

**INLAND WETLANDS AND WATERCOURSES COMMISSION MEETING
MONDAY, JUNE 3, 2013
TOWN HALL 7:00 P.M.**

Present: Chairman Bruce Burnett, Susan Ryan, Robert Orciari, Robert Wesneski, Paul Whiton (arriving at 7:05 p.m.), Alternate Member Marie Etter and Land Use Coordinator Polly Redmond
Karen Nelson and Mr. Fred Pesce arrive at 7:10 p.m.

PUBLIC HEARING

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 Marie Etter seated for Paul Whiton.

2. IWWC COMMISSION INITIATED REVISIONS TO INLAND WETLANDS AND WATERCOURSES REGULATIONS DATED 3-1-12 IN RESPONSE TO DEEPS 2012 LEGISLATION AND REGULATION ADVISORY.

Chairman Burnett reads the call to hearing as published in the Republican-American on 5/23/13 and 5/31/13. Changes are being made to IWWC Regulations Section 11.1 and 11.6 as required by DEEP Advisory.

3. CONTINUE OR CLOSE HEARING.

With no comments from Commissioners or the public, S. Ryan **motioned** to close the hearing at 7:03 p.m., seconded by M. Etter. Motion passed unanimously.

P. Whiton arrives at this time and is seated. M. Etter is reseated for Victoria Elliott.

SHOW CAUSE HEARING - continued

1. OPEN HEARING – ESTABLISH QUORUM.

Chairman Burnett calls the hearing to order at 7:05 p.m. and a quorum is established.

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

No one at this time is present to represent.

LUC Redmond informs the commission that she spoke to Mr. Pesce's engineer, Robert Green, who informed her that he was on a stop work order from Fred Pesce and that nothing further would be coming before the commission. M. Etter **motioned** to close the Show Cause Hearing. R. Wesneski believes that the hearing should remain open to keep options open. R. Orciari asks for clarification from R. Wesneski in that he wishes to keep the hearing open with R. Wesneski stating, yes. There is no second to the motion made.

Karen Nelson and Fred Pesce arrive at this time. Mr. Pesce provides for viewing a map titled Right of Way Map, Town of Harwinton, for the CT State Highway Department. He states that the DOT had done work years ago to improve the intersection of Route 72 and Route 4 and brought black top, gravel and rock to Mr. Pesce's property that filled in the wetlands area that is subject to a Cease and Correct Order. Mr. Pesce said that he himself did not do anything wrong and would like this matter settled once and for all. Chairman Burnett asks Mr. Pesce if he has brought any material to this area with Mr. Pesce stating, no, only stone and that was in the area of a barn on the property. Chairman Burnett questions why after all this time, this is the first time Mr. Pesce is claiming that he had no part in filling in the wetlands area and that it was the DOT. Chairman Burnett continues stating that a soil scientist reported that there was considerable fill brought on site. Mr. Pesce insists that his property is under farm status and that he should be able to do what he wants on his property in the name of agriculture. Chairman Burnett reminds Mr. Pesce that this commission wanted information on options on taking material out and grading so there is no erosion into the wetlands and/or the option of reclamation. Mr. Pesce insists that he did not put any of this material on site and that he is at a loss on what to do. Chairman Burnett informs Mr. Pesce that before his arrival, the commission was going to take action and possibly place a lien on the land records in the Town Clerk's office. Mr. Pesce states that the First

Selectman was out to his property recently (for a complaint received). Mr. Pesce was informed that this is not the matter at hand and that this would be addressed under Item 8 Complaints. Mr. Pesce states that he has complied with the Cease and Desist Order that was issued and has stopped work. M. Etter questions him on what exactly he has stopped doing with Mr. Pesce claiming that he had his engineer come to the IWWC meetings. Chairman Burnett informs Mr. Pesce that LUC Redmond spoke to his engineer, Robert Green, and was informed that he is not authorized to do any further work. Mr. Pesce states that the project is costing him too much money and that he can't keep paying his engineer. He states he "gives up" and the town "can do what they need to do." Chairman Burnett asks for a motion if there are no other questions.

3. CONTINUE OR CLOSE SHOW CAUSE HEARING.

M. Etter **motioned** to close the hearing at 7:27 p.m. as she believes there will be no further information provided to this commission. R. Orciari agrees in that Mr. Pesce's engineer is no longer going to be involved and it seems there is no resolution in sight. P. Whiton seconded the motion and it passed unanimously.

REGULAR MEETING

1. OPEN MEETING – ESTABLISH QUORUM.

Chairman Burnett called the meeting to order at 7:28 p.m. Same quorum exists with all regular members seated and M. Etter seated for V. Elliott.

2. APPROVE MINUTES OF PREVIOUS MEETING: 5/6/13

R. Wesneski **motioned** to approve the minutes of the previous meeting, seconded by S. Ryan. Motion passed unanimously.

3. RICK SZABO FOR GLORIA CRAIG – MAINTENANCE OF POND, WESTLEIGH DRIVE, ASSESSORS MAP B8-05-0035.

No one is present to represent.

S. Ryan **motioned** to amend the agenda to take up Item 5 at this time, seconded by R. Wesneski. Motion passed unanimously.

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

R. Orciari states that the commission needs to discuss actions and that a mechanics lien can be placed on Mr. Pesce's property. R. Wesneski states that in order to do that a dollar value would need to be set on cost to restore. He questions whether this option should be referred to the town attorney. Chairman Burnett states that no matter what this commission does, it will need to be referred to the town attorney. M. Etter offers that this commission can take action and tell Mr. Pesce that all material that filled in the wetlands must be removed. R. Wesneski **motioned** to refer the current status to Town Atty. Michael Rybak asking him to assist in what type of action this commission should proceed with. M. Etter seconded the motion and it passed unanimously. Upon questioning whether Karen Nelson will handle this matter, she informs the commission that she cannot as she is officially resigned from her enforcement position for the Town of Harwinton. The commission asks that LUC Redmond refer the matter to First Selectman Michael Criss who should confer with the town attorney on the Pesce matter. The commission also asks that the town attorney and First Selectman Michael Criss attend the next IWWC meeting on July 1, 2013 at 7:00 p.m.

S. Ryan **motioned** to amend the agenda to take up Item 8 at this time, seconded by M. Etter. Motion passed unanimously.

COMPLAINTS/ENFORCEMENT ACTIONS.

ALYSEN ALMAND, 401 BURLINGTON ROAD AGAINST FRED PESCE, E6-04-0010, 529 BURLINGTON ROAD.

Ms. Almand is present. Fred Pesce is still present. Ms. Almand provides numerous color photos of her pond that is shown as a murky brown color obviously filled with silt. She claims that she had left her home one morning, either on May 14, 2013 or May 15, 2013, with a pond containing clear water and returned later that day seeing “a chocolate-milk” looking pond. R. Orciari questions Ms. Almand on what she believes caused this. Ms. Almand provides a photo she took of an excavator in the area of Fred Pesce’s pond that also shows piles of stockpiled material close by. R. Orciari asks Ms. Almand if the excavator was in the stream with Ms. Almand replying that it was on the edge of the Pesce pond. Ms. Almand states that she took this photo of the excavator from her back window that faces the Pesce pond area. Upon request by R. Orciari, Ms. Almand gives the history of the pond which has been in her family for 75 years. She speaks of swimming and fishing in her pond as a young child and that the ponds were at one time used as ice ponds. Ms. Almand states that now, trees in the area of her pond are falling over and the water table has risen considerably which she believes is due to activities conducted by Mr. Pesce over the years. She states that her grandmother, Anne Kovall, now deceased, who lived in this home for many years and raised her family there, also had expressed concerns and made complaints to the town over Mr. Pesce’s activities and silt formation in her pond with no results. Ms. Almand has satellite photos; one from 1969 that shows a pond in the front of her property and one from present day that shows the pond is no longer there. Chairman Burnett questions Mr. Pesce asking him if he’s done any activities in the stream that runs through his property with Mr. Pesce stating he put down rip rap where excavation was done but that it is several hundred feet from the stream. Again Chairman Burnett asks Mr. Pesce if he has been conducting activities in the stream with Mr. Pesce stating that he did take sand and gravel out of the stream. Chairman Burnett asks if he had a permit to do so with Mr. Pesce replying, no, but that the first selectman paid him a visit and advised him to install E&S measures. Chairman Burnett asks Karen Nelson if she has anything to offer whereas Ms. Nelson states that the First Selectman asked her to go out to the property to inspect for erosion control measures. She provides photos she took while at the Almand property and notes that Mr. Pesce took the First Selectman’s suggestion and has installed erosion and sedimentation control measures where he was working in the vicinity of his pond.

R. Orciari asks Ms. Nelson if she saw evidence of work being done directly in the pond with Ms. Nelson stating she could not see. Chairman Burnett asks Ms. Almand what the current situation with the stream is with Ms. Almand stating that she has contacted Hemlock Construction who will determine how much material needs to be taken out of her pond to restore it. R. Orciari notes that damage is not just of the Almand pond but that this tributary goes out to Rock Brook which has brook trout in it. Silt may not kill the fish but it would create an unhealthy place for fish to spawn.

R. Wesneski states that there are two things the commission is hearing tonight. One is removal of material and working in the ponds by Mr. Pesce without a permit and two, harm to downstream neighbors, which is a civil matter that this commission may not be able to correct. He questions, what are the actions that this commission is going to take? M. Etter asks Mr. Pesce if he would allow someone onto his property to look at his ponds. R. Orciari states that it is pointless to have a Cease and Correct Order issued though it is clear that the town needs to take action. R. Wesneski states that the commission may have to issue a Cease and Desist Order. Chairman Burnett states that this commission can inform Mr. Pesce tonight not to do any work on his property until he comes into conformity with the regulations. Mr. Pesce states that he is willing to have commissioners come onto his property to see the ponds and continues to defend himself stating that his property is a farm allowing him to work his land. M. Etter reminds Mr. Pesce that this has nothing to do with farming. Mr. Pesce then asks whether the commission is telling him he can’t do anything on his property if it is within 100 feet of wetland? R. Orciari states that is not what they are telling him but that he does need to come before this commission for a permit for any work within 100 feet of a wetland or watercourse as he has been informed of many times before. M. Etter states that the commission needs to be assured that nothing further will be done against Almand’s property to cause damage and if a Cease and Desist Order is sent out it should encompass the entire Pesce property. R. Wesneski **motioned** that a Cease and Desist Order be issued for any and all activities that have occurred that produced silt in down land streams and ponds. R. Orciari adds a **friendly amendment** that the Cease and Desist Order is a temporary order until further action is taken. The Cease and Desist Order is so Mr. Pesce understands that no further activity is to take place within 100 feet of a wetland or watercourse on his property and that this commission will be in discussion with the town attorney

for punitive action to be taken. Mr. Pesce states that he understands this. R. Orciari also suggests that a site walk of the Pesce and Almand property be conducted with the consensus of the commission that a site walk be conducted on Monday, June 10, 2013 at 6:30 p.m. beginning at the Pesce property, 529 Burlington Road, and continuing on to the Almand property at 401 Burlington Road. M. Etter seconded the motion and it passed unanimously.

*Karen Nelson was asked if she is still acting as the town's enforcement officer with her replying that she finds it to be a conflict of interest with the new position she holds at the Northwest Conservation District but that she had agreed to go look at the silt fence put up by Mr. Pesce at the request of the first selectman. With no enforcement officer to issue the Cease and Desist Order, Chairman Burnett offers to issue one to Mr. Pesce. Karen Nelson will electronically send a C&D Order format that he could use as a template.

Chairman Burnett brings other matters of complaints to the table at this time questioning LUC Redmond if the Cyr Subdivision revisions were okay to be authorized by her. She explains that the drainage system was revised from what the IWWC approved so that there will be no new pipe connected to the catch basin located on the street in front of the Zychek property. The old plan was to connect to that catch basin in the street and pipe along on a diagonal across Lot 2's driveway, passing over the town's right of way, and then back onto existing Lot 1 to a proposed catch basin and then dispersing to wetlands to the east.

The new plans show no connection to the existing catch basin in the street. Drainage will flow along the existing drainage easement on the Zychek property, as it does now, with no swale removal proposed. Where drainage falls onto proposed Lot 2, a catch basin will be installed, and a new pipe will be installed to direct flow in a northerly direction (toward the front of the property) where it will meet a new proposed catch basin. Flow will then be directed in the same direction as the old plan and finally dispersing in the same wetlands area on the east side of existing Lot 1.

Revisions to the plans are basically along the shared property line of Zychek and Lot 2 with activities only on Lot 2, and outside the regulated area by 200 feet. LUC Redmond states that Highway Supervisor John Fredsall did review the latest revised plans and had no issue with the changes.

Chairman Burnett informs the commission that Tim Bobroske had called him questioning the present activity of Pickett Brook Property consisting of grading off Plymouth Road in the vicinity of where the proposed Equestrian Estates Subdivision road will exit out of the subdivision. LUC Redmond informs commissioners that there is no activity within regulated areas and that she has been in discussion regarding this activity with Highway Supervisor John Fredsall who has been out to the site. The work is being done to improve site lines and is the beginning of Phase I of the project which is to make improvements to the emergency access way from Break Maiden Lane to Plymouth Road. She informs commissioners that Jared Braddock, Pickett Brook Property, made application before the Zoning Commission on May 20, 2013 for removal of the fill and that the application was approved. LUC Redmond was made aware the following day that 10,000 cubic yards of fill was being removed or redistributed according to Mr. Braddock.

4. DISCUSSION/POSSIBLE DECISION – REVISIONS TO INLAND WETLANDS AND WATERCOURSES REGULATIONS DATED 3-1-12 IN RESPONSE TO DEEPS 2012 LEGISLATION AND REGULATION ADVISORY.

M. Etter **motioned** to adopt revisions to the Inland Wetlands and Watercourses Regulations as presented at tonight's public hearing and as advised by DEEP, seconded by S. Ryan. Motion passed unanimously. Reason for approval is that it is in accordance with DEEP Model Regulations. Effective date shall be one day after publication of the decision notice.

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

See Complaints/Enforcement Actions above.

6. DISCUSSION – OPEN ZEO POSITION.

M. Etter recommends Stacey Sefcik to the position of Zoning Enforcement Officer, seconded by R. Wesneski. Motion passed unanimously.

7. **ANY OTHER BUSINESS.**

LUC Redmond informs the commission that she signed off on the following applications:

- 1) Colin Dinwoodie, 87 Cemetery Road, 18' x 24' barn. No wetlands.
- 2) Corey Schultz, 49 Lily Pond Lane, 20' x 40' inground pool. No wetlands.
- 3) Tom Hickey, 153 Meadowview Lane, 15' x 27' inground pool. Non-regulated activity.
- 4) Peter Theirry, 555 Hill Road, 24' x 32' garage. No wetlands.

8. **COMPLAINTS/ENFORCEMENT ACTIONS.**

ALYSEN ALMAND, 401 BURLINGTON ROAD AGAINST FRED PESCE, E6-04-0010,
BURLINGTON ROAD

See Complaints/Enforcement Actions above.

9. **CORRESPONDENCE.**

James Buss from the Lake Harwinton Association is present. Commissioners have received a copy of the Lake Harwinton 2012 Water Quality Summary Report that Mr. Buss sent to the Land Use office. Report remains on file in the Land Use office.

New Subdivision Regulations dated 5/20/13 are distributed to IWWC Members.

10. **INVOICES.**

Invoice of Karen Nelson for 4 hours for two IWWC meetings is to be submitted according to Karen Nelson. M. Etter **motioned** to approve the invoice allowing LUC Redmond to sign off on it, seconded by S. Ryan. Motion passed unanimously.

11. **ADJOURN.**

S. Ryan **motioned** to adjourn the meeting at 8:35 p.m., seconded by P. Whiton. Motion passed unanimously.

Respectfully submitted,

Polly Redmond
Land Use Coordinator

RECEIVED FOR RECORD AT HARWINTON CT
ON 6-5-13 AT 9:25AM
ATTEST NANCY E. ELDRIDGE TOWN CLERK