

**MIDDLEFIELD INLAND WETLANDS  
and  
WATERCOURSES AGENCY  
405 Main Street  
Middlefield, Connecticut 06455**

Minutes of the May 16, 2018 Regular Meeting

Rebecca Adams, Chairman, called the meeting to order at 6:59 pm.

Attendance:

Members

Alternates

|   |                  |       |                    |
|---|------------------|-------|--------------------|
| X | Adams, Rebecca   | A     | Zieminski, Charles |
| X | Angiletta, Irene |       |                    |
| A | Brown, James     |       |                    |
| X | Li, Linda        |       |                    |
| X | Manning, John    | Other |                    |
| X | Poturnicki, Rob  | X     | Bernotas, Randy    |
| X | Veeley, Robert   |       |                    |

A=Absent

X=Present

Amendments to the Agenda

Rebecca Adams made a motion, seconded by Rob Poturnicki, to add Executive Session under CGS 1-200(6)(b) for pending or anticipated legal action after number 7 on the agenda. Motion carried unanimously.

Randy Bernotas also asked to add Lyman Farm to the agenda for their installation of a farm road that crosses a wetland, but Rebecca Adams stated that they had no paperwork for it. Mr. Bernotas wanted it on the agenda as he feels it is right-of-use and he would like the Commission to make that determination. He had put it on the agenda, but it did not appear to be there now. Ms. Adams explained that they cannot make any determination tonight as there is no application.

Mr. Bernotas also explained that he brings items to the Commission to see if they are or are not a regulated use and Ms. Adams explained that those should be agenda items so that the Commission can assess those. He explained that he had also added that item to the agenda and it was not on it. Ms. Adams stated that she will personally do the agendas or hire someone to do them. From a legal standpoint, no matter who makes the determination there is still a 14-day appeal period under State statute. She reminded everyone that their charge was not to make everything happen as soon as possible, but to do everything correctly. She explained that there are many cases in the courts right now where the Board did not know about the activity, they get overturned, the permits get returned to the Commission and get invalidated.

Linda Li made a motion, seconded by Rob Poturnicki, to add consideration of Patrick Manning's application for an addition on the south side of his home to the agenda. Motion carried unanimously.

Rob Poturnicki made a motion, seconded by Jim Brown, to approve the agenda, as presented. Motion carried unanimously.

#### Public Comment

None.

Receipt of Application of Sheldon Haag, 41 Lake Road, for an IWWC permit for work commenced and completed without a permit for installation of sprinklers, front, side and rear yards, within 100 ft. of a wetland. Owner: Laura Hughes.

Randy Bernotas explained that no one is present on behalf of the applicant. This is work that was completed without a permit and is now under enforcement. Mr. Bernotas explained that he had the applicant come down and take out a permit.

Rebecca Adams explained that the Commission now has the application and this issue falls under enforcement. A cease and desist does not apply in this case.

Receipt of Application of Michael Moore and John LaRosa, 24 Rosemary Lane, for an IWWC permit to conduct activity within 100 ft. of a wetland to replace approximately 32 ft. of an existing wall with 6 x 6 pressure-treated timbers.

Michael Moore, 24 Rosemary Lane, explained that they have 120 feet of frontage on the lake and the eastern 32 feet of the wall have deteriorated and the structure is not solid. They are proposing to remove what's there and replace it with another wall. One portion would come out closer to the lake because they don't want to move an existing tree. At the very eastern side, they would want to move it back four feet to make it more secure. This would require them to remove about three to four feet of soil which they would keep on the property for gardening. They would like to start this project in the beginning of September.

Ms. Adams thanked him for planning ahead and felt that the Commission may want to make a site visit. She explained that the Commission officially received the application tonight. Mr. Moore reviewed the location of the wall and explained that it sits back approximately 12 feet from the water. Randy Bernotas explained that he has seen the condition of the wall and this is a repair, not a new wall. Mr. Moore explained that they would want to replace it with 6 x 6 timbers and back-fill it with stone and dirt. They also have 100 feet of dock that they will secure with pilings.

Randy Bernotas will call Mr. Moore to set a date for a site visit.

Receipt of Application of LaRosa Middlefield, LLC, 275 Baileyville Road, for an IWWC permit to conduct a regulated activity within the wetland, filling of the existing wetland drainage system and relocation of wetland drainage system and within 100 feet of a wetland for the construction of a parking lot for a proposed restaurant.

Rebecca Adams explained that the Commission will receive this application tonight and that there are two separate issues: one to fill the drain within the wetland and the other activity within 100 feet of the wetland.

Pat Benjamin, of Bascom and Benjamin in Durham, was present with John LaRosa, one of the owners of the property, who has owned it for about three years. This property is at the corner of Lake Road and Baileyville Road and is the old gas station and liquor store. They have already remediated the property. The property is located within the commercial zone and has a sanitary sewer. They would like to put a small addition on the building and create a parking lot.

Mr. Benjamin reviewed the existing conditions map for the Commission and showed the building, existing sanitary sewer and well. The area in front is all paved and the back is processed stone. There are currently three culverts which cross Lake Road, one of which is 40" x 65" and two of which are 18". All three run into the wetland drainage channel. All of the wetlands have been flagged. Mr. Benjamin explained that the channel runs from four to five feet deep down to one foot deep. He believes that the DOT comes in once every six or seven years to clean it out. He did submit a report that describes the channel and vegetation.

Mr. Benjamin explained that the property owners are looking at this for a restaurant and they would need to create a parking lot. Linda Li asked where the sanitary sewer goes and Mr. Benjamin explained that it is part of the Lake Beseck system. He then showed a copy of the layout plan, showing a 20 x 17 addition and closing off two of the entrances. The lot would be gravel, with two 24-foot wide entrances and the remaining area being grass. Based on the Planning and Zoning regulations, they would need to create parking for 26 spaces, including handicapped. There will also be one dumpster.

Pat Benjamin looked at the maximum amount of water on the uphill side of the road and through the pipes before it would flood over and that was approximately 139 cfs (cubic feet per second). The pond on the other side of the road acts as a detention basin. They looked at a gradual switch in the channel which would come around the parking lot and back into the existing channel. The channel would be 3 feet deep x 9 feet wide and it would be armored with rip-rap. There will be silt fence around the parking lot, they will excavate, then armor it and finally break through for the inlet and outlet.

Almost all of the proposed activity is within 100 feet of the wetland. Mr. Benjamin reviewed the grade with the Commission and it is relatively flat. He also had a cross section of the channel.

Linda Li asked if the concerns would be automobile discharge that goes into Lake Beseck and a high amount of water flow that would cause erosion. Mr. Benjamin explained that the water flows would be pretty much the same. He also explained that there would be a 2-foot infiltration trench near the channel which have been used in several places around town.

Rebecca Adams explained that it would be a significant activity and a public hearing will be scheduled for June 20, 2018. She declared this a complex application so that the Commission's engineers and soil scientists will work with the applicant. Pat Benjamin did talk with Brian Curtis, but has not sent him all of the drainage calculations yet.

Pat Benjamin also explained that the existing well will need to be relocated to the front. Mr. LaRosa explained that they have had the well tested and it is fine. They also tested all of the houses within 500 feet of the previous gas tanks and they were all fine.

Randy Bernotas asked if the soil in the area of the new drainage is considered wetland and Mr. Benjamin stated that it was not, but at some point it will be. Mr. Bernotas didn't understand why the Commission would need to hire a soil scientist if this was a watercourse rather than a wetland.

Irene Angiletta asked how much vegetation would be on the property and Mr. Benjamin reviewed the map and explained that what is shown in green will be vegetation. He also assumes that a landscape architect will be involved once the project goes to Planning and Zoning.

Rob Poturnicki made a motion, seconded by John Manning, to schedule a public hearing for June 20, 2018 to present the LaRosa application for a permit. Motion carried unanimously.

#### Patrick Manning Application for an Addition on the South Side of his Home

John Manning recused himself from the Commission for this issue.

Rebecca Adams explained that this area has an intermittent watercourse. Mr. Manning explained that the watercourse only runs when it rains and showed where his existing house is and explained that the corner of the garage will be 44 feet from the watercourse. Mr. Manning had drawings and his builder was present at the meeting tonight. They reviewed the drawings with the Commission and both Rob Poturnicki and Randy Bernotas confirmed that, because of the slope of the land, everything runs away from the intermittent watercourse.

Linda Li explained that they are concerned with any sedimentation or change in the flow rate and Rob Poturnicki explained that everything runs completely away from the brook. The existing house was built in 1940.

Rebecca Adams felt that this would not fall under regulated activity if it does not have the potential to impact the wetlands. Linda Li agreed. Ms. Adams agreed to have Mr. Bernotas handle this application.

Randy Bernotas felt that activity within 100 feet of a wetland is a regulated activity and that triggers review by the Enforcement Officer. He felt that if the activity is in the wetlands, it would trigger review by the Commission.

Rebecca Adams then resigned as chairman of the Commission and left the meeting. Linda Li was asked to continue to run the meeting as of 7:49 pm.

Rob Poturnicki made a motion, seconded by Robert Veeley, that Patrick Manning's application is not a significant activity. Motion carried unanimously.

John Manning un-recused himself and rejoined the Commission.

#### Discussion on Violation Procedure and Fine Structure for Inland Wetlands and Watercourses Commission

Rob Poturnicki suggested moving on from this issue at this point and skip the executive session as well unless they wanted to talk about what happened tonight.

Randy Bernotas had some information for the Commission about violations and fines and how other towns handle these issues. He suggested that the Commission review it and the subject can go on the agenda for the next meeting.

Mr. Bernotas also stated that he didn't know why he was in the position he is if he doesn't have the authority to do what he thinks he should. When he had been the Enforcement Officer previously, anything within the 100-foot review area triggered the Enforcement Officer to take a look at it rather than having everything come before the Commission. A regulated activity is described on page 9 of the regulations. He then asked the Commission what this regulation

triggers and if the Enforcement Officer needs to determine if it needs to come to the Commission or does it require a permit application. His opinion is that it does not require a permit unless it is actually in the wetlands or if the Enforcement Officer determines that it does.

Irene Angiletta suggested that another attorney help explain that to the Commission. Mr. Bernotas also read from page 39 of the regulations regarding enforcement. Rob Poturnicki personally agrees with Mr. Bernotas, but also felt that the Commission should get a legal opinion. Linda Li stated that some wetlands commissions have a lawyer present at all meeting, but no one felt that would be necessary here. It was also explained that if the Commission felt that the Enforcement Officer oversteps his bounds, they can revoke a permit. Mr. Bernotas also commented that he would not be issuing a permit; he would just determine if there is detrimental effect or not.

Rob Poturnicki stated that if the Commission is not made user-friendly, people will do what they want until they get caught. Irene Angiletta understood that Randy Bernotas would investigate and determine if a permit is needed. Linda Li will call the attorney to get a determination on this issue.

There was then some discussion about why this issue has come up and the fact that there is no recourse for the Commission when work is completed without a permit. Commissioners felt that they would personally feel better if their neighbor got punished for this type of activity. Randy Bernotas mentioned the work done on Lake Road and Laurel Brook Road as examples.

Rob Poturnicki told Randy Bernotas not to be upset about what happened tonight and reminded the Commission that they will need to work together to make the public hearing happen next month. Mr. Poturnicki volunteered to help in any way he could. There was discussion about who would, in fact, notice the public hearing, put up the signs and notify the neighbors.

#### Enforcement Officer's Report

Randy Bernotas reported that Patrick John Manning proposed to construct a garage and addition at 15 Chicopee Road. It is approximately 44 feet from an intermittent watercourse. That watercourse is completely lined with bedrock and ledge and dries up in late spring to autumn. Mr. Bernotas' opinion is that the activity will not affect the watercourse with proper E&S controls put in place and does not require a permit.

Mr. Bernotas also reported that material from previous dredging of the pond at Powder Ridge Mountain Park & Resort, 99 Powder Hill Road, is being repurposed to create a landing zone for the new zip line attraction. E&S controls are in place, but this is within 80 feet of the edge of the pond. The sides of the landing zone are all seeded for restoration and there was no erosion after yesterday's rainstorm. Mr. Bernotas does not believe a permit is required.

Randy Bernotas also mentioned Lyman Farm's request for a ruling for right-of-use to continue a farm road along the farm pond near the maintenance buildings on South Street. This activity would involve crossing the outlet from the pond. Pat Benjamin sent the calculations to Brian Curtis who forwarded them to Mr. Bernotas. Mr. Bernotas feels this is a right-of-use and a permit is not required.

#### Approval of Minutes

Rob Poturnicki made a motion, seconded by John Manning, to approve the minutes of the April 18, 2018 meeting. Motion carried unanimously.

#### Matters or Business Raised at Previous Meetings or on Previous Agendas

Everyone agreed there had been an excellent turnout at the Land Use presentation that was held.

#### Members' Suggestions for Matters for Addition to the Current Agenda or for Discussion and Inclusion on Future Agendas

None.

#### Adjournment

Rob Poturnicki made a motion, seconded by John Manning, to adjourn the meeting. Motion was carried unanimously. The meeting was adjourned at 8:15 pm.

Respectfully submitted,

*Debi Waz*

Debi Waz  
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