

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

Minutes of the September 18, 2019 Regular Meeting

Rebecca Rieder, Chairman, called the meeting to order at 7:02 pm.

Attendance:

| Members | | Alternates | |
|---------|------------------|------------|--------------------|
| X | Rieder, Rebecca | A | Zieminski, Charles |
| X | Angiletta, Irene | | |
| X | Brown, James | | |
| X | Li, Linda | | |
| A | Manning, John | Other | |
| X | Poturnicki, Rob | X | Bernotas, Randy |
| X | Veeley, Robert | A | Curtis, Brian |

A=Absent
 X=Present

Amendments to the Agenda

Rob Poturnicki asked to move item (3) Public Comment to between (8) and (9).

Powder Ridge Veterinary Hospital, Expansion of parking area, 375 Baileyville Road

Rebecca Rieder reviewed that the applicant had been at the prior meeting and the commission asked for further information from Darin Overton about what would be installed. Randy Bernotas explained that this is in the review area and not in the wetlands and is not a significant activity. He met with Jim Fasano and Darin Overton to review the calculations. The apron coming into the driveway will be extended to keep some of the run-off from Baileyville Road from going down the driveway and everything will be pitched toward the north side of the property with a swale leading into a basin, slowly infiltrating into the wetlands.

Ms. Rieder reviewed that this will actually reduce the flow of water into the wetlands and that will make the situation better. The question before the Commission is about paving the entire area. The Commission is in favor of having the entire area paved. Attorney Branse asked if there has been an application and if the Commission would like that to be a condition, the Wetlands Enforcement Officer can make that a condition of his staff permit. He also suggested that they can use pervious concrete, pervious bituminous or and pavers since the Commission would not want gravel.

Luis Fernandes, Update of progress on driveway and rain garden, 223 Baileyville Road

Luis Fernandes explained that they had originally proposed a rain garden at the end of the driveway, but have since restructured the driveway and altered the entryway, with an extended apron, so that the water from Baileyville Road continues north and into the catch basin. All of the asphalt has also been eliminated. Mr. Fernandes has spoken with both Randy Bernotas and Jerry Russ and they now feel that a rain garden is not necessary. Rebecca Rieder explained that the permit was issued with the condition of asphalt and a rain garden and he would need to get an amendment to the permit.

Mr. Fernandes felt that the permit specified a rain garden because of the asphalt, but Ms. Rieder explained that the Commission favors asphalt paving, but the rain garden was not specifically because of the asphalt. Mr. Fernandes explained that the driveway was originally paved from top to bottom, but since they restructured the entry point into the property, they have removed all of the asphalt. Originally, all of the rainwater off Baileyville Road was entering into his driveway.

Rebecca Rieder explained that a lot of debris ends up in the lake, including that from non-paved driveways. That has led the Commission to require paving. Randy Bernotas reviewed that the original pavement was for the addition and there would be an increase in the amount of impervious surface with the roof. At that time, Mr. Fernandes had stated that he would be eliminating some asphalt to make room for the addition and that he would install a rain garden at the bottom of the driveway and that is what the Commission issued the permit on. Ms. Rieder reviewed that the permit conditions were done to preserve the lake and get the best conditions possible. She added that if the change of flow turns out to make the rain garden unnecessary, then that will play out but the applicant would need to come in for an amendment. She explained that the Commission will be looking to see what the total change is in water flow.

Attorney Mark Branse asked if Mr. or Mrs. Fernandes had an engineer involved in the design and Randy Bernotas noted that Brian Curtis, the Town Engineer, had reviewed it. The original plan had been prepared by an architect. Attorney Branse stated that any amended application would need to be prepared by a professional. He also asked how much time is left for a rain garden to be planted and Ms. Rieder stated that she would have expected it to be in by now. Mr. Bernotas recommended that it not be done until the Spring, if it is going to be put in. Rob Poturnicki noted that a rain garden doesn't necessarily have to have any specific plants in it. Mr. Fernandes thought that the rain garden was just going to be stone.

Rebecca Rieder reviewed the responsibilities of the Zoning and Building official vs. the Inland Wetlands official. It was suggested to have their architect or engineer contact Randy Bernotas and they hope to have an amended application in by the next meeting. Jim Brown reviewed why the Commission prefers asphalt over gravel.

Lakeview Estates conditions of development and homeowners' association responsibilities

Rebecca Rieder reviewed that the homeowners' association has met with Randy Bernotas. The president of Lakeview Estates confirmed that they met with Mr. Bernotas to define the parameters of what their responsibilities are. He reviewed that the development of this community goes back many years, but the final paving was done this summer. As an association, they are pretty new to this and not very familiar with wetlands regulations. The association met last week which resulted with concerns and questions. The homeowners had an understanding of what they could do when they purchased the properties, but it now appears that that may not be exactly correct. He encouraged the individuals that would be directly affected to speak for themselves.

Rebecca Rieder noted that there should be an agreement for the association that sets forth all of the conditions and that the permits, along with their conditions, are incorporated in that. She reviewed that this Board worked on this permit for a very long time to ensure that retention ponds would work properly and that there wouldn't be additional sedimentation into the lake as well as that plantings would be present.

Randy Bernotas added that the items of contention that have been identified include the strip of vegetation between the beach and the actual properties that was supposed to be planted, docks on the beach and the aesthetic appearance of the retention ponds. He noted that the cattails and phragmites have to be removed so that the ponds function.

One of the property owners stated that they all want to be good neighbors of the lake and they care about the environment. Another property owner asked if there was a particular time of year that the cattails should be cut back and Randy Bernotas told him that it was preferable to be in the Fall. Brian Curtis had mentioned that they should be cleaned out twice a year, but Mr. Bernotas felt once a year would be sufficient as long as there is no overgrowth.

Kim Hartman asked if the cattails need to be cut down or actually dug out and removed. Randy Bernotas offered to speak to their landscaper and explained that they usually cut them and then paint the top of them with herbicide.

Paul Farrell understood that the Commission would like the cattails removed, but they are right in his backyard and they like how they look. Ms. Rieder reiterated that there were reasons behind the retention ponds and any conditions put on the permit. Mr. Farrell added that the retention ponds work, even with the cattails. Randy Bernotas explained that as cattails die off, they settle to the bottom of the basin and over time, the basin will eventually fill up. Ms. Rieder suggested the homeowners' association get a professional to work on this issue along with the Town's professionals.

Joan Bauer asked if plantings around the retention areas are acceptable and, again, Ms. Rieder reiterated that they are revisiting everything that got resolved over hundreds of hours and she wasn't sure how to handle that. She felt that the Commission will have to ask their attorney and engineer to see how to best handle this. Attorney Branse acknowledged that the original developer had an engineer and that would be who to speak to. Jim Brown asked if there were restrictions on what the homeowners could plant in their own yards and Irene Angiletta recalled that they had been concerned about trees and docks originally.

Rebecca Rieder also explained that each of the property owners should have received a copy of the Lakeview Estates declaration when they purchased their property. Randy Bernotas asked if some of the more stringent items, like the retention basins and the vegetative strip, should have been in the deeds.

A property owner asked if there was any recourse on the builder who should have planted the vegetative strip. Randy Bernotas wasn't sure, but thought that there may be. Ms. Rieder stated that there is a bond that hasn't been released as of yet. Attorney Branse suggested that it may be time to call the bond and use the money to do the remaining work.

Brian Solomon, from 8 Lakeview Estates, stated that the developer told them they can cut down the 25-foot strip twice a year and worried that in years, it will become a forest and he won't be able to see the lake at all. Randy Bernotas stated that that was why there was supposed to be plantings there. Mr. Solomon verified that they are allowed to cut up to that 25-foot line and Ms. Rieder stated that they were.

Another property owner asked about the section of the beachfront that wasn't touched and wondered if they can remove the brush in that area. Ms. Rieder explained that the beach is where the beach is going to be and that is limited. No further expansion of the beach will be allowed. The property owner just wanted to clear the underbrush so that the existing beach is accessible. Mr. Bernotas asked if there was a walking path on that side that goes to the beach area and the property owner confirmed that there is. He would just like to remove the scrubby brush. Ms. Rieder would like to have the engineers look at that area as well. Attorney Branse explained that it is precisely that material that has the most substantial filtering function for the lake. He also recommended that the engineers deal with these issues.

Mr. Bernotas also noted that he will recommend extending the pipe between the two properties on the lower cul-de-sac.

The president of the homeowners' association summarized that they can possibly use the bond money to get the plantings done and Ms. Rieder agreed, but stated that there were some other issues as well dealing with other agencies.

Michael Carusone, 255 Baileyville Road, Enforcement Action

Rebecca Rieder stated that the issue is the driveway going in and the site visit. It became clear that they would not be able to comply with the conditions of the permit and they have not submitted further documentation. The permit was denied for incompleteness.

As soon as the CO was issued, a gravel driveway was installed. Jerry Russ visited the site as that is not in compliance with Planning and Zoning and they are now planning to schedule a Show Cause hearing. Mr. Carusone's attorney has been notified and the information will go out. The hearing will determine how this came to be and whether it's a violation.

Attorney Branse explained that a Show Cause hearing follows the issuance of an order and asked if an order has been issued. Ms. Rieder explained that no order has been issued, but the Commission has already tried to avoid an order. Randy Bernotas reminded everyone that he is recused from the matter. Attorney Branse explained that, by statute, the hearing must be within 10 days of the issuance of the order.

Michael Carusone stated that he is talking with the engineer and something will be drawn up and a permit will be pulled. Ms. Rieder explained that this is not a building permit issue and that the issue is that the grass area needed to remain. Mr. Carusone stated that there was no grass on the side of the house. Ms. Rieder reviewed that the Commission had done a site visit when the driveway was proposed and they spent quite a bit of time with the engineer and did a lot of measuring. They took a lot of pictures and the surface was pervious at the time. Nothing was supposed to be filled in and there wasn't supposed to be any change in grade. There was no permit issued for that. Since the Commission did not know that work had commenced on the drainage system, no one from their office was there to see how it was being done.

The Commission discussed possible dates for the hearing and Rebecca Rieder will send a copy of the order to all of the members. Attorney Branse explained the Commission's options at the Show Cause hearing, which include rescinding the order, continuing the order or referring the matter to counsel for civil action.

Rob Poturnicki made a motion, seconded by Linda Li, to issue an order on September 23, 2019 with a Show Cause hearing on October 2, 2019. Motion carried unanimously,

Attorney Branse also suggested that, since Randy Bernotas has recused himself from this issue, the Commission needs to have a back-up Wetlands Enforcement Officer and suggested several options for that.

Randy Bernotas also added that Planning and Zoning approved the parking area at Powder Ridge Veterinary Hospital before the Wetlands Commission was done with the process. Attorney Branse explained that they are not allowed to do that. Rebecca Rieder would like to have a training session for all staff and commission members who would like to attend. Attorney Branse mentioned that there will be an advanced Land Use training session on Saturday, October 26th at the UCONN Extension Service Office in Haddam.

Rebecca Rieder made a motion, seconded by Rob Poturnicki, to appoint Brian Curtis as the back-up Inland Wetlands Enforcement Officer for the Middlefield Inland Wetlands Agency. Motion carried unanimously.

Sean Hayes, Powder Ridge Ski Area and Resort, Maintenance of silting pond

Sean Hayes, from Powder Ridge Ski Area and Resort, explained that they have a sediment basin in front of their pond that needs to be maintained this year. It is about one-third clogged in the pipe. He believes that it is mainly from some of the synthetic work they did and the cutting that Lymans did for their fence. He has a plan that was outlined by their engineer. They will go back down to the clay liner that is present and repair any sides with rip-rap, if necessary, clean the pipe by hand and put it back together. He feels that the work won't take more than a day.

Randy Bernotas felt that this was absolutely maintenance. Attorney Branse asked if this maintenance was a condition of the original approval, but Mr. Hayes did not feel there was any stipulation on the sediment basin. Attorney Branse asked if it would cause silt to flow into another body of water if this area was not cleaned out and it was explained that it would. Mr. Hayes explained that the material taken out of the basin will be brought up the hill, back to where it came from. Attorney Branse quoted section 4.2 of the regulations regarding soil conservation and suggested that this request could be seen as a jurisdictional

determination and the Commission could vote that this is an activity that is exempt and it may proceed on this occasion as well as other occasions, as required.

Rob Poturnicki made a motion, seconded by Jim Brown, to move that the Commission finds that the removal of material from the retention pond on the south side of the driveway is considered to be a soil conservation measure and therefore exempt under section 4.2(a) of the IWWC regulations. The Commission requests prior notice to the WEO before commencing future work. Motion carried unanimously.

Enforcement Officer's Report

Randy Bernotas reported that the two projects that Cahill did for the town are both complete. There has been some feedback about the project on Old Indian Trail and it came out great.

Mr. Bernotas also noted that there was some landscaping going on at the corner of Mattabeseck and Cherokee and they have installed hay bales. There is a pile of spoils from long ago that have been deemed polluted on Brookside Drive and, because the business was sold, they have to make sure the land has no liens on it. That issue is being handled by the state.

Mr. Bernotas also stated that they have put an engineered septic system in at 20 Edgewood Court and he finally got the property owner to put up silt fencing until it's stabilized. He also mentioned that the storm drains on Baileyville Road have finally been vacuumed out by the State. Mr. Bernotas did ask to be notified of where the soil will be deposited.

There was some discussion about the Lakeview Estates issues and how the problem really is with the contractor.

Approval of Minutes

Jim Brown made a motion, seconded by Rob Poturnicki, to approve the minutes of the August 21, 2019 meeting, as presented. Motion carried, with Linda Li abstaining.

Public Comment

None.

Matters or business raised at previous meetings or on previous agendas

Rob Poturnicki asked if it would be possible to have Jerry Russ attend the Show Cause hearing on October 2, 2019.

Linda Li asked about the ordinance to levy fines and Rebecca Rieder stated that she and Ed Bailey have talked about it and have a draft back from the attorney. At this point, it is a matter of Ed Bailey scheduling the public hearing and it hasn't been a top priority. She will ask him to move it forward.

Rob Poturnicki commented that he feels the Commission really needs to pay attention to dates and not give open-ended deadlines. Rebecca Rieder felt that the Fernandes property needs to get paved and that

was what the permit was based on. Attorney Branse explained that the Commission should not have to impose any conditions when the plan shows the work being proposed, i.e. if the plan shows it paved, then it should be paved. Mr. Poturnicki asked if the approved plan showed paving and Ms. Rieder stated that he had never stated he was taking up any asphalt. Mr. Bernotas recalled that Mr. Fernandes had stated that he would remove “some” asphalt and replace it with grass and a rain garden to offset the area of the roof. Mr. Poturnicki did feel that what they did was a good idea and makes sense.

Members’ suggestions for matters for addition to the current agenda or for discussion and inclusion on future agenda

Randy Bernotas asked who asks the state to start the draw-down on the lake and Rob Poturnicki explained that it is supposed to be automatic.

Adjournment

A motion was made and seconded to adjourn the meeting. Motion was carried unanimously. The meeting was adjourned at 8:47 pm.

Respectfully submitted,

Debi Waz

Debi Waz
Alwaz First