

1-13-10

MINUTES: THE INLAND WETLANDS COMMISSION, Town of Hamden, held a Regular Meeting on Wednesday, January 6, 2010 at 7:00 p.m. in Thornton Wilder Hall, Miller Memorial Library Complex, 2901 Dixwell Avenue, Hamden, CT and the following items were reviewed:

Commissioners in attendance:

Nancy Rosenbaum, Chairperson
 Mike Montgomery
 Andrew Brand
 Kirk Shadle
 Mike Milazzo, arrived at 7:10 p.m.
 Bill Tito
 Mike Stone arrived at 8:00 p.m.
 Eric Annes
 Lynne Krynicki
 Joan Lakin
 Annalisa Zinn, sitting for vacancy arrived at 7:05 p.m.

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. New applications & amendments – site inspection TBA**

09-1155 123 Forest Street, 98 Orchard Street, and 106 Orchard Street-construction of three single-family homes.
 Forestland Homes LLC, Applicant

Mr. Bernard Pellegrino, Attorney, addressed the Commission and explained that the three properties are owned by Mr. William Wilson. Mr. Wilson has entered into a contract to sell the properties to Forestland Homes, LLC who will build the three houses. Mr. Pellegrino stated that the three lots are non-conforming and the lot lines need to be revised. Mr. Pellegrino reviewed with the Commission where the wetland areas exist and stated that the proposed homes will be constructed outside the one hundred foot buffer area. Mr. Pellegrino said that the corners of where the houses will be placed will be flagged. Ms. Rosenbaum asked that the location of the driveways be flagged. Mr. Montgomery said because there will be activity close to the wetlands and there is an outlet for the footing drains, he would like them located for the site inspection. Mr. Pellegrino stated that he had no objections to the Commission's request.

Mr. Tito made a motion that this item be tabled until the February 3, 2010 meeting pending a site inspection. Ms. Lakin seconded the motion. The motion passed unanimously.

09-1156 196 Denslow Hill Road-installation of a septic System
Paul Siciliano, Applicant

Mr. John Paul Garcia, Professional Engineer and Land Surveyor, addressed the Commission and stated that the property is the subject of a Cease and Desist order, but that the application is for a septic system. He said that the septic system is excluded from the cease and desist and that it would be constructed behind the house. Mr. Garcia explained that QVHD has approved the proposed septic system. Mr. Annes asked Mr. Garcia if there is an existing septic system. Mr. Garcia explained that the house on the property has an existing septic system, and the applicant is requesting to renovate it. Mr. Garcia advised the Commission that he will stake out the septic system prior to the site walk.

Ms. Lakin made the motion to table this item until the February 3, 2010 meeting pending a site inspection. Mr. Annes seconded the motion. The motion passed unanimously.

B. Pending applications

09-1152 20 & 36 Todd Street – construction of a residential building – Trailside Village III
Ravenswood Construction LLC, Owner/Applicant

Mr. Bernard Pellegrino, Attorney, addressed the Commission and asked that this item be tabled until later in the meeting.

Mr. Brand made the motion to table this item, and it would be heard later in the meeting. Mr. Annes seconded the motion. The motion passed unanimously.

Mr. Bernard Pellegrino, Attorney, addressed the Commission and stated that he had planned on giving a presentation with regard to the application at this meeting, but the comments from the DPH and RWA need additional review time. The applicant has submitted to the Commission a revised plan, and he stated that additional time may be needed to review and has no objection if additional time is needed to make a decision. Mr. Pellegrino reviewed the comments made at the site walk and reviewed the Trailside Phase III revised plans.

Mr. Tom Daly, Professional Engineer, Milone and MacBroom, addressed the Commission and explained that he had never before had the CT Department of Public Health comment on one of his projects. He stated that he will address and respond to the RWA and Town Engineer's concerns. Mr. Montgomery asked if the soil was needed against the interior of the basin wall and about the slopes of the basin soil-walls. Mr. Daley replied that maybe they can use large concrete blocks and thus reduce the area of the basin. He thought that all slopes were 3:1 or better.

Mr. Milazzo made the motion to table Application 09-1152 until the February 3, 2010 meeting. Mr. Shadle seconded the motion.

Mr. Annes asked for clarification of the wetland delineation discussion that occurred at the site walk.

Mr. David Lord, Certified Soil Scientist, addressed the Commission and said that the wetlands do not have well defined wetland soil types. The watercourse is a sedimentation feature. The main channel is clogged. It had banks three years ago. The area that the Commission saw was not alluvial, because it has a single cap of sediment. Mr. Lord pointed out that it had six inches of coarse sediment over native, reddish soil where he had dug away from the stream. The situation that the Commission had seen during the site inspection (of water flowing well away from the main channel) was related to a storm event. The regular flow continues to be in the main channel. Mr. Lord stated that the area is ideally suited to be a sediment trap. Mr. Montgomery asked about the watercourse being shown on the plan as

a straight line and that the current channel does not match the flagging. Mr. Lord said that the watercourse is being deflected and the area is changing because of the sediment load.

Mr. Lord submitted and reviewed a summary of his findings and concerns from the site walk with the Commission.

The Commission voted unanimously in favor of the motion to table this item.

09-1153 0 Downes Road – construction of a single-family home – BERL Associates

Mr. John Paul Garcia, Professional Engineer and Land Surveyor, addressed the Commission and stated that the original plans submitted were revised and incorporate the comments made during the site walk. He explained that the septic system was revised from a two line to a one line system, which reduces the amount of materials that will be needed on the site and reduce the amount of disturbance to the site. Mr. Garcia said that Attorney Jerry Ryan, Attorney for the applicant, has been in contact with Mr. Tim Lee, Assistant Town Attorney, and the language for the non-disturbance area and conservation restrictions has been determined. Mr. Garcia stated that QVHD has approved the plan for the septic system and he has received the sign off from the Town Engineer.

Ms Rosenbaum said that there is a note on the plans indicating that the non-disturbance buffer is fifty feet and it should be 100 feet. Mr. Garcia explained that it was a typographical error and the non-disturbance buffer is 100 feet. Ms. Rosenbaum also stated that there is a note on the plans that indicates wetland marker flag H is only 73 feet from wetland flag 414 and would need to be pulled back, and that the inland wetland markers should be placed every 35 feet and on the plans they appear to be every 50 feet. Mr. Garcia explained that he was asked by the Town Engineer to define the locations and coordinates of the markers, and it is difficult to use mathematical closure. He is willing to put the signs every 35 feet, but would like the angle point marks to remain the same. Mr. Garcia stated he will be willing to comply with the request of the Commission.

Mr. Brand asked Mr. Garcia if the existing curtain drain will be relocated. Mr. Garcia reviewed the location of the existing curtain drain and explained that it may not have to be moved, but is a warning to the contractor so that the curtain drain will not interfere with the foundation. Mr. Garcia explained that the location of the curtain drain and the proposed foundation has been reviewed with QVHD.

Ms. Lakin asked Mr. Garcia to address the concerns of the RWA letter dated 1/6/10. Mr. Garcia stated that the RWA does not want the house built because it is in the area of a protected watershed. The RWA has stated that there is a concern that the septic system will flow back into the curtain drain. Mr. Garcia explained that the curtain drain is being installed uphill in excess of 25 feet from the septic system, and the water will not interrupt the flow of water in the curtain drain. Mr. Garcia reviewed the Public Health Code design manual requirements for a septic system. He explained if the curtain drain were to fail and the water level were to come up to grade it would still be below the bottom of the septic system. Mr. Garcia stated that the Public Health Code states specifically that intermittent flooding of a septic system will not fail a system. The system designed for this application has a 24 to 30 inch separation distance from the water.

Mr. Garcia said that the data that was generated from the monitoring of the curtain drain indicated that the water table was from twenty two to thirty two inches below grade, and the system was raised another six inches as requested, but is still above what is required by the State Statute. Mr. Garcia does not agree with Mr. Walter's, RWA comments because the septic system is not down gradient and will not flow downhill and is not located down gradient. He feels if the QVHD as the regulatory agency had issues with the design it would not have issued an approval.

Ms. Krynicki reviewed with Mr. Garcia the contours of the septic system and the distance of the curtain drain from the leach field. She is concerned that there is no monitoring pipe for any rebound and there is no monitoring well at the end of the leaching field. Mr. Garcia said that the monitoring that was done showed no rebound effect, but he was raising the system six to eight inches to be sure.

Mr. Shadle asked Mr. Garcia to explain using the term failed for the septic system, and asked if it means the septic system needs to be replaced or is failing in temporary functionality and treating as necessary. Mr. Garcia said he had said if the curtain drain were to fail the water table would show up about eight to ten inches below grade. The health code recognizes intermittent problems with the septic system will not in itself fail the septic system. Mr. Shadle asked Mr. Garcia if he meant the failing of the system would be to the point where it needs to be replaced or temporary failure of proper treatment. Mr. Garcia replied temporary failure of proper treatment. Mr. Shadle discussed with Mr. Garcia his concerns that a homeowner may not recognize a problem with a curtain drain. Mr. Garcia explained to the Commission that when a system is failing there is a distinct odor and owners will have them snaked or make repairs. He said that most systems are over-designed and it is very remote that they will fail.

Ms. Krynicki said that a system can function hydraulically but can be failing and allow nutrients to go untreated. Mr. Garcia reviewed the treatment area of a septic system and explained how it would be treated.

Mr. Garcia explained to the Commission that the original curtain drain was installed improperly. He stated that the curtain drain that he has installed is functioning properly and was issued a tentative permit by QVHD. Mr. Annes asked Mr. Garcia what the possibility is of the curtain drain failing. Mr. Garcia explained that there is the possibility of any system failing. Mr. Annes said that the curtain drain is discharging water and there are distinct channels forming that can channelize down towards the stream. Mr. Garcia said that the stream is over 100 feet away and reviewed the location of the pipe and where it discharges. Mr. Brand reviewed his observations of water coming from underneath the pipe this morning. Mr. Garcia stated that he can put rip rap in the area if the Commission is concerned with erosion. Mr. Brand said there is a concern that fertilizers and pesticides used by the resident could get into the curtain drain.

Mr. Montgomery discussed with Mr. Garcia the function of the open top curtain drain vs. a capped curtain drain that would be covered by topsoil and the filtering of pesticides. Mr. Garcia explained that he has no experience with the filtering factor of topsoil with regard to nutrients and pesticides or herbicides. He also stated that he does not have enough experience to state how pesticides, chemicals and fertilizers would be detrimental to the wetlands. The Commission discussed their concerns about fertilizers and pesticides affecting the watercourses and wetlands.

Mr. Lee stated that he agrees there are issues that may affect the wetlands and watercourses. He explained that the Commission must determine what evidence has been presented that shows how the project will impact the watercourses. He explained that QVHD has approved the plans for the septic system and the members cannot base a decision on the possibility that the system will fail. Mr. Annes stated that the issue of a curtain drain channelizing and fertilizers getting into the watercourses can occur. Mr. Lee asked if restricting the use of fertilizers would alleviate his concerns. Mr. Garcia would be willing to accept a restriction on the land records prohibiting the use of pesticides and fertilizers, and it would not be an issue with the owner.

Mr. Ron Walters, Senior Environmental Analyst, RWA, addressed the Commission and stated that he agrees with Mr. Garcia that QVHD is the regulatory agency and that the RWA has no regulatory power. He said that the RWA's concern is based solely on the issue that the reason for a curtain drain is to make the septic system function properly. Mr. Walters explained that when water is effluent in a septic system that fails it will rise and can reach the ground surface. Mr. Walters explained the concerns of the RWA is if the curtain drain fails and it is flowing into the Brooksvale stream. He discussed with the Commission what can happen if the septic system fails. Another concern is that the curtain drain is intercepting surface and ground water and that there is less water for the dilution of the nutrients going down to the wetlands. Mr. Walters explained that the hydraulics of the site and the impact during the summer months may dry out the lower

wetland areas. Mr. Annes asked if the DPH can order a cease and desist if a system is malfunctioning. Mr. Walters stated that the DPH can issue a notice of violation and order that the system be fixed.

Mr. Milazzo asked Mr. Walters if the septic system and curtain drains did not malfunction would there be concerns. Mr. Walters advised that he would not be concerned under normal conditions because septic systems work to treat domestic waste water. The concern is that at this site there is a ground water table problem and the site is being altered to make the septic system compliant to the state regulations. Mr. Walters explained that there has been no data submitted with regard to the baseline ground water levels vs. the current groundwater levels. Mr. Milazzo asked Mr. Garcia if his client would agree to them maintaining the curtain drain annually and if they do not, the town would maintain it and the cost would be to the applicant. Mr. Garcia did not think his client would object to that condition. Mr. Walters stated that the RWA is concerned with the ground water table being manipulated to put a septic system in and that the site is not suited for one.

Ms. Rosenbaum asked Mr. Garcia if he would agree to grant an extension until the February 3, 2010 meeting for further discussion because the Commission may not be able to come to a decision. Mr. Garcia stated that he would agree to an extension and would submit it in writing.

Mr. Annes asked for clarification of where the water is entering the curtain drain. Mr. Garcia explained that the curtain drain is interrupting the ground water and surface water. He explained that it appears that there is overflow from the cross culvert at Downes road and the curtain drain is designed to intercept ground water. Mr. Garcia will submit the graph from QVHD that shows the base line data.

Mr. Dan Kops, Assistant Town Planner, reviewed note 5 regarding the flood zone boundaries for an A zone and a C zone on the plans with Mr. Garcia. Mr. Kops would like Mr. Garcia to show the elevations on the plans. Ms. Rosenbaum would like note 6 to be corrected to show a 100 foot non-disturbance buffer, and marker H needs to be pulled back. The legend wetland buffer shows 50 feet and does not correspond with the line style on the plan. Ms. Krynicki advised Mr. Garcia that the malfunction of the water table is possible and asked if it would be possible to have permanent monitor wells down gradient for periodically monitoring the ground water. Mr. Garcia stated that it would be acceptable to require yearly monitoring of the ground water for up to three years, but does not feel it should be for the lifetime of the property. Mr. Garcia will speak with his client. Ms. Rosenbaum would like clarification on the note regarding the existing curtain drain and the building of the house.

Ms. Lakin made the motion to table this item until the February 3, 2010 meeting. Mr. Annes seconded the motion. Mr. Montgomery, Mr. Brand, Mr. Shadle, Mr. Stone, Mr. Annes, Ms. Krynicki, Ms. Lakin and Ms. Zinn voted in favor of the motion. Mr. Milazzo and Mr. Tito voted against the motion. The motion passed 8-2-0

09-1154 560 Sherman Avenue – Compensatory wetland mitigation work -
Quinnipiac University, Owner/Applicant

Mr. Bernard Pellegrino, Attorney, addressed the Commission and reviewed the application. He explained that the project is to enhance the sewer system from Quinnipiac University's main campus to Whitney Avenue. A condition of approval requires an Army Corps of Engineers Permit. The Army Corps required wetland mitigation and they have approved the design to enhance and enlarge the existing wetlands on the site at 560 Sherman Avenue.

Mr. Howard Pfrommer, Nathan Jacobson, Civil Engineer, addressed the Commission and reviewed the mitigation area. He stated that there are 4 parts to the mitigation: 1) a wooded wetland area of .16 acres in

size 2) remove trash from the area 3) remove exotic invasive species for a period of five years 4) Conservation Easement deed over to the Town of Hamden.

Mr. Pfrommer explained that there would be monitoring reports prepared two times of year for a period of five years. The reports would be given to the IWC and the Army Corps of Engineers. Mr. Pfrommer reviewed the erosion & sediment control plans and where the wetland markers will be placed. He also reviewed the wetland area being created and the planting plans. Mr. Pfrommer stated that a soil scientist will be on site during the project. He reviewed with the Commission the information packets that were submitted to the Commission. He reviewed the site walk comments and the Town Engineer comments.

Mr. Brand said that during the site walk there was large debris located in the wetlands and beyond the mitigation area and asked how the debris would be removed. Mr. Pfrommer advised the Commission that it would be removed by man power and a small Bobcat if necessary. The work in the area would be done in the summer and fall when the area is dry.

Ms. Zinn stated that she works for Quinnipiac University and needs to recuse herself.

Mr. Montgomery and Mr. Pfrommer discussed that trees need to be identified and determine which maples need to be saved. Mr. Montgomery said that there are upright drums located near Sherman Avenue and the contents should be identified and the IWC advised of the contents and then removed. Mr. Montgomery discussed with Mr. Pfrommer is an area of low under story and there may be a deer population in the area. Mr. Pfrommer stated that he will have photos taken of the area and review with the Commission.

Mr. Annes made the motion to approve Application 09-1154. Mr. Shadle seconded the motion. Mr. Montgomery would like to add the following conditions: 1) The Catalpa tree that is labeled as a maple be saved. 2) The contents of the upright drums near Sherman Avenue be identified and the IWC be notified of the contents and how they will be disposed of.

Mr. Brand would like to add a condition 3 that reads: The comments from the Town Engineer dated January 4, 2010 be a condition of approval.

Mr. Annes and Mr. Shadle accepted the changes made to the motion.

The motion passed unanimously.

II. Notices-of-Violation, Cease & Desist & Restore Orders, Notices-to-Appear

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

Mr. John Paul Garcia, Professional Engineer and Land Surveyor, addressed the Commission and advised the Commission that the hay bales have been placed. Mr. Garcia explained that Mr. Siciliano is unable to do any further remediation because the ground is frozen and it will be completed when the weather permits.

Mr. Annes made the motion to table this item until the February 3, 2010 meeting. Mr. Brand seconded the motion. The motion passed unanimously.

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

Mr. Lee updated the Commission on the Town's lawsuit concerning the clear-cutting by Carlie Capital LLC and that the court has given an extension of two weeks to submit the forestry report.

Mr. Annes made the motion to table this item until the February 3, 2010 meeting. Mr. Shadle seconded the motion. The motion passed unanimously.

c. **N.O.V.** 20 & 36 Todd Street – lack of full compliance with IWC Permit #03-1002

Mr. Bernard Pellegrino, Attorney, addressed the Commission and advised the Commission that the mitigation plan has been completed.

Mr. Bill Root, Certified Professional Soil Scientist, addressed the Commission and reviewed the findings during the site walk. He said that a remedial planting plan dated December 23, 2009 had been submitted. He reviewed the non-disturbance area and the planting plan with the Commission.

Mr. Montgomery asked what type of seed mix would be used behind the shrubs that act as a barrier close to the edge of the buffer. Mr. Root advised wildlife conservation seed mix would be used and reviewed the planting of the shrubs along the non-disturbance zone. He said that he would plant to the IWC preference. Mr. Shadle asked about the quantities of the plants being used. Mr. Root advised that he would have an exact amount closer to the time of planting and reviewed the area where they would like to create a barrier with the plantings.

Mr. Montgomery made the motion to accept the Wetland Buffer Remediation Plan and lift the notice of violation for Trailside Village Phase II.

Mr. Lee asked if there should be a time frame for the mitigation. Mr. Root advised the Commission it would be completed in the Spring of 2010.

Mr. Montgomery added to the motion: ***The remediation plan will be implemented in the spring of 2010. Mr. Milazzo seconded the motion.***

Mr. Shadle stated that he would like a condition to be: a survivability check for the period of three years. Mr. Montgomery said that he feels if a remediation plan does not work it can be brought to the property owner's attention. Mr. Montgomery asked Mr. Shadle and the Commission how they would like the condition to read.

Mr. Shadle would like the condition to read: ***A guaranteed survivability for a period of three years that all plants that die will be replaced as depicted on the remediation plan for the notice of violation.*** Mr. Shadle would also like a condition to read: ***The final plan of plant selection and quantity be signed off by the Chair or Commission.***

Mr. Lee suggested to the Commission that they might want to table lifting the Notice of Violation until June 2010, to allow for the planting plan to be completed. If the plants die the Commission can request a new remediation plan or reissue a notice of violation. Mr. Annes asked how this would affect subsequent owners of the property. Mr. Lee advised that the condominium will have a condo association and a notice of violation can be issued to them if the plantings die. Mr. Shadle asked about the condition for the survivability of the plantings. Mr. Lee feels this is a good condition. The Commission discussed when the violation is lifted can they enforce the condition.

Mr. Montgomery stated he was withdrawing the motion.

Mr. Lee recommends that the Commission approve the remediation plan and table the Notice of Violation until June 2010. Mr. Pellegrino stated that he would agree to the amendment to the original approval with conditions. This would allow the IWC to enforce and the Notice of Violation can be removed. Mr. Lee suggested should table to the next meeting and as an amendment to Trailside Phase I & II to add the conditions as previously discussed.

Mr. Montgomery made the motion to table this item until the February 3, 2010 meeting. Mr. Annis seconded the motion. The motion passed unanimously.

Ms. Rosenbaum asked Mr. Root if he could provide an estimate of the amount of plants on the plan. Mr. Root advised the Commission that there are roughly 50 plants based on the density and the size of the area, and he will add the information to the plan.

III. Review Site Inspection Schedule

Mr. Vocelli will schedule (weather permitting) site inspections for 123 Forest Street, 98 Orchard Street, and 106 Orchard Street, and for 186 & 196 Denslow Hill Road.

IV. Review December 2, 2009 meeting minutes

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

V. Other business

Mr. Milazzo stated that there is a house being built behind St. Stephens School and the silt fence is in disrepair. He asked that Mr. Vocelli visit the site.

Mr. Annes asked if the planting and tree cutting plan for the New Haven Golf Course has been submitted. Mr. Vocelli said that no plan has been submitted and they are only allowed to remove twenty trees.

VI. Adjournment

A motion to adjourn was made by Mr. Milazzo and seconded by Mr. Stone. It passed with no dissenting votes. The meeting ended at 9:18 p.m

Submitted by: _____
Stacy Shellard, Clerk of the Commission