

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

Present: Chairman Bruce Burnett, Robert Orciari, Robert Wesneski, Victoria Elliott, Paul Whiton, Alternate Members Marie Etter and Tim Bobroske and Land Use Coordinator Polly Redmond. Also present: First Selectman Michael Criss and Town Counsel Michael D. Rybak.

Absent: Susan Ryan and Don Prigitano

1. **OPEN MEETING – ESTABLISH QUORUM.**

Chairman Burnett called the meeting to order at 7:02 p.m. All regular members present are seated with Tim Bobroske seated for Don Prigitano and Marie Etter seated for Susan Ryan.

2. **APPROVE MINUTES OF PREVIOUS MEETING: 6/3/13 AND 6/12/13 SPECIAL MEETING**

M. Etter **motioned** to approve the minutes of 6/3/13, seconded by R. Wesneski. Motion passed unanimously with V. Elliott and T. Bobroske refraining from vote due to their absence at the 6/3/13 meeting.

M. Etter **motioned** to approve the minutes of 6/12/13, seconded by V. Elliott. Motion passed unanimously with T. Bobroske and P. Whiton refraining from vote due to their absence at the 6/12/13 special meeting.

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

Mr. Pesce is present along with his son, Ric Pesce and daughter-in-law Corolla Pesce. He informs the commission that his engineer, Robert Green, nor his attorney, Patrick Power, is able to attend tonight's meeting. He states that Robert Green is still reviewing Sean Hayden's 3/26/13 letter but that he would be able to attend the commissions next meeting on August 5, 2013. Chairman Burnett, to be clear, asks Mr. Pesce that if either were here tonight they would be addressing site plans and mitigation in the area near the highway (Route 4) with Mr. Pesce stating that is correct. Chairman Burnett states for the record that the Land Use Coordinator has provided documents tonight from the land use file that takes this matter back to 2009. R. Orciari states that, in his opinion and after walking the site on 6/12/13, there was concern for mitigation and stormwater diversion to the west of the filled area but that he doesn't think that is a good idea now. Sean Hayden's original recommendations outlined in his letter dated 3/26/13 seem adequate if Mr. Pesce is willing to do them. He believes there is still a need for mitigation and wetland plantings for stabilization to the bank but to remove all fill, as was discussed at past IWWC meetings, does not appear to be a viable option. R. Orciari also notes that the area subject to the current "Cease and Desist" Order noted as proposed gravel parking area (#1-7) remain forever untouched and that no gravel should be placed in this area but rather that soil be placed down and that the area of fill location should remain as a natural vegetated area. M. Etter agrees with R. Orciari to approve of Sean Hayden's recommendations, to remove aggregate to the edge of the filled area, grade and do plantings and also that the area be off-limits to any further development. Upon questioning by Atty. Michael Rybak on whether there is a complete Wetlands Application, the Land Use Coordinator states there is not a complete application with no signature by the applicant and no fee being paid. Upon questioning by Chairman Burnett if Mr. Pesce still retains the services of Robert Green due to Mr. Green informing LUC Redmond that he was placed under a "stop work order", Mr. Pesce states he still employs Mr. Green as his engineer. T. Bobroske **motioned** that the commission allow Mr. Pesce one more month to submit a final site plan to this commission for after-the-fact activities with the stipulation that Robert Green contact Sean Hayden, Northwest Conservation District, so that Mr. Hayden's recommendations of 3/26/13 are implemented into the final site plan. V. Elliott seconded the motion. T. Bobroske notes that the commission does not want any information on the site plan to address a farm stand. M. Etter asks Atty. Rybak if this is how the commission should proceed with Atty. Rybak reminding the commission that there is not a complete application but if the commission agrees to offer Mr. Pesce one more month to get the application ready for submission this may be something the court would order them to do anyway if it were to come to that. M. Etter questions if there is anything the commission could do to enforce this matter besides going to court with Atty. Rybak stating that a Show Cause Hearing would be held for the commission to determine how to enforce compliance. R. Wesneski questions whether a timeframe or deadline could be set for completion of work that Mr. Pesce is required to do with Atty. Rybak stating that if the work is not done the commission could enforce the order as well. T. Bobroske expresses to Mr. Pesce that the commission is giving him thirty (30) days to provide a complete application and final site plan and that this is the "line in the sand". M. Etter questions what the commission wants of Mr. Pesce at the next IWWC meeting with T. Bobroske stating that a

complete application is required, revised plans be received and Robert Green to be in contact with Sean Hayden. R. Wesneski adds that this is an after-the-fact application and that the revised plans should not show parking, farm stand location or anything referencing farm use. M. Etter mentions that Sean Hayden's recommendations were not clear in that there were no measurements or quantities for removal and that the commission is looking for an application to be presented in its final form. R. Wesneski states that after looking at the site plan there may be more things the commission asks for. He wishes to clarify that it is the recommendation of the commission that a letter be sent by Chairman Burnett to Robert Green informing him of what the commission is looking for. T. Bobroske agrees and states that Robert Green should be in contact with Chairman Bruce Burnett if there are any questions. Atty. Rybak states that at this point, the Chairman is the commission's enforcement officer and speaks for the commission in light of the fact that an enforcement officer has not yet been hired to replace Karen Nelson. Atty. Patrick Power and Sean Hayden should be copied on this letter. All members are in favor of the motion.

7:35 p.m.: Tim Bobroske leaves at this time.

4. COMPLAINTS/ENFORCEMENT ACTIONS.

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

David and Alysén Almand are present and inform the commission that after the commission's 6/12/13 site walk conducted on her property, silt has continuously built up in her pond. It is her hope that the runoff from Mr. Pesce's property be included in the enforcement action that the commission is taking against Mr. Pesce. She distributes recent photos of her pond for members to review. Ric Pesce states that there is and always has been a lot of water running down Route 4, Burlington Road, and that Mrs. Almand's grandmother, Anne Kovall, who previously owned and lived in the Almand home, had asked the Pesce's if they would clean out her pond of the silt which they did. Chairman Burnett states that during the site walk he noted that there was a lot of filling and clearing being done on the Pesce property along the stream and that silt fence is failing and in some areas is not even there. He states that any storm activity would bring silt into the stream. M. Etter states that there is extensive digging right down to the bank of the stream and pond and that there is no place on the Pesce property that is not under the review and jurisdiction of this commission due to the amount of wetlands and watercourses on site and that Mr. Pesce has never come before this commission for any work that he has done. Mr. Pesce questions whether the commission is talking about silt or material that was brought onto the property from work done by DOT in improving Route 72. He begins to argue that his property is under farm status with Chairman Burnett telling him that silt fence needs to be installed on his property where activities are taking place. Mr. Pesce states that he did so after First Selectman Michael Criss visited his property after receiving Mrs. Almand's first complaint. Chairman Burnett questions Mr. Pesce if any silt fence has been installed since the commission's 6/12/13 visit with Mr. Pesce stating that he installed silt fence where sand and gravel is on the corner of the stream. He was told to grade off the bank and install silt fence in which he did. Mr. Pesce states that the work he has been doing is tilling and that he is able to do this without any permits. Chairman Burnett states that there is erosion disturbance on the edge of the stream resulting in silt going into the stream as a result of the work being done on the property. Mr. Pesce states that high water took down some silt fence and that he will install it again to which his son, Ric Pesce, states that he will install it. R. Orciari notes that it is also washing in where the walking bridge is at the bend and that silt fence is needed there but there is also a need for top soil for vegetation to grow and that fast growing grass seed should be placed down. V. Elliott notes that this work should be done as soon as possible. R. Pesce questions if they could install the silt fence now and do the vegetation in the fall to which V. Elliott states it must be done immediately. R. Orciari adds that the sandy area must have top soil placed down with mulch and seed. R. Pesce states that there are some round stones on the property that he could place at the banks on corners if that is acceptable. R. Wesneski agrees that it is but that it should not be placed down during a heavy rainstorm. R. Orciari informs R. Pesce that when the work is being done he should contact the town so it can be inspected to ensure work is being done correctly. First Selectman Michael Criss states that if LUC Redmond is contacted she will contact Chairman Burnett. He also informs the commission that by the end of this week there is a plan in place to have an IWZEO/ZEO for a temporary time until the land use commissions can conduct an interview of this person who is an enforcement officer for the Town of Plymouth and who is

willing to additionally work in Harwinton. Mr. Criss states that it would be this person who could give guidance to Ric Pesce on how to proceed. M. Etter questions whether a site plan is required for this work with Chairman Burnett stating no, it is erosion control. David Almand addresses the commission stating that they are new homeowners who now have two formal quotes to undo the damage to their property caused by Mr. Pesce. He states that Pesce's excavator has not been used recently and he knows this not only from the lack of noise but from the lack of ground vibration that is felt when the excavator is in use but that there is still a cascading effect within the past week on their property. He states that he and his wife can act legally, have their pond cleaned out, and then see how much silt continues to come down to their pond. R. Wesneski **motioned** that a letter be sent to Fred Pesce outlining things that need to be accomplished within thirty (30) days to prevent silt from running down to the Almand property at 401 Burlington Road. Mr. Pesce is to report back to this commission at their August 5, 2013 meeting at 7:00 p.m. in the town hall on this matter. Mr. & Mrs. Almand will be copied on this letter.

M. Etter **motioned** to add to the agenda: **Steve Kwapien – informal discussion on relocation of proposed house, Orchard Hill Road, Lot 9B,** seconded by R. Wesneski. Motion passed unanimously.

Mr. Kwapien is present and states he is interested in the property that is for sale by Tara Lockwood, property owner. With the use of a site plan provided by Tara Lockwood in 2010 for application for single family dwelling, Mr. Kwapien points out that he would like to switch the house and reserve location to place the house to the rear of the property and the reserve up toward the front. The septic system is already installed and the proposed house location is currently 30 feet from a wetland. With the new location, the house would be further than 30 feet from the wetland area. Mr. Kwapien notes that he proposes no basement in the home if he purchases and builds on the property. R. Orciari states that he does not see a problem with the proposal and that if properly engineered there would be enough room for the reserve to be in front. Mr. Kwapien would need to get TAHD approval, return to this commission for approval and get Zoning Commission approval as well.

M. Etter **motioned** to add to the agenda: **Eric Birkenburger, 30 Northgate Drive, application for 24' above ground pool,** seconded by P. Whiton. Motion passed unanimously.

Mr. & Mrs. Birkenburger are present. The house is served by city water and the pool will be located approximately 55 feet from a wetland. TAHD approval has been received. R. Orciari states that this application can be signed off on by LUC Redmond with R. Wesneski in agreement.

V. Elliott **motioned** to add to the agenda: **Jared Braddock for Pickett Brook Property, LLC, informal discussion on use of property at 609 Litchfield Road for training sessions on laying gas pipe and removal,** seconded by M. Etter. Motion passed unanimously.

Mr. Braddock is present and explains that Pickett Brook Property, LLC was approached by local pipe fitters who are anticipating natural gas piping and want to use the property, located in a Country Residential zone, for training on installing pipe during the month of October for two four-week sessions. V. Elliott questions how many people will be involved in the training with Mr. Braddock stating he is unsure. Mr. Braddock continues by explaining how installation of a timber mat bridge in a right of way to cross wetlands will take place and how two sections of the parcel will be clear cut and grubbed and enforced with erosion control measures to protect the streams. Once the training sessions are done, trees will be planted to replace those taken down. Training will involve opening a trench, laying pipe, removing the pipe, grading and replanting. The bridge will remain in place as it is built. Mr. Braddock is questioned on why property owned by Pickett Brook at 221 Bogue Road is not used for this purpose as that property is located in a Light Industrial zone and would be more suited to this type of activity. Commissioners ask for further information such as what the area is of where the pipe will be laid, calculations on drainage basin, load capacity of bridge, what the noise levels would be, hours of operation, parking information and roadway surface type. This matter will go before the Zoning Commission on July 8, 2013 for informal discussion to determine whether this is even a permitted use in a residential zone.

At this time, Chairman Burnett questions Mr. Braddock on the status of Equestrian Estates Subdivision and the activity of opening the emergency access off Plymouth Road. Mr. Braddock explains that John Fredsall, Highway Supervisor, and the Zoning Commission had been contacted prior to the beginning of work. He states this is in compliance with Planning Commission approval for Phase I of the subdivision.

5. **ANY OTHER BUSINESS.**

None.

6. **CORRESPONDENCE.**

Copies of Habitat received. Letter from Town Clerk Nancy Eldridge giving information on Executive Sessions is received. Copies of new IWWC Regulations dated 6-11-13 are distributed to commissioners. A summary of Fox Hunt Subdivision and Equestrian Estates approvals by IWWC and the Planning Commission are distributed to commissioners.

7. **INVOICES.**

None.

8. **ADJOURN.**

M. Etter **motioned** to adjourn the meeting at 8:50 p.m., seconded by R. Wesneski. Motion passed unanimously.

Respectfully submitted,

Polly Redmond
Land Use Coordinator

RECEIVED FOR RECORD AT HARWINTON CT
ON 7-3-13 AT 2:37pm
ATTEST NANCY E. ELDRIDGE TOWN CLERK