



## Inland Wetlands and Watercourses Agency

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### SPECIAL MEETING MINUTES

Inland Wetlands and Watercourses Commission

Thursday, July 28<sup>th</sup>, 2022 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 7:04 pm

**ROLL CALL:** Present: Chairman P. Bassermann, Commissioners S. Botta, M. Papantones and J. Meinsen; C. Begemann joined at approximately 7:20 pm. Absent: Commissioners M. Steinberg and M. Funaro. Staff present: Inland Wetlands Agent J. Frederick and Inland Wetland Associate K. Blanchette

**1) ENFORCEMENT:**

- a) CC# 22.07.01 – 6 Partridge Lane – Clearing and earthwork within a Conservation deed restricted area

IW Agent-a neighboring resident had come in to inquire about their property lines. There was not a complaint about the activity, but was questioning where their property lines were in regards to where the work was being done. Upon hearing this, the office investigated as they were familiar with the fact that there was a wetland on the property as well as a conservation deed restricted area. Upon going out to the site, it was observed that work was being done potentially in the deed restricted area. The resident, Adam Greenberg, had previously come in and asked about doing work and it was indicated to him that there were wetlands and a deed restriction. Greenberg was contacted while at the property and permission was granted to enter the property and inspect the work that was being done. Majority of activities are in the deed restricted area. The intended plan is that they will put in a half basketball court, a baseball field and a batting cage. Deed restriction language limits vegetation removal without approval from the Inland Wetlands Commission. There was no Inland Wetlands permit required for this individual lot outside of the regular subdivision permit.

IWA staff J. Frederick showed site plans showing deed restricted area and the areas of clearing. There are stakes marking what appears to be the 100 ft. upland review area. Silt fence was originally not installed properly but has since been corrected. Some fill was brought in within some areas. Woodchips around the perimeter of the site is helping to stabilize the soils. There are wetlands also on adjacent properties and the 100 ft. upland review area does extend onto the subject property. It is estimated that 10,000-13,000 sq. ft. is disturbed. Majority of work is within the conservation deed restricted area. Deed restriction language was read into the record, focusing on clause #3, which stated:

*The following are prohibited, unless written permission is granted by the Inland Wetland and Watercourses Agency as noted:*

- a) *No living, dead or dying trees or other vegetation is to be cut or removed except with permission of the Agency, dead or dying trees that pose a safety hazard may be cut*

*down, but are to be left on the ground where they fell in the designated Natural Area. Also, with permission, invasive species may be removed.*

- b) No planting of grass or other vegetation is permitted except with permission of the Agency.*
- c) No fertilizers, herbicides, or other pesticides shall be applied or used except with permission of the Agency.*

Parts of the Cease and Correct order were also read into the record. It was requested that they stop work with the exception of installing the silt fences properly.

Marjorie Shansky-attorney representing Adam Greenberg. They have enlisted Chuck Mandel of Thomas A. Stevens and Associates, Inc., David Lord and John Cunningham for landscape design. Does not believe the conservation deed restriction is held by the Agency. Noted that the stipulations in the Cease and Correct order have been met-Activities have been ceased, they have acknowledged receipt of the Cease and Correct, attended the hearing and corrected the erosion controls. Therefore the 4 corners of the cease and correct order that has been complied with. Client is prepared to hold position while scope and project is planned and submitted.

Adam Greenberg-Gave some background on what his intent and plans for the site are. Stated it was never intended to create a violation. They had the property flagged to try and make sure they stayed outside of the wetland area.

Chuck Mandel-Thomas A. Stevens and Associates-blue flags on 100 ft. review line and staked out property lines. Went out and did some topography and locations. Wetlands extended to the west of the property and showed offset on western edge of property line. Woodchips were placed in the upland review area. The edge of the baseball field is within the 100 ft. upland area. There was some fill brought in to level off the basketball court.

There was questioning by the commission about whether activities were conducted within the conservation restricted area. Mr. Mandel showed a site plan showing the limits of disturbance and the conservation deed restricted area, in which there was broad overlap.

David Lord-Soil Scientist-was out to the site this afternoon and took a number of photos of the site and primarily focused on the areas inside the filter fence and existing vegetation to the extent that there is bare soil. Outside the silt fence are areas where vegetation was cut but not stumped or removed. Also sizeable trees that still exist within the silt fenced area. There does not appear to be any soil erosion occurring. Observed that the silt fence is properly installed. Discussion has been started on a planting plan for restoration in the area.

IWA Staff J. Frederick questioned whether the offsite wetlands portrayed on the site plan were picked up from the original subdivision map or in the field.

Chuck Mandel stated he got them in the field from areas that were "pretty apparent to be wetlands".

IWA Staff J. Frederick stated that the site is currently stable.

There was question amongst the commission as to whether the violator was anticipating submitting an application for their plan. Marjorie Shansky indicated that it is their intention to submit a plan for the desired proposal. Commissioner indicated that an application was not the way to correct a violation and was questioning why the commission is not asking for a restoration plan. Sympathized with the resident in making what they feel are improvements to their property, however allowing the violation of a deed restriction should not be a precedent that the commission wants to set. Anyone is welcome at any time to submit an application before the commission but felt this issue should be addressed not by an application but by a plan to address this. The concern is that if the commission requires a restriction and/or easement, but the property owner conducts activity anyways and asks for forgiveness after the fact and the

commission allows it to stand, then there is no point in having deed restrictions and/or easements.

Attorney Shansky- reiterated that it is not a conservation easement-it's a conservation restriction- and that the commission is not the holder of the restriction and the reason there is no call for a restoration is because the Cease and Correct order does not request a restoration.

Chairman P. Bassermann felt it would be in the best interest to gain insight from Town Council.

J. Frederick Noted that clause 3 is directive to the commission. Indicated she did not require a corrective plan because she was unsure if that is what the commission would require.

Attorney Shansky stated that they are trying to reconcile both the commission and the property owner.

Commissioners indicated that they would want to see a restoration plan as a corrective action. There was discussion amongst the commission as to whether a corrective plan should be done before an application is submitted or if they should be done simultaneously.

J. Frederick stated that the original permit for the subdivision approval required the conservation restriction be submitted. Commission discussed that issue is in regards to the aggressive development of property that was supposed to be preserved. Attorney Shansky questioned whether the restoration plan had to be cloaked within a permit. J. Frederick stated that as this is a violation, it needs to be handled separately as a violation. However, if there is additional activity that the homeowner would like to conduct <i.e. putting in the basketball court> then a permit would need to be sought. Commissioners indicated that the cease and correct should be upheld and the commission should seek advice from town Council and continue the discussion at the next meeting. It was determined that the Commission would get clarification on what authority the commission has in order to meet the language and the intent of the permit that was issued for the subdivision. It would also obtain information on whether any properties that have conservation restrictions have resulted in the development of the restricted areas and whether the commission has standing to enforce the restriction. It also requests guidance that if the violator also want to submit an application, but the Cease and Correct is asking for restoration, how is that handled?

Will be continued to August 11 meeting at 7 pm.

#### **ADJOURNMENT:**

Chairman Bassermann made Motion to adjourn at 8:16 p m. Commissioner Botta Seconded. Motion carried unanimously (5-0-0).

**Respectfully Submitted,**



Katy Blanchette