

May 10, 2010

**MINUTES: THE INLAND WETLANDS COMMISSION**, Town of Hamden, held a Regular Meeting on Wednesday, May 5, 2010 at 7:00 p.m. in the Library, Hamden Middle School, 2623 Dixwell Avenue, Hamden, CT and the following items were reviewed:

***Commissioners in attendance:***

Nancy Rosenbaum, Chairperson  
 Mike Montgomery  
 Andrew Brand  
 Bob Anastasio  
 Bill Tito  
 Mike Stone arrived at 7.58 p.m.  
 Eric Annes  
 Lynne Krynicki  
 Joan Lakin

***Staff in attendance:***

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

Ms. Rosenbaum called the meeting to order at 7:00 p.m. and reviewed the meeting procedures. Mr. Montgomery called the roll and there was a quorum.

**I. Applications**

**A. Pending applications**

**10-1157** 3139 Whitney Avenue – construction of a 14-unit residential building  
 Revivance Development Services LLC, Applicant

Mr. Pellegrino, Attorney addressed the Commission and reviewed the application.

Mr. Victor Benni, Civil Engineer, addressed the Commission and stated that sheet 4 of 6 in the drawing set has been revised. He stated that the landscaping plan was revised, and the construction sequence has been revised. He explained that a note has been added which states that the ponds will be fully excavated prior to the main construction activity taking place on the site. Mr. Benni reviewed the construction sequence and the stormwater management plan. He stated that any modifications to the design or the plan for the site will come before the IWC for approval.

Mr. Benni said that a water bar will be placed along the access driveway and he reviewed the design and the direction in which the stormwater will flow. He explained that there will be three areas with erosion control blankets located on the east side of the parking area between pond one and two which will then go to a sediment forebay which will then go into the rain garden. Mr. Benni reviewed the erosion control seed mix that will be used on the site and the locations across the site where straw wattles and silt socks will be used. Mr. Benni reviewed the equipment maintenance plan

and the addition of the vegetation establishment notes. The access to the construction site will be 80 feet in length. Mr. Benni reviewed the landscaping plans and stated that the contractor would propose what would happen in the rain garden.

Mr. Benni reviewed the Town Engineer comments and stated that the scrivener error for pond number two's berm was corrected to read elevation 95.5 and will match the stormwater management report. He explained that comment number 2 can be added as a condition of approval. He stated that revisions to the S & E Control Plan have been revised as requested by the RWA's comments dated May 3, 2010 and he reviewed the changes that have been made.

Ms. Linda Reed, Representative for the interveners Attorney Gesmond and Attorney Sgrignari, stated that because the revised plans were received late on April 30, 2010 she has not had enough time to review them and that she is unable to comment on them. Ms. Reed asked if the application is approved by the IWC and the P&Z Commission and survives any appeals, and the applicant comes back before the IWC would the intervener be notified. Mr. Tim Lee, Assistant Town Attorney, stated that the intervener has the right to ask to have agendas for meetings sent to them. Ms. Reed said that for this application they were notified by certified mail that there was a pending application, and asked if any future changes would be done administratively or come before the IWC. Mr. Lee said that a minor change could be done administratively, but a major change may require a new application. Ms. Reed asked if the regulations provide for how a determination is made. Mr. Lee said that the IWC would determine what action would be taken based on what is being requested. Mr. Benni said that the note being added to the plan regarding notification is intended for the construction representative or developer not to make any changes on the site without notifying the IWC. Ms. Reed asked if the intention is to go back to the Commission and not to be done administratively. Mr. Benni said that Mr. Tom Vocelli, Wetlands Enforcement Officer, would be notified and he would then advise the Commission.

Mr. Brand advised Mr. Benni that pachysandra is not a native plant and Mr. Benni said that if the IWC would like it could be removed. Mr. Benni stated that the existing pachysandra is native to the rain garden. Mr. Brand is concerned that the pachysandra will spread and Mr. Benni said that it has maintained itself in the rain garden, but the remainder of the area will be grass. Mr. Benni advised the Commission that a condition could be added that the pachysandra would be maintained strictly in the rain garden area.

Ms. Sigrun Gadwa, Professional Wetland Scientist, addressed the Commission and said that pachysandra is ground coverage that is considered low maintenance and does not require pesticides and fertilizers and she does not object to it being used because it would not spread through the developed portion of the site. It is not a wetland plant and would be stressed by the water. She discussed with the Commission a condition being added with regard to maintaining the pachysandra. Mr. Benni said that the pachysandra that exists in the rain garden is thriving in the area of the rain garden because there is no standing water.

Mr. Montgomery discussed with Mr. Benni the concern with the vegetation coverage in the pond area and where there will be sheet flow. Mr. Montgomery said that the location of the dumpster is also a concern because when construction is completed trash may go into the pond. Mr. Benni said that the dumpster has a six inch berm which would help with any water coming from the dumpster. Mr. Benni reviewed the seed mixes and erosion control blankets that will be used, and when the planting will be completed.

Ms. Reed said that there is a notation on the plans that there will be "no trespassing" signs and she asked if they were designed to prevent tenants from going into the rain garden given the need to protect the area. The Commission sought assurance from Mr. Steve Nugent, Owner, that the tenants will be educated that they should not go into the protected area. The Commission reviewed with Mr. Nugent, Mr. Benni and Ms. Gadwa locations where the medallions and signs should be posted to protect the area.

Mr. Kops, Assistant Town Planner, said that there should be a condition which reads that the notification sequence should be to notify the IW enforcement officer and the RWA. Mr. Lee said that before a decision is made because there is a petition for intervention the IWC should make a finding if there is an impact to the wetlands that there is no feasible and prudent alternative to the impact on the wetlands.

***Mr. Montgomery made the motion to approve Application 10-1157 having found that it will have no significant impact or cause unreasonable pollution to the wetlands on adjacent properties; with the following conditions: 1) Notify IWC and RWA three days prior to start of construction. 2) As built grading of the detention ponds should be submitted following construction to verify that they were constructed in accordance with the plans. 3) Incorporate recommendations noted in the letter dated May 3, 2010 from Peter Cumpstone of the RWA. 4) At the suggestion of the applicant a posting similar to the rain garden will be added to the front of the detention pond reading to the fact "protected area, do not enter, do not litter".***

***Mr. Anastasio seconded the motion.***

Mr. Annes stated that he would like to add: no unreasonable pollution to the environment or wetlands. Mr. Montgomery said a motion must relate to the impact on the wetlands or watercourses, not to the environment in general. Mr. Lee discussed with the Commission that it can say that it does not impose a significant impact or unreasonable pollution to the wetlands and or environment. Mr. Montgomery disagreed and did not amend. Mr. Annes asked if a motion should say "at the suggestion of the applicant". Mr. Montgomery did not accept the change. Mr. Montgomery discussed with the Commission and accepted condition 4 to change "should be" to "will be".

Mr. Tito said that he will be voting no because the intervener did not have the opportunity to review the maps that were received on April 30, 2010. They did not have ample time and they have shown good faith by coming to the meetings, and had not received the revised plans in a timely fashion.

***Mr. Montgomery, Mr. Brand, Ms. Krynicki, Mr. Annes and Mr. Anastasio voted in favor of the motion. Mr. Tito voted against the motion. Ms. Lakin recused herself from the application. The motion passed 5-1-0.***

**10-1159 Farmington Canal Greenway-Construction of Skiff Street Underpass  
Town of Hamden, Applicant**

Mr. Ryan McEvoy, Professional Engineer, addressed the Commission and stated that he has received and reviewed the comments from the RWA, Town Engineer, and the field walk report. Mr. McEvoy reviewed the site location. The proposal is to straighten the Farmington Canal and construct a pedestrian underpass under Skiff Street by using a 14 foot wide and ten feet high box culvert. It will be at the existing grade of the trail. The discharge pipe from Skiff Street will be extended 10 feet and the rip rap channel will be reconstructed and any sand that accumulates will be removed. There will be 230 square feet of direct wetland impact. The proposal is to add 200 linear feet of trail and reconstruct and regrade 450 linear feet of trail past were the tie in will take place to the existing grade. The path to Skiff Street and stop light that exist will be remaining, but may be removed in the future. The area of Skiff Street will be shut down to traffic for approximately two weeks while the work is being done.

Mr. Annes asked if the environmental cleanup that needs to be done on the abutting property will have any impact when the soil is being moved around. Mr. Kops said that the work will be done on Town property only. Mr. Annes asked if the excavation of soil will have impact on the ground water. Mr. McEvoy said that there will not be impact to ground water, and borings in the area have been done and they will not experience ground water for an additional 4 or 5 feet from where the bottom of the culvert is being proposed, and what is being removed is construction fill put in place to build the road up.

Ms. Lakin said that the Town Engineer has stated that Connolly Parkway will be used as a detour route and asked if there would be any impact. Mr. McEvoy said that they are working with the State and the Town to detour the traffic.

Mr. Brand asked if the culvert is one piece. Mr. McEvoy said that they will be cutting back 40 feet of the culvert for depth coverage and installing reinforced concrete pipe.

Ms. Rosenbaum said that most of the Town Engineer's comments do not address wetland issues. Mr. McEvoy said that the comments are logistical and address design and logistical concerns. Ms. Rosenbaum asked Mr. McEvoy to

address the RWA comments. Mr. McEvoy reviewed the RWA comments and said that they are proposing 300 linear feet of silt fence around the perimeter of the wetlands and reviewed where it would be placed. He said that the stock pile of material and location of refueling can be added to the plans or as a condition of approval.

Mr. Kops stated that the recommendation for the installation of the pipe and the splash pad is that it should be done preferably during late summer, but due to the schedule and the DOT review for the work it will have to be done when there is no rain predicted for at least a week. The work must be done by the fall of 2010 so that the funding for the project will not be lost.

Mr. Anastasio asked if the tunnel will be pitched away from the wetlands. Mr. McEvoy stated that it will have a ½ percent pitch from the south end pitching down towards the north end. He reviewed the cross pitch for the water as it would come across the trail.

Mr. Brand asked if the disturbed area would be seeded and if there were any proposed planting plans. Mr. McEvoy stated that there are restoration plans but no planting plan proposed. Ms. Rosenbaum reviewed the plans that were received and said that the IWC had not received a full set of restoration and planting plans.

Ms. Lakin asked if the motion can be made without having any environmental restoration plans. Ms. Rosenbaum said that the planting restoration plans can be approved by the chair of the IWC.

***Ms. Lakin made the motion to approve Application 10-1159 with the conditions that the RWA suggestions number 2, 3 and four in a letter dated May 5, 2010 be included in the approval and that the planting restoration plan be approved by the chair of the Commission.*** Ms. Rosenbaum said that number 2 may be difficult to include. Ms. Lakin said that the comment states that the work should be done during a dry period of time not season, and the motion does not need to be amended.

***Mr. Tito seconded the motion. The motion passed unanimously.***

***Ms. Lakin made a motion to move the N.O.V. for 790 Main Street the top of the N.O.V's agenda. Mr. Annes seconded the motion. The motion passed unanimously.***

## **II. Notices-of-Violation, Cease & Desist & Restore Orders**

### **a. C.&D. 186 & 196 Denslow Hill Rd - Dumping & deposition of fill in or near wetlands**

Mr. Vocelli explained that he had spoken to Mr. Paul Siciliano and had asked him to attend this meeting. Mr. Vocelli was informed by Mr. Garcia that he is no longer the engineer for this property. The restoration measures imposed at the meeting in November 2009 have not been completed. Mr. Vocelli discussed with the Commission his findings from a recent site visit and distributed his field notes to the members.

Mr. Lee reviewed his letter to property owners dated April 23, 2009. He explained that the fine originally imposed has not accumulated because the Existing Condition Survey was produced. The Commission could impose a fine such as \$90.00 per day because the remedial work was not completed.

***Mr. Montgomery made the motion that if the restoration is not enacted as proposed by July 1, 2010, the fines will be imposed as \$90.00 per day as of May 5, 2010. However, if the owner completes the remediation work to the satisfaction of the Commission prior to July 1, 2010, the Commission will consider waiving the fines. Mr. Anastasio seconded the motion.***

Mr. Vocelli asked if Mr. Lee should send another letter to Mr. Siciliano. Ms. Rosenbaum said the letter should be sent to both property owners.

***The motion passed unanimously.***

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

Mr. Lee updated the Commission on the Town's lawsuit concerning the clear-cutting by Carlie Capital LLC. This item was tabled.

**c. N.O.V. 790 Main Street – wetland conservation area encroachments**

Ms. Rosenbaum explained that the N.O.V would be handled differently. Mr. Vocelli was asked to provide a map of the area in violation and where the encroachment is occurring and provide a report to the IWC. This would allow the person who had the violation to attend the meeting if they chose to. She feels that a violation may not always call for a site visit by the entire commission. Mr. Vocelli distributed and reviewed the report and map of the area. He explained that a deed restriction was placed on the Town land records and reviewed what is allowed to be done in the buffer area. Mr. Jeff Jeffers addressed the Commission and reviewed the area. He stated that the property has more wetlands area than usable property.

Mr. Lee said that the restrictions were recorded in the chain of title, and buyers would have been given constructive notice at the time the property was purchased. Mr. Lee discussed the restrictions on the property and what information would be given when the property was received.

Mr. Jeffers advised the Commission that the dogs being housed on the premise are not used for breeding. The dogs are housed in 3 12 x 20 sections of cages during the day and placed inside at night. The fence was placed on the property for safety reasons.

Mr. Vocelli reviewed the effects of the day compound on the wetlands and feels it is limited. He said that the 100 foot conservation area met the regulatory target of 100 feet. The IWC had imposed the restrictions based on policy and practice. He assumes the Commission considered the question of wetland impact during the permitting process that led to imposition of the buffer and the deed restriction.

Mr. Vocelli discussed with the Commission the location of the wetlands and the stream located on the property which is an active watercourse. He discussed the location of the footing drain and the pipe easement on the land records. Medallions had been installed several years ago by Mr. Mikolinski who was the developer of the property, but they cannot be found.

The Commission discussed with Mr. Jeffers what needs to be done on the area to maintain the area. Mr. Jeffers reviewed the location of the plastic stockade fence. Mr. Vocelli said that the fence increases the backyard area as opposed to a deed restricted conservation area and it appears to be mowed. Mr. Montgomery would like the fence moved back so that it is no closer than 50 feet to the watercourse. The Commission discussed with Mr. Jeffers the use of fertilizers and pesticides and where the fence should be located. The IWC discussed with Mr. Vocelli where the medallions and the stockade fence should be placed and reviewed the location of the conservation buffer area and dog compound.

Mr. Tim Lee explained to the Commission that the IWC would be allowing activity that is in violation of the deed restriction if the shed is kept. He said there are two alternatives 1) A new deed restriction be required and filed on the Town Land records. Or, 2) A motion that would grant relief from the existing deed restriction and Mr. Jeffers would have to file the minutes of the meeting on the land records as proof of modification.

Mr. Vocelli reviewed the original application, the minutes of the August, 2006 meeting, and the deed restriction that was put in place.

Mr. Montgomery said if the owner of the property would like to leave the fence or the compound in place, then they should come back to the IWC with a proposal to modify the deed restriction, or they will need to honor what is clearly

stated on the land records. Mr. Jeffers stated that he pays taxes and he not being allowed to utilize his property. He will have his attorney contact Mr. Vocelli. The Commission discussed with Mr. Jeffers the different options available to him and that he should come back with a proposal to amend the deed restriction and the permit.

***Mr. Brand made the motion to table this item until the June 2, 2010 meeting. Ms. Lakin seconded the motion. The motion passed unanimously.***

### **III. Review Site Inspection Schedule**

There are none for this month.

### **IV. Review April 7, 2010 meeting minutes**

Mr. Annes said that on page 3, under Application 09-1152, 3<sup>rd</sup> sentence should read “One will be for the conservation area”. The last sentence should read “in compensation for approval to cross the wetlands”. 2<sup>nd</sup> sentence from the bottom should read “if there is a surge”.

Ms. Rosenbaum said that on page 4, 1<sup>st</sup> paragraph is confusing and discussed with the Commission. It should read “if there is a surge or high level”. On page 1 the Commissioners and Staff in attendance should be added and also add as paragraph one “Ms. Rosenbaum called the meeting to order at 7:02 p.m. and reviewed the meeting procedures. Mr. Montgomery called the roll and there was a quorum.”

Mr. Annes said that on page 4, 4<sup>th</sup> paragraph, 4<sup>th</sup> sentence should read “if the pond is drained the baseline will be seen and is on the plans”.

Mr. Montgomery said that on page 4, 2<sup>nd</sup> paragraph 4<sup>th</sup> sentence should read “will be seen as is on the plans”. 5<sup>th</sup> paragraph correct spelling to be “metes & bounds”.

Ms. Rosenbaum stated that on page 1, 1<sup>st</sup> paragraph should read “that Bill Collins was the original developer on the project”. She explained that Attorney Porto had requested the correction.

***Mr. Anastasio made the motion to accept the minutes of April 7, 2010 as amended. Mr. Annes seconded the motion. The motion passed unanimously.***

### **V. Other Business**

Mr. Annes asked when are revised plans supposed to be submitted prior to a meeting. Mr. Lee said that it should be ten days. The Commission reviewed with Mr. Kops what would be the acceptable amount of time to receive plans prior to a meeting. Mr. Annes said that because Application 10-1157 had an intervener they should have had more time to review the plans. Mr. Lee said that the intervener for application 10-1157 did not ask to have the matter tabled to allow for time to review the application. Mr. Vocelli said that Mr. Gesmond had received the revised plan on April 29, 2010. Mr. Tito feels that six days is not enough time and the intervener was not given the opportunity to review the revised plans. The Commission discussed the need for applicants to submit plans in a timely fashion to allow time for the plans to be reviewed.

Ms. Rosenbaum explained that permits issued from July 1, 2006 through July 1, 2009 are now valid for six years. A permit can be renewed for a total of 11 years. The DEP says that the regulations should be revised to reflect this change, but Ms. Rosenbaum feels it can be done administratively.

Ms. Rosenbaum thanked the Commissioners who worked on Earth Day. She also thanked Mr. Tito, Ms. Lakin and Mr. Brand for de minimus reviews. Mr. Anastasio asked if time could be set aside at a meeting to discuss the issues

that the DEP recommendations have raised. Ms. Rosenbaum said that this could be started at the next meeting and Mr. Anastasio will review the suggestions made by the DEP so that the Commission will be in compliance.

#### **VI. Adjournment**

*A motion to adjourn was made by Ms. Lakin and seconded by Mr. Tito. It passed with no dissenting votes. The meeting ended at 9:20 p.m*

Submitted by: \_\_\_\_\_  
Stacy Shellard, Clerk of the Commission