

Minutes of the Special and Organizational Meeting of the Inland Wetlands Agency on January 06, 2016.

A. Roll Call

Present: Cathy Collins, Jim Connors, Ken Cowden, Dave DeFlumeri, Carol Dunn, Lily Flannigan, Brendan Magnan, Steve Munson, Daniel Schopick and Philip Zeyte.

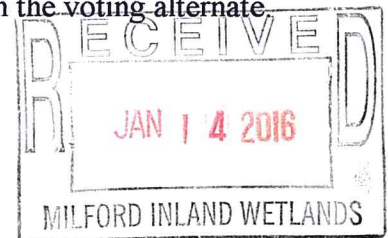
Also Present: DPLU Director Joe Griffith, MaryRose Palumbo and Lisa Streit

MaryRose noted that Connors, Schopick and Zeyte have all been sworn in by the City Clerk.

Streit called the meeting to order at 7:30 p.m. and deemed Dunn the voting alternate.

B. Organizational Meeting

MaryRose reviewed Chairman responsibilities:
Bylaws Sec 5.2



The Chairperson shall preside at all meetings and hearings of the MIWA and has authority that includes, but is not limited to:

- a. Calling special meetings;*
- b. Directing or authorizing actions of the MIWA Designated Agent(s), when, in the judgment of the Chairperson or an Agent, action is required during the period of time between regularly scheduled meetings, or before a special meeting can be called;*
- c. Appoint sub-committees for purposes and terms approved by the MIWA;*
- d. Attend all sub-committee meetings as an ex officio member of each committee; and*
- e. Attend significant city meetings as required to represent the MIWA.*

Bylaws Sec 5.3

The Chairperson shall have the privilege of discussing and voting on all matters before the MIWA, but shall not move for or second any motion.

Streit called for nominations for **Chairman**: A motion was made by Connors, seconded by Magnan to nominate Collins Chairwoman. There being no further nominations, they were closed. Streit cast one vote deeming **Collins** Chairman.

Collins called for nominations for **Vice Chairman**: A motion was made by Connors, seconded by Flannigan to nominate Magnan Vice Chairman. There being no further nominations, they were closed. Streit cast one vote deeming **Magnan** Vice Chairman.

Collins called for nominations for **Parliamentarian**: A motion was made by Cowden to nominate Schopick Parliamentarian. MaryRose stated that Schopick is not a regular

member and therefore cannot be nominated. A motion was made by Munson, second by Connors to nominate DeFlumeri Parliamentarian. There being no further nominations, they were closed. Streit cast one vote deeming **DeFlumeri** Vice Parliamentarian.

A motion was made by Connors, seconded by DeFlumeri that the Compliance Officer acts as the Designated Agent for the Agency. The motion carried unanimously. MaryRose's resume is on file in the Agency office.

Collins thanked everyone and welcomed new Commissioner Philip Zeyte and congratulated reappointments Connors and Schopick. Collins encouraged board members to read Section 1.1 of the Regulations which is taken from the enabling statute. Section 1.1 is what the Legislature intended when creating the Inland Wetland Agencies - a balance of rights of property owners and nature for this and future generations. Section 10 is the Criteria to be used in making a decision on an application.)

C. Pledge

All stood for the Pledge of Allegiance.

D. Public Comments

None.

E. New Business

1. **IW-A-15-068: 45 Cooper Avenue, Aviel Suarez**, proposed elevated residence with construction within 100' of a wetland or watercourse in the South Central Shoreline Watershed.

This item is on the agenda for the first time and can be discussed at the next regular meeting. MaryRose reviewed the date codes after each application.

Bob Wheway requested reordering the agenda as the applicant for item E. 2. is not yet present. A motion was made by Munson, seconded by DeFlumeri to hear item F. 1 next. The motion carried unanimously.

A motion was made by Connors, seconded by Munson to hear items F.1. 0 Tanglewood Circle lot 28 and F.2. 0 Tanglewood Circle Lot 29 together. The motion carried unanimously.

F. Old Business

1. **IW-A-15-064: 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-15-065: 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.

MaryRose reported that these applications are a proposal for two single family homes with construction, grading and fill in and within 100' of a wetland in the Housatonic River Watershed.

The proposal for 0 Tanglewood Circle Lot 28 is to fill 845 sq. ft. of wetland with 12,577 sq. ft. of work in the 100' upland review area for the construction of a house and yard and access to a septic system for a single family home. The applicant is proposing to use a rubble wall to delineate the edge of the filling and the wetland and to create 2,004 sq. ft. of wetland. They are also proposing a pervious driveway with a gravel reservoir area for stormwater treatment.

The proposal for 0 Tanglewood Circle Lot 29 is to fill 814 sq. ft. of wetland with 13,046 sq. ft. of work in the 100' upland review area for the construction of a house and yard and access to a septic system for a single family home. The applicant is proposing to use a rubble wall to delineate the edge of the filling and the wetland and to create 1,499 sq. ft. of wetland. They are also proposing a pervious driveway with a gravel reservoir area for stormwater treatment.

The Applicant's Attorney has requested that the previous applications on these properties (IW-A-15-017 & IW-A-15-018) be incorporated for reference. Schopick stated that it was determined that April Culver is not the owner, but Trustee. Bob Wheway stated that he would refer that back to Attorney Lynch.

Bob Wheway, PE of Codespoti & Associates presented the applications and submitted the following:

- 1) Soil Investigation Report Lots 28 & 29 Tanglewood Circle by Otto Theall, Soil Scientist, Professional Wetland Scientist, Soil and Wetland Science dated May 2, 2014 (for Lot 28 file)
- 2) Drainage report summary for Lot 28 Tanglewood Circle, Milford, CT by Codespoti & Associates dated December 2015
- 3) Porous Pavement Maintenance Guide for Lot 28 Tanglewood Circle
- 4) Soil Investigation Report Lots 28 & 29 Tanglewood Circle by Otto Theall, Soil Scientist, Professional Wetland Scientist, Soil and Wetland Science dated May 2, 2014
- 5) Drainage report summary for Lot 29 Tanglewood Circle, Milford, CT by Codespoti & Associates dated December 2015
- 6) Porous Pavement Maintenance Guide for Lot 29 Tanglewood Circle

Wheway reviewed what has changed from the previous applications. Lot 28 has a number of revisions to the previous set of plans. They have reduced the house from 32' X 50' to 26' X 46' making it from a 1,600 sq ft building footprint to a 1,200 sq ft building footprint area. They have shifted the building to the north and tucked it into the side yard setback. They have changed to a front load garage as a result of the previous hearing on the project. With regards to moving and shifting they were able

to reduce wetland encroachment 6' by moving everything 6' closer to Tanglewood Circle. They had proposed 1,622 sq. ft. of wetland filling. They are now asking for 845 sq. ft. of wetland filling a 48% reduction in wetland filling over the previous application. In reducing the size of the house and making a front load garage it gave room for an additional wetland creation area. They are now at approximately a 2,000 sq ft of creation which is more than a 2:1 mitigation.

Lot 29, they have reduced the house from 32' X 64' to 26' X 46' making it from a 2,050 sq. ft building footprint area to a 1,200 sq ft building footprint area. For a reduction of 42% of building foot print area. They have shifted the house to the south corner against the building setback line with a front load garage. The reduction in the width of the house gives the ability to move 6' closer to Tanglewood Circle and away from wetlands. This reduction puts the house fully out of the wetland. They are asking for 814 sq ft of filling for a reasonable back yard area to go with the house. The previous application proposed 2,631 sq ft of filling that is now reduced to 814 sq ft of filling, a 69% reduction in wetland filling for this application. This has also provided additional area for wetland creation. They are now proposing 1,500 sq ft of wetland creation, which is under the MIWA policy of 2:1, but when the lots are reviewed together the mitigation proposed equals 2:1.

Wheway stated that the temporary disturbance for force main installation has been removed. They had a conversation with the State Department of Health reviewed the plan and they are willing to entertain putting an easement across lot 28 for the force main for Lot 29. It will have to be formally approved by the State Department of Health. He stated that he would add a copy of the email from the State to the file. This plan has a 69% reduction of filling of the wetlands.

Wheway stated that he has not decreased the Low Impact Design reservoir system so they are providing a no net increase in runoff. He feels that he has addressed the Agency's comments in the denial motion with the exception of the consideration of a single home on the two lots. He assumes that there will be a request for a public hearing and site walk.

Wheway stated that he feels that a lot of the comments with the Third Party Reviewer, LandTech Consultants, were ferreted out with the back and forth that occurred in the previous application. This proposal represents Alternate 4 that was submitted with the original application but had not been fully developed with engineering. He stated that this proposal is for Alternate 4 on steroids.

Collins stated that she would like to see the site and asked if it was re-staked and if the agency felt they would like to walk it again. She asked that the 4 corners of these proposed houses be staked. She would like to visualize the proposal in a different season and with the different house locations.

Munson asked if the markers for the houses from the previous proposal are still there and if they are to please leave them and just mark the new corners with a different color as it will help visualize the changes. Munson stated that he is inclined to have

the 3rd party review but would like to see it with the same reviewer from the previous application as they are familiar with the sites. The Commission agreed.

Schopick asked about the single lot option. Wheway stated that that was more appropriate for attorney Lynch to address. The applicant's position is that they are 2 separate distinct lots. Schopick stated that he would hope that the applicant can address the pervious asphalt in residential situations: where maintenance becomes an issue with ideas on how they should handle that. This may be an issue to discuss at a public hearing. Wheway stated that the commission might not have seen residential pervious pavement before but it has been around/successful for years and further stated that any other type of stormwater management has the same issues, it would be enforced the same way. Everything that is engineered requires maintenance and he asked how the commission handles the other options. Connors stated that pipes or galleys can be vacuumed out. In reading the maintenance document, do you really think an owner is going to cut up his driveway if it becomes impervious? He is concerned with the maintenance factors being onerous. He is concerned that the maintenance will not happen. Wheway stated that these are accepted best management practices. Any stormwater design will have just as much maintenance. Everything is the same as what the Agency has seen before except for the pavement. If the rest of the maintenance isn't done – the galleys will fail too. If the commission isn't comfortable they can do conventional asphalt and yard drains. They are trying to come forward with the best practice designs that are available. The driveway areas are small and there will not be significant tracking so the porous material will not be sealing up. They have a 20% void ratio in the pavement. Zetye asked what the expense is for installation. Wheway stated that there is a 15-20% premium over conventional asphalt. Pervious pavement doesn't have the sand component. It is similar to the super pave that DOT is using on the highways. It allows the water to seep through and run out at the binder layer level.

Collins stated that this will be discussed more after the site walk at the public hearing and that Wheway may want to bring an expert in pervious pavement. Wheway suggested that the Agency may want the 3rd party reviewer to look at it.

Magnan asked apart from porous pavement being a best management practice (BMP) why is this being proposed. Wheway stated that due to the site characteristics and test hole data showing a high water table, they need a thick layer to put this system into. They looked at what could be done to shrink the cross section profile to avoid more disturbances. Magnan stated that as part of your preparation you mentioned the revised approach to getting the force main to the leaching field and asked that that be explained. Wheway referenced the combined plan. Lot 29 on the combined plan outlines the force main path to the leaching system. Construction sequencing would be: establishing the temporary crossing to access the area for leaching system then doing the wetland creation. Once the force main is in and the leaching system installed then they would be doing the wetland creation, which can't occur until the disturbance work is done. Putting the force mains together eliminated the disturbance of approximately 1,300 sq. ft. of temporary disturbance for the other force main

Schopick stated that Wheway asked that prior proceedings be made part of these proceedings and that the IWA should make a motion to accept that request. Munson asked if this is a separate proposal or two new proposals. Cowden asked if the mitigation will be separately considered. That is not 2:1 on lot 29 and one more then 2:1 on lot 28.

Munson stated that he doesn't have an issue looking at it together. Wheway stated that in part they are asking to hear them together as an economy of time. The presentations are similar because of the locations but we can do them separately if you would like. Flannigan stated that she does not have all of the paperwork from the last application.

Collins questioned 2:1 vs. almost 2:1 and that they can't have it both ways and asked if they are considered together or individually. Wetlands mitigation is together, sewer is together, one area for two separate houses. MaryRose will discuss this with the City Attorney.

DeFlumeri asked when you are creating or recreating new wetlands will those wetlands be autonomous from the existing or contiguous and if they will touch. Wheway stated that the intent is to have them become contiguous. When they designed this, part of what was looked at for additional mitigation was that the elevations are critical to maintaining the hydraulic regimen and not supplanting the existing wetlands. That is why there was difficulty creating the wetland in the rear where there would have had to have been a significant grade change.

Magnan asked what the rational for the 16' surrounding the house. Wheway stated that it was just a sense of reasonableness; to him 16' seems small but it was changed from the previous application to accommodate the Agency's concerns.

A motion was made by Connors, seconded by Munson to hold a site walk on Thursday, 1/14/16 at 4:00 p.m. The motion carried unanimously.

A motion was made by Connors, seconded by DeFlumeri to hear item E. 2. next. The motion carried unanimously.

E. New Business

- 2. IW-PA-16-001: 226 Baxter Lane, Victor Rosado,** proposed addition, indoor sport court, patio and pool with construction and grading in and within 100' of a wetland or watercourse in the South Central Shoreline Watershed.

MaryRose reported that this is a pre-application and can be discussed this evening and reviewed the following:

The Agency reviews Pre-application to determine if:

- 1) A proposal is allowable under Section 4 of the Regulations for Uses Permitted as of Right
- 2) To determine if a permit is required for the proposal

3) To give an applicant the chance to see what additional information the Agency *may* request before filing a full Application.

In the event of a pre-application review prior to submitting a full application, the Agency *does not* make a decision on the application nor voice its opinion on the approvability of the proposal. The Agency can suggest additional information that they would like to see for a full application or concerns on the proposal that should be addressed in a complete application (such as *"I am wondering how the applicant is going to handle stabilization of the steep slope adjacent to the wetland – please have the engineer and professional wetland scientist address this in your application"*)]

This is a proposal by Victor Rosado of 226 Baxter Lane for a 40' X 32' two story addition, a 50' X 100' 2-level indoor sport court, a 18' X 70' patio, a gazebo and a 35' X 60' inground pool and patio area. This proposed work would require the filling of 0.04 Acres or 1,758 sq. ft of wetlands with the proposed creation of 0.041 acres or 1,794 sq. ft of wetlands. Mr. Rosado is looking for guidance from the Agency before he moves to full engineering and design of his proposal. Mr. Rosado and Bob Wheway of Codespoti & Associates, the Engineer on this project, are here this evening to present the pre-application.

Bob Wheway of Codespoti & Associates on behalf of Victor Rosado. This house was constructed in 2003 on a 5.08 acre lot with 4.2 acres of wetlands as located on Sheet SP1 of your drawings. Due to the Rosado's increasing family size (10 children) he needs to expand to make use of the property for his family. He is proposing a 2-story addition, indoor recreational facility, inground pool and yard area as shown on sheet SP2

Prior to this plan Mr. Rosado had a much more ambitious plan for this property with 16,000 sq. ft of wetland disturbance on the property. Over several meetings they scaled down to a more reasonable proposal.

Wheway submitted Alternate 1 – which shows the proposed filling reduced to 6,400 sq. ft. This alternate meets all the amenities and the project goals are intact. It was our opinion that this was still overly aggressive. Through negotiations with Mr., Rosado we modified the plan to keep the program he had in mind intact which lead to Alternate 2. They met with MaryRose on Monday to review this plan; it kept the program in mind scaled back the yard area, reducing filling to 3,200 sq ft with a 2:1 mitigation areas with a loss of yard area and amenities. Based upon that meeting, a meeting with the design team and owner it resulted in the pre-application presented this evening. Sheet SP2 shows the proposed filling of 1,230 sq. ft. for the pool and 528 sq. ft for the sport court. They were able to substantially reduce the amount of filling by separating the building and putting it in the SW corner of the site. The proposed gazebo is elevated above the ground it would be at existing retaining wall level and provide an overlook into the adjacent wetland with several creation areas on the site. In relocating the sports building some existing features were relocated (playground and storage area). This is a quick overview; they are looking for

guidance from the commission as to what would be needed, to bring this in as an application.

Collins asked if the mitigation proposed is 2:1. Wheway stated that he understood that to be more of a policy and not a regulation. When looking at the property there is not much upland that can be used to create mitigation areas. They asked MaryRose if there is the ability to do offsite mitigation. She said that the Agency has done offsite mitigation in the past. Looking at these numbers they would do offsite improvements of approximately 1,800 sq ft.

Schopick asked if there was a permit for the shed. If not it should be removed before the application is brought into the Agency.

Munson stated that he has no issue with offsite mitigation but when it was done before it was a very different situation. Point being wetlands are not created equal. He is open to offsite mitigation but thinks it should be considered on a case by case basis as all wetlands are different. If proposed it should be staying in the same watershed area.

Collins stated that the applicant is just looking for guidance not for the Agency to redesign his plans.

Wheway stated that they were looking for direction to develop the plan before putting time, energy and effort into creating the plan. They would like it to be in an appropriate direction for the Agency.

Magnan asked for a clarification of the property line. SP1 was referenced.

Collins asked if there was an option to put the pool in the front to keep it away from the wetlands. Wheway stated that issues with putting a pool in the front yard are safety. He would defer to the owner on pool location.

Connors stated that the corner of the sport building is also in the wetland and that it is a 5,000 sq. ft. building and he asked what it is. Wheway stated that it is a basketball court; it is smaller than a regulation court. Alternates were presented to show that plans have been significantly scaled back from what the owners' objectives were.

Cowden stated that the pool is 20' x 40' and questioned the size of the patio and what the lower level room was. Wheway stated that there is an existing patio there and they are just reworking it. They are proposing a movie area on the lower level. Cowden suggested reducing the pool and patio size and moving the proposed sport court building closer to the house or even attaching it to the house.

Schopick asked if it was possible to remove the shed. Wheway stated that the shed could be built into the sport court. DeFlumeri stated that if the shed was moved 90 degrees the basketball building could be moved up to get it out of the wetlands.

Collins stated that the IWA would like to see things moved out of the wetlands as much as possible and that a 2:1 mitigation be proposed. It is not the IWA's job to reengineer the plan, it is the IWA's job to protect the wetlands and balance the use of the property. Wheway asked what mechanism is there to do offsite improvements. Magnan stated that the IWA goes into each application without pre-determination and thinks that it is premature to assume that there won't be a 2:1 mitigation. 2:1 mitigation is not the only factor to consider; functions and values are considered. Munson stated that the reason more than 1:1 is policy is because creation does not always work.

G. Minutes

A motion was made by Connors, seconded by DeFlumeri to accept the minutes of 12/16/15 as presented. The motion carried unanimously.

H. Staff Report

Welcome Commissioner Zeyte and welcome back everyone

Distributed this evening is the Milford Code of Ethics from the Code or Ordinances, a 2013 memo from the City Attorney's office on Commissioner independent research, two 1992 memos from the City Attorney's office on the *Carr v Bridgewater case*, an excerpt from the Book "What's Legally Required" 2004 edition and a copy of the MIWA Bylaws. Please read or reread the information and if you have any questions please let MaryRose know.

Also distributed is a draft synopsis of Commissioner Experience. Please mark up the synopsis and return it to MaryRose. She will update it and have it for the next meeting. The purpose of the synopsis is so that other Commission members and applicants will know what commissioners' areas of expertise are.

A DRAFT contact sheet was distributed to make any corrections and return it to Maryrose this evening.

The IWA process is a fair and open process where the applicant presents information and the Agency reviews it to determine if it complies with the City of Milford IWA Regulations. The IWA cannot rule on or speak to the P&Z or ZBA regulations or things in the purview of other City, State, or Federal Agencies. The IWA's are not mini DEEP's and can only review/decide based on impacts to wetlands and watercourses.

As a reminder/refresher when commissioners sit on the Agency and review applications they are to be unbiased and review the information that is presented. If there is a question or additional information is needed you can either ask the applicant at a meeting to provide that to you or you can contact MaryRose and she will ask the applicant to provide that information at the next meeting. Researching information outside of the record is inappropriate and could taint an Agency decision. Please see Assistant City Attorney Debra Kelly's memo from June 2013 regarding individual Commissioner research on applications before the Agency.

If you would like to see information other than what has been presented please ask as early as possible in the process so that the applicant is given a fair chance to comply with your request within our 65 day review time frame.

If friends, neighbors or citizens approach you to discuss or 'just tell you one thing' about an application please explain to them that it would be better if the entire Agency was able to consider their information. If they continue to try and talk to you about an application you need to just walk away. Ex parte communication isn't always your fault but it is in the best interest of you and the Agency to avoid tainting a decision.

Site Status:

- Indian River Interceptor – Appear to be closing down for the winter. I required that they repair their erosion controls today before leaving the job until spring.
- Way Street work is complete, asbuilts received mitigation monitoring to continue.
- West Main Street is complete waiting on asbuilt. Mitigation area is in and will be monitored for 3 years.
- 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.

Please call the office if you cannot attend a meeting.

I. Chair Report

Instructions/suggestions to read the regulations, code of ethics, reminder about ex parte communications. Ask questions of staff and /or in a meeting, no discussions outside of meetings or private discussions during a meeting.

Thank you for the vote, of confidence will rely just as much as always we work best as a committee when everyone participates. The IWA is a democratic body. In some instances you may be in the minority or the majority on a decision. In all cases the goal is to apply the IWA Regulations as outlined in the Ordinance and Statutes. A former Chairman (John Ludtke) liked to say that if both the applicant and opponents are upset with the Agency after a decision then we have done our jobs, as the Wetland Statute is a balance Statute. It is not the charge of the Agency to prohibit people's use of their property; it is our charge to balance their rights to use their land with the protection of the wetland and watercourses.

The Statues require that we look at the wetlands only. Wetland case law has given us the requirement that plants and animals that may use the wetland for a portion of their life cycle can only be considered if a nexus can be drawn between the loss of that species and the loss of that wetland. But the impact of wetland loss on the species is unfortunately not something we are allowed to consider.

The next meeting will be January 20th in this room. Please let the office know if you cannot attend. (There will be a special meeting and site walk on January 14 at 4pm for 0 Tanglewood. Please check your email in case of inclement weather.)

There being no further business to discuss, a motion was made by Connors, seconded by Munson to adjourn at 9:25 p.m.

Respectfully submitted,



Lisa Streit

These minutes have not been accepted or approved