

Minutes of the Regular Meeting of the Inland Wetlands Agency on October 21, 2015.

A. Roll Call

Present: Cathy Collins, Allen Cegan, Jim Connors, Ken Cowden, Carol Dunn, Lily Flannigan, Brendan Magnan, Justin Margeson, Steve Munson and Daniel Schopick.

Absent: Dave DeFlumeri.

Also Present: DPLU Director Joe Griffith, MaryRose Palumbo and Lisa Streit.

Collins called the meeting to order at 7:30 p.m. and appointed Schopick the voting alternate. She also noted that Schopick and Cowden listened to the recording of the meeting of 10/07/15 and read the minutes of same.

B. Pledge

All stood for the Pledge of Allegiance.

C. Public Hearing

None.



D. Old Business

A motion was made by Connors, seconded by Munson to hear items IW-A-15-017 0 Tanglewood Circle lot 28 and IW-A-15-018 0 Tanglewood Circle lot 29 together. The motion carried unanimously.

1. **IW-A-15-017: 0 Tanglewood Circle, April Culver** – proposed single family home with construction, grading and filling in and within 100' of wetlands in the Housatonic River Watershed.
2. **IW-A-15-018: 0 Tanglewood Circle, April Culver** – proposed single family home with construction, grading and filling in and within 100' of wetland in the Housatonic River Watershed.

Collins stated that the IWA has done their due diligence and are well trained. All plans for this application still require filling of wetlands. The IWA has never approved a 1:1 ratio of fill to creation and she feels that the issue of backing out of the driveway onto the road is not an issue. It was noted that the original lot was for one house.

Cowden stated that he lives on West River Street that has a double line in the road and he backs out onto it and this is not a concern. He is also not in favor of a 1:1 ratio. He is concerned with the distance to the wetland. He would consider a one house application. He is not in favor of future septic work proposed.

Schopick stated that he was not at the last meeting he listened to the tape and read the minutes. Per Mr. Wheway the alternate plans were not prudent but feasible. It seems that the reason the applicant found them not prudent was because they thought they were too expensive. No alternate plan reduces the foot print of the house and per Attorney Lynch, one house is not an option. Per 11/14 document to the Zoning Board of Appeals the owner purchased this property in a single transaction and the intention was to combine the lots. So the applicant at least at one time considered one house on combined lots to be a feasible and prudent alternative. Per Wheway a waiver from the State Health Department was not possible in the timeframe this Agency has to make a decision. Both Lynch and Wheway stated that they have been working on this project for 1.5 years, which is enough time to create a system with less impact. Future septic issues are a concern. If approved as is and a problem occurs, it then becomes an emergency and would likely have to be approved. The applicant chose to go before the ZBA first. If they came before the IWA first and then the ZBA they would have possibly been able to show a legitimate and legal hardship. It is not the IWA's charge for the applicant to get their maximum return on their investment; it is to protect the wetlands. It is not up to the IWA to come up with a plan but there are prudent and feasible alternatives.

Flannigan stated that the plan of 6/15/14 shows fill of 4,200 sq. ft. and 1,502 sq. ft. temporary disturbance with 1,010 sq. ft. creation which is only a fourth of repair ratio. This wetland abuse is unprecedented. Alternate #4 shows a 1:1 ratio. There are more feasible and prudent alternatives. What happened 30 years ago is passed, 30 years in the future is unknown. This would be irreversible irretrievable loss of wetlands; long term loss. The lots have to be considered together due to the wall. She is not in support of the plan.

Cegan stated that he carefully reviewed all of the material and agrees with the board members and cannot possibly vote in favor of this application.

Connors agrees. He has a big issue with the septic system. There may be sewers in the future; that would be different.

Magnan stated that the board is trained not to be pre determined and to listen to all of the testimony both public and the experts. The process is very clear; the citizens' energy and participation aids in the deliberation process with the wetlands issues. There are complex aspects to this application. The applicant stated that irretrievable loss was unavoidable from the beginning and then lastly suggested alternate #4. Considering all of the information, he feels there are too many unknowns, too many risks and he cannot approve or support this application. It is not prudent. The definition of Prudent is careful in providing for the future. Climate changes are considered as well in protecting the wetlands and we must protect them.

Munson stated that things that were said about the applicant were unnecessary and the applicant does have the right to use their property. There needs to be reasons for denial and what would maybe be acceptable use. Collins stated that it is the IWA's job to protect the wetlands, not design a plan. Munson stated that he feels they made a good

faith effort with the plan and feels there should be clear reasons for denial. Collins read Section 2 in the IWA Regulations regarding prudent and further stated that these are two lots but one wetland. Cegan stated that it was clear that one lot and one house would be considered and it was absolutely rejected. Flannigan stated that we cannot see into the future for possibilities.

- MaryRose stated that the Agency held two site visits in July and has had 4 nights of hearings on this application. We heard from 3 wetland experts and 2 engineers.
- The public hearing was held because the Agency found that the proposed activity may have a significant impact on wetlands. We have heard expert testimony that the applications are proposing an irreversible and irretrievable loss of inland wetlands.
- Under section 10.3 the Agency cannot approve these applications unless they find there are no feasible and prudent alternatives to the applications. The applicant has submitted 3 alternatives for Lot 28 and 3 alternatives for Lot 29 and one showing both lots. Each of the alternatives has less wetland filling than the applications. Mr. Wheway stated that the alternatives were all feasible but he didn't feel that they were prudent because they would have straight driveways that back out onto the City Street. From visiting the site and personal experience does the Agency feel that not having a dog leg to turn around and having to pull out of your driveway is a prudent reason for filling a wetland?
- None of the alternatives were full plans with all engineering, erosion & sedimentation controls, grading, drainage, planting and mitigation completed.

Mr. Allen discussed the potential for future impacts to the wetlands from this proposal from the construction of the secondary septic system. As shown on the plans as required by the health department, the secondary septic system is proposed less than 10' from the wetland line at the closest point. Construction and grading of this system is a potential future impact to the wetlands. Mr. Wheway argued that if there is ever a need to replace the septic system the homeowner could opt to remove and replace the existing system but that will require that the access road be rebuilt in and adjacent to the wetland mitigation area for Lot 28 or a new access road through the wetlands on lot 29. Mr. Wheway stated that the owner could 'just apply and get a permit for the new system at that time'. These are potential future impacts that the Agency needs to consider.

The following motion was made by Connors, seconded by Flannigan:
After duly considering all relevant factors, he moved to deny applications IW-A-15-017 and IW-15-018 based on information and expert testimony in the file and presented at the meetings and the plans entitled:

"0 Tanglewood Circle prepared for April Culver Lot 28' Rustic Acres' Section IV, Milford, Connecticut" by Codespoti & Associates, 3 sheets dated as follows S1-5/02/15, S2 & S3 dated 6/5/14 revised 4/27/15 (last revised 10/7/15) AND

"0 Tanglewood Circle prepared for April Culver Lot 29' Rustic Acres' Section IV, Milford, Connecticut" by Codespoti & Associates, 3 sheets dated as follows S1-5/02/15, S2 & S3 dated 6/5/14 revised 4/27/15 (last revised 10/7/15).

This action will have an adverse impact or effect on the physical characteristics of the wetlands and watercourses and the applicant has not shown to the satisfaction of the commission that there are no prudent and feasible alternatives to the proposed activities. The applicant may investigate the following types of alternatives:

- Reducing the size of the footprint
- Shifting the location of the footprint on the site plan
- Proposing fewer lots / less adverse impact on wetlands/watercourses
- Increase the distance between the wetland and the edge of construction.
- Three alternatives for Lot 28, and four alternatives for Lot 29 have been proposed but insufficient information is available on these alternatives to determine which, if any are the most feasible and prudent alternative.

The motion carried unanimously.

E. Minutes

Munson asked for clarification on page 1 and this was reviewed. A motion was made by Magnan, seconded by Munson to accept the minutes of the 10/07/15 meeting as presented. The motion carried unanimously.

F. Staff Report

Reminder for upcoming training:

The CLEAR Land Use Academy **ADVANCED TRAINING** is this Saturday in Haddam from 8:30 to 3pm.

TOPICS COVERED:

Bias, Predisposition and Conflicts

Atty Richard Roberts, Halloran and Sage

Implementing and Enforcing Land Use Decisions

Atty Kenneth Slater, Halloran and Sage

Running a Meeting and Making the Decision

Atty Mark Branse, Branse and Willis

Also on their website they have a training page that has both videos and fact sheets for Land Use Commissions you may find it valuable to read or listen to this training the link is: <http://clear.uconn.edu/lua/online/rolesResponsibilities.htm>

CACIWC is November 14th in Wallingford at the Villa Capri. The training runs from 8:30 to 4:00 and the following people are signed up Cathy, Brendan, Al, Lily Carol and MaryRose will be attending

Site Status:

31 Shadows End Rd. This was the storage shed pre-application we approved over the summer. The project is complete and the homeowner is asking if an asbuilt is really necessary. MaryRose visited the site on 9/28 with Chairwoman Collins. The shed is in the area, is stabilized and there is no change to the wetland from her pre-construction visit. The Sostillos are requesting that the requirement for an asbuilt be waived due to the high cost of the survey. The IWA is holding a \$4,100 bond for the completion of the project.

Collins stated that when the agency approved the permit there was a condition to require an asbuilt. Connors stated that an asbuilt will cost about the same as the bond. Cowden asked if there is a lesser drawing that will satisfy the condition and not be as expensive; he doesn't want to set a precedent that asbuilts will be waived. Collins stated that there are several sites like this. Munson questioned if they were bonds or cash. MaryRose stated that there are both; she can investigate to see if there is a lesser costing alternative to the survey that will satisfy the condition. Flannigan stated that at one point she had gotten a survey and then topography was required and that doubled the cost of the survey. MaryRose stated the MIWA motions require topography to ensure that the grading to the wetland is what was approved. Cowden stated that he would like an asbuilt to show where the footprint of the building is. Magnan stated that it appears an asbuilt is needed.

Indian River Interceptor –We continue trying to work towards a solution with the Sewer Commission's consultants to get the contractor to comply with their permit. CT-DOT has required that the job be finished and/or the road be stabilized for the winter by November 13, 2015. It appears that they will be winterizing and restarting the job in spring 2016.

Sanitary Sewers Infills No 2 (Plains Rd/Shelland St/High St/White Oaks Ter) - Final paving/stabilization work is ongoing and should be finished within the next 2 weeks.

Way Street work is ongoing,

West Main Street is nearly complete. Mitigation area is in and seems to be doing well.

1595 Boston Post Rd project is ongoing.

86 Old Field Lane is ongoing.

220 Rock Lane is ongoing

134-142 Old Gate Lane is ongoing.

CT-DOT work the cells under the I-95 Bridge over the Wepawaug is ongoing

Ct-DOT work on the bridge over the Wepawaug is ongoing she was called to the site last week to review several trees that will be impacted by the new bridge alignment. They reviewed the area and determined it is very likely that at least 2 of the trees will be undercut by the River / have been impacted by the construction and will cause a hazard. Two additional trees were reviewed and depending on the final

stabilization may be removed. Cowden asked if they will be adding mitigation plantings. Those trees provide shade in that area of the River. MaryRose is to speak to DEEP and DOT to determine if trees can be added to the stabilization in that area. It is a DEEP project because the State regulates their own work in a wetland. There is concern about river sand bank and Japanese knotweed.

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

G. Chair Report

Collins thanked the board for all of their time and effort in reviewing the applications.

The next regular meeting will be on 11/4/15 in Conference Room A.

There being no further business to discuss, a motion was made by Connors, seconded by Munson to adjourn at 8:20 p.m.

—Respectfully submitted,_____

Lisa Streit

These minutes have not been accepted or approved.