



Inland Wetlands and Watercourses Agency

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Minutes

Thursday, March 12, 2020, 7:00 PM
Joseph Trapasso Community House
46 Church Street, Branford, CT

1. CALL TO ORDER:

Chairman Peter Bassermann called the Regular Meeting of Branford's Inland Wetlands & Watercourses Agency to order at 7:03 P.M.

Chairman Peter Bassermann introduced Commissioner Sullivan to Branford's Inland Wetlands Commission.

Comm. Sullivan introduced himself.

2. ROLL CALL:

Commissioners Present: Chair Peter Bassermann, Chris Traugh, Suzanne Botta, Steven Sullivan

- Eric Rose arrived at 7:29 P.M.

Commissioners Absent: Rick Ross, Richard Greenalch, Sandra Kraus

Staff Present: Inland Wetland Agent Jaymie Frederick

3. APPROVAL OF MINUTES:

- **Commissioner Traugh** Motioned to approve the February 13th Regular Meeting Minutes, Comm. Botta seconded, Motion carried (in favor - not in favor - abstained) (4-0-0).
- **Commissioner Botta** Motioned to approve the March 07 Special Meeting Minutes, Comm. Traugh seconded, Motion carried (4-0-0).

4. APPLICATIONS FOR RECEIPT:

- none

5. APPLICATIONS FOR REVIEW:

IW# 20.02.01 | 41 Brainerd Road | Residential Lots (subdivision)

- **Jim Galligan, with Nafis and Young, representing Statewide Construction,** introduced the Application, noted the site walk, reviewed the scope of the proposed work, and requested feedback from the Commission.
- **Chairman Peter Bassermann** asked if the wetlands were re delineated.
- **Jim Galligan** said no, a soil scientist was contacted to reflag the inland wetland.
- **Comm. Botta and Jim** discussed the driveway locations and storm drainage.

6. PUBLIC HEARING:

IW# 19.11.01 | 1151 West main St | Bank & Grocery Store

- **Chairman Peter Bassermann** read an opening statement into the record that recapped the application’s timeline and noted that the public hearing had been continued from February 13, 2020, to today.
- **Chairman Peter Bassermann** asked if any Commissioners felt the need to recuse themselves from participating in these proceedings: none.
- **Attorney John Knuff – Sound Development Group LLC – Applicant’s Council** reviewed the application, introduced the applicant’s team, recapped the application’s developments since the Agency received it, and went over the site’s history. He noted the application’s most recent plans and walked the Commission through the timeline of peer review comments and the applicant’s responses.
- **Attorney John Knuff** noted that they addressed every comment as of March 5th, exhibits 49-57. He noted that the applicant had addressed all comments raised by Town Staff, members of the public, and the peer review team. We have conducted extra test pits in the mitigation area out of excessive caution and agreed to relocate any impacted soils away from the stormwater infiltration area.
- **Attorney John Knuff** stated that he, the applicant, and his team, believe this project to be in the best interest of the Town of Branford and for the environmental conditions of the property, including the inland wetland.
- **Attorney John Knuff** informed the Commission the order that the team’s discussion will occur:
 1. Environmental conditions and the remediation area
 2. Changes to stormwater treatment
 3. Functions and values of the inland wetlands and the mitigation area
 4. Summary of prudent and feasible alternatives
- **Timothy Myjak, LEP - Senior Project Manager - BL Companies - part of the applicant’s team** informed the Commission what a Licensed Environmental Professional certification means: cleanup regulated sites that have had spills and releases – in compliance with the State of CT DEEP.
- **Timothy Myjak** informed the Commission that he was involved in this site back in the 1990s when Mitsubishi was there and walked the Commission through the site’s history.
- **Timothy Myjak**, the site is deemed an establishment, meaning the state of CT mandates this site is cleaned up by the buyer once it’s sold and needs to meet the State’s standards.
- **Timothy Myjak**, the primary impacts to this site, are associated with polluted fill: asphalt. He asked rhetorically, “how does asphalt fill a problem when it’s under other asphalt?” He then stated that the State of CT DEEP has deemed that asphalt impacted fill does not have to comply with pollutant mobility standards: it does not leach. “We can move the soil on this site, unrestricted.”
- **Timothy Myjak**, the development plan goes far above and beyond what the State of CT standards (RSRs) requires us to do. The developer has committed to removing the urban fill around the stormwater infiltration area and where he asphalts fragments exist. The State of CT allows us to use this soil onsite, because it’s not a residential site.
- **Timothy Myjak:** in the eyes of the State of CT, remediation does not mean physical removing soils, it also means institutional controls – urban fill being placed under buildings and clean fill. The remedial action plan for this site is in conjunction with the development plan and stays within the boundaries of what’s required by the State of CT.
- **Comm. Botta:** do the asphalt contaminants you refer to include asphalt millings? Are those the same things?
- **Timothy Myjak:** yes.

- **Attorney John Knuff** restated that polluted soils will be removed from the site.
- **John Schmitz - BL Companies Engineer - Application's Project Team** - walked the Commission through the proposed storm drainage system, from collection to release: plan GD1
- **John Schmitz:** for all storms analyzed, we reduced the peak rate and total volume of runoff. When the site is developed, there will be less water leaving the site than there is today.
- **Chairman Bassermann:** how is this being accomplished?
- **John Schmitz:** infiltration.
- **Chairman Bassermann:** has the infiltrator changed since the original plan?
- **John Schmitz:** no, the original included infiltration but did not include it in any calculations. We didn't take the credit for infiltration. He referred the Commission to plan CS2 and noted that they are planning to put sand around the infiltrator once they remove the contaminated soils.
- **John Schmitz:** we added two extra rows (another thirty chambers), so the system did change in size, slightly.

Commissioner Rose arrived 7:29

- **John Schmitz** referred the Commission to remediation plan EXH1 (remedial action plan), walked it through the plan, pointed out the fill, and reviewed the recent test pit data.
- **Attorney John Knuff** noted that the additional testing confirmed that bedrock was 10-feet or below in the mitigation area and that a wetland can be created there.
- **Matt Davidson - Davidson Environmental LLC - The Applicant's Environmental Consultant** reviewed his credentials and addressed some comments and questions. He submitted what he had to say to the Agency in letter form.
- **The Commission and Matt Davidson** discussed the content, to determine if it was substantial and would need to have been submitted 5-days prior to the Public Hearing.
- **Matt Davidson** stated that it's what he will say verbally.
- **Commissioner Bassermann:** if that's what it is, then it makes sense to accept it, so we have a written record.
- **The Commission** agreed to accept the document.
- **Matt Davidson** informed the Commission why the area for mitigation was chosen, then discussed the inland wetland values and water quality functions. Wetland number-2 provides the highest level of water quality function on the site; this would be the best place to mitigate.
- **Matt Davidson** discussed other areas on the site as possible mitigation areas and ruled out the front and middle of the site.
- **Matt Davidson** stated that he didn't know that Branford has requirements for monitoring, so it was extended from 3-years to 5-years, with 2 inspections/reports the first year with 80 percent survivability.
- **Attorney John Knuff** read the definitions of feasible and prudent alternatives and referenced his memo dated March 05, 2020.
- **Attorney John Knuff** read CT case law aloud: Torello vs. wetlands and noted that his memo cites three examples of case law regarding inland wetland fill.
- **Attorney John Knuff** reviewed the alternatives proposed by the applicant: 1,2,3,4 and the 5th which is to leave the site vacant.
- **Chairman Bassermann** asked what the total proposed fill was for alternative 4.
- **Comm. Botta** asked to have alternatives 3 and 4 compared.
- **Attorney John Knuff** informed the Commission on the two alternatives.
 1. Total proposed fill for Alt. 3 has a total of 9,917 sq. ft. of impact

- **Chairman Bassermann** asked what the total proposed fill was in the original application.
- **John Schmitz** noted that the original application proposed over 11,000 sq. ft. of fill.
- **Chairman Bassermann** asked for clarity on how Alt. 3 reduces that figure by 2,799.
- **John Schmitz** noted how the numbers changed with the new stormwater mitigation.
- **John Schmitz** compared Alt. 3 to Alt. 4 – noted that 4 is where we are at today.
- **Comm. Botta:** the issue was the parking?
- **John Schmitz** yes.
- **John Schmitz** noted that they're not allowed to have rock cut within 50-feet of a property line and shared that's why the proposed development is where it is.
- **EO Frederick** asked if removing the parking will increase or decrease impacts to wetlands. Are you moving the building back further to compensate for parking?
- **John Schmitz:** the building hasn't moved.
- **Comm. Traugh:** asked how they derived the amount of parking?
- **Attorney John Knuff:** Town code - and we are a tad over parked.
- **Comm. Botta** asked if that overage could be put into reserve.
- **Attorney John Knuff** stated that his clients think they know what they need to be successful and that he wants the site to be economically productive.
- **Comm. Rose:** will you remove all construction debris that's in the mitigation area beyond 4 feet?
- **Timothy Myjak** I don't see the need to over excavate the area and go beyond the State of CT remedial standards.
- **Matt Davidson:** stated that from a wetland functions standpoint, it didn't see the need to remove more than 4-feet of debris.
- **Comm. Botta:** asked about construction sequence and erosion control features during construction.
- **John Schmitz:** reviewed the phases and their sequences of construction.
- **Chairman Bassermann** asked where dewatering would take place above and beyond where they've identified.
- **John Schmitz:** we may run into water and need to dewater as we go.
- **Comm. Botta:** asked about the stockpiling near a watercourse.
- **John Schmitz:** noted that they're spread out to show where a contractor might put them.
- **Comm. Botta:** your stockpiles done represent where they'd be on the site?
- **John Schmitz:** they represent our best guess. A contractor may move them and create field changes.
- **Comm. Botta:** what else can we see changing based on your experience?
- **John Schmitz:** reactions to storms.
- **Comm. Botta:** will there be misting while blasting.
- **John Schmitz:** the blasting contractor has not been selected, but what they do has to meet a lot of criteria. They may have a water truck to spray.
- **Comm. Botta:** asked about stockpiles, and dewatering, and she referenced what she's observed from other active construction sites in Town. She stated that she did not want to see detention ponds becoming saturated and blowing out.
- **Comm. Rose and John Schmitz** spoke from his experience regarding dewatering and stockpiling.
- **Robert Wheway - Codespoti - Part of the Town's Consultant Team** introduced the third-party review team. He noted that he had a chance to review BL's March 05, comments to his March 03, set of comments, and that he is in agreement that all of his engineering concerns in regard to stormwater management have been addressed. That said, they have not had an

opportunity to review the applications new material due to budgetary restraints. He noted with a new review, he wouldn't expect to see any major items.

- **Mathew Popp – landscape Architect - Third Party Review Team:** would like to see something tied to invasive species: X% in 5 years be down to X%.
- **Jeffery Gordon – Codespoti - Part of the Town’s Consultant Team** shared that his comments were addressed with exception to some rock cut comments.
- **Jeffery Gordon** noted that his alternative sketch entertained the idea of inverting the grocery store and its parking lot as to use the building to cover the contaminated soils. He noted that this was addressed with the soils being removed from the site.
- **Franklyn Pilicy – Land Use attorney for 45 years,** represents Rockledge Condominium Association, noted that the condo association is in support of this application. He submitted that letter for the record.
- **Bill Horne – active with the Branford Land Trust –** noted that he is speaking on his own authority, not BLTs. He noted that the BLT is generally concerned about developments upstream of its properties. He stated that if anything is not properly implemented, it could have negative effects in freshwater streams downstream. He noted that plans don’t always go in as designed and referenced some failures in Town. His concern is for the reduction of stormwater retention onsite. He stated that there is a quality that’s being removed, but not replaced: flood flow attenuation.
- **Bill Horne** referenced a document that he submitted for the record. The document stated that this watershed is highly developed with a lot of impervious surface.
- **Bill Horne:** spoke to changes noted for watercourse 1: pre and post-construction for 100-year storms.
- **Bill Horne:** spoke to the figures incorporated in the 100-year flood, referenced the North East Regional Climate Center at Cornell – based on rainfall until 1996 was 9.1 inches not 8.15. He stated that it’s clear that there is some uncertainty here between professionals.
- **Bill Horne:** referenced the national climate assessment – intense precipitation – dominant trend has been in rainfall intensity. Whether it’s 9.1 or 8.15, science tells us that it’s going to be increasing.
- **Bill Horne:** is it prudent to size your retention basin to be within a few tenths of an inch from overtopping in a 100-year storm? The map from GD1 shows that you might be able to build in excess capacity if they designed it slightly differently.
- **Janet Reisman** handed the Commission a letter and applauded the applicant for revising its plans to comments from the peer reviewer. She noted three promises made by the applicant.
- **Janet Reisman** urged changes to the Regulations.
 1. Monitoring for 5-years is insufficient and should be for the life of the site. She urged the Commission to reconsider monitoring for more than 5-years. She also noted that the applicant has clarified who will be monitoring the site.
 2. UpToDate precipitation rates. The 16-year old stormwater, that applicant’s reference is based on rainfall calculations from the 1960s. She noted that there are more UpToDate models, like what Bill Horne referenced. She noted that this should be made to be part of the application requirement.
- **Kate Galambos:** Where is the water for this wetland coming from?
- **John Schmitz** informed Kate.
- **Kate Galambos:** Is this a functioning mature wetland?
- **Matt Davidson:** I wouldn’t use the word mature, but we’ll go with it, yeah
- **Kate Galambos:** Will the mitigation change the ecology of the existing wetland, and how water enters it? I want the Commission to be aware of this.

- **The Commission** acknowledged.
- **Kate Galambos** asked what the impact if this development have on the mill creek?
- **Kate Galambos** asked to have the footprint reduced.
- **Chris Donofrio – Resident** – in support of the development.
- **Dave Cioffi – Resident** – spoke to the site’s flashiness, and reviewed a letter that he handed the Commission a letter:
 - He noted that the site is bordered by empty abandoned sites and he thinks this development will set off a lot of development in the area.
 - He noted that the wetlands on the site are the only ones in the area and that he believes them to be of the utmost importance.
 - He noted that there is “plenty of existing stormwater retention, some of which would be destroyed.”
 - He asked how the limits to fertilizer and deicing agents would be enforced in years to come.
 - He questioned the accuracy of the developer’s pre and post runoff rates.
 - He questioned the plans bookkeeping credits regarding sweeping
 - He stated that he was not in favor of wetland mitigation next to the existing wetland. The problem is the mill creek, that’s the stressed resource. The mitigation is not in the same watershed, not the affected watershed.
 - He noted the lack of wetlands in the area, and that only one is on this site.
 - He questioned the needs for a bank, and the grocery store.
 - He stated that he would prefer that development only take place on the existing pavement, and stated that it’s not in the Commission’s purview to consider the economic necessity of the bank.
 - He referred the Commission to the storm technic system - sheet DN5 – that they’re using this system instead of green infrastructure.
 - He asked how the public will know if the forest inch is retained onsite and how will snow be managed onsite?
- **Matt Davidson** stated that he politely disagreed with the gentleman from Bill Horne and Dave Cioffi:
 - He stated that they are not eliminating flood flow alteration functions and are mitigating for them.
 - We are substantially increasing flood flow alteration on the site, in a much more meaningful area through the mitigation area.
- **Comm. Rose:** noted that the mitigation area is not within the impacted watershed and asked if that was relevant.
- **John Schmitz:** Watercourse 1 can contain a 100-year storm, so no water from there gets into its watershed.
- **Matt Davidson:** if I felt like what we were doing was adversely affecting the watercourse, I would say, yes it’s pertinent, but I don’t.
- **Comm. Rose and Matt Davidson** discussed the water, wetlands, water quality functions, hydrogeology, and the construction of the mitigation area.
- **Comm. Rose** asked Matt Davidson about water storage during a 100-year storm event, the potential for watercourse 1 to hold it.
- **Matt Davidson:** its dry’s in the summer and empty’s out.
- **Comm. Rose, Matt Davidson, and John Schmitz** discussed the 100-year storm event, the site’s topography, and flooding.

- **The Commission** discussed whether or not it would require additional review from the Agency's peer reviewer, or if it had enough information to proceed.
- **Chairman Bassermann** asked the peer reviewer what the cost of additional analysis would be on the latest set of revised items.
- **EO Frederick** informed the Commission of what the estimate that third party reviewer provided Staff in advance of the meeting.
- **Comm. Traugh:** stated that he remembered the peer reviewer stating early on in the meeting that it did not expect to have significant additional comments on the newly submitted materials.
- **Chairman Bassermann** asked the Peer reviewer if it believes there were any changes heard tonight that changes its opinion on whether or not a review would offer and significant additional comments.
- **Robert Wheway:** noted that he hadn't had an opportunity to review changes to the stormwater calculations. IF all comments have been included in the application material, there probably won't be anything significant that will popup, maybe housecleaning items: nothing that would substantially change the outcome of the design.
- **John Knuff** asked the Commission to close the public hearing, if it was comfortable in doing so. He stated that the only evidence on the record supports this application.
- **Chairman Bassermann** noted that this Commission strongly considers public comment and concerns in its deliberations.
- **John Knuff** public comment does not qualify as evidence and courts will not qualify it as a basis for an application denial.
- **Chairman Bassermann** closed the Public Hearing and stated that deliberations would be at a later date.

The Commission took a 12-minute break: approximately 9:30 - 9:42

7. DELIBERATIONS:

IW# 19.10.02 | 779-803 East Main St. & 21 Sycamore Way | Laboratory Building

- **Chairman Bassermann:** three Commissioners have been present for all public hearing dates: Chairman Bassermann, Commissioner Botta, Commissioner Traugh
- **Chairman Bassermann** asked Commissioner Rose if he has listened to the recordings of the Public Hearings and reviewed the printed materials for this application such that you are fully prepared to participate in these deliberations
- **Commissioner Rose:** Yes, I have.
- **Chairman Bassermann:** are there any Commissioners that wish to recuse themselves from these deliberations?
- **Commissioner Sullivan:** yes
- **The Commission** reviewed materials that Town Staff provided: summaries, boilerplate conditions, list of possible conditions.
- **The Commission** started with the criteria of section 10.2 of the Regulations.
- **The Commission** discussed the application's potential impacts, and proposed fill to the site's existing inland wetlands in the context of potential conditions of approval:
 - The Commission agreed on the area for entrance/crossing
 - The Commission discussed the dewatering timeframe and proposed requirements
 - Work is to be consecutive once started and not to exceed 2-weeks
 - The Commission discussed the building's location on the site
 - The Commission discussed the submitted prudent and feasible alternatives

- The Commission discussed the likeness of short and long-term impacts inland wetland
- The Commission discussed turbidity and the possibility of having limits on National Turbidity Units (NTUs)
 - Possible Condition to require a baseline NTU test sample
- The Commission discussed water diversion – avoid work when there’s a storm coming
- The Commission discussed the likeness of short-term and long-term impacts to the slope and inland wetland downgradient of the proposed building
- The Commission the stone drive as a means to allow access for maintenance of the detention pond.
 - Possible Condition to require an inspection report after the construction of the road to the detention pond that certifies its utility in allowing proper access via machinery for maintenance.
- The Commission discussed having the engineering company that draws the plans be a part of onsite construction to ensure proper installation
- **EO Frederick** informed the Commission of Town Council’s suggested that Commission deliberates tonight, come up with conditions to draft, and schedule a special meeting for next week.
- **The Commission** discussed Town Councils recommendation.
- **The Commission** returned to its discussion of the application’s potential impacts to the site’s existing inland wetlands in the context of potential conditions of approval:
 - The Commission discussed the box culvert in conjunction with the restoration
 - The Commission discussed the enhancement project
 - The Commission noted that it determined that there is no prudent and feasible alternative for this application
 - The Commission discussed boilerplate conditions
 - The Commission decided to strike A
 - The Commission decided to strike B
 - The Commission decided to keep C
 - The Commission decided to strike D
 - The Commission discussed the bonds associated with the Permit
 - The Commission reviewed and discussed suggested Conditions of approval made by the peer reviewer; they commented that they liked and agreed with all, but:
 - Language on Condition Witten without A
 - The Commission reviewed and discussed additional comments for consideration made by Staff (comments 6-12). It was in agreeance with all, and discussed the following:
 - **Comm. Rose:** per comment 11, he suggests that any change to approved drawings must be submitted to the Inland Wetlands and Watercourses Agency for review and to strike within 100 feet
 - **The Commission** discussed Comment 6: that all plans get updated to reflect the changes made on-site plan EC4
- **The Commission** discussed the mitigation bond: plantings, monitoring, invasive species control.
 - The estimated cost to be submitted for review
 - Approved amount to be bonded
- **EO Frederick** asked the Commission if it wanted to include an erosion control bond.
- **The Commission** discussed the bond and the order of events of the proposed development.
- **The Commission** discussed the timeframe moving forward and the possibility of a teleconference.

- **Chairman Bassermann:** from a process standpoint, we would like to have a refined document to review before voting so that there's no confusion on what we agree to. I would like to see this rescheduled till next week.
- **The Commission** asked EO Frederick to poll Commissioners for an available date next week to meet and to prepare the document for review.
- **The Commission** concluded item 7 on the agenda.

The Commission decided to table items 8-11 till the April Regular Meeting.

8. ENFORCEMENT:

- Postponed to April meeting

9. OTHER BUSINESS:

- IW#13.06.03 | 47 Gould Lane Subdivision | Sediment & Erosion Control
 - o Postponed
- Recent water main replacement at 1025-91 West Main Street – as of right or regulated activity without a permit
 - o Postponed
- Permit Extension | Request | IW# 15.01.01 | 271 Brushy Plain Rd.
 - o Postponed

10. AGENT APPROVALS:

- IW#20.01.02 | 63 Gould Lane | Construction of New Single-Family Home
 - o Postponed
- IW#20.01.01 | 16 Sybil Creek Place | Invasive Species Management Services
 - o Postponed
- IW# 20.01.03 | 57 & 61 East Industrial Rd. | Construction of two new industrial buildings with associated appurtenances
 - o Postponed

11. CORRESPONDENCE & ANNOUNCEMENTS:

- Letter from Kate Galambos RE 250 North Main and Gould Lane Projects dated 1.18.2020
 - o Postponed
- Notice of intent to modify DEEP permit for application of chemical controls to pond located at 18 Whiting Farm Rd
 - o Postponed
- CAWS was canceled and may be rescheduled
 - o Postponed

12. ADJOURNMENT:

Comm. Botta made a Motion to adjourn the Regular Meeting of the Inland Wetlands Commission at 11:25 P.M, Chairman Bassermann seconded, Motion Carried (5-0-0).

Respectfully Submitted,

David E. McCarthy