

Inland Wetlands Agency

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SPECIAL MEETING
APPROVED MINUTES

Canoe Brook Senior Center, 11 Cherry Hill Rd., Branford, CT
Totoket Room
Thursday, January 19, 2017 7:30 PM

Present: Peter Bassermann, Suzanne Botta, John Rusatsky, Richard Greenalch, Sandra Kraus, James Sette and Eric Rose.

Absent: Jim Goggin, Merle Berke-Schlessel and Rick Ross.

Staff Present: Enforcement Officer Diana Ross, Inland Wetland Assistant Jaymie Frederick

Chairman Bassermann called the meeting to order at 7:35 p.m.
All Commissioners present were seated.

PUBLIC HEARING:

Proposed amendments to the "Inland Wetlands and Watercourses Regulations of the Town of Branford"

Chairman Bassermann stated that copies of the public notices, regulation amendments and summaries of changes are available. Chairman introduced Carolyn Kone, Attorney with Brenner, Saltzman & Wallman firm, to offer background information for today's discussion.

Atty. Kone put in context why the proposed regulations are in front of the commission. In May 2016 the Commission adopted regulations amendments. Following the adoption, four appeals were filed. Atty. Kone stated that she does not think that the appeals have any merit; however, to prosecute to the end is a drain on the Commission's resources and expensive to defend. The cases were consolidated. The lawyers for the parties met with the judge; the judge felt that they should work together to see if there could be any changes to the regulations that would result in a resolution to these appeals. To cover the uncertainty if the regulations were to be overturned, the judge entered a stay period that new regulations would not apply during (Aug 17, 2016 -Feb 16, 2017) during which a resolution could be reached. The parties did meet and confer. The regulations amendments before the Commission tonight are the result. The amendments clarify or make more certain what is necessary for an applicant to apply, or have to do with compensation for disturbed wetlands. Stated that where possible they relied on the statutes or DEEP guidelines.

Atty. Kone overviewed changes:

Definition of Best Management Practices – removed the word "buffer" and used "vegetated areas" so that there was no confusion between DEEP's definition and the Commission's intent.

Section 7.4 – complaint was that the language was confusing, so language was incorporated from CGS 7-159b.

Section 7.6 – multiple changes; all have to do with application requirements.

Section 7.6a – added DEEP stormwater quality manual definitions for "Primary Stormwater Treatment Practices" and "Above ground low impact storm water management structures"

Section 7.6b – eliminated reference to vegetated buffer as it would prohibit any interim use of the areas. Made language tighter by stating “adjacent to wetlands” rather than “vicinity of wetlands”. Used DEEP definition for the purpose of a vegetated area.

Section 7.6d – corrected cross reference.

Section 7.7f – clarification as to how applicants are supposed to address information for offsite wetlands.

Section 7.7i.5.) – clarified that phasing plan was to relate to wetlands and watercourses, added language from CGS 22a-42a(d)(1)

Section 7.8 – stated this section is important because a letter was received concerning this section. Language was changed to match the model regulations. This is not a restriction, the commission has complete discretion.

Section 7.8c.2. – this had to do with offsite wetlands and watercourses; clarified if that “information is publicly available” it needs to be included.

Section 7.8c.3-8 – clarified that this additional information that may be required is as it pertains to wetlands and watercourses.

Section 7.8c.8 – addressed concern relevant to lighting conflicts with PZ and clarified that any required changes need to come back for approval.

Section 7.8d. 2. – changed reference to Best Management Practices to be consistent and specified inland wetlands and watercourses

Section 7.8g – specified vegetated areas adjacent to wetlands and watercourses, not just in general

Section 7.9a – lawyers recommend that the Commission go back to the 2007 regulations because that had worked for the Commission and applications. That number (750sqft) seemed to be fair, and the new number (500sqft) didn’t really have any information as to why it would be better.

Section 7.10 – the possible extension of the monitoring reports to ten years ran into the issue of a management plan that extends beyond the life of the permit. Spoke to lawyers considered knowledgeable in Connecticut wetland law and got contradictory answers as to whether or not a management plan can extend beyond life of the permit. Thought it simplest to return to 2007 regulations which requires 5 years at minimum; which still gives the Commission a lot of leeway.

Recapped these are the recommended changes by the lawyers. If the Commission approves the changes, all of the lawyers will ask the appeals be permitted to be withdrawn. If the Commission does not approve the changes the Commission will litigate the appeals. If the Commission has changes, the changes will be brought to the other parties to see if they are acceptable.

Chairman Bassermann clarified that the public hearing is open and has been open for the duration of Atty. Kone’s presentation. Read into the record the list of exhibits for the public hearing. Read Exhibit 11, testimony of Bill Horne, into the record (testimony available in the Inland Wetland office. Horne is concerned with the change at beginning of section 7.8. Asked staff if there is any more information.

EO Ross responded not at this time.

Chairman Bassermann asked for public comment.

Janet Riesman, 699 East Main St., provided written testimony for the record. Her property is farmland located between land owned by Bittersweet partners and land owned by Weber and Secondino. Owns 39 acres, much of which has been an active farm since the 17th century and is protected by the CT farmland public act 490. Came to the meeting feeling as though these regulations were being forced behind the scenes and that appeals were pushing for these changes. Did not think it was right for a handful of lawyers and developers to push through these changes behind closed doors with no public input. Does not feel that the Commission should set aside goals for fear of litigation. Regulations as written now actually undermine the purposes laid out in the Title and Authority of the regulations. Stated concern with changes to section 7.10, developer responsibility is confined to just wetlands and

not the site as a whole, concerned with wording in 7.8. Afraid the revisions do not protect wetlands. Public has right to know what sort of negotiations got us in this situation.

Kate Galambos stated that she is interested in Janet's comments and the Commission's response to her points. She has read through all of the changes. She would like to thank the Commission for all the work they have done to create the proposed set of regulations. Thinks that they reflect a dedication to science and law and that they are comprehensive, reasonable and complete. Interested in response to concerns regarding 7.8 wording and to 7.9 regarding the square footage.

Chairman Bassermann closed the public portion of the comments. Passed out draft resolution to Commissioners. Introduced this is the time to discuss the proposed changes and public comments.

Comm. Rusatsky commented that he was the one that motioned to approve the [May 2016] regulations; the motion passed and then the regulations were appealed. The problems were mostly points for clarification. The Commission thought it would be simpler and cheaper to resolve this way. Changes were minor in nature; don't affect overall body of the regulations. Addressed that 7.8 language change is to match the state model regulations.

Comm. Botta added that Section 7.8 was discussed prior to this change of "involves" or "may have". Stressed that with the clause "At the discretion of the Agency or its Duly Authorized Agent, or if..." the Commission still has the discretion and tools that it needs. She was also on the Commission during passage of the regulations that were appealed by four developers. The bulk of the changes are not substantive. Commission still has the tools that it needs to provide protection of the inland wetlands and watercourses.

Comm. Greenalch stated that these regulations are more of a clarification. They went back to 750 from 500; 750 was in the 2007 regulations. Doesn't think the use of significant impact relevant to Section 7.8 is anything to be concerned about.

Comm. Botta thanked the public for coming and making comments. It has been difficult process, thinks the Commission has done the best that they could.

Chairman Bassermann commented that he has issue with the fact that the Duly Authorized Agent is not listed as someone that can do the monitoring reports, asked if that was what was intended.

EO Ross stated she had requested that be added because when it is required to be a professional the applicant has to pay for that expert to come back and inspect on an annual basis. For a small application the thought was that Town Staff could do that. The way it's written now that was removed. The current language they will have to pay for a professional.

Comm. Rose asked if the regulation is arguably more restrictive than the May regulations.

Comm. Greenalch asked if they could grant their Agent permission as a condition of approval.

Comm. Botta stated that she thought Duly Authorized Agent was put back in as an option.

Atty. Kone stated they could put the old b (May 2016 regulations) as a substitute for the current new b (2007 regulations).

Comm. Rose asked if making this change now from what was sent to the state restarts the process.

Atty. Kone stated no, they would need to file it and she will have to deal with the plaintiffs, doesn't know why they would have any problem with the change.

EO Ross stated the proposed language needs to be kept or you lose "85% or better"; keep the currently proposed language and just add "qualified ecologist, wetland specialist or *Duly Authorized Agent*".

Atty. Kone clarified "*or Duly Authorized Agent as approved by the Agency*" as it was proposed before.

Commission agreed.

Chairman Bassermann brought up the public's concern over vicinity and adjacent. Asked if there was something that determined vicinity was too broad.

Commission discussed that adjacent was the better wording. Vicinity could go beyond their jurisdiction.

Comm. Rose stated that he is sensitive to comment about the lawyers all talking and the Commission doing things behind the scenes. The Commission was sued. At no time did the Commission meet with any attorneys other than the Commission's attorney. The executive session meetings were attorney client privileged discussions. Commission heard only from the attorney representing the Commission. Every change that was requested was reviewed very scrupulously by the Commission with the help of Counsel. The Commission has seen these changes multiple times. The process did protect the Town very well and was not a backdoor process in the sense that other people were not engaging with the Commission.

Chairman Bassermann stated a draft resolution was passed out.

Atty. Kone reviewed that a new whereas clause (five) should be added for the proposed change.

Chairman Bassermann read into the record the proposed fifth Whereas clause: "Whereas the Commission, after public testimony, wishes to amend Section 7.10.b to also authorize its Duly Authorized Agent to provide the reports required in that subsection; and".

Chairman Bassermann stated the Draft Resolution is an exhibit, closed the public hearing and opened deliberations.

Chairman Bassermann introduced that there is a draft resolution before the commission. The fifth "Whereas" has been gone over, asked Commission if there are any issues with the whole resolution?

EO Ross read the proposed language change to Section 7.10: "...or wetland specialist *or a Duly Authorized Agent as approved by the Agency* and document...".

Comm. Greenalch motioned to adopt the changes to the Regulations per the draft resolution in front of the Commission with the one modification that was made earlier. Comm. Kraus seconded. No discussion occurred. Motion passed unanimously (7-0-0).

ADJOURNMENT: Comm. Botta motioned to adjourn the meeting at 8:49, Comm. Rose seconded. Motion passed unanimously (7-0-0).

Respectfully Submitted,



Jaymie Frederick, Inland Wetlands Assistant