



Inland Wetlands and Watercourses Agency

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Minutes

Thursday, August 08, 2019, 7:30 PM
Canoe Brook Senior Center
11 Cherry Hill Road, Branford, CT

1. CALL TO ORDER:

- **Chairman Peter Bassermann** called the Regular Meeting of Branford's Inland Wetlands & Watercourses Agency to order at 7:31 P.M.

2. ROLL CALL:

- Commissioners Present: Chair Peter Bassermann, Richard Greenalch, Eric Rose, Sandra Kraus, James Goggin
- Commissioners Absent: Rick Ross, Suzanne Botta, Chris Traugh
- Staff Present: Inland Wetland Enforcement Officer Diana Ross, Inland Wetland Staff David McCarthy

3. APPROVAL OF MINUTES:

- **Comm. Greenalch** Motioned to approve the July 10th Special Meeting Minutes | Site Walk | IW#13.06.03 - 47 Gould Lane Sub Division, Comm. Goggin seconded, Motion passed (in favor - not in favor - abstained) (5-0-0).
- **Comm. Rose** Motioned to approve the July 11th Regular Meeting Minutes, Comm. Greenalch seconded, Motion passed (3-0-2).
- **Comm. Greenalch** Motioned to approve the July 29th Special Meeting Minutes | Site Walk | IW#13.06.03 - 47 Gould Lane Sub Division, Comm. Rose seconded, Motion passed (3-0-2).

4. APPLICATIONS FOR RECEIPT:

BR# 19.07.06 | 45-81 Short Rocks Rd. | Watercourse Restoration

- **Ainsley Highman** introduced himself and noted that this project is in the same stream as his previously withdrawn project: upstream about 100 yards.
- **Ainsley Highman**: explained his project, and how he intends to use gabion rock baskets to build up the stream bed and bank.
- **Pete DaRos**: went into further detail about the Milone and Macbroom Study that recommended the installation of jams and lay logs to prevent further erosion and reduce the filling of the supply pond with sediment.
- **Chairman Peter Bassermann**: How many installations does the study call for?
- **Ainsley Highman**: Several: we can get that exact number, but were proposing to install two to four now, then four over the span of a year.
- **EO Ross**: permits last 5 years, so you can lay out your long-term plan.
- **Chairman Peter Bassermann** asked the applicants if they were aware of other projects like this?
- **Pete DaRos**: Yes

- **The Commission** learned that the submitted paperwork is excerpted from a much larger plan by the Milone and Macbroom Study.
- **Chairman Peter Bassermann:** when we review this at the next Regular Meeting, we will need more from the report: numbers, data, they entire plan.
- **EO Ross:** asked the applicant to make a list of the pages from the large report, so she can make a PDF for the Commission when this is reviewed for Decision at the next Regular Meeting.
- **Comm. Rose:** the application should be specific, we need a plan.
- **Ainsley Highman** expressed a sense of urgency for this project, the need to take action to reduce erosion sooner than later, and requested that the Commission schedule a Site Visit.
- **The Commission** expressed concern for only implementing parts of the much larger plan from the Milone and Macbroom Study.
- **The Commission** asked the Applicant to obtain feedback from the study's original Engineer and learn if the desired effects can be achieved from partly performing the full set of recommendations.

5. APPLICATIONS FOR REVIEW:

IW# 19.07.04 | 56 Stony Creek Rd. | Existing Structure Remodel (Site Improvements)

- **Leigh Small (Applicant)** introduced himself and the project.
- **Chris Williams (Christopher Williams Architects)** reviewed the building plan and noted that the overall footprint of this building is not changing, that most of the modifications are to the building itself, and there will be a decrease in impervious areas.
- **Jen Beno (Soil Scientist with Soil Science and Environmental Services)** informed the Commission that she delineated the wetland across the property in July, then reviewed the site's conditions.
- **Jen Beno** referred the Commission to her soils report and noted that there are existing play structures in the wetland. Then, she reviewed the functions of the wetland, the upland review area and the types of vegetation there. She noted an intermittent watercourse that runs through a swale across the site. "It stays wet a lot, but its mowed when it dries up."
- **Jen Beno** informed the Commission that the applicant is proposing to remove all the existing play structures located within the wetland and to install a fence by hand, and to enhance the intermittent watercourse by planting highbush blueberries and removing invasive species.
- **Comm. Kraus** asked about the total decrease of the impervious area.
- **Portia Elmer** informed the Commission that the overall footprint of the houses to be removed is more than the proposed parking spaces and driveway.
- **The Commission** reviewed the plan
- **Jen Beno stated** that it's her professional opinion that this plan has no adverse impact to the wetland or its functions.
- **Amy Small:** informed the Commission that the wetlands would become a part of the children's classroom learning. The landscape is part of the classroom: rocks, trees, field, "forest kindergarten."
- **Comm. Greenalch** made a Motion to approve IW# 19.07.04 | 56 Stony Creek Rd. | Existing Structure Remodel (Site Improvements), Comm. Rose Seconded (5-0-0).

6. ADMINISTRATIVE APPROVALS ISSUED:

IWAA# 19.06.02 | 115 Burban Dr. | Above Ground Pool

- The Commission noted that EO Ross approved the application administratively.

IWAA# 19.07.05 | 55 Deforest Rd. | Above Ground Pool

- The Commission noted that EO Ross approved the application administratively.

IW# 19.07.01 | 21 Lomartra Lane | Construction of a New Single Family Home

- The Commission noted that EO Ross approved the application administratively.

IW# 19.07.02 | 19 Lomartra Lane | Construction of a New Single Family Home

- The Commission noted that EO Ross approved the application administratively.

IW# 19.07.03 | 17 Lomartra Lane | Construction of a New Single Family Home

- The Commission noted that EO Ross approved the application administratively.

7. OTHER BUSINESS:

IW#13.06.03 | 47 Gould Lane Sub Division | Sediment & Erosion Control | Review of Site Walk on July 29th | Discussion of Wetland Impacts

- **Ryan McEvoy:** Lead Project Engineer and Civil Engineer with Milone and Macbroom updated the Commission on the status of the 47 Gould Lane Subdivision since the Site Walk.
- **Ryan McEvoy** informed the Commission that grading behind lots 10, 11, 12 (a significant amount of earthwork) is slated for next Tuesday, and should take about a week and half.
- **Peter Bassermann** asked IW Staff David McCarthy to report on the outstanding soil and erosion controls, repairs, and achieving site stability.
- **IW Staff David McCarthy** reported on his visits to the 47 Gould Lane Subdivision to the Commission.
- **Comm. Bassermann** asked Michael how the foundations were dug prior to administrative approval of the erosion controls.
- **Michael DiGioia** walked the commission through a timeline of events. He informed the Commission that he installed the erosion controls per the plot plans. Then, when IW staff inspected them, they made recommendations/modifications to be added. Then, when they came to inspect those upgrades at 1:00 P.M the day of the site walk, they were not at 100%. My crew was still installing them, but most were up. That same evening the Commission came for a site walk, but I didn't know that IW Staff was not technically allowed to inspect them at the Site Walk. I assumed since they saw that they were up, that we were ok to go.
- **The Commission, IW Staff, and Michael DiGioia** discussed the timeline of events.
- **IW Staff David McCarthy** handed the Commission a timeline document he created titled: *Communication Timeline for Building Lots 10, 11, 12.*
- **The Commission, IW Staff, and Michael DiGioia** discussed the timeline of events.
- **Michael DiGioia:** at the site walk, Diana and David saw them, so I thought that they were good to go.
- **EO Ross:** We didn't and couldn't talk with you about anything specifically at the Site Walk ... "we needed to follow up with you after the site walk."
- **Michael DiGioia:** I apologize, I did not know that.
- **Comm. Rose:** I can understand how the confusion occurred, I get it.
- **IW Staff David McCarthy** informed the Commission that most of the soil and erosion controls for lots 10, 11, and 12 are up, as a part of ongoing maintenance, there only a few minor repairs outstanding.
- **The Commission, Ryan, and Michael** discussed excavating the slope behind lots 10, 11, and 12, as well as the status of the retention basin.
- **Comm. Bassermann:** will the overall design will work once site stability is achieved?
- **Ryan McEvoy:** that's our belief, yes.

- **Michael DiGioia:** I want to install the organic berm that EO Ross suggested to be placed down gradient of the level spreader, but I won't until the BLT signs off on all of it.
- **Ryan McEvoy:** I think this will not hurt, I am willing to give it a shot.
- **Michael DiGioia** I am willing to do whatever I need to do, but only if everyone is on board.
- **Peter Raymond (President of the Branford Land Trust (BLT)):** creating a berm from compost to the transfer station will leach whatever is in the compost into the wetland.
- **Michael DiGioia:** I don't want to upset my neighbors, I don't want to create another problem.
- **Comm Rose:** did the BLT suggest any other ideas?
- **Peter Raymond:** I have not had time, but I think that a transfer station compost berm is a bad idea.
- **Ryan McEvoy** spoke to the turbidity of the water that discharges out of the basin as a result of large rain events.
- **Ryan McEvoy** spoke to stabilizing the site with vegetation.
- **Comm. Bassermann** will the site be vegetated by the end of October?
- **Michael DiGioia:** yes, absolutely.

Wetland Impacts

- **Comm. Bassermann:** "What is our jurisdiction here?"
- **EO Ross:** the Commission has jurisdiction over any impacted wetlands, whether on or off the property.
- **Peter Raymond** informed the Commission that, according to the bylaws, it has jurisdiction over the off-site inland wetlands owned by the Branford Land Trust, and that it has the authority to force the applicant to pay for off-site remediation.
- **Comm. Bassermann** noted that he spoke with the Town's Attorney and the consensus was that Commission cannot force an applicant to pay for something to occur off-site.
- **The Commission** discussed the difference behind hiring a third party to evaluate/review impacts to the inland wetlands, VS. forcing the applicant to pay for offsite remediation/cleanup.
- **The Commission** reviewed the letters submitted to the IW Commission by the BLT.
- **The Commission** reviewed the Milone and Macbroom's inland wetland evaluation, and the BLT's inland wetland evaluation conducted by William Kenny Associates LLC.
- **Comm. Bassermann** asked if there had been any discussion between DonMar and the BLT about remediation.
- **Peter Raymond:** yes, but we'd like for the IW Commission to step in and provide guidance.
- **Comm Rose:** the Milone & McBroom report suggests that things be left as they are in the inland wetland.
- **Ryan McEvoy** read the last page of the report: *the wetland vegetation has remained healthy.*
- **Peter Raymond** noted that report spoke solely to vegetation, and no other functions of the inland wetlands were assessed.
- **Comm. Rose** reminded the Commission of a previous discussion it had about hiring a third party consultant. He stated that he thinks the Commission should have a third party review the wetland impacts and that it was his understanding the Town would absorb that cost.
- **EO Ross:** I was not involved in that discussion it would be unusual for the Town to do that.
- **EO Ross:** The normal way to go about this would be for the Town to issue an Enforcement Order to someone that impacts the inland wetlands, then require that they restore it.
- **EO Ross:** I don't know of any way to accept a bond from someone that is not applying for a permit. I don't think the State Statues enable us to do that.

- **Comm. Bassermann:** we have a professional opinion that suggests restoring the inland wetland would do more harm than good.
- **EO Ross:** the Commission would issue an Enforcement Order against the violator stating that they need to hire a professional to go in there and assess the situation. However, it's on someone else's property and they may not want that.
- **EO Ross:** the Town should not be hiring a consultant to investigate impacts to an inland wetland that were caused by an applicant that did not manage their soil and erosion controls. There's no budget for that.
- **Comm Rose:** I recommend that we have a third party do what Milone and Macbroom did, and figure out how to pay for it.
- **Comm Rose:** Considering the amount of siltation that occurred, I don't think it's appropriate to take the applicant's recommendation to stop, do nothing, and watch it to see how it goes.
- **EO Ross:** why would you not issue an enforcement order against the violator and have them do that?
- **The Commission** discussed parliamentary procedure, its responsibility, and authority to protect wetlands from pollution.
- **EO Ross** stated that the IW Agency has very limited authority to get things done: cease and correct, notice of violation, then enforce them. If they don't want to do it, the only option is to take them to court.
- **Michael DiGioia:** my company has been around forever and has never been sued. In the interest in offering everyone peace of mind, I have offered to fund a surety to assure that mitigation of the wetland occurs when the time comes.
- **Michael DiGioia:** in discussion with Town's Staff and the Town's Attorney, I can change the stipulation of my Inland Wetland Bond at any time. It can be changed to cover wetland mitigation.
- **EO Ross:** The State Statues don't enable us to change the bond stipulations after the fact.
- **The Commission** discussed the bond, the surety, and funding a third party.
- **Michael DiGioia:** we have no objection to repurposing our bond.
- **The Commission** reviewed William Kenny's Inland Wetland report and recommendations. It noted that it needs to have further discussion with the Town's Attorney to discuss its reach with the bond.
- **Comm. Rose:** we need to resolve this. We clearly have to act. I recommend the Commission does talk to the Town's Attorney so we can act. Leaving a wetland silted for say, five years, because development is ongoing is not a reasonable answer. I don't feel that we have adequate information and we need clarity.
- **Peter Raymond:** the BLT has been discussing this with DonMar, but would like to have the IW Commission involved.
- **Comm. Greenalch:** in what way?
- **Peter Raymond:** we'd like to know about your jurisdiction and authority to help.
- **EO Ross:** our jurisdiction is to issue a cease and correct order if DonMar does not voluntarily step in to restore the wetland. If restoration is the solution, the Commission needs to review the plan.
- **Peter Raymond:** If the BLT and DonMar agree the restoration is the solution, what is the process?
- **EO Ross:** the cleanest way would be to submit a joint application to clean up the wetland.
- **Peter Raymond:** who is responsible to determine if it should be restored or not?
- **EO Ross:** this Agency cannot tell you what to do to restore the inland wetland, either DonMar, or the BLT needs to hire a consultant to determine that.

- **Bill Horne:** the land trust has an expert that has looked, and will continue to look at it. What will the Commission do if they come to different conclusions?
- **Comm. Rose:** decide.
- **The Commissions** discussed the issues at hand.
- **Peter Raymond:** this is why we wanted a bond. It could be put aside, so that in a year or so, we can have an expert tell us what to do, and if they decide that restoration is the answer, then we use the bond to restore the inland wetland. If not, it's returned to DonMar.
- **Comm. Greenalch:** how do you set a value?
- **Peter Raymond:** there are comparables.
- **Comm. Bassermann:** are you saying that waiting a year to decide is a good thing?
- **Peter Raymond:** yes.
- **Comm. Bassermann:** but you want to know that in the end, there's a way to restore the wetland if it needs to be.
- **Peter Raymond:** yes.
- **Michael DiGioia** stated that he has no issue what so ever with adding a stipulation on his inland wetland bond, so that when the time comes, the bond money can be used for restoration. He asked if someone from the Commission can speak to the Town's Attorney about changing the stipulations of the bond.
- **Chairman Peter Bassermann** stated that he will follow up with the Town's attorney to clarify the bonds limits and process.
- **Comm. Rose:** suggested that the BLT comes up with a remediation amount and a plan in the background.

Staff Update on Fee Schedule Research and Analysis | Potential Dates for a Series of Special Meetings to Discuss Changes to the Regulations

- **IW Staff David McCarthy** briefed the Commission on his Fee Schedule Research and Analysis.
- **IW Staff David McCarthy** recommended that the Commission holds a special meeting or two for IW Staff to present its Fee Schedule Research and Analysis, and allow ample time for the Commission to review, examine, reach agreement, and consider IW Staff recommendations to Town Regulations and the Inland Wetland Fee Schedule.
- **The Commission** discussed the possibility of a Special Meeting in September and the development of a subcommittee.
- **The Commission** requested that IW Staff make a summary page of changes to preface the research report.

8. CORRESPONDENCE & ANNOUNCEMENTS:

UConn Native Plants and Pollinators Conference | Oct. 3, 2019

- IW Staff David McCarthy handed the conference information to the Commission

Inland Wetland Enforcement Officer Diana Ross announced her retirement

- EO Ross shared that this will be her last Inland Wetland meeting.

9. ADJOURNMENT

Comm. Goggin Motioned to adjourn the August Regular Meeting of the Inland Wetland and Watercourses Agency 9:23 P.M., **Comm. Greenalch** Seconded, Motion carried (5-0-0).

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "D. E. McCarthy", written in a cursive style.

David E. McCarthy