

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

Minutes of the June 20, 2018 Regular Meeting

Rebecca Adams, Chairman, called the meeting to order at 7:04 pm.

Attendance:

Members		Alternates	
X	Adams, Rebecca	A	Zieminski, Charles
X	Angiletta, Irene		
X	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 added accepting an application for a patio and fire pit to be installed at the right rear corner of the house at 23 Rosemary Lane as item 2.5. Irene Angiletta asked to add discussion of the need for protocol as item 11.5.

Rebecca Adams made a motion, seconded by Rob Poturnicki, to add the two above items to the agenda. Motion carried unanimously.

Sticks and Stones Landscapes, LLC, 23 Rosemary Lane, Installing a patio and fire pit

The Commission accepted this application at this time.

Public Comment

None.

Rebecca Adams made a motion, seconded by Rob Poturnicki, to suspend the meeting and go to public hearing at 7:07 pm. Motion carried unanimously.

* * * PUBLIC HEARING * * *

Permit Application #05003-18: 275 Baileyville Road, LaRosa Middlefield, LLC, Application for a permit to conduct a significant regulated activity to construct a parking lot for a proposed restaurant within 100 ft. of a wetland and to conduct a significant regulated activity in a wetland or watercourse by filling an existing wetland drainage system and relocating a wetland drainage.

Pat Benjamin, from Bascom & Benjamin, was present with John LaRosa. Mr. Benjamin explained that the property is located at the corner of Baileyville Road and Lake Road. They would like to convert the existing building to a restaurant. An environmental engineering company was hired and the property has been cleaned up. This is one of the few properties in Middlefield that is on a sanitary sewer, is zoned commercial and would allow a restaurant.

Mr. Benjamin reviewed the location of the property and explained that there are two curb cuts on Baileyville Road and two on Lake Road. There is a 40" x 65" culvert and two 18" culverts. All of the wetlands and the channel have been flagged. The channel is mostly stone and rip-rap that has been covered by dirt. Mr. Benjamin believes that the DOT cleaned out the culvert about four or five years ago.

Mr. Benjamin explained that the property owners are looking to add a 340 sq.ft. addition to the building. They would close two curb cuts. Based on the size of the floor space, they would need to have 26 spaces. They had originally proposed a gravel parking lot with curbs and three recessed lights.

To be able to accomplish that, they looked at putting the stream into a culvert. It would be two very large, very flat box culverts. It was then felt it would be best to move the stream. The channel would be 11 feet wide at the very top, 39 inches deep and the bottom width would be 36 inches. There would be 18 inches of intermediate rip-rap, with a median size of 6 to 8 inches. The existing capacity of the channel would be about 169 cfs. The most water that could go through the culverts before it flows down the road is 139 cubic feet per second, so they have actually oversized the channel by about 25 percent. There will be silt fence below the entire parking lot and an erosion and sedimentation control bond will be required.

Pat Benjamin explained that the Town Engineer has reviewed the calculation of the channel and the area of the parking lot and he had requested a change in the curtain drain. He also asked for an earth berm. They also talked about planting a series of trees to shade the channel along the northern and eastern sides. There had also been discussion about paving the parking lot. They had originally proposed it to be gravel and would be willing to do it either paved or with gravel. There had been a concern about the plows digging up the gravel and pushing it into the channel. The infiltration ditch goes all the way around the parking lot.

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Pat Benjamin reviewed Eric Davidson's report saying that the channel is stone and gravel with areas of rip-rap along the bottom and side slopes. The stream is well-defined and contains no significant bordering wetlands. Vegetation is wood shrub and the dominant tree species is red maple, common shrub and herb species, including a number of native and non-native invasive plants. Mr. Benjamin believes that the DOT only cleaned out the first 40 or 50 feet of the channel.

Mr. Benjamin reviewed that Eric Davidson had stated that the stream had originally been excavated out. He felt that putting the stream in a culvert would be a bad idea. He felt that eventually sand and other plants would eventually come in and it would need to be cleaned out every four to five years. He felt that it would be a better idea to create a channel and a swale. The property owner would then be responsible for cleaning it out and Rebecca Adams felt that that could be included as a condition of the permit.

Pat Benjamin also reviewed that the watershed area is about 98 acres. Irene Angiletta asked if he knew specifically how much existing wetland there is on the property. Mr. Benjamin did send that information to Brian Curtis, but he did not have it available at the meeting. He did review the wetland area on the map for the Commission. Rebecca Adams reported that Brian Curtis had gone to the property and confirmed that the channel is underlaid with significant amounts of gravel. John Manning felt that there would be more wetlands than there is now. Mr. Benjamin pointed out that it will also be shaded.

Jim Brown asked for clarification of the wetland lines and Mr. Benjamin explained what was wetlands and what was not. Rebecca Adams summarized that they have incorporated Brian Curtis' suggestions into the plans. Mr. Benjamin confirmed that they had and the size of the channel was increased by 2 feet and 6 inches deep, the side slope was changed and the berm was added.

Mr. Benjamin also explained that they will eventually have to go to the WPCA to have the pump chamber and oil and water separator approved.

Randy Bernotas asked how the old channel will be kept open during construction and Mr. Benjamin explained that the work will be done at absolute low flow and reviewed how the construction will be done. This can only be done from June 1st through October 1st during the dry season.

Irene Angiletta asked about the landscape architect and Pat Benjamin explained that that is part of the project, but there is not a lot of area available. Nothing will be planted within the line of sight. Mr. Benjamin also explained that they will not have to go to the Traffic Authority as they have less than 100 parking spaces. There will also be no need for a traffic light.

Mr. Benjamin reviewed that if the lot is paved, water will go into the drain with a 1- or 2-inch storm. They can also keep it as gravel, but reminded everyone that there will be some plowing along the edge. Rebecca Adams stated that gravel ends up being compacted and there is not much infiltration there anyway. Mr. Benjamin felt that it would not be much of a difference with this size parking area.

Alexandra Taylor, from Lake Shore Drive, asked about what is being done to protect or relocate wildlife in the area. Mr. Benjamin offered to have a wildlife biologist scan the site before construction begins and would be willing to have that as a condition of the permit. Rebecca Adams explained that the property does not have wetland soils other than the actual channel.

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Troy Donahue asked how the drainage on his property would be affected by this project and Pat Benjamin felt that the drainage would be exactly the same. The channel stops between 15 and 20 feet from Mr. Donahue's property line. Mr. Donahue explained that he has never seen the drainage go across the road. He also asked if there was going to be any kind of fencing, but Mr. Benjamin explained that they haven't proposed any fencing because there really isn't any room for it. This will be discussed further at Planning and Zoning. Mr. Donahue also asked about lighting and Mr. Benjamin explained that when they go to P&Z, they will supply hours of operation and all lights will be box lights and will be full cut-off.

Pete Parker, who works for the highway department in Middlefield, explained that the State owns the easement and cleans that out. They clean just in front of the pipes on Lake Road. Mr. Benjamin explained that the State does not have a formal easement there.

Rob Poturnicki made a motion, seconded by John Manning, to close the public hearing at 7:44 pm. Motion carried unanimously.

The Commission took a short break at this point.

Discussion and Potential Action on Permit Application #05003-18: 275 Baileyville Road, LaRosa Middlefield, LLC, Application for a permit to conduct a significant regulated activity to construct a parking lot for a proposed restaurant within 100 ft. of a wetland and to conduct a significant regulated activity in a wetland or watercourse by filling an existing wetland drainage system and relocating a wetland drainage.

Rob Poturnicki made a motion, seconded by Jim Brown, to approve permit application 05003-18, with conditions, as attached.

Linda Li asked if they were going to include anything about maintaining the existing landscaping and Rebecca Adams explained that that would fall under Planning and Zoning. It was generally agreed to ask the applicant to pave the parking area and that will be added as a condition and was incorporated into the motion.

A vote was taken and the permit was unanimously approved, with conditions.

Discussion and potential action on permit application #0501-18, Michael Moore and John LaRosa, 24 Rosemary Lane, requesting an IWWC permit to conduct activity within 100 ft. of a wetland to replace approximately 32 ft. of an existing wall.

Rebecca Adams reviewed that most members of the Commission had gone on a site visit to the property. She does not feel this is a significant activity though it would require a permit. It would be a matter of making sure the wall is replaced and the soil is retained.

Rob Poturnicki made a motion, seconded by John Manning, to approve permit application #0501-18, Michael Moore and John Lanosa, 24 Rosemary Lane with the usual erosion and sedimentation controls and oversight by Randy Bernotas. Motion carried, with Jim Brown abstaining.

Discussion and potential action on permit application #05020-18, 43 Lake Road, owner Laura Hughes, applicant Sheldon Haag, to install a subsurface sprinkler system within 100' of a wetland (work completed prior to submission of an application).

Randy Bernotas reviewed that a sprinkler system had been installed and he asked them to come in for a permit because they were digging a trench along the retaining wall right up against the lake with no E&S controls. Rebecca Adams agreed that a permit would be clearly required, but the Town does not have any ordinance to assess penalties.

Irene Angiletta felt that they could issue the permit with the condition that they can no longer apply pesticides on the property as they sprinkler system will cause the pesticides to go into the lake. Rebecca Adams stated that, in order to include that as a condition, there would need to be evidence in the record of that impact provided by an expert.

The property owners/applicant were not present at the meeting. Irene Angiletta felt that there were steps that the Enforcement Officer could take and Ms. Adams explained that that would be either a notice of violation or a cease and desist. Ms. Angiletta felt that that should happen so they could show the impact of the pesticides, but Ms. Adams reminded her that the Commission would have to hire someone to do that assessment. Ms. Angiletta had a picture of a sign saying that pesticides were applied to the lawn.

Rebecca Adams will explore this further with Attorney Willis and Randy Bernotas.

Receipt of application #0601-18, 22 Lake Road, Jennifer Fontanella, to construct a paved driveway and remove trees.

Rebecca Adams explained that the Commission has now received this application. Mr. Bernotas suggested the Commission schedule a site visit. Irene Angiletta felt that this property is very close to the brook that enters the lake and there should be some type of buffer.

Randy Bernotas has looked at the property and the driveway situation is just not workable as is. As far as the trees to be removed, some of them are over the deck and a lot of trees were removed by the landscaper that was hired by the foreclosure bank and were left there. Jennifer Fontanella asked about the trees in front and Ms. Adams stated that the Commission will need to take a look first and she does not want to do this piecemeal. She then agreed to check with Attorney Willis and if she is told it is okay, then Randy Bernotas can review the location of the trees and give them permission if they are outside the 100-foot review area.

Ms. Angiletta stated that her concern is really with the driveway and how close it is to the wetland and what material would be used.

Rebecca Adams will suggest some dates for a site visit and Randy Bernotas will notify the applicants.

Discussion of IWWC Enforcement Process and Assessment of Fines and Fees

Rebecca Adams reviewed that Randy Bernotas had suggested fines and fees, but this would have to be passed by Town ordinance. Ms. Angiletta felt that the fees were quite high and would teach violators a

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lesson very quickly. Mr. Bernotas reminded everyone that they had fined Ken Leavitt at Powder Ridge \$1,000 a day for a violation.

Ms. Adams will speak to the First Selectman about the getting the process of creating an ordinance started. Ms. Angiletta did not feel that \$1,000 is appropriate. Linda Li liked the idea of paying double the fee if the work was done without a permit. Ms. Adams explained that that would require a public hearing and the Commission would have to prove that the property owners knew they needed a permit, but that would not be that hard to do. As for the 43 Lake Road property, Irene Angiletta thought that the regulations state that the Commission can request an applicant to appear at a meeting and if they don't, then the Commission has recourse. Ms. Adams will speak with Attorney Willis to see what recourse they would have.

Rebecca Adams asked everyone to think about this issue and bring their ideas to the next meeting.

Enforcement Officer's Report

Randy Bernotas reported that he does a weekly inspection at Laurel Brook Road and it is almost completely restored. He will contact Middletown Water Department for a joint inspection to be sure they are satisfied.

Mr. Bernotas also reported that the contractor for the Eversource project on Cedar Street is waiting for it to get a little bit drier. They will correct any deficiencies and then he will reinspect it.

Chairman's Report

Rebecca Adams reported that there had been an open house at the lake on Saturday where they talked about Lake Smart and rain gardens and plantings. As she was on a boat ride by Rover's, she noticed a truck backing down the driveway at the Carusone property and dumping a huge load of stone. They also had a large shipment of pavers delivered. She then contacted Matt Willis who has drafted a cease and desist order. A show cause hearing will need to be held within 10 days after the order is served. Randy Bernotas added that they were also clearing trees that were not on their property. He has also petitioned to Jerry Russ to have a 20-foot fence installed between the two properties.

Approval of Minutes

Irene Angiletta asked to have the minutes revised where they state that Rebecca Adams resigned.

Discussion of the Need for Protocol

Irene Angiletta had reflected on the last meeting and checked Robert's Rules of Order which states that the presiding officer or chair creates the agenda and that minutes from previous meetings are considered as a legal document. Ms. Angiletta felt that a protocol for transparency needs to be established that will help things move along. She felt that all applications for permits should come to the Agency first and the Agency should determine whether the application is significant or not, regulated or not regulated or a matter of right or not. Rebecca Adams confirmed that that is what the law requires other than issues that are deemed *de minimis*.

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Ms. Angiletta felt that all applicants should come to the Agency first so that the members have the same background as Mr. Bernotas would have. Rob Poturnicki asked why they would be second-guessing what Randy Bernotas tells them. Ms. Adams stated that they would not be asking about items that are *de minimis* and those items need to be delineated. Randy Bernotas summarized that if he felt that anything looked like the Agency should review it, it will come before them. He also mentioned right-of-use issues and Ms. Adams stated that the Commission is legally required to determine whether something is a right-of-use.

Randy Bernotas added that he thought that the Commission was trying to be more user-friendly and Rebecca Adams felt that they were. Irene Angiletta felt that they were too user-friendly. Mr. Bernotas asked about the trees on the property at 43 Lake Road and whether the Agency would go after them if they took the trees down that were outside the 100-foot review area. Ms. Adams explained that she is not trying to hold anyone up, but doesn't want to make any decisions about the property until they see it. Rob Poturnicki felt that the Agency would be treating the applicant differently by making them wait if the trees are outside the review area. Jim Brown suggested that the site visit just be held soon. Rebecca Adams will call Matt Willis tomorrow about this issue.

Rob Poturnicki commented that he wasn't sure what Randy Bernotas was supposed to do if the Agency doesn't trust him to issue permits. Rebecca Adams felt that the Agency needs to be clear about what his responsibilities are. Linda Li felt it was more complicated because they only meet once a month.

Jim Brown summarized that lawyers follow precedent and he understood what was happening with this application tonight. He felt that Ms. Adams was probably protecting the Commission by stalling on this. It was also mentioned that the 100-foot rule is not black and white and several scenarios were discussed. Rebecca Adams explained that case law is very clear that if a project has more than just the potential to result in an impact to the wetland, the Agency has jurisdiction over that regardless of whether it is within the 100-foot review or not. Dr. Brown felt that Rebecca Adams is trying to do the right thing and is not acting as the Agency's attorney.

Matters or Business Raised at Previous Meetings or on Previous Agendas

None.

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

None.

Adjournment

Jim Brown made a motion, seconded by John Manning, to adjourn the meeting. Motion was carried unanimously. The meeting was adjourned.

Respectfully submitted,

Debi Waz

Debi Waz
Alwaz First

Middlefield Inland Wetlands and Watercourses Agency

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Decision:

Motion: That the Middlefield Inland Wetlands and Watercourses Agency, having considered the factors pursuant to Section 10 of the Inland Wetlands and Watercourses Regulations of the Town of Middlefield, Commissioners' knowledge of the area, information observed on a scheduled field walk, and after review of written information and public testimony provided by the applicant on this application finds the following:

1. That the MIWWC declared the activity a significant activity as defined in Section 2 of the Middlefield Inland Wetlands and Watercourses Regulations.
2. That a formal field walk and special meeting for this application was conducted by the MIWWA on June 7, 2018.
3. Because the application proposes a significant activity, the MIWWC held a public hearing at the Agency's regular June meeting, June 20, 2018.
4. That the proposed activity will not have a significant adverse effect on the inland wetlands and watercourses as presented provided all permit conditions are adhered to.

Therefore, the Agency grants, with conditions, approval of the MIWWA Permit Application **#05003-18, 275 Baileyville Road, LaRosa Middlefield, LLC**, for regulated activity associated with paving and the construction of an addition to a commercial building for purposes of operating a restaurant, as presented in written and oral testimony provided by the applicant shown on design drawings, on file in the Middlefield Land Use Office, prepared by Bascom & Benjamin, LLC of Durham and reviewed by Brian Curtis of Nathan L. Jacobsen and Associates Inc., the Town Engineer, for conformance with the engineering requirements of the Middlefield Inland Wetlands and Watercourses Agency Regulations, with the following conditions:

1. That all activities have appropriate sediment and erosion controls in place in accordance with the 2002 DEP Erosion and Sediment Control Guidelines to prevent sedimentation of downstream wetlands and watercourses. In particular, any dewatering activities associated with excavation on site shall have appropriate sediment containment to minimize discoloration of receiving waters.
2. That the permitted engage a certified wetlands biologist who will visit the site and relocate or make accommodations for wildlife as appropriate and necessary.
3. That all paving, parking and ingress and egress be done with asphalt or like material and not crushed stone or gravel.
4. That the Middlefield Wetlands Enforcement officer be notified prior to the proposed start date of construction to verify that appropriate sediment and erosion controls are in place when construction begins.

5. A bond estimate shall be provided to the Town Engineer for the proposed work. The agreed-upon amount shall be bonded with the MIWWA in a form suitable to the Agency's attorney. Bond reductions will be considered after review of the annual monitoring reports.

Inland Wetlands Commission – Action

In Favor	Opposed	Abstained
Rebecca Adams		
Linda Li		
Irene Angiletta		
Jim Brown		
Bob Veeley		
P John Manning		
Rob Poturnicki		

Result: (circle one)

Motion Carried

Motion Failed

Other