit you need an IWA review.

They are proposing to amend the approval to reduce to 44 units. It would be their hope for a positive referral to the Zoning commission for that hearing. The applicants have hired Codespoti and Associates, engineering, and design as well as Soil Science and Environmental Services, Soil Scientist and Biologist. There will be some activity in the upland review only and no permit is needed but the IWA has the right to review and make recommendations. Caswell Cove has a special permit but are amending it and the permit goes with the land.

Jeff Gordan, Environmental Planner, Landscape Architect, president of Codespoti & Associates, P.C. 263 Boston Post Rd Suite 5, Orange CT, noted he is not an engineer. He stated that the focus is 100' off of the MHW (mean high waterline) as well as the affirmation of the tidal wetlands line. There are 3 flags noted south of the bulkhead. He reviewed the existing conditions plan that shows

the elevations as well as the overall plan. He proceeded to review the 100' upland review area; within this is the cul-de-sac and the water quality structures. The silt fencing is backed up with fiber waddles and this was reviewed on the plan as well as the drainage flow on site. The landscape plan was reviewed; the snow shelf areas are delineated. He is proposing the use of CMA (calcium magnesium acetate) which is a road salt alternative. The issue with sodium chloride is animals and environment. Their hope is that the use of CMA would be an overall improvement to the snow removal plans for the whole development.

Robert Wheway, PE, Codespoti & Associates, P.C. 263 Boston Post Rd Suite 5, Orange CT. stated that the drainage on this site is unique due to direct discharge to the Housatonic River. Normally you would see a detention or retention basin to control the water volume leaving the site, but since we are discharging to a major waterbody the controls of stormwater retention are not required in the CT DEEP 2004 Water Quality Manual or the City of Milford Engineering Guidelines. We do need to deal with water quality and so we have proposed a water quality structure in the cul-de-sac to treat the stormwater before discharge. The hydrodynamic separator proposed meets all of the requirements of State water quality manual and Milford guidelines.

He has also proposed galleys for roof runoff which is generally clean water. The proposed galleys provide for the required water quality volume from the roof and ground water recharge volume on site.

Jennifer Beno, Wetland Biologist, Soil Science & Environmental Services, Inc since 1994., 95 Silo Dr #1917, Rocky Hill, CT inspected the site in May of 2018 with soil scientist Scott Stevens, where the purpose was to delineate regulated areas. In January 2022 she inspected the site again to look at dominant vegetation and characteristics of the site. The site has been highly disturbed over time by filling, and scrub growth have overtaken the property, the majority of which is invasive; olive, knotweed, phragmites, bittersweet vine, honey suckle, etc. There is a narrow grassy area by the river with numerous old fill piles, concrete, asphalt, etc. There is a small tidal wetland area that provides several wetland functions: wildlife habitat, visual aesthetics and recreational. No endangered species were observed; she requested additional information from the DEEP and received a letter from Shannon Perne dated 2/9/22 which indicated she does not anticipate impacts to the listed species on site. There are no direct impacts to the wetland or to the river. She reviewed the 100' upland review area; the plan is to mitigate for the removal of shrubs by installing native species plantings that provide a natural shade and wildlife habitat along the corridor. This plan will have no significant adverse impact. She recommends removing invasives and to reconsider using button bush. She recommends an increase in diversity in the wildlife habitat with herbaceous vegetation mowed 1 to 2 times per year.

She further recommends follow up inspection in planting areas for 2 years after established to document the survival rate and any invasive or erosion concerns.

Those IN FAVOR:

Dottie Bateman, 632 Pope's Island Road, stated that she has been the President of the Caswell Cove Condo Association for the past 8 years. She has lived here since 1993 and there are 204 units. The area has a very active river life; there are swans, bald eagles, even a harbor seal at one point. There are 87% of unit owners in approval of this plan.

Tatiana Murphy, 538 Pope's Island Road, reiterated what Dottie stated, she is in favor of the project.

Frank Pilicy, 235 Main Street, Watertown, Attorney representing Caswell Cove, stated that residents voted as an association and had 87% in favor of this project. There were zero no votes. There are no adverse impacts.

Lindsey Murray, 725 Pope's Island Road, stated that she is also in favor of this project.

Those AGAINST:

Gary Peluchette, 1425 Windward Road, stated that he is against the project and stated that the vote for this project was in 2007 and he is not sure who still resides in the complex from then. Density is a concern. 44 units can have up to 88 or more people and cars and feels there is not adequate parking. There would be parking closer to the river, and he is concerned with oil, sand, and runoff into the river. He is concerned with the impact to the wildlife. Density is a concern to the health of the river and that 18-24 units might be more feasible. He moved in here in 2016 and was not aware of the plan.

Jon Walker, 221 Pope's Island Road, stated that per Google maps with overlays shows density and every square foot being impervious surface and he doubts this doesn't have a negative impact to the river. 60-70% of the land would be hard surface. Insurance would require use of harsher chemicals for snow/ice. He can't see how snow trucks could get to the pile area. The rest of the area is much less dense. Per Attorney Bellis, the Association is now responsible for the bulkhead. This is an immediate incurred cost. Road salt to the river, how can this not have an adverse impact. He questioned how effective the abatement structures are and he needs more information to be able to make a decision. 160 to 44 seems ingenuous; there can't possibly be 160 units put in and questioned if there is a better solution with less impact.

Bill Roberts, 836 Pope's Island Road, asked about liability and who would be responsible for the 12' sewer main if something goes wrong. Leakage from cars, etc. with 44 additional units will put more into the river. He feels there are not enough facts. He is a new owner and wouldn't have bought here if he knew about this project.

Jean Gray, 1435 Windward Road, has concerns with the plan and asked if the IWA has ever had a plan like this before and if so, what were the concerns and have they been addressed.

Kathy Duhon, 1414 Windward Road, stated that she is entertained endlessly by the wildlife and aghast by the conditions of the river with debris. Her concern is the same as her neighbors with runoff from salt, fertilizer, and dogs on the grass. She has seen otters, fox, and bald eagles. The river is already poisoned, and additional runoff will only cause more damage.

APPLICANT REBUTTAL

Attorney Bellis stated that density is a Planning & Zoning issue and referenced an appellate court case, that came down in January 2022, of Pernell vs Washington that states unless there is a finding of significant impact to the wetlands no alternative plan has to be submitted.

Robert Wheway, reviewed the grading plan, catch basins, and drains that culminate at the cul-de-sac and water quality structure to release at the stone revetment wall. The plan has an overall 85.3% efficiency for water quality which is Best Management Practices. The treatment capacity was also reviewed.

Jeff Gordon addressed the comments regarding insurance companies requiring harsher chemicals for snow/ice. CMA is a tried-and-true material, it is not new. It is used by the Michigan DOT as well as in Scandinavia. It is used to de-ice roads with little to no toxic effects to vertebrae, trout, etc. It has been studied, is biodegradable, safe and he does not feel this is an issue.

PUBLIC REBUTTAL

Jon Walker thanked the Engineer for the information as well as Mr. Bellis and if insurance companies are happy with the CMA product, then he is ok.

MaryRose reviewed the following:

Once the application is presented and reviewed the Agency can determine jurisdiction:

If there *are* resources under their jurisdiction on the site, the Agency must determine:

- If the activity has an impact or effect on those resources. Then make that determination on the record.
- Evaluate the information in the record to determine if a permit can be issued as proposed or modified with conditions. Then make that determination on the record.
- Report outcome to the P&Z Board

If there *are not* resources under their jurisdiction on the site, the Agency must:

- Make that determination on the record.
- Report outcome to the P&Z Board. That report may include suggestions to the PZ Board such as:
 - Additional Sedimentation and Erosion control
 - Planting suggestions, (i.e., salt tolerant or low or no mow areas for nutrient uptake and stabilization such as recommended by Jen Beno of SSES)
 - Suggestions that pertain to IWA Jurisdiction from City Engineer report and public participation in the meeting.

Magnan thanked the applicant and the public for their participation and addressed Jean Gray's comment regarding review of a prior plan. Jim Connors has been on the board for 25 years and has been in construction for more years than that Munson is the next senior member. The IWA must follow State Regulations and State Law. Magnan then asked for review of the mean high water (MHW) mark and the upland review area and asked if there are wetlands resources landward of the MHW. **Jen Beno** referenced Scott Stevens report from May 2018 stating that this is all disturbed soils and tidal wetlands. Magnan asked for clarification that this is not wetlands and there is no direct wetland impact. Beno stated that that is correct.

MaryRose addressed whether this application was before the IWA in the past. It has not been, the IWA was not created until 1989 and this project was approved in the 1980's by CT DEP.

M. Connors asked how recently this has been disturbed soils. Beno stated that based on the vegetation, it has been disturbed for at least 25 years. If it were shallow fill over the wetland area, there would still be some indicators and she did not observe that.

Munson asked about the sufficiency of the water storage and that per the City Engineer's letter of 2/14/22, there be no increase in runoff, and it does not appear that there is sufficient storage for water quality volume. Wheway stated that when discharging in water bodies, there is no need to store water. He quoted the guidelines and water quality manual and stated that the City Engineer is in full agreement with this. Munson questioned Beno regarding invasive species and if they would be removed and replaced with salt tolerant plantings. Beno stated that they would and showed this

on the plans. Munson questioned if there would be fertilizers and pesticides. Beno stated no, this was not mentioned. Munson questioned if this project is under the MIWA jurisdiction.

M. Connors questioned jurisdiction. MaryRose reviewed that the MHW is the limit of tidal resource, The State territorial limit is MHW, so while the center of the river is the City boundary, the Agency cannot regulate into the State territorial limit. The IWA jurisdiction starts at the States territorial limit, MHW, and goes landward and only covers inland wetlands and watercourses.

Magnan stated that his concern was the design of the water quality system and when there are excessive rain events, what will be done to ensure that the slope is not eroded. Wheway stated that just to the south of that bulkhead there is a large boulder revetment, and he is not concerned with erosion in that particular area. Magnan stated that there is some distance from the outflow and the boulders. Wheway stated that there is a flared end hitting the outer limits of the revetment and reviewed this in the catch basin area. There should be no potential for erosion. MaryRose showed pictures of the site to orient this.

M. Connors questioned the water quality structure; how does it separate, how is it cleaned, does it clean pollutants. Wheway stated that it is a particulate and oil separator. A two-compartment structure (two chambers), particles are separated, and oils are separated. Everything requires maintenance. He reviewed the profile drawings and there is a maintenance schedule recommended that includes protocol and inspections. M. Connors stated that the bio swale is a great improvement, but the large lawn area is a concern regarding fertilizers, etc. and suggested plantings along the edge for that. Magnan agreed that it is a very clever design of the bio swale.

Beno recommends the lawn area as an un-mowed vegetative strip to take up any nutrients and to provide habitat.

Panico questioned if the application is not within the MIWA's jurisdiction if it would be permitted with the DEP. MaryRose stated that there would be DEP and CAM review if there is work within their area.

Atty. Bellis stated that they are not seeking permits for activity in a wetland, they are seeking a special permit from Planning and Zoning and are looking for MIWA review, they would not have to go to DEP.

J. Connors stated that he thinks the plan is good and will enhance the existing development. There is no filtration now and he likes the snow removal plan and feels it is questionable if this is within the MIWA's jurisdiction. He referenced Great River Golf Course as a similar scope project.

Panico stated that the plan is very well done and appreciates the input. DeFlumeri stated that it is very well designed, and he likes the project and questioned who has jurisdiction over the bulkhead. It was discussed that DEEP would and possible funds were allocated but it is not within the MIWA purview. Bedecker stated that he does not feel this project is within the MIWA's jurisdiction. Bhavne agreed. Magnan agreed and stated that he is appreciative of the experts and preparation and professionalism and thanked the public for their participation.

Removal of invasives was discussed and per Beno it is part of the plan that she recommended that invasives be removed as necessary for development and ground maintenance.

It was deemed that all information needed has been presented and a motion was made by J. Connors, seconded by DeFlumeri to close the Public Hearing. The motion carried unanimously. M. Connors stated that he is concerned with precedent in selecting what's giving jurisdiction. MaryRose stated that there is territorial jurisdiction of the MHW, and you can't take jurisdiction of someone else's territory. The Soil Scientist testified that there are no inland wetlands on site. From the MHW landward there are no inland wetlands.

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

After duly considering all relevant factors and based on a review of the information in the file and presented at this meeting moved that

- This application is not under MIWA Jurisdiction
- The Compliance Officer will respond as such to the Planning & Zoning Board transmittal with the following recommendations:
 - Soil Erosion and Sedimentation controls as outlined on the plans and in the CT DEP "2002 Erosion and Sedimentation Control Guidelines" must be installed and maintained on the site until the property is stabilized.
 - Erosion control recommendations as outlined in the City Engineer memo dated 2/14/22.
 - Planting and invasive species control recommendations, as included in the Soil Science and Environmental Services Report dated 1/19/22.
 - A Stormwater monitoring and maintenance plan for regular inspection and maintenance of the Stormwater Quality system be included in any approval.

The motion carried unanimously. (Noting L. Tryon recused)

F. Minutes

A motion was made by Connors, seconded by DeFlumeri to approve the minutes of the 02/16/2022 regular meeting as presented. The motion carried with M. Connors and Bhave abstaining.

G. Staff Report

The office continues to be busy with inquiries, bond release requests and minor reviews and other reporting. We continue to work through flooding or storm drainage complaints and addressing those concerns.

Site Status:

- 0 Tanglewood Circle – waiting on the permittee to schedule meeting to walk the site. He has stated he will contact MaryRose for the walk.
- 30 Bridgeport Av – waiting on asbuilt.
- Florence Av – a modified permit has not been taken out.
- 17 Maddox Av – bond release project closed.
- 114-122-124-128 Merwin Ave – ongoing.
- 33 Pearl St – ongoing,
- Terrace Rd is completed, waiting on asbuilt review.
- 161 West Rutland Rd – ongoing.
- Wheelers Woods – ongoing, completion anticipated in February; plantings are in and doing well.
- Milford Cemetery – 420 West River Street – plantings were installed, and site has been stabilized for winter.
- 16 Marsh St. – ongoing.

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

G. Chair Report

Magnan thanked everyone for their time and efforts preparing and participating in this evening's meeting.

The next regular meeting will be on March 16, 2022, via ZOOM.

Please let the office know if you cannot attend and get any questions you have on the applications to MaryRose so that she can forward them to the applicants.

There being no further business to discuss, a motion was made by Connors and seconded by Munson to adjourn at 9:40 p.m.

Respectfully submitted,

Lisa Streit

These minutes have not been accepted or approved.