

MINUTES: THE INLAND WETLANDS COMMISSION, Town of Hamden, held a Regular Meeting on Wednesday, December 3, 2008 at 7:00 p.m. in Legislative Council Chambers, 2372 Whitney Avenue, Hamden, CT and the following was reviewed:

Commissioners in attendance:

Nancy Rosenbaum, Chairperson
Mike Montgomery
William Tito
Andrew Brand
Kirk Shadle
Paul Murray, alternate for Paul Jobmann
Robert Gnida
Joan Lakin
Mike Milazzo

Staff in attendance:

Dan Kops, Assistant Town Planner
Tom Vocelli, IW Enforcement Officer
Tim Lee, Assistant Town Attorney
Stacy Shellard, Commission Clerk

I. New applications (not yet site-inspected) and Renewal Requests

A. 03-1003 Request to renew existing permit – Farmington Canal Phase III – Town of Hamden, Applicant

Mr. Kops, Assistant Town Planner, reviewed the renewal request and advised the Commission that the Town of Hamden is asking for an extension of five years for the existing permit. The final expiration date of the permit would then be January 7, 2014.

Mr. Milazzo made a motion to renew IWC Permit 03-1003 for a period not to exceed five years. Ms. Lakin seconded the motion. Mr. Tito, Mr. Gnida, Mr. Murray, Ms. Lakin, Mr. Brand, Mr. Montgomery, and Mr. Milazzo voted in favor of the motion. Mr. Shadle abstained. The motion carried.

B. 08-1143 0 Downes Road – installation of a curtain drain – BERL Associates, Owner/Applicant

Mr. John Paul Garcia, Professional Engineer & Land Surveyor, advised the Commission that the parcel consists of 10 acres and is located at the west end of Downes Road. It is approximately 800 to 1000 feet from the intersection of Gaylord Mountain Road. The parcel has 8 to 9 acres of upland area and the backside of the site is wetlands. The proposal is to remove the existing curtain drain and place a new curtain drain 6 to 8 feet deep in the same location. Monitoring wells will be installed to determine if the parcel is suitable for a septic system. If it is not suitable the lot would be unacceptable for residential construction. The work to place the monitoring wells must be done between February and May. The members discussed with Mr. Garcia the Notice-to-Appeal that was previously issued for the property and they noted that there are pre-existing wetland flags on the property. The flags are believed to be approximately 2 years old. Mr. Garcia discussed with the members where the pipes would be located. They will be utilizing the existing pipe location in order to minimize additional disturbance.

Mr. Shadle made a motion that Application #08-1143 be tabled until the 1/7/09 meeting pending a site inspection to be conducted during the month of December. Mr. Gnida seconded the motion. The motion passed unanimously.

II. Pending applications

- A. Action on Public Hearing Item **08-1141** - 64 Rocky Top – single-family home & estate

Mr. Gnida made a motion to deny the application

After reviewing testimony and other information provided by the applicant, the Acting Town Engineer, a professional engineer representing neighboring property owners, a representative of the Regional Water Authority, environmental science graduates, neighboring property owners, and other Commissioners and site inspection of the property, I make a motion to deny application #08-1141 for the following reasons:

1) The application is incomplete in several respects

- The applicant failed to provide a geological report by an appropriate professional, addressing existing soil and hydrological conditions and how excavation and removal of 600,000 cubic yards of rock/ledge would impact offsite wetlands, groundwater flows and water tables as requested by the Hamden Acting Town Engineer and the Commission. The lack of information on existing and future geological conditions resulted in the applicant speculating on procedures and the Commission and public not being able to determine impacts to the wetland and watercourses.
- The applicant failed to provide an existing condition survey that meets horizontal and vertical accuracies of A-2 and T-2 or T-3 respectively as requested by the Acting Town Engineer on September 22, 2008.
- On Nov. 5, 2008, the Acting Town Engineer reaffirmed the need for the above survey as well as descriptions of surface flow patterns and peaks, a geological report, impacts on surface and groundwater on and off property wetlands and watercourses, the lack of construction and erosion controls, and the lack of phasing and sequencing details.
- Failed to provide an estimate of the time it would take to accomplish the quarrying operation, only stating that it may take years before all the rock is processed on this site.
- The applicant failed to clarify the volumes of existing material to be used on site as part of the “Final Earth Restoration” indicated in Note 8, on Sheet 5. The type and volume of material to be imported to the site to meet the proposed two feet of overburden and topsoil should also be provided.
- Failed to demonstrate accurately the water holding and sediment deposition capacities of the two proposed basins. (Letter from Richard E. Couch P.E. and questions from Acting Town Engineer E. Fuller).
- The applicant failed to address impacts to wetlands and watercourses offsite, on privately owned, and town owned property. These wetland and watercourse areas are well within the 200ft upland review area regulated by the Commission. A spring fed watercourse originating on the property of 84 Green’s Ridge Road, even though depicted on the Hamden Inland Wetland and Watercourses map, is not depicted on any of the sheets of the applicant’s site plan. Other wetlands depicted on this same town wetlands map, including a vernal pool on Rocky Top Road, are not depicted or discussed by the applicant, even though the potential exists for them being negatively impacted from this project. As a result, there was insufficient information presented by the applicant to allow the Commission to make an informed decision regarding the impacts to the offsite wetlands and watercourses.

2) The application is inaccurate in several respects

- Distances from offsite wetlands and distances of existing disturbance on the site from offsite wetlands are at variance from those measured in the field by a member of the public and a wetland commissioner on separate occasions. Although the town owned wetlands to the west of this project have been depicted on the revised site plan, their distances from the proposed activities remain in dispute because the applicant has not provided an A-2 survey.
- The calculation of required total storage volume of the temporary basins is in error and using correct figure from the CT DEP manual a total storage capacity of 8,800 cubic feet would be required rather than the 1, 100 cubic feet proposed (See letter from Richard E. Couch P.E). Without accurate calculations regarding total storage capacity, the Commission cannot determine the impacts to the wetlands and watercourses.
- The acreage that will drain into the storage basins is based on final conditions and not the larger and fluctuating drainage area received by the basins during the rock mining phase.
- Calculations of peak flows contain an erroneous CN value for grassed areas; furthermore the rationale for other CN numbers needs to be supported.

3) Feasible and prudent alternatives for building a single family home were not considered

- The applicant proposes what is essentially a mining operation that will disturb more than 13 acres and remove 600,000 cubic yards of earthen material from the 18.02 acre parcel in order to prepare the parcel for a single family estate.
- Rather than removing the existing rock ridge, the applicant’s stated desire for an estate consisting of a house, barn, horse riding ring, pool and tennis court conceivably could be placed on top of the ridge, which would provide excellent views and likely greater value than location of the buildings on the floor of an old quarrying operation with 80 foot rock cuts.

- The applicant's statement that the soils are too thin on the top of the ridge to support a septic system is based on premise rather than a soil survey. Even if the soils are thin, an engineered septic system, which require 2 or 3 truckloads of gravel, should be considered as an alternative to removing more than 30,000 truckloads of earth to lower the ridge top so that the proposed house could access suitable, native soil.
- 4) Potential adverse impacts were not considered or are not sufficiently minimized
- The mining of 600,000 cubic yards of rock, rock crushing and associated quarrying activities should utilize the guidelines for stormwater pollution prevention (SWPPP) suggested by EPA for Mineral Mining and Processing Facilities. (Re: RWA letter). The applicant by his own admission said it may take years before all of the rock is processed on this site and that a stormwater permit from the Connecticut State Department of Environmental Protection (DEP), or the U.S. Environmental Protection Agency (EPA) may be required by the applicant under the National Pollutant Discharge Elimination System (NPDES). According to an EPA distributed Fact Sheet (EPA-833-F-06-025), under Sector J: Mineral Mining and Processing Facilities, this project can be identified under the Standard Industrial Classification (SIC), Major group 14 (SIC Code 1429).
 - The red silt rock characteristic of this property and area is highly erodible and development in this area has a history of runoff that has polluted off site wetlands and a municipal water supply.
 - The two temporary sediment traps proposed are undersized and, moreover, sediment basins are more appropriate for this project. (DEP 5-11-5). The acreage of runoff during construction rather than post construction should be used to size the basins (re: Couch letter).
 - The plan for management of stormwater runoff in the area of the proposed cut slope parallel to the proposed driveway is deficient in several respects: (1) because of the acreage draining to the slope, runoff should be directed away from rather than down the slope; (2) using a silt fence to direct water diagonally across a cut slope is a method not in the DEP manual and therefore, justification needs to be provided; (3) the water bars across the roadway are not suitable for the heavy traffic volume and to convey drainage from several acres across a roadway (re: DEP manual 4-4, 5-7-6, other).
 - No management of stormwater was proposed for the easterly side of the existing ridge and the final grading will result in overland flow distances of up to 1,200 feet, or to the southerly rock face that will result in point discharge which is not considered in the plan (re: Acting Town Engineer Fuller and Couch letter).

To reiterate, the proposed project to mine 600,000 cubic yards of earth material has several deficiencies in both the plan and in information not provided that pose significant adverse impacts to the onsite and nearby offsite wetlands and watercourses which are in a public water supply watershed. The applicant failed to provide the Commission with the necessary information, the Commission was unable to evaluate all of the impacts to the wetlands and watercourses. For all the above mentioned reasons, I make a motion to deny the application.

Mr. Tito seconded the motion.

Ms. Rosenbaum asked for discussion. Mr. Gnida observed that the vernal pool located southeast of the property is near a rock retaining wall that the applicant proposes to build along the edge of the property. The topography would cause runoff to drain down into the vernal pool.

Ms. Rosenbaum asked for a vote on the motion. Mr. Montgomery, Mr. Tito, Mr. Brand, Mr. Shadle, Mr. Murray, Mr. Gnida, and Ms. Lakin voted in favor of the motion. Mr. Milazzo abstained. The motion to deny the application carried.

B. 08-1142 2798 Whitney Ave – Whitney Manor Parking Expansion – Amkraut Vuolo Realty Assoc

Ms. Gayle Sims, Attorney from the Pellegrino Law Firm, requested that the application be temporarily tabled until later in the meeting.

Mr. Milazzo made a motion to temporarily table the matter. Mr. Montgomery seconded the motion. The motion passed unanimously.

Ms. Sims, Attorney from the Pellegrino Law Firm, reviewed the application. Civil engineer Victor Benni advised the Commission that the revised plans bring the proposed parking area closer to the building. The distance away from the wetlands would change from 10 feet to 12.4 feet. The wetland area that would be displaced is 389 square feet. The proposed fence would end at the edge of the wetland disturbance area. Mr. Benni reviewed with the members the revised plans based on comments dated 12/3/08 from the RWA and the Town Engineer.

Mr. David Lord, Certified Soil Scientist, addressed the Commission and reviewed the proposed planting plan. He reviewed with the members the Wetland Compensation Plan that he had submitted. The Commission asked if the invasive plants being removed would involve the entire area. Mr. Lord advised they would not be removing invasive plants from the entire wetland area.

The Commission members suggested to Mr. Benni that the swale should be a maximum of 6 inches in depth. Mr. Benni agreed that this could be done as a condition of approval. The Commission advised Mr. Benni that there should be wetland markers placed around the perimeter of the property, and that the grass mix should be a New England Conservation Mix. The members also noted that the maintenance plan is too vague; it should state that the catch basins and drywells should be cleaned annually and that confirmation should be sent to the Commission or to the Planning Office. Commissioner Montgomery asked if there is an oil/water separator on site. Mr. Benni stated that to his knowledge there is not. Mr. Benni advised that there have been no reports of drainage problems in the storm water system on Whitney Avenue. The Commission asked when construction would start on the parking lot expansion. Mr. Benni advised the members that he was unsure of the time line, but thought the paving would start in the spring.

Mr. Milazzo made a motion to approve Application # 08-1142 with the following conditions: 1) revision of the plans to show the substitution of the seven shrubs indicated by Mr. Lord and deleting the use of the fabric, and substituting the New England Conservation Mix in place of the long grass seed mix currently mentioned in the plan. 2) The addition of a note indicating that there will be an annual cleaning of all catch basins and dry wells with a report and proof that the same has been done submitted to the Commission on an annual basis. 3) Revise the note regarding the swale to eliminate the reference to a 6 inch minimum depth and replace it with a maximum of 6 inches in depth. 4) Wetland markers be placed on the property boundaries surrounding the wetlands on the property at 35 foot intervals as required by our regulations. Mr Gnida seconded the motion.

In the course of general discussion on the motion Mr. Montgomery advised the members that he would be voting against it.

Mr. Gnida, Mr. Murray, Mr. Milazzo, and Mr. Shadle voted in favor of the motion. Mr. Tito, Ms. Lakin, Mr. Brand, and Mr. Montgomery voted against the motion. Ms. Rosenbaum cast the deciding vote in favor. The motion to approve passed 5 to 4.

C. Request to amend Permit # **06-1106** – 305 Sherman – building footprint changes – Quinnipiac Univ

Attorney Bernard Pellegrino Jr. addressed the Commission and reviewed the amendment request. He advised the members that the footprint of the crescent shaped dormitory will extend to a semi circle. There are 2 pod residential buildings that have been removed from the plan. At the end of parking lot A there were four pod buildings that had been approved and that have been removed from the plan. They have added to the plans a wind turbine court yard and the use of solar panels. He advised the members that there would be an increase in the parking plans to add a total of 39 parking spaces. Sidewalk locations and elevations for retaining walls have also been changed from the original plans. The plan was revised to add a recreation area, and exterior stairways are to be relocated. He advised the Commission that the proposed changes are all within the perimeter of the existing site and that the distances between construction and the wetlands will not be altered in any significant way. He also advised the Commission that the sediment and erosion control plans for York Hill and especially for the Kimberly Road area are being reviewed with Town staff and with the RWA.

Mr. Howard Pfrommer, Civil Engineer, also addressed the Commission and elaborated on the amendment request. He advised the members that the plan would eliminate some dormitories, add a floor to the crescent shaped dormitory, and extend the building as well. The plans have been revised to add wind turbines that would provide lighting for the site. He reviewed the proposed plans for sidewalk and elevation changes and for the addition of a recreation area. There will be a .029 percent increase in impervious surface and there will be minimal impact to the stormwater management system. He also reviewed with the members the proposed plans for the utilities and some anticipated grading changes.

The Commission members then asked Mr. Pfrommer to focus on erosion control and stabilization concerns. Mr. Pfrommer advised the members that the site has been opened up. He described areas that have been seeded and he reviewed the areas that currently have ongoing construction. The members advised Mr. Pfrommer that erosion control maintenance procedures and inspections are not being pursued in effective and timely fashion. Mr. Pfrommer reviewed the S&E issues that were raised during the Commission site inspection as well as additional problems that were discovered during a follow-up visit by IWC members, Town staff, and the RWA. He presented a Kimberly Road Interim Stormwater Pollution Control Plan and he advised the Commission that erosion control maintenance and inspection procedures have been reviewed with the site excavator and the contractors.

Mr. Pfrommer also submitted to the Commission a draft Monthly Sedimentation and Erosion Control Checklist for use on the York Hill expansion project and the Kimberly Road reconstruction project. He then submitted information on the use of Floc

Logs for the removal of fine particles from turbid water and some literature on the use of Flexterra FGM for erosion control and revegetation.

Mr. Mike Guaglianone of the RWA suggested that the format of the proposed monthly check list be revised to include a reporting mechanism for problems found and for correction of those problems. He reviewed with the members his concern about the failure to monitor and maintain sediment and erosion controls. He advised the members that inspections should be done weekly and after each rain event.

Mr. Kops, Assistant Town Planner, stated there should be daily, weekly, and quarterly reports depending upon the issue under consideration. He reviewed with the members and with the applicant how the checklist might be formatted. He also stated that there should be a follow up after each rain event. Mr. Pfrommer advised the Commission that the checklist would be part of a written report submitted on a monthly basis. Some of the members stated that daily inspections and reports would be advisable in areas where there is ongoing construction activity and that rigorous inspections should be undertaken after each rain event. Commissioner Shadle stressed the need for reporting mechanisms that require accountability in finding problems and in fixing them. He also observed that the University has opened up a huge construction area on the York Hill Campus and is now encountering difficulty staying on top of the erosion control and stabilization challenges posed by such a large amount of ongoing activity.

Mr. Montgomery made a motion to approve the proposed amendment to IWC # 06-1106 with the following condition: 1) provide a result-oriented plan for monitoring and reporting erosion and sediment control that is satisfactory to the Chairperson of the Commission; the final draft is due within 30 days and the first draft should be given to the Chairperson before the 30 days are up for review and possible revision.

Ms. Rosenbaum asked for any discussion. Mr. Shadle would like a condition- of-approval that any issues raised by Acting Town Engineer Elliott Fuller that have not already been resolved should be addressed in a final plan. Responsible parties should also be added to the plan as needed. Mr. Tito stated that the University should be more vigilant about erosion control issues and perhaps more careful when hiring contractors.

Mr. Montgomery added another condition to his motion 2) Address the questions raised by Acting Town Engineer Elliott Fuller in his memo dated 12/2/2008. Mr. Murray seconded the motion. Ms. Lakin recused herself. Mr. Gnida, Mr. Murray, Mr. Milazzo, Mr. Shadle, Mr. Brand, Mr. Tito, and Mr. Montgomery voted in favor of the motion. The motion passed.

III. Notices of Violation, Cease & Desist Orders, Notices to Appear:

a. Cease & Desist & Restore Hearing

186 Denslow Hill Rd and 196 Denslow Hill Rd - Dumping & deposition of fill in or near wetlands

Ms. Rosenbaum advised the Commission that Mr. Paul Siciliano was not present. Mr. Siciliano is the owner of the property at 196 Denslow Hill Road and he is the agent for his parents who have owned the property at 186 Denslow Hill Road since 1969. Mr. Vocelli, Inland Wetlands Enforcement Officer, advised the members that he and Ms. Lakin visited the back side of the properties on the afternoon of November 29th. The official Commission visit to the same back part of the properties was conducted on the morning of the 29th. The Commission members discussed their concerns about the debris and its effects on the wetlands. There are wetland flags in the area, but IWC members and Town staff have not yet been able to ascertain who placed them there and for what purpose or project.

Mr. Vocelli advised the Commission that a land surveyor has not been hired to perform the Existing Conditions Survey needed by the Commission. Mr. Tony Mello declined to take on that job and Mr. Siciliano has not been able to retain a new surveyor.

Mr. Tim Lee, Assistant Town Attorney, advised the members that the previously-issued Cease & Desist & Restore Order has been filed on the land records of the Town of Hamden in accordance with the Commission's unanimous vote at the November meeting. He stated that no sale or refinancing of the properties can take place unless the Order is addressed to the satisfaction of the Commission and then removed from the land records by the Commission. The Commission members asked if they could impose fines. Mr. Lee advised that they would have to determine the amount of the fine and what is necessary to stop the fine. The members also discussed taking legal action through the courts. Mr. Lee advised the members that if it is the will of the Commission then court action can be pursued. He can send a letter advising Mr. Siciliano of whatever additional action the Commission decides to pursue.

Mr. Milazzo made a motion to begin imposing a fine of \$10.00 per day as of today (December 3, 2008) until such time as the Inland Wetlands Commission receives a Survey of Existing Conditions for 186 Denslow Hill Road and for 196 Denslow Hill

Road. If the Existing Conditions Survey is received by or on March 4, 2009, the fine of \$10.00 per day shall be rescinded. If the Survey is not received by or on March 4, 2009, the fines shall continue and the Inland Wetlands Commission shall also decide whether or not to pursue legal action against the owners. It was further moved that Assistant Town Attorney Lee shall confirm the contents of this motion via letters to the owners of 186 Denslow Hill Road and 196 Denslow Hill Road. Mr. Tito seconded the motion.

Mr. Rosenbaum called for discussion on the motion. Several of the members stressed the importance of Mr. Siciliano's attendance at these meetings so that the Commission's remaining concerns can be addressed now that the dumping has ceased. The lack of an Existing Conditions Survey and the Commission's inability to discuss wetland impact, slope stabilization, and fill remediation issues with the owner-agent have practically forced the IWC to order last month's recording on the land records and this month's imposition of fines. There being no further discussion, Ms. Rosenbaum called for a vote on the motion to begin the imposition of fines.

Mr. Montgomery, Mr. Tito, Mr. Brand, Mr. Shadle, Mr. Murray, Mr. Gnida, Ms. Lakin, and Mr. Milazzo voted in favor of the motion. The motion carried unanimously.

- b. N.O.V. 64 Rocky Top Road –clearing of trees & removal of vegetation

Mr. Tim Lee, Assistant Town Attorney, advised the Commission that a trial date has been set for the end of February 2009. The Commission tabled consideration of the N.O.V.

- c. C. & D. 415 Putnam Avenue – unpermitted activity in a regulated area
Tabled to January 7, 2009

IV. Review Inspection Schedule for New Applications & for Other Sites

Mr. Vocelli will schedule the Commission site inspection for 0 Downes Road

V. Other Business --- 480 Sherman Avenue

The Commission reviewed the interim existing conditions/planting plan that was prepared by Landscape Architect Aris Stalis on behalf of owner Peter Landino and then distributed by Mr. Vocelli this evening. The members also discussed the original planting plan that had previously been approved by the Commission. Ms. Rosenbaum asked that Mr. Vocelli follow up in order to make certain that a final existing conditions plan of actual plantings is prepared and submitted with the onset of the next growing season. The matter will be removed from the agenda at the conclusion of tonight's meeting and then put back on the agenda when the aforementioned plan is received for consideration next year.

Ms. Rosenbaum thanked Mr. Montgomery and Mr. Gnida for their efforts on consideration of the Rocky Top matter by the Commission.

VI. Review meeting minutes for 10/01/2008 and for 11/05/2008

Minutes for 10/01/2008: Ms. Rosenbaum noted that on page 3 in the second paragraph the last sentence should read – Mr. Harriman advised the Commission that the excavation would start from the northwest side of the property.

Mr. Brand made a motion to accept the minutes as amended. Mr. Murray seconded the motion. The motion carried unanimously.

Minutes for 11/05/2008

Ms. Lakin made a motion to accept the minutes as written. Mr. Murray seconded the motion. The motion carried unanimously.

VII. Adjournment

A motion to adjourn was made by Mr. Shadle and seconded by Mr. Gnida. It passed with no dissenting votes. The meeting ended at 10:40 p.m.

Submitted by: _____
Stacy Shellard – Clerk of the Commission