

INLAND WETLANDS AND WATERCOURSES COMMISSION MEETING
MONDAY, APRIL 1, 2013
TOWN HALL 7:00 P.M.

Present: Chairman Bruce Burnett, Robert Orciari, Robert Wesneski, Victoria Elliott, Don Prigitano, Alternate Member Marie Etter and Land Use Coordinator Polly Redmond
Absent: Susan Ryan, David Keepin and Alternate Member Tim Bobroske

SHOW CAUSE HEARING - continued

1. OPEN HEARING – ESTABLISH QUORUM.

Chairman Burnett called the hearing to order at 7:00 p.m. All regular members present are seated with Alternate Member Marie Etter seated for Sue Ryan.

2. FRED PESCE – AFTER-THE-FACT ACTIVITIES OF DEPOSITION OF MATERIAL AND POLLUTION INTO REGULATED AREAS WITHOUT A PERMIT, 529 BURLINGTON ROAD.

Robert Green, P.E., Robert Green Associates is present. Site plan titled Site Plan for Farm Stand, Assessors Lot 10, dated January 19, 2011, revised October 25, 2012 and January 15, 2013 prepared by Robert Green Associates is reviewed. A letter dated March 26, 2013 from Sean Hayden, Soil Scientist, Northwest Conservation District, has been received. Chairman Burnett states that he has spoken with Mr. Hayden regarding the pros and cons of removing *all* the material in the cross-hatched area as opposed to what is on the current site plan. Chairman Burnett reports that Sean Hayden is not comfortable with hypothetical situations but if there were two plans to review; one to remove all material and the other being the current plan, he would be more prepared to discuss benefits, costs, advantages and disadvantages. But to try to compare this plan with an open-ended situation where there is no specific plan in terms of the amount of fill to be removed, he wasn't prepared to answer.

V. Elliott questions whether the commission could ask for a second plan on removing all of the fill? Chairman Burnett states that would be a possible approach. He adds that part of the commission's purview is to look at feasible and prudent alternatives and the commission could ask the applicant for evidence as to why removing all of the fill would not be as feasible and prudent as the current plan. Chairman Burnett references Sean Hayden's letter where it states in paragraph three that, "The Site Plan did not address my second comment which was to "include grading and stormwater diversion details that bring runoff to a Primary Stormwater Treatment Practice." Chairman Burnett points out that Sean Hayden's letter does offer assistance to work with the engineer and client to design a type of storm water treatment and that this could possibly be interpreted as a feasible and prudent alternative to the plan submitted originally but this is up to the commission to determine. M. Etter wishes to clarify that the recommendations for a stormwater treatment facility is for an application not yet submitted to this commission. The commission is only looking at the illegal filling of the wetlands done two years ago which happens to be in the area where the proposed future farm stand would be located. There is no existing application for the farm stand at this time as this commission is still dealing with the issue of illegal filling of the wetlands. Chairman Burnett states there is a proposal before this commission to remove part of that material and stabilization of the bank and it is being reviewed because if a farm stand is applied for and approved, there will be runoff into the wetlands from this area.

Chairman Burnett reminds the commission that Mr. Hayden said he would comment if there were two site plans with two proposals. R. Wesneski has concerns that if the material is removed and planting is done, and then the applicant comes back with a proposal, you can end up destroying everything that was done. Making it for a retention basin, the wetlands will be disturbed twice with an impact. If work was done all at once, and the end result is with a correct water and sedimentation control facility, the material could be removed and a retention basin can be created all at the same time. Without an application for some kind of future development though, the commission doesn't know how it can be done. R. Wesneski states that looking at it from a practical standpoint, he would like to see all the material in the cross-hatched area removed and reverted back to wetlands with plantings and some type of a retention basin scenario. Chairman Burnett questions R. Wesneski if he means that all recent deposition should be removed with R. Wesneski replying, yes, not just the slope back but all the material in the test hole 5 cross-hatched area should be brought back to the original lines and that Sean Hayden should be present during removal. R. Wesneski states that in the construction of that setting, whether its materials removed six inches below the bad material so you create a retention basin with proper overflow back into the brook, this would require more than just removal of the material. He also would ask that the applicant volunteer to do this with acknowledged guarantee that no further work shall be done in this area and that this would go a long way in addressing what commissioners have said about removal of fill. Robert Green addresses the commission stating that the original proposal submitted was to address the Cease and Desist/Correct Order and that plans were drawn up to show the *correction* and also to apply for the farm stand although the two activities could stand alone. The limit of fill in violation is separate from the proposal of the farm

stand but it is all on the same site plan to show what could happen in the future. Mr. Green states that he believes the field site visit and the soil testing that took place with Sean Hayden, Chairman Burnett and the property owner present clearly indicated, to him, that cutting back the slope is the thing to do although Sean Hayden does not clearly state this in his letter to which Mr. Green is unsure why. Mr. Green states that during the August site visit it was clear to him that the slopes were to be pulled back and restored as shown on the plans submitted, but if the commission feels otherwise, he would respect that. Regarding the farm stand, Mr. Green feels each site can be done independently so if the decision is made tonight, or the near future, to require to just take out the large product, adjacent to the wetlands, clean the slope up, do the plantings, and not remove everything, in accordance with the plan, this can be done and he would like to think that the commission would like to have this done before the farm stand application is presented. He would like to clean up that segregated area first and then the commission can review the site plan for the farm stand which can be done without going back into the area being repaired.

R. Wesneski states that the difference is that the amount of fill to be removed is substantial and more than just providing side slopes, quantity wise. Mr. Green agrees but that Sean Hayden said to just clean up the area where the slopes are steep against the wetlands. V. Elliott states that Sean Hayden's letter doesn't state this and she refers to paragraph two of the letter where it states, "very large aggregate is not suitable for vegetating with wetland buffer plantings" and that's what she would like to see removed, the large aggregate. Chairman Burnett questions if that is what is to be removed with Mr. Green stating, not all of it is to be removed. He explains that Sean Hayden indicated to start at the toe of the slope adjacent to the wetlands, pull out the rocks that create a steep slope, get a gentle slope from the area that's been filled down to the wetlands area for a more pleasing appearance, the large product would be gone and that the area is to be backfilled with suitable soil for vegetation.

Chairman Burnett informs the commission that part of the discovery on his part, during the August site visit, is that this area in general has been filled for a long time and that the area was not, and is not, a pristine wetland area. He is not, however, suggesting that this justifies additional filling of wetlands, just that the quality of the wetland is something the commission should take into consideration. R. Wesneski states his belief that the material should be removed and a retention basin should be put in. R. Orciari agrees and notes that Sean Hayden's letter offers assistance for a stormwater facility and offers to inspect the soil conditions as the coarse material is excavated out of the wetland border. R. Orciari states that the cross-hatched area, the recent material deposited there, should be removed, including the large aggregate, suitable soil for vegetation should be brought in, vegetation should then be planted and that there should be some type of buffer and stormwater retention device installed. He states that the commission spoke of mitigation in the area of test hole 5, which was illegally filled, and though it was not a typical red maple swamp, it was a wetland that will never be able to be replicated but what can be done is to create artificial wetlands within a retention basin put in. Mr. Green states that a retention basin may not be needed and that there is enough room within the area of the farm stand and access area along Route 4 where there is no need to get into the Cease and Correct area. R. Orciari questions whether an artificial wetland where the area was filled (cross-hatched area) could be possible with Mr. Green replying, yes, but he asks, is it practical? R. Orciari states that the commission spoke of mitigation and though it can't be replicated, artificial wetlands can be installed and may be the best thing to do.

R. Wesneski questions Chairman Burnett if it is appropriate to have the applicant come back with a plan that depicts a motion that we make or could a motion be made to have the work done in an absolute way? Chairman Burnett states if we are asking the applicant to remove all the material that was filled then yes, the commission needs a plan for that. R. Green questions if that would be based on a motion and a decision and not a "let's do it and make a decision later" type of scenario? R. Wesneski states that the commission would want to see a plan before we approve something being done. R. Green asks if the commission wants to see something to compare to with R. Wesneski stating that the commission needs to make a decision on whether all fill is to be removed, or defer to someone else to make that decision. Chairman Burnett states that a plan showing removal of material should be presented. D. Prigitano asks how many years the wetlands in this area have been filled with Chairman Burnett stating the recent fill has been there about four years. D. Prigitano notes that after so many years it is no longer a wetland and asks what the odds are of it becoming a wetland once again after removal is done. Chairman Burnett replies that one can create a wetland situation. R. Wesneski states that this is where it needs to be investigated. What depth to put in, amount of removal of fill, what kind of plants to put in, what kind of surface material to put on the existing material there, this all needs to be dictated by a plan.

R. Wesneski **motioned** to require the engineer to come back with a plan to show removal of the cross-hatched material on the plan currently proposed that includes gradual side slopes back to the other existing material so there is a gradual transition between new and old material, and demonstrate through a cross section a list of materials, contours, what the final area will look like after it has been restored and demonstrate that all fill material has been removed. D. Prigitano seconded the motion and it passed unanimously.

R. Wesneski **motioned** that the Show Cause Hearing be continued to Monday, May 6, 2013 at 7:00 p.m., seconded by M. Etter. The motion passed unanimously.

REGULAR MEETING

1. OPEN MEETING – ESTABLISH QUORUM.

Chairman Burnett called the regular meeting to order at 7:30 p.m. The same quorum exists.

2. APPROVE MINUTES OF PREVIOUS MEETING: 3/4/13

R. Wesneski **motioned** to approve the minutes of the previous meeting with the amendment of Page 2, Item 6, line 17 to read, "...the DEEP *recommends* (omit the word "requires") a 100 foot buffer...." M. Etter seconded the motion and it passed unanimously.

3. DISCUSSION/POSSIBLE DECISION - STEVE LATOUR, BERKSHIRE ENGINEERING FOR ELLIOT CYR (PROPERTY OWNER) AND WESLEY CYR (APPLICANT) – APPLICATION FOR TWO LOT RESUBDIVISION, 93 OAKWOOD DRIVE.

Steve Latour, Berkshire Engineering, is present along with Wesley Cyr. Plans by Berkshire Engineering titled Re-Subdivision prepared for Wesley Cyr (sheet 1/1), dated 1/14/13 and revised to 3/14/13, Site Development Plan, Lot 2, Cyr Re-Subdivision (sheet S1), dated 2/26/13 and revised to 3/14/13 for 25 foot natural vegetation area, 4 bedroom dwelling, Erosion & Sedimentation Control Plan (sheet E1), dated 2/26/13, Details & Notes (sheet D1), dated 2/26/13 are reviewed. TAHD approval has been received and remains on file. A 25 foot natural buffer has been added to the site plans showing placement of "protected wetlands" markers. Mr. Latour refers to comments made at the March 4, 2013 IWWC meeting regarding relocation of the drainage easement and that all work will be performed by the property owner including filing of the easement in the land records.

Michael Zycek, 66 Oakwood Drive, abutter to the Cyr property, is in the audience and wishes to make comment. He speaks of erosion and loss of some of his land caused by the rise and fall of Lead Mine Brook during rainstorms and that the back of his property where the West Branch of Lead Mine Brook flows has created a 5 to 6 foot drop off to the brook. He also has concern that the proposed activity may be within the flood zone. Site Development Plan shows a heavy dashed line depicting the 100 year flood line with the closest separating distance from the house to the 100 year flood line being approximately 51 feet. Mr. Zycek notes that the first 40 to 50 feet of the existing drainage easement begins on his property. He states that he is not sure how this activity would be possible without changing the brook and without this being considered a significant activity. He expresses concern over the impact on wildlife as he has seen turtles, sandpipers, etc. in the two ponds that abut his property. He questions whether the applicant or his engineer has consulted the *Natural Diversity Database* for possible endangered species in this area. Mr. Zycek encourages and recommends that members of the commission conduct a site visit to his property to see firsthand what he is referring to. Mr. Latour responds stating that all activity, except drainage, is outside the 100 year flood area and with the pipe, there will be a gentler slope and that there is no affect to Mr. Zycek's property now or will there be later.

R. Orciari refers to the yard drain and the high storm flows and questions whether the pipe will come out to grade on the eastern side of the Cyr property. Mr. Latour states it will and that this may even help Mr. Zycek's problem of flooding. R. Wesneski notes that the wetlands have been delineated with no activity within the wetlands. R. Orciari questions whether it will be an issue if the pipe goes onto the adjacent property (Zycek's) with easements on the Cyr and Zycek properties with Mr. Latour replying, no. R. Orciari explains to Mr. Zycek that the pipe will divert water farther from the brook and will be much better now in regards to erosion concerns. Mr. Zycek expresses his concern with flooding and that it is difficult to determine where the future brook will be with future rainstorms. Mr. Latour states that the 100 year flood plain line will not change as it's based on elevation. The brook is now one foot deep, 10 feet wide, and the water does rise fast during rainstorms but also drops quickly.

The applicant is asked to return to the May 6, 2013 IWWC meeting and present the Natural Diversity Database map to determine the presence of any endangered species in this area. Berkshire Engineering is to also investigate putting in a catch basin in the right-of-way area that would protect the adjacent homeowner to ensure no erosion on his property. The catch basin would be located in the right-of-way and would connect the outlet, the pipe, from the two catch basins and go into another catch basin and out to the same place where the pipe would go out in the brook so instead of the bend, there would be two catch basins, eliminating the channel. R. Orciari notes that it is a long pipe and does R. Wesneski think it would need a clean out? R. Wesneski states that its 300 foot long, which is not bad, but any issues of cleaning out the pipe should be determined by the highway supervisor.

M. Etter **motioned** to continue this matter to the next IWWC meeting on May 6, 2013 at 7:00 p.m. R. Wesneski seconded the motion and it passed unanimously.

4. **DISCUSSION/POSSIBLE DECISION - FRED PESCE SHOW CAUSE HEARING – UPHOLD, MODIFY OR WITHDRAW ORDER, 529 BURLINGTON ROAD.**

No discussion.

5. **REVIEW 2012 LEGISLATION & REGULATION ADVISORY.**

The commission reviewed the changes and agreed to forward the amendments to Michael Rybak, Town Counsel, for his review. Item will be placed on the May 6, 2013 IWWC agenda for further discussion and setting of a public hearing date.

6. **ANY OTHER BUSINESS.**

LUC Redmond reports two wetland application sign-offs in March. A sign off for 280 South Road for a 12' x 16' addition and a sign off for 87 Cemetery Road for an 18' x 24' barn. Non regulated activities.

7. **COMPLAINTS/ENFORCEMENT ACTIONS.**

None.

8. **CORRESPONDENCE.**

CT Federation of Lakes newsletter is received.

9. **INVOICES.**

None.

10. **ADJOURN.**

D. Prigitano **motioned** to adjourn the meeting at 8:25 p.m., seconded by R. Wesneski. Motion passed unanimously.

Respectfully submitted,

Polly Redmond
Land Use Coordinator

RECEIVED FOR RECORD AT HARWINTON CT
ON 4-9-13 AT 2:08pm
ATTEST NANCY E. ELDRIDGE TOWN CLERK