

INLAND WETLANDS AND WATERCOURSES COMMISSION MEETING  
MONDAY, FEBRUARY 4, 2013  
TOWN HALL 7:00 P.M.

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

SHOW CAUSE HEARING

1. OPEN HEARING – ESTABLISH QUORUM.

Chairman Burnett called the hearing to order at 7:00 p.m. All regular members present are seated.

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 to represent. 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, are reviewed by the commission. IWZEO Nelson states for the record that she has reviewed this site plan and believes it follows recommendations made by Sean Hayden, Northwest Conservation District, but in speaking with Sean, she has learned that he has not reviewed this most current site plan. Mr. Green explains that on 8/24/12, he, Sean Hayden, Chairman Burnett, Fred Pesce and an excavator were on site during the excavation of test pits #1 through #5. Results of those test holes are listed in the lower left corner of the site plan under the title "Fill Depth at Test Hole". Mr. Green states that those present at the time the test holes were dug concluded that the cross hatched area shown on the site plan is that which is defined as the most recent fill and subject to the Cease and Correct Order issued by IWZEO Karen Nelson and dated 12/20/12. Sean Hayden's 11/12/12 letter to the Wetlands Commission notes that a trench excavated to delineate the interface between old and recent fill material is not illustrated on the site plan. His letter goes on to read that he is in agreement with the location of the test pits and the listed fill depths at the test holes and that he is in agreement with the applicant's delineation of the recent fill as compared to older fill in the vicinity of the proposed farm stand.

Mr. Green states that Sean Hayden asked that a detail be provided that shows how the slope will be corrected of the original fill material into the wetland and that he also indicated that the material should stay; therefore, the detail on the lower right of the site plan called Grass Filter Strip indicates how that slope is going to be constructed. Mr. Green states he is here tonight to ask that the application be accepted. Chairman Burnett informs Mr. Green that a complete application for the farm stand is required as Land Use Coordinator Redmond informed him that the application on file is incomplete and not signed though at this time the Show Cause Hearing is the matter at hand.

M. Etter questions what the Test Hole data noted in the lower left corner of the plan means with Mr. Green replying it means the depth of fill. M. Etter questions, "not the width?" with Mr. Green replying, correct. Mr. Green continues by stating the fill consists of construction material debris; black top material and fill that was brought to the site and also some concrete block that has been broken up. S. Ryan questions if this area contained wetlands with Mr. Green replying, yes, there *was*. S. Ryan questions if this material will be taken out with Mr. Green replying, no. He continues by stating that it is Sean Hayden's recommendation to start at the existing toe of the slope, or the bottom of the fill as it abuts the wetland, and bring a flat slope up to the existing material and to leave the existing material because it is not harmful, and to plant a grass filter strip along that slope and at the base so that any runoff or sediment from the fill material will be trapped. D. Keepin questions whether this is actually stated in Sean Hayden's letter. Chairman Burnett reads Mr. Hayden's July 26, 2012 letter, in particular his "Recommendations". Mr. Hayden listed two recommendations that "should be considered to make this project more protective of the surrounding wetlands." They are as follows: 1) Wetland fill material should be removed in the vicinity of wetlands flags #s WL10 through WL16. The fill debris in this area is very large aggregate and not suitable for vegetating with wetland buffer plantings. Once the coarse materials are removed a "no mow" vegetated buffer should be planted to create a filter strip for the western portion of the driveway. 2) The plan should include grading and stormwater diversion details that bring runoff to a Primary Stormwater Treatment Practice (2004 CT Stormwater Quality Manual, CT DEEP). Mr. Hayden concludes his letter stating, "This will be important to renovate stormwater runoff before it is released to the adjacent wetlands."

S. Ryan questions the report of Sean Hayden that states material should be removed while Mr. Green is saying tonight that it won't be. Mr. Green states that it is a steep slope now to the wetland and that during the field visit,

which IWZEO Karen Nelson was also present, it was understood that removal should be to create a flatter slope because the large material that is at the top doesn't look good; it is a steep slope down to the wetlands.

R. Wesneski states that the recommendation by Mr. Hayden does not say how much material should be removed with Mr. Green stating that it is his understanding that removal should be enough to create a flat surface. T. Bobroske states that, in his opinion, it is a moot point in reference to the slope but his question to Mr. Green is that, regardless of a slope, which to him is nothing, is that the commission is asking, based on a soil scientist report, to remove what already existed? He asks if that is what Mr. Green is requesting. Chairman Burnett states that that is not his understanding in talking to Mr. Hayden and that what shows on the map is some removal and some change in the slope.

S. Ryan questions if there will be some removal of fill with Mr. Green stating yes. He continues by stating, there will be material removal from the wetland flags #10-16 that is on a very steep slope. There are new contours and the detail shows, from the wetland area, a shallow swale that will be created for the bioretention area along with a grass lined slope as requested. Material being removed is that which is large block material and a flatter slope will be created. Mr. Green concludes by stating, that this is in accordance with what was seen and determined from the site visit. R. Orciari questions what the slope would be after completion with Mr. Green stating it would be 4:1 or flatter.

T. Bobroske states his belief that when you have wetlands and you've dumped stuff on wetlands, you can remove it and that is what happened on this application. He continues by stating, what the commission has in front of them is maybe 5%, in his estimation, of actual wetlands that was actually filled. There is test pit #5, which was all a man-made condition put on this site that wasn't originally wetlands and the commission is asking for removal of an insignificant area that was filled. If the commission wants to go with this recommendation, fine, but he believes if this was done by man, that it should be removed and that wetland soils should be placed back in this area. V. Elliott questions if there is a reason why Sean Hayden didn't recommend this with T. Bobroske stating he does not know. T. Bobroske states that this commission asked for Sean Hayden's opinion, who gave it. That Mr. Green is an excellent engineer and has his opinion. That IWZEO Karen Nelson, as enforcement officer, has her opinion. But the commission must determine what is best for Harwinton. T. Bobroske continues by stating, when an applicant comes in on this particular application after so many years of filling, and is asking for a small area to be removed, he doesn't understand how just some top soil and grass can be placed down and this commission 'calls it a day'. After so much time has passed, he can't believe this commission believes that the fill and grass swale is the answer.

R. Orciari states that perhaps it may be possible for mitigation with a detention basin that might even be able to take runoff from the road. Mr. Green states that when the DOT did construction at the intersection (of Route 72 and Route 4), some of their drainage came east along Route 4 towards the Pesce property and DOT installed an outlet without a detention basin or any element that this commission would recommend or suggest. It may be something the commission may want to discuss with the DOT since it was there project, their design and their outlet. As far as mitigating somewhere else on this site, it may be possible although Mr. Hayden has indicated that material in this area is concrete, blacktop and boulders. In the field, it was Sean Hayden's opinion that sometimes you do more damage correcting activities.

T. Bobroske questions if it was Sean Hayden who said DOT did this or if there is documentation of DOT stating they did this? Mr. Green corrects T. Bobroske in stating that he did not say Sean Hayden or DOT had stated this but in fact he said that Sean Hayden said, 'sometimes it's better to do some regrading and some corrective work on the fringe instead of removing all the material that was placed'. Mr. Green states that DOT did the project at the intersection and some drainage work was brought easterly. DOT has a drainage outlet near the property that is storm drainage and that DOT did no filling. The point he is trying to make, he says, is sometimes it's better to leave well enough alone even though there was damage to the wetland. Everyone acknowledges that wetlands was filled but Sean Hayden said, in this particular instance, to take out the large product and create a flat slope, plant it, grade it and protect the remaining wetlands on the property.

R. Wesneski asks Mr. Green if he knows what was under the fill and test hole with Mr. Green replying he could only tell what the depth of the hole was and that it was wetland soil. R. Wesneski asks, if the commission comes up with the proposal to remove the fill in Test Hole 5, the cross hatched area, and install a detention basin, could the drainage from the parking lot be redirected into that retention basin either through a culvert pipe or by grade? Mr. Green replies, yes, it probably could with maybe the exception of the far remote area of parking spaces 8-15. Mr. Green questions R. Wesneski as to whether he is talking about constructing a detention basin in wetlands with R. Wesneski stating, yes, he believes that's what R. Orciari was previously talking about.

R. Wesneski refers to the area from wetland flags 17 to 14 and asks if that area could be brought closer to the proposed top slope that is shown and up to the sedimentation fence? Mr. Green replies, yes. R. Wesneski questions if that could be brought over to W.L. 103 with Mr. Green stating that that is essentially what is being proposed because the heavy dash line represents a swale that's below the elevation of the wetland. R. Wesneski asks if the steep slope is already being removed so that it could be flattened out with Mr. Green stating, yes, that what you see between W.L. 14 and 17 is in fact removal to the elevation of wetland. R. Wesneski questions if it can be streamlined with Mr. Green stating it already has, under this proposal. R. Wesneski asks, if continued over to W.L. 103 and creating a basin around Test Hole 5, would this lend itself to a detention basin if excavated with Mr. Green replying yes, if excavated, that would give the ability to get the grade to work also. R. Wesneski asks if the bottom of it would be above or below the water table with Mr. Green stating that at some point it would be close to it because the wetland soils are probably at 179 and a half and that would be very close to the water table.

T. Bobroske questions if that's what was originally there with R. Wesneski stating, yes. T. Bobroske asks that the reality is that it was wetland and then stuff was dumped on it and now we have different? Mr. Wesneski states yes, but if a detention basin was put in its place with wetland plants it could tend to go back to a wetland environment. S. Ryan asks if it is the whole cross hatched area and if this is done, would there be no parking in that area? T. Bobroske questions whether the commission is talking about parking or the Show Cause Hearing issue at this point? Bob Green states there are two elements and that tonight is a Show Cause Hearing. S. Ryan states that if there is discussion on creating a detention basin, it would affect the whole plan including parking. T. Bobroske questions whether the commission is just looking at the area under the Cease and Correct Order with Chairman Burnett giving assurance that they are and reminding the commission that IWZEO Nelson stated Sean Hayden has not yet seen this plan. R. Wesneski believes the Show Cause Hearing could be expanded to include the rest of what is being discussed. V. Elliott states that Sean Hayden didn't recommend the whole plan with Mr. Green stating that perhaps Sean Hayden should review this plan and the possibility of creating a detention basin although it is his wish to get the Show Cause Hearing done first. T. Bobroske questions Mr. Green if he believes the commission should keep the Show Cause Hearing open to have Sean Hayden review the area that was filled in (cross-hatched area on site plan) and also the parking area? Mr. Green states he cannot answer that, that it is the commission who should decide. Chairman Burnett reminds the commission that Mr. Green is here because of the Cease and Correct Order although he himself would like Sean Hayden to review this site plan and the additional plan of creating a detention basin.

R. Orciari returns to the discussion of DOT construction and asks if it is feasible to divert flow to a detention basin and whether Sean Hayden would consider this. Mr. Green states that if Sean Hayden agrees that some material be removed and decides there is no need to construct a detention basin, he will be okay with this. Then the application for a farm stand would proceed and then recommendation can be made that runoff be diverted to wetland flag # 5. He continues by stating, the Cease and Correct Order element should be dealt with first and that he can't answer R. Orciari's question on DOT runoff.

### 3. CONTINUE OR CLOSE SHOW CAUSE HEARING

S. Ryan **motioned** to continue the Show Cause Hearing to the commission's March 4, 2013 meeting at 7:00 p.m. and that Sean Hayden should review this site plan. A letter should be sent to Sean Hayden addressing the possibility of creating a detention basin instead. V. Elliott seconded the motion. R. Orciari adds a friendly amendment stating that wetland plantings should be considered. R. Wesneski adds a friendly amendment that a letter be sent to Sean Hayden that includes these minutes so he knows what has been discussed at this hearing. D. Keepin states that, in his opinion, the debris should be removed and the area should be returned to wetland status. The motion passed unanimously. The hearing adjourned at 7:40 p.m.

T. Bobroske leaves at 7:40 p.m.

## REGULAR MEETING

### 1. OPEN MEETING – ESTABLISH QUORUM.

Chairman Burnett called the meeting to order at 7:40 p.m. All regular members present are seated.

### 2. APPROVE MINUTES OF PREVIOUS MEETING: 1/7/13.

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

### 3. GREG MELE/BIRGE PARK COMMONS, LLC – APPLICATION FOR 1175 SQUARE FOOT ADDITION TO COMMERCIAL BUILDING, 178 BIRGE PARK ROAD.

Item is deferred to the end of the meeting for discussion purposes only.

### 4. JOHN MATTHEWS FOR JAMES PRATT - APPLICATION FOR TIMBER HARVEST, ASSESSOR'S MAP NO. C3-1-01, WHETSTONE ROAD.

Mr. Matthews is present and states that since the last IWWC meeting he attended he has put together a proposal that includes a narrative, photos of the crossing area, information on soils at crossings, information on the corduroy bridge that will be used and a map (sheets 1 of 3, 2 of 3 and 3 of 3 all on one sheet) is provided showing the 260 +/- acre parcel of property and dated September 24, 1980. The main stream in the vicinity will not be used for a crossing and the project will be broken into an east and west operation with exits from Hayden Road and Whetstone Road. Existing skid roads from logging done in the 1980s are shown on the site plan and will be used as accessible roads. A tracking pad will be used if required. R. Orciari questions if the project is considered selective harvesting with Mr. Matthews replying, yes. R. Orciari questions what the diameter of wood going out will be with Mr. Matthews stating that they will be taking the trunks of the trees down to six inches. After questioning by R. Orciari on when the work will be done and suggesting it not be done during the "muddy season", Mr. Matthews states that the work will be done now, while the ground is frozen, and the project should be completed by spring. R. Orciari **motioned** to approve the application as a use as of right for silviculture practices, seconded by S. Ryan. Motion passed unanimously.

### 5. DENNIS MCMORROW, BERKSHIRE ENGINEERING FOR JOHN QUARTIERO - TWO-LOT SUBDIVISION, 3 BIRCH HILL ROAD.

Mr. McMorrow, P.E., Berkshire Engineering is present to represent. Plans by Berkshire Engineering include Record Subdivision Map, dated 12/12/12, Site Development Plan, dated 1/28/13, Erosion and Sedimentation Control Plan, dated 1/28/13 and Details and Notes dated 1/28/13 are reviewed. Thomas Stansfield, Professional Soil Scientist, Stansfield Environmental Services in Goshen has flagged the wetlands on the property and his report is on file attached to the Project Report prepared by Berkshire Engineering dated January 28, 2013. The property contains 15.745 acres in which a 10.77 acre lot (lot 2) will be created. With the house, septic and well layout on lot 2, there will be no regulated activities. The remaining house lot (lot 1) will contain 4.97 acres with part of its septic system presently in wetlands and part in the upland area. A reserve septic area is shown for the existing three bedroom dwelling and an alternative reserve septic area is also being shown on the south side of Pickett Brook. It is the opinion of Berkshire Engineering that this area, on the south side of the brook, even though it has greater separation from the wetlands, is not suitable due to the wetland impact to develop this area. Therefore, the reserve septic area shall be located in the middle of the property on the north side of Pickett Brook. It would be this future activity, for the reserve only, that would be deemed regulated activities if and when it is needed. TAHD approval is outstanding at this time though Mr. McMorrow has been working closely with Robert Smith, Sanitarian on this project. S. Ryan **motioned** that a report be made to the Planning Commission informing them that the map presented tonight was reviewed by the Inland Wetlands Commission who deemed they have no jurisdiction due to the absence of any regulated activities. D. Prigitano seconded the motion and it passed unanimously.

### 6. ROBERT SCHNEIDER – SEPTIC REPAIR/REPLACEMENT, 280 SOUTH ROAD.

Mr. Schneider is present. Site plan by Wolff Engineering, Woodbury, CT, titled Subsurface Sewage Disposal Plan, dated 1/2/2013 (Plot date: 1/4/2013) is reviewed. The project will involve septic replacement with activities outside the 100 foot regulated area. R. Orciari **motioned** to sign off on the application for non-regulated activities, seconded by V. Elliott. Motion passed unanimously.

**7. PETE LEVASSEUR – APPLICATION FOR POND MAINTENANCE AND 36' X 44' BARN, 86 GALE ROAD.**

Mr. LeVasseur is present with a Site Development Plan dated 12/14/2001 by R.R. Hiltbrand Engineers/Surveyors used at the time of house construction. Mr. LeVasseur has highlighted the wetland area he wishes to clean out to create a pond for agricultural purposes. The location is 64 feet from leaching chambers delineated on the site plan. Spoils from the area will remain on the property but will not be distributed into any other nearby wetlands. M. Etter questions how much material will be removed from the wetland area with Mr. LeVasseur stating he is unsure. LUC Redmond questions how deep the pond will be once complete with Mr. LeVasseur stating approximately six to eight feet deep. R. Wesneski suggests that the edge of the wet area, where the pond is proposed, and closest to the leaching chambers be left alone. Chairman Burnett asks if Mr. LeVasseur will be doing the work himself with Mr. LeVasseur replying that his uncle, who has experience in pond construction, will be helping him. Mr. LeVasseur is willing to come back before this commission next month with more information concerning removal information and amounts. Commissioners agree to this with R. Wesneski requesting that photos be brought in of the area where the pond will be located and also information on contours in that area.

Application for 36' x 44' barn is taken up for discussion at this time. The proposed location of the barn, drawn in on the site plan by Mr. LeVasseur, will be approximately 70 feet to wetlands. Upon questioning, Mr. LeVasseur states that a bank and rock would prevent him from being further away from wetlands. He also states that the barn will not be used for keeping of animals. R. Wesneski **motioned** to accept the application as a regulated non-significant activity. He asks that Mr. LeVasseur return to the commission's March 4, 2013 meeting with more information concerning distances between the proposed barn and wetland flags #100-105, contours of the area, and if possible, photos of where the barn will be located. D. Prigitano seconded the motion and it passed unanimously.

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

No discussion.

**9. DISCUSSION – REVIEW 2013-2014 IWWC BUDGET REQUEST.**

R. Wesneski **motioned** to approve the 2013-2014 budget request as presented by LUC Redmond with all line item amounts remaining the same. D. Prigitano seconded the motion and it passed unanimously.

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

LUC Redmond will work on the proposed amendments to the Inland Wetlands Regulations and present them to the commission at the next meeting.

**11. ANY OTHER BUSINESS.**

LUC Redmond informs the commission that, due to her absence at the January meeting, it was unclear to her whether the Birge Park Commons application (Item 3 under Regular Meeting) was approved for *all* proposed additions and new septic installation. Commission members differ on opinion of what was approved and it is recommended that LUC Redmond listen to the recording of that meeting. \*After listening to the recording, it is clear that the applicant was applying for all additions and the new septic and that a motion was made to approve the application in its entirety.

LUC Redmond informs the commission of a sign-off on a wetlands application made by **Jeff Anton, 188 North Road, for a 28' x 44' barn**. No activities within 100' of wetlands.

**12. COMPLAINTS/ENFORCEMENT ACTIONS.**

IWZEO Nelson reports that no further action concerning the Ladd complaint has been made.

Mr. Buss from the Harwinton Lake Association is present to discuss unpermitted work done by a property owner by the name, Lyra, who resides on Shore Drive. Construction of a retaining wall on the shore of the lake has been done with no permits. V. Elliott **motioned** to instruct IWZEO Karen Nelson to inspect the property and report back to this commission, seconded by S. Ryan. Motion passed unanimously.

**13. CORRESPONDENCE.**

Information received from Atty. Steve Byrne regarding a State Appellate Court decision that affirms rule that a decision by a Wetlands agency must be based on substantial evidence and not be mere speculation.

**14. INVOICES.**

D. Keepin **motioned** to approve the invoice of IWZEO Karen Nelson for 14 hours (\$490.00), seconded by R. Wesneski. Motion passed unanimously with D. Prigitano abstaining from vote.

**15. ADJOURN.**

S. Ryan **motioned** to adjourn the meeting at 8:50 p.m., seconded by V. Elliott. Motion passed unanimously.

Respectfully submitted,

Polly Redmond  
Land Use Coordinator

RECEIVED

FEB 11 2013

TOWN CLERK