



## Inland Wetlands and Watercourses Agency

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### REGULAR MEETING MINUTES

Inland Wetlands and Watercourses Commission

Thursday, December 9<sup>th</sup>, 2021 at 7:00 PM

This meeting was held remotely, via ZOOM

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#### CALL TO ORDER:

**Chairman Peter Bassermann** called the meeting to order at 7:01pm.

#### ROLL CALL:

**Commissioners Present:** Chairman Peter Bassermann, Clarice Begemann, Melissa Funaro, Richard Greenalch, and Melissa Papantones

**Commissioners Absent:** Suzanne Botta and Mark Steinberg

**Staff Present:** Jaymie Frederick – IW Agent and Abby York – IW Associate

#### 1) COMMISSION MEMBERS:

- a) New appointees: Mark Steinberg and Melissa Funaro
- b) Resignations: Sandra Kraus

#### 2) MINUTES FOR APPROVAL:

- a) November 4, 2021 Regular Meeting Minutes
  - o Commissioners noted an error in the discussion of IW#21.08.01 175 Cherry Hill Road.

**Comm. Begemann made a motion to approve the minutes from November 4<sup>th</sup>, 2021, with the change that the location of the wetlands are offsite for 175 Cherry Hill Road.**

**Comm. Greenalch seconded the motion.**

**The motion carried. (Y-N-A : 5-0-0)**

#### 3) OTHER BUSINESS:

- a) IW#21.06.01 | 54 & 60 North Main Street | Car Wash permit modification request
  - o **Jim Pretti** (engineer, Criscuolo Engineering shared the revised plan and noted additional water quality treatment measurements. Staff shared a memo with potential conditions for the approval of the modification, which the Commission.

**Comm. Papantones made a motion to adopt the agent's recommendations drafted in the December 9<sup>th</sup>, 2021 memorandum regarding the permit modification request.**

**Comm. Funaro seconded the motion.**

- o Staff confirmed the motion was to approve the modification request with condition 1 relative to the plantings. Commissioners noted the motion relates to IW#21.06.01.

**Comm. Papantones accepted the amendment.**

**Comm. Funaro accepted the amendment.**

**The motion carried. (Y-N-A : 5-0-0)**

**4) APPLICATIONS FOR RECEIPT:**

- a) IW#21.11.03 | 314 Pine Orchard Road | Addition and interior renovations
  - Staff introduced the application and shared the GIS map with the location of the watercourse. Staff asked about the construction access and other construction details.
  - Commission determined this application could be processed administratively.
  
- b) IW#21.12.01 | 56 Stony Creek Road | Installation of footings for equipment platform
  - Staff introduced the application, noting it is for the Nest Daycare. Staff said the activity is for footings for an equipment platform, but the activity is close to the wetland.
  - **Leigh Small** (owner) said the platform is 7-8 feet above ground and it would be for the exhaust vent for a hood fan. **Small** noted nothing would be directed to the wetland.
  - The Commission determined this application could be processed administratively.
  - Staff shared there was a modification in early on in 2021 for a permit issued in 2019. Staff noted there were three, prefabricated bridges to be placed wetland area that were shown on the site plans, and have since been placed on the site. Staff noted because there was limited time to review the plans, the fee associated with disturbance within a wetland was not assessed. However, the withdrawn application from 2021 had an associated fee that would be the appropriate amount for the placement of the three bridges. Staff asked the Commission to determine if at this point, they are willing to accept this as the current site plan. The Commission confirmed.
  
- c) IW#21.12.02 | 82 Mill Plain Road | Installation of a footing drain
  - Staff said the homeowner is looking to replace the concrete slab in their garage with a footing drain that discharges to the rear of the property. Staff noted the nearby watercourse. Commissioners asked questions regarding the proposed energy dissipater.
  - **Bill Lyons** (representative for applicant) explained the project, noting the pipe would be to drain groundwater that comes up to the level of the new concrete slab.
  - The Commission determined that this application could be processed administratively.

**5) APPLICATIONS FOR REVIEW:**

- a) IW#21.08.01 | 175 Cherry Hill Road | 11-lot subdivision
  - Staff shared the requested information regarding phasing and construction sequence details. Staff said the Commission needs to determine the type of activity: whether it is a subdivision with or without regulated activity. Staff said if it is determined the activity is a subdivision with regulated activity, the applicant has requested a fee reduction. Commissioners asked staff thoughts regarding the type of activity.
  - **Jesse Langer** (attorney, Updike, Kelly & Spellacy) said based off the supplemental information provided by the applicant team, he believes the activity should not be considered a regulated activity. **Langer** then shared his thoughts on the conditions set forth in the staff report drafted on December 9<sup>th</sup>, 2021.
  - **James DiMeo** (engineer, Juliano Associates, LLC.) said the soil and erosion control measures are extensive, and thinks weekly monitoring reports aren't necessary. **DiMeo** said Phase I of construction would be the completion of the detention basins and road, which will be stabilized before the individual lots are constructed. **DiMeo** shared details of the detention basins regarding the 100-year storm. **DiMeo** responded to some of the comments as noted in the "Response to Staff Comments" [Dated December 2<sup>nd</sup>, 2021].

- Staff shared the definition of regulated activity as written in the Inland Wetlands and Watercourses Commission Regulations. Commissioners discussed the activity.
- Commissioners asked about access to the site during construction. **DiMeo** said the construction access will be topped with crushed stone and work as an anti-tracking pad.
- Commissioners discussed enforcement if the application is approved as a subdivision without regulated activity. Commissioners said they would be okay with the activity being a subdivision without regulated activity if lots 7 and 8 come back for a permit. Staff shared potential conditions for approval, and noted some may be appropriate if the Commission approves the activity as a subdivision without regulated activity. Commissioners expressed concerns regarding being directly above the wetlands, even if they are outside of 100' Upland Review Area.

**Comm. Greenalch made a motion to approve IW#21.08.01 for 175 Cherry Hill Road as a subdivision without regulated activity with the conditions 1, 2, 3, 4, 5, 8, 9, and 10 from the staff report [dated December 9<sup>th</sup>, 2021] along with the standard conditions and the general provisions of all permits.**

**Comm. Begemann seconded the motion.**

**The motion carried. (Y-N-A : 4-0-1) Comm. Papantones abstained.**

- b) IW#21.10.03 | 49 & 81-111 Commercial Parkway | construction of a “last mile” ecommerce delivery station
- Staff reminded the Commission of some of the requested items from the last meeting, which have since been submitted and reviewed. **John Knuff** (attorney, Hurwitz, Sagarin, Slossberg & Knuff, LLC) shared an overview of the requested modifications made to the site plans. **Knuff** noted they reviewed the staff report and are amenable to the proposed conditions of approval. Staff stated the Town Engineer was satisfied with the revisions and has no additional comments. Staff shared the staff report drafted on December 6<sup>th</sup>, 2021, and potential conditions of approval with the Commission.

**Chairman Peter Bassermann made a motion to approve IW#21.10.02 for 49 & 81-111 Commercial parkway along with conditions 1-8 set forth in the staff report as dated December 6<sup>th</sup>, 2021, and that the bond related to condition 2 be identified as the second option within the staff report.**

**Comm. Greenalch seconded the motion.**

**The motion carried. (Y-N-A : 5-0-0)**

- c) IW#21.10.05 | 367, 373-375, 377 and 383 East Main Street | addition of a building and associated drainage/improvements to an approved (IW#20.04.01) mixed use development
- Staff updated the Commission regarding the modifications made. Staff noted most of the activity is outside the 100' Upland Review Area, but the stormwater ties into the system on the property that is within the 100' Upland Review Area. **David Sacco** (Engineer, TPA Design Group) shared the changes seen in the revised plan set and discussed the changes made to the rain garden. **Sacco** reminded the Commission that they also seek permission to install the fence required by the DOT.
  - Staff shared the staff report drafted on December 7<sup>th</sup>, 2021. Staff noted the fence is part of this application. Commissioners considered the conditions of approval.

**Comm. Greenalch made a motion to approve IW#21.10.05 for 367, 373-375, 377, and 383 East Main Street and include any modification to IW#20.04.01 along with this approval, and include conditions 1-7 as set forth in the staff report, as well as the standard conditions and the general provisions for all permits.**

**Comm. Begemann seconded the motion.**

- **Chairman Peter Bassermann** identified the staff report is dated December 7<sup>th</sup>, 2021.

**Comm. Greenalch accepted the modification to the motion.**

**Comm. Begemann accepted the modification to the motion.**

**The motion carried. (Y-N-A : 5-0-0)**

- d) IW#21.11.01 | 3-7 Rockland Park | restoration of a wetland area/pond, including removal of invasive species and planting native plants

**\*Comm. Begemann recused herself from the discussion of this item.\***

- Staff said this item may not be actionable, as there is a conservation deed restriction for the property, and the restriction holder needs to be properly notified. Staff shared the fee reduction request submitted and said the Commission should discuss non-permitted and as-of-right uses and confirm whether or not this application would be different.
- **Yin Ho** (property owner, applicant) shared materials provided since the last meeting, including a new wetland delineation and a report done by All Habitat Services.
- **Matt Davison** (soil scientist and wetland scientist, Davison Environmental) shared the re-flagging of the wetland that was done and noted he reviewed the plan put together by the applicant and believes it is acceptable. **Davison** said he confirmed the area drains down into the Sound from under Rockland Park and noted the work proposed will serve to improve water quality functions. **Davison** recommended densely planting a variety of plugs in Zone 1 and increasing the variety of proposed plantings for Zone 2. **Davison** provided comments on the All Habitat Services report, noting mechanical removal of the phragmites and chemical treatment of the re-sprouts may be the best plan. **Davison** provided the applicants with a plant spacing table, which may help in determining the appropriate density and spacing of the plantings for the wetland restoration areas. Commissioners asked questions regarding survivability of the native plantings, especially while attempting to eradicate the invasive species. **Ho** said the recommended start time would be the winter with the first mechanical cutting of the invasive species.
- **Ho** discussed the conservation deed restriction and said they were unaware of the 60-days' notice that needs to be given, and she was hoping to move forward so they can start the vegetation removal as soon as possible. Staff shared that in lieu of the noticing requirement, a letter stating they are aware of the application and the activity wouldn't be in conflict with the conservation deed restriction would be acceptable.
- Staff said if the applicant can get the outstanding information, the Commission could accommodate a special meeting to act on the application. The Commission tentatively scheduled a meeting for Monday, December 20<sup>th</sup> at 7pm.
- The Commission reviewed the conditions of approval as drafted in the staff report dated December 9<sup>th</sup>, 2021. Staff noted that while they cannot make a decision on the application today, the Commission can act on submitted the fee reduction request.

**Comm. Papantones made a motion that the fee associated with the application be reduced to the \$60 DEEP fee and that the Commission waive the fee associated with the total area of disturbance.**

**Comm. Greenalch seconded the motion.**

**The motion carried. (Y-N-A : 4-0-0)**

**\*Commissioner Begemann was reseated.\***

- e) IW#21.11.02 | 140-240 Austin Ryer Lane | D005/003/001C | Repair/replacement of drainage outlet
- Staff shared the request from the applicant to table this item to the January 13<sup>th</sup>, 2021 meeting, and noted the Commission could make a determination on the fee assessment. Staff stated the individual who conducted the wetland investigation no longer works at the company, so if the Commission wants to see a report, a new investigation would need to be done. Staff said that while it is typically required, the Commission could waive the requirement if they believe it is appropriate.
  - Staff shared the fee submitted at the time of the application was \$1,160. Staff noted the area of direct impact to the watercourse was not included in the initial fee. Staff said since the application was submitted in response to a passive violation, it may be appropriate for the Commission to consider the request submitted by the applicant.
  - **Pete Parent** (CHA Companies) noted that there isn't a way to get around filling in the eroded channel, but the benefit filling it in would provide to the wetland area would be much greater than the value the intermittent watercourse provides.
  - Staff shared the language in the regulations that allows the Commission to grant a fee reduction. Staff noted it may be beneficial to get guidance from Town Counsel regarding the Commission's 2:1 mitigation requirement for wetland/watercourse impact. The Commission agreed and suggested staff also look at past practice.

**Chairman Peter Bassermann made a motion for IW#21.11.02 for 140-240 Austin Ryer Lane to grant the fee reduction to \$1,160.**

**Comm. Greenalch seconded the motion.**

**The motion carried. (Y-N-A : 5-0-0)**

- The Commission determined to waive the requirement for a full wetland report.
- Staff noted the recent drainage improvements made on same parcel by the other association and asked the Commission if a permit is required. The Commission said it has been their practice to require an after-the-fact application for the activity. Staff said they will follow up with the association to inform them an application is required.

**6) JURISDICTIONAL RULING REQUEST:**

- a) 93 Bradley Street | maintenance of path/road
- Staff introduced the jurisdictional ruling request received. **William Colwell** (attorney, Parrett, Porto, Parese & Colwell, P.C.) was present on behalf of the Maturo family (owners) to discuss the past maintenance of the property. **Colwell** said he believes they are grandfathered in, based off the Regulations §4.1c and §4.2b, regarding maintenance and enjoyment of a residential property. Commissioners asked if there is any language

- in the regulations regarding being “grandfathered” in. Staff said this may be related to §4.1.c, but noted the road ends on commercial property [1151 West Main Street].
- Commissioners asked if any of the outstanding questions could be answered by doing a site walk. Staff noted there is a property dispute as well, regarding private properties, so a site walk may not be possible, considering permission would need to be granted by all property owners. **Colwell** said the property boundary dispute is not relevant for this Commission. Staff said a site walk could be scheduled once Town Counsel confirms they are satisfied the Commission has all appropriate authorizations.
  - In response to concerns, staff said if the Commission were to rule this activity is as-of-right, they could state in the decision it is applicable to the crushed stone/gravel specifically, not a paved surface.

**7) ENFORCEMENT:**

- a) NOV | 93 Bradley Street | clearing of vegetation and placement of crushed stone
  - Staff said since the jurisdictional ruling request was continued to the January 13<sup>th</sup>, 2021 meeting, this item should be as well.
- b) CC#21.03.01 | 143 Ivy Street | earth disturbance, drainage and vegetation removal within the upland review area
  - Staff said the management company requested to lift the order. Staff inspected the property after the town repaired the curb along the road, and they are satisfied with the action taken, and it is their recommendation that the Cease and Correct Order be lifted.

**Comm. Begemann made a motion to lift CC#21.03.01 for 143 Ivy Street.**

**Comm. Papantones seconded the motion.**

**The motion carried. (Y-N-A : 5-0-0)**

**8) OTHER BUSINESS (CONT.):**

- a) IW#14.11.02 (Phase I) and IW#17.07.05 (Phase II) | 250 North Main Street | two pad retail development
  - Staff shared the office received monitoring reports for both phases of development, noting Phase I is under the 85% survival of plantings by about 5 plants. Commissioners asked if replacement plants would need to be monitored for 5 more years. Staff said the Commission would be within their right to require the additional plantings and extend the monitoring period. Staff noted there are some volunteer native plants filling in the area of concern, which means there are favorable plants growing there. Staff said it is important for the permit holders to stay on top of monitoring moving forward for the second phase to ensure the invasive species are able to stay at bay.
  - **John Schmitz** (civil engineer, BL Companies) was present on behalf of the permit holders. **Schmitz** noted that the monitoring reports were done by Jen Beno (biologist) in August, and again in November, once some invasive plant species were cleared. Staff shared site map with monitoring areas and the recorded survival rates.
- b) IW#19.10.01 | 21 Summit Place | multi-story building with community center and parking
  - Staff said the report is available in the Dropbox, and that it was a positive report.
  - Staff asked the Commission if, in general, they would like to see reports as they come in. The Commission confirmed staff only needs to share the report if there is a problem.

- c) Regulation Fee Subcommittee Report
  - o **Chairman Peter Bassermann** updated the Commission on the disbanding of the subcommittee and requested a full report be shared at the January 13<sup>th</sup>, 2021 meeting.
- d) Schedule time to discuss/review changes to regulations in response to fee subcommittee report, statute changes, previous commission discussions and staff notes
  - o Staff shared the process for revising the regulations includes having a public hearing, and noted some of the revisions includes statutory changes.
  - o Commissioners shared interest in having a special meeting to focus on the regulation revisions, but would wait until the January 13<sup>th</sup>, 2021 meeting to schedule it.

**9) CORRESPONDENCE & ANNOUNCEMENTS:**

- a) IW Agent letter RE 125 Short Beach Road
  - o Staff said the property is owned by the Branford Land Trust, and staff was made aware of some dumping of natural debris. Staff issued a letter stating the deposition of materials, even natural debris, in the area of a wetland is a regulated activity.

**ADJOURNMENT:**

**Comm. Greenalch made a motion to adjourn.**

**Comm. Papantones seconded the motion.**

**The motion carried. (Y-N-A : 5-0-0) The meeting was adjourned at 10:45pm.**

**Respectfully submitted,**

**Abby York  
Inland Wetland Associate**