



## Inland Wetlands and Watercourses Agency

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### REGULAR MEETING MINUTES

Inland Wetlands and Watercourses Commission

Thursday, February 22, 2024, at 7:00 PM

This meeting was held remotely, via ZOOM.

**CALL TO ORDER:** Meeting was called to order at 7:00 pm by Chairman Peter Bassermann

**ROLL CALL:** Chairman Peter Bassermann, Commissioners Matthew Ormrod, Jessica Meinsen, David Gocłowski, Suzanne Botta, and Melissa Papantones. Also present was IW Staff Jaymie Frederick and Katy Blanchette

#### 1) **MINUTES FOR APPROVAL:**

- a) February 8<sup>th</sup>, 2024, Regular Meeting Minutes-Commissioner S. Botta made a motion to approve the minutes of February 8<sup>th</sup>, 2024. Commissioner M. Papantones seconded. Motion carried unanimously.

#### 2) **PUBLIC HEARINGS:**

- a) IW#24.01.02 | 38 Howard Ave | pervious patio and landscape retaining walls and shed-IW Agent J. Frederick indicated that since the last meeting, two revised Verified Petitions were received from Stephen Diaz-Romero/Sofia Noori, and from Daniel Coughlin. The commission reviewed the petitions. Commissioner M. Papantones made a motion to accept the Verified petitions to intervene. Commissioner S. Botta seconded. Roll Call vote:  
J. Meinsen-aye  
M. Ormrod-aye  
D. Gocłowski-aye  
M. Papantones-aye  
S. Botta-aye  
P. Bassermann-aye  
Motion carried unanimously.

Attorney Marjorie Shansky indicated that reports were submitted from various professionals including wetland scientists, soil scientists, and engineers indicating that there are no wetlands impacts from the constructed retaining wall.

Professional Engineer James Pretti showed site plans indicating directional water flows from pre and post construction. Indicates that there is actually less runoff from the retaining wall construction than existed previously due to the change in direction of the flows and storage in fill material behind the wall. The grading of the driveway/patio and the location of the top of the wall is such that the water from the patio area does not overtop the wall and is directed to the grassed area behind the patio or permeates the patio. Indicated that the patio is actually semi-permeable and not completely impervious. Presented 2 plans both of which call for lowering the height of the wall to no more than 3 feet high. The alternate plan calls for leaving the wall in place but lowering the height and decreasing the amount of patio area by increasing the lawn space.

Wetland scientist Matthew Davison indicated that the watercourse originates from catch basins within Rustic Road and is carried through a pipe which daylights and turns into a watercourse behind the subject properties. The water that comes from Rustic Road is untreated runoff and piping of the watercourse has adverse impacts to the watercourse as piped watercourses have no wildlife benefit or pollutant attenuation that would be achieved in a natural watercourse. Additionally, the opposite bank of the watercourse is lawn right up to the edge of the watercourse with 2 pipes of unknown origin (presumably footing drains) discharging directly into the watercourse. The piped watercourse originated from property owners filling their back yards and piping the watercourse according to survey notes. Piped watercourses are only allowed through permitting of Army Corp of Engineers for use for driveway or roadway crossing, not for private property owners filling in their back yard. Submitted rainfall data that shows there was 130% of the normal amount of rainfall for 2023. Even with the increase in rainfall, no evidence of erosion has been seen on the slope.

Daniel Coughlin (intervenor) spoke on behalf of the property owners at 34 Howard Avenue. Stated he was the contractor that was hired to do the renovations for the homeowners at 34 Howard Ave. Before construction began, a structural engineer was hired to inspect the 60-year-old foundation to ensure that it would be able to support a second story on the house. Structural Engineer indicated that the foundation was stable and strong enough to support the second story. Now the property owners are getting infiltration of water into the basement and structural engineer came back out and said that soil is eroding away forcing the foundation to settle. Concluded that the retaining wall built on 38 Howard Avenue is causing increased water runoff that is eroding the soil on the property of 34 Howard.

Attorney Ainsworth for the property owners at 34 Howard (intervenor) indicated that the retaining wall was constructed without permits from the commission despite being told by the ZEO that permits would be required. Stated this has caused undo harm to his client's property. There are questions regarding the structural integrity of the wall as there is no way of knowing if it was built properly. Still have concerns about what fill is located behind the wall and how much. Have concerns about wall collapsing.

Engineer Robert Sonnichsen, PE was present and hired by residents at 34 Howard Avenue (intervenor). Indicated that there was no way to know how the wall was constructed and if the wall was pinned to the ledge or not, which brings into question the structural integrity of the wall. Other concern is that there are weep holes located on the north side of the property above the watercourse, however there is no indication of weep holes on the wall between 38- 34 Howard Avenue side, and they poured concrete on top of the ledge to prevent water seepage. However, the modular walls are not structured to resist hydrostatic pressure on the backside, and due to that the wall is weeping and causing detriment to the foundation at 34 Howard. Wall is only 2 feet from the foundation at 34 Howard, which makes the uncertainty of construction even more concerning. There was a significant amount of soil that was removed in order to construct the wall, but that soil absorbed and conveyed water and it was generally directing the water downwards on the hill to the wetland.

Dramatically changed that small areas conveyance of water. Has video of the wall visibly weeping but not currently able to share the video during the meeting.

Applicant has not done a good job of documenting what has been done on site.

Proposing shrubs that will be approved by wetlands agent, however plants are usually called out on the plan and permit and not thrown at the agent. Very concerned with

the conveyance of water. No original plan, even if cutting wall down to 3 feet doesn't solve the problem of not knowing how the wall was constructed. Walls are not strong enough to hold hydrostatic pressures behind them which can cause movement of the block and collapse of the wall.

Robert Russo, soil scientist from CLA Engineers-does support for towns and serves as wetlands and inspection staff for towns. Review applications for towns, making sure applications are complete and comprehensive. Construction was done before a permit was issued and therefore you don't have the information typically needed on construction and suitability. Not sure if it is consistent with regulations and best engineering practices. Visited the site on February 9<sup>th</sup>. Did not see active sedimentation and erosion on site. Based upon site visit, mostly in concurrence with observations from Matt Davison. Referenced regulation 7.6a and 7.6b. Low impact development should be prioritized. Pavers are impervious and therefore the pre-constructed condition is highly preferred as impervious surfaces affect water quality. Commissions regulations require the applicant to consider reduction of impervious surfaces and that is not being achieved on this site. The likelihood of future impacts is determined by how that wall was constructed and whether it collapses. Water quality treatment and reduction in impervious surface were not adequately addressed in the current application. The soil removal between the houses at 34 and 38 Howard also needs to be addressed and remedied as it served a valuable function. Commissioner Botta questioned whether he felt that the assertion by J. Pretti about the change in directional flows was not accurate or that it could not be confirmed because of unknowns. R. Russo indicated that he does not feel the classification as a pervious surface was accurate without specs on the pavers that were used, but generally that type of material is not deemed pervious.

Raffael Aschettino, Structural Engineer-Hired by owners of 34 Howard prior to the remodel of their home to assess existing foundation for addition of second story. Found the 60-year-old foundation to be structurally sound. Was called back by homeowners in September/October of this year due to receiving water in their basement. Upon re-evaluation, it was found the rear corner of the foundation closest to the highest point of the wall had settled and appeared to have been undermined from erosion. Construction of the wall caused water to be directed to the adjacent property (34 Howard) that wasn't before. The intent of the block wall is to allow water to flow freely through it, not pond the water behind it. It cannot withstand the hydrostatic pressure. Ledge rock is generally deemed impermeable; however, ledge has lots of fissures that allow water to flow through it. Cannot speak to the stability of the wall as although it is evident that they used concrete on the base of the wall, it is unknown whether or not the wall was pinned to the ledge.

Attorney Keith Ainsworth requests that the violation file and the application file should be combined because you would not have one file without the other. Has not yet had time to review the plans submitted earlier in the day and requests the commission holds over the public hearing to the next meeting.

Lisa Liscio-neighbor at 26 Howard Avenue-brook travels under her property and has historically had issues with the amount of water coming on to her property and flooding the basement. A few years ago, the town put a holding tank for stormwater at the edge of her property before the pipe daylighted onto 34. Has seen a lot of fluctuations in the water level. Concerned about how the wall may affect the flow upstream. As a neighbor she is hoping both parties can work toward an amicable resolution.

Sofia Noori-property owner at 34 Howard Ave-want to help find a resolution to the problem. There have been a lot of misconceptions regarding us and our consent. Obtained all permits for the construction on our home. Had shared our plans with the neighbors in an effort to be a good neighbor. Construction on the retaining wall began when we were not residing in the home as it was under construction. So unaware what was taking place. Knew there was activity but didn't know the extent of the work. Main concern at the time aside from how close it was to our property was that they didn't put a fence up to block the sunlight, however they were intending on placing a solid fence on top of the wall. Offered to pay for part of the fence if they could put slats in the section of fence to allow sunlight in. The property owner refused and said they wanted a completely solid fence. Initially went to the town inquiring about fence regulations and how high a fence could be. It was then it was discovered that there were no permits for the retaining wall. Was told by Zoning Enforcement officer that she had already spoken to the property owners in October 2022, and they were told they would need to get a variance and permit from wetlands. Became involved in the wetlands proceeding because we felt we had to. Parked cars on the retaining wall and was concerned the wall would not be able to hold the weight of the cars and collapse into the watercourse. Neighbors do not communicate with us aside from in the meetings, which is another reason why we attend to that we know what's going on. When the initial application for a permit was received in June, we were unaware that the wall was actually partially on our property. Was not mentioned until August when Attorney Perito confirmed that it was partially on our property. However, he stated we didn't need to be notified because we were already intervenors and therefore parties to the application. States that the company that company that constructed the wall (Dunn) did not have the benefit of a survey line, however, there was a survey done for the other side of property, but not for our side of the property. Have been 4 revisions of the plan submitted and not once were we asked for consent, yet it was said that our consent was unattainable. Don't get to see the plans until they come before the commission. Property owner's contractors came onto our property and removed vegetation and tree stumps without our permission. Then it was discovered that our foundation was in danger of collapse because of undermining. Spent every dollar we had on renovating this house and now we are afraid of losing it. If the wall cannot be deemed safe, then we are requesting that wall be taken down.

Matt Davison-wetland scientist-wanted to make a comment on the thermal impacts to the watercourse that Bob Russo indicated would happen with the runoff. Thermal impacts would be a concern IF the runoff discharged directly into the watercourse, but it isn't. It is filtered through the wall and eventually to the weep holes by the slope before it trickles down the slope. This takes a matter of days to accomplish. Also, the area that is patio is very small, at less than 1,000 sq ft. A source of concern for thermal impacts would actually be from Rustic Road. And it is most likely the cause of the watercourse's flashiness.

Tom Keefe-questioned the reinterpretation of the retaining wall regulations. Attorney Ainsworth and Aniskovich explained that it wasn't so much a reinterpretation of the regulation, more of what has been standard for the last 10+ years.

Eric Banson-40 Brockets Point Rd.-spoke on the concerns regarding fairness, potentially collapsing of the wall/house, and who is protecting the taxpayers.

Maureen Moore-(no address given)- questioned why permits were not obtained.

Commissioner David Gocłowski-referenced a previous photograph and stated that it appeared by the sloping of the patio that the water drains directly into the wetlands and that there are wetland impacts.

Kevin Walsh, Attorney for 38 Howard-Currently representing owners of 38 Howard in a civil case. Asked to draw attention to photos and videos within exhibit 10. Also indicated that the neighbors at 34 Howard have stated that the construction of the wall has caused issues but provide no proof. Reiterated that there was an overall average increase in water last year and yet there was still no indication of wetlands impacts, even with all the rain that we had.

Commissioner Melissa Papantones- questioned where the issues of the house foundations are.

Raffael Aschettino, structural engineer- it is located in the wall closest to the retaining wall, the back rear corner. There is evidence of settlement and cracks. If conditions persist the house will not be stable.

Paula Moliterno-44 Howard Ave- spoke about the concerns the neighbors have has nothing to do with wetlands and is disappointed in the actions of the neighbors.

Joanne Devito-responded to Paula Moliterno-its about not getting a permit.

Peter Jackson, architect of 34 Howard- in reply to Kevin Walsh's comment about the amount of water coming off the roof causing their problems, the water from the roof drains towards the street, not to the rear. However, the home now has gutters.

Sarah D'Addabo- attorney for 38 Howard in civil case-court is going to proceed in its own time and not going to take away from the jurisdiction of the commission.

Sarah Suiter (sp?)-2 Rustic Road-greatly disturbed at the impacts to Sofia and Stephens property. Very concerned about potential impacts to the wetlands and really hoping the commission is able to act on the application for everyone's benefit.

Laura Troidle-Howard Ave resident for 20 years-would like commission to approve the application-want to see a very quick resolution of this issue as it is creating unnecessary tension in the neighborhood.

Margery Shansky-attorney for 38 Howard Ave- would like to continue the matter to be able to provide some additional information on some of the questions raised. None of the intervenors have met their burden of proof regarding impacts due to the retaining wall. Nothing is specific or quantifiable, they are merely concerns. From evidentiary support, they don't have any. Would like to provide some additional information to the commission to consider in their deliberations and allow Mr. Sonnichsen to review the submissions from this evening.

Commissioner Matthew Ormrod- lack of understanding how stable the structure is given its position immediately about a wetland watercourse. Would like to see more details on how structurally sound the wall is.

Commissioner Melissa Papantones- agrees with Commissioner Ormrod. Need to see the plan for construction of the wall because we are having to speculate a great deal about what is behind the wall and how it was constructed.

IW Agent J. Frederick-need more detail on the wall. Top of wall, bottom of wall, grading and how wall would be brought down to lower grade.

Chairman Bassermann-we need evidence to support the allegations from property owners at 34 Howard. Due to the need for more information, may be prudent to continue to the March 28<sup>th</sup> meeting.

Commissioner Botta makes a motion to continue the public hearing March 28<sup>th</sup> meeting. Commissioner Ormrod seconds. Roll Call vote:

D. Goclowski-aye

J. Meinsen-aye

M. Ormrod-aye

S. Botta-aye

M. Papantones-aye

P. Bassermann-aye

3) **ENFORCEMENT:**

- a) Notice of Violation | 38 Howard Ave | retaining wall & associated activities
- b) Consider whether to issue cease and correct orders relative to Regulated Activity conducted without a permit at 34 Howard Ave and 38 Howard Ave (activity subject to notice of violation sent on April 24<sup>th</sup>, 2023)

Commissioner S. Botta made a motion to table the above items until the March 28<sup>th</sup> meeting. Commissioner J. Meinsen seconded. Motion carried unanimously.

4) **APPLICATIONS FOR REVIEW:**

- a) IW#24.02.01 | 380 Shore Drive | 1 story art studio with support spaces and breakfast nook-IW Agent J. Frederick gave an overview of the plan. Engineer Matthew Brunson from BL companies indicated that this was for a 1 story addition and presented the proposed plan. The Commission questioned whether they had a stormwater management plan and engineer indicated that there is only a net increase in impervious cover of 30 sq feet. Commission recommended reviewing the 2023 Storm water management guidelines for consideration of stormwater management. The current plan calls for roof runoff to outlet at grade and infiltrate/sheet flow over the grass. The Commission would like the applicant to look at other stormwater management methods for control (ie dry wells) as the ground area is mostly ledge. IW Agent J. Frederick asked for calculation on the total area of disturbance of the project, not just the square footage of the addition. Review of the application was continued to March 14<sup>th</sup>.

5) **OTHER BUSINESS:** none

6) **AGENT APPROVALS:** none

7) **CORRESPONDENCE AND ANNOUNCEMENTS:**

- a) Aquatic Pesticide Application-9 Totoket Rd-Scheer Pond-repeat application that was submitted to the state for approval.

8) **ADJOURNMENT:** Commissioner S. Botta made a motion to adjourn at 10:52 pm. Commissioner D. Gocłowski seconded. Motion carried unanimously.

Respectfully submitted,

Katy Bradley-Blanchette  
IW Associate