

**TOWN OF EAST WINDSOR
INLAND WETLANDS WATERCOURSE AGENCY**

Regular Meeting – February 1, 2017

MEETING MINUTES

*******Draft Document Subject to Commission Review/Approval*******

CALL TO ORDER: Chairman Baker called the Meeting to order at 7:00 p.m. in the Town Hall Meeting Room, 11 Rye Street, Broad Brook, CT.

ESTABLISHMENT OF QUORUM:

Present: Regular Members Alan Baker (Chairman), Richard Osborn, and Rebecca Talamini, and Alternate Member Steve Smith.

Unable to Attend: Regular Member Dave Menard and Alternate Member Michael Sawka

Guests: Deputy Selectman Richard P. Pippin, Jr., Inland/Wetlands Liaison; Kathy Pippin, Board of Finance.

Chairman Baker noted the establishment of a quorum with 3 Regular and 1 Alternate Member as noted above. All members will sit in on votes this evening. .

Also in attendance was Wetlands Enforcement Official Shawn Rairigh.

AGENDA ADDITIONS:

MOTION: To ACCEPT the Agenda Addition under Item IX **MISCELLANEOUS**, bullet 3: 47 Broad Brook Road – Herbert and Kathleen Holden - As-Of-Right-to-Farm activity at 47 Broad Brook Road, Broad Brook– Permit Modification.

Talamini moved/Osborn seconded/**DISCUSSION**: None

VOTE: In Favor: Unanimous

APPROVAL OF MINUTES/1) January 4, 2017 – Regular Meeting:

MOTION: To APPROVE the Minutes of Regular Meeting dated January 4, 2017 as presented.

Osborn moved/Talamini seconded/**DISCUSSION**: None.

VOTE: In Favor: Unanimous

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PUBLIC HEARINGS: None

CONTINUED PUBIC HEARINGS: None.

NEW APPLICATIONS TO BE RECEIVED/1) #01-2017/Gerald Wilcox – Request to conduct regulated activities to construct single family home at 41 Winkler Road. Map 114, Block 24, Lot 073, Zone A-1:

Wetlands Enforcement Official Rairigh advised the Commission that Mr. Wilcox is presenting an application for construction of a single family home on the subject lot. Mr. Wilcox was approved for an Inland Wetlands Permit in 2004 for a similar application; that permit carried a 5 year permit duration. The first lot of a subdivision was completed/constructed in 2005. This lot was subsequently sold to another party, who received a Special Use Permit for an accessory apartment through the Planning and Zoning Commission in 2007; the home and accessory apartment were never built. The Inland Wetlands Permit has expired; an extension was not requested. The Zoning Permit is still valid. Mr. Wilcox is now looking to repurchase the property and is looking to construct the dwelling as originally proposed.

Mr. Wilcox, speaking from the audience, indicated the engineer has gone back, re-stamped the plans, and has certified that everything is the same as originally proposed. Nothing has changed with regard to the (North Central) Health Department. He is requesting expedited action as there is a clause in the purchase agreement requiring proof of approval of the proposed dwelling construction. The Commission discussed procedural options.

MOTION: To ACCEPT Application #01-2017 Gerald Wilcox for a request to conduct regulated activities to construct single family home at 41 Winkler Road. Map 114, Block 24, Lot 073, Zone A-1, AND to APPROVE the Application as an Agent Decision.

Osborn moved/Talamini seconded/DISCUSSION: None

VOTE: In Favor: Unanimous (Baker/Osborn/Smith/Talamini)

NEW APPLICATIONS TO BE RECEIVED/2) #02-2017/Montserrat Realty/Connecticut Mulch – Request to conduct regulated activities to clear land in upland review area on property at North Road/Route 140 (no street number), B-3 Zone; Map 113, Block 16, Lot 021. Application being filed to lift Cease and Desist Order regarding Violation of Section 6.1 of the Inland/Wetlands Regulations.

Wetlands Enforcement Agent Rairigh noted no one is present representing Connecticut Mulch this evening.

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Wetlands Enforcement Agent Rairigh summarized that in March, 2016 the Acting Wetlands Agent noticed activity, including logging and clearcutting of forest, on the subject property. The activity was brought to the Commission's attention as a Violation; discussion occurred with a representative from Connecticut Mulch in October and November, 2016. The representative was advised to file an application outlining what he proposed to do in the way of further activity, and was told to reseed the area logged with New England seed mix.

Wetlands Enforcement Officer Rairigh reported the representative submitted an application, accompanied by an inadequate map which was not a signed site plan. On several occasions Wetlands Enforcement Officer Rairigh advised the representative of the need for certified plans, and a narrative of proposed activities. The plans before the Commission tonight, and the narrative indicating the seed mix has been planted, were received in the Planning Office at approximately 4 o'clock this afternoon, leaving no time for review before submission to the Commission. Review of the plans during the meeting found no indication of the proposed activities. Wetlands Enforcement Officer Rairigh noted he was advised during earlier phone conversations Connecticut Mulch wants to clear the road frontage for potential sale, however almost all of the frontage is wetlands. Discussion followed regarding the lack of information necessary to consider this application.

Chairman Baker noted the plan submitted this afternoon is dated 2010; it fails to show the activities performed in 2016, nor does it show the intended work. Chairman Baker suggested it's in the applicant's best interest that the Commission not accept this application this evening as acceptance would initiate the approval timeframe. Should the Commission be unable to hold meetings for any reason, and information be lacking, it could jeopardize approval. Chairman Baker suggested the Commission could hold a Special Meeting if necessary to assist the applicant complete the desired work.

MOTION: To NOT ACCEPT AS IT IS INCOMPLETE Application #02-2017/Montserrat_Realty/Connecticut Mulch for a request to conduct regulated activities to clear land in upland review area on property at North Road/Route 140 (no street number), B-3 Zone; Map 113, Block 16, Lot 021. Application being filed to lift Cease and Desist Order regarding Violation of Section 6.1 of the Inland/Wetlands Regulations.

Osborn moved/Talamini seconded/

DISCUSSION: The Commission welcomes the applicant to resubmit an application containing documentation as discussed.

VOTE: In Favor: Unanimous (Baker/Osborn/Smith/Talamini)

NEW BUSINESS: None.

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OLD BUSINESS: Nothing pending.

MISCELLANEOUS/1) Informal Discussion – M & L Development, proposed single family house. Wells Road (no current street number). Map 115, Block 28, Lot 31. Zone A-1.

Appearing for this discussion were Attorney T. Mark Barbieri, Gary Merriman and Dan Merriman, of M & L Development, and Richard Zulik, environmental consultant.

Attorney Barbieri reported M & L Development has built many other properties in East Windsor, among them Mason's Brook off of Route 5/South Main Street. They have found this lot on Wells Road owned by the McBeth Estate. The McBeth family has owned this lot since 1953, which pre-dates zoning and/or wetlands regulations. Discussion with Town Planner Whitten has determined the lot is a "lot of record"; the Merrimans are proposing to construct a single family ranch style home with driveway access. The lot is presently not identified by a street number, but is located on the north side of Wells Road approximately ¼ to a ½ a mile from North Road; approximately 2/3 of the lot is impacted by wetlands.

Attorney Barbieri reported that adjacent lots were heavily filled to enable construction of homes. A berm was constructed along the Wells Road frontage; the assumption is that construction of the road and homes caused the subject lot to be impacted by the adjacent run off. Wells Road has subsequently been redone, which has improved drainage on the north side. The land across the street on the south side is a tobacco field. Sewer is now available to this lot; lack of public water would require installation of a well. The present proposal would require construction of the home and access driveway to be located within the wetlands.

Attorney Barbieri suggested they felt the Planning and Zoning Commission would probably be ok with this proposal but they felt discussion before this Commission would be prudent. They feel there are no prudent and/or feasible alternatives regarding location of the improvements. Discussion followed regarding weighing the role of the Commission regarding wetlands preservation vs. the owners' belief that they have been paying taxes on a lot of record for many years.

Commissioner Osborn questioned how far off the road construction is proposed, and would fill be brought in? Mr. Zulik indicated the dwelling location would be approximately 65' off the road; minimal fill would be added around the home and driveway. A 12 inch culvert would be installed under the driveway for passage of water. In response to Commissioner Osborn's question Mr. Zulik indicated a 2 car garage would be included below the dwelling. Mr. Zulik noted the present soils are sandy Scarborough soils. He suggested this is a small wetlands, perhaps a ¼ of an acre. He would not define this wetlands as being tremendously valuable; some storage would

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remain for flood storage; he believes the flora and fauna will remain. Mr. Zulik suggested perhaps ½ of the wetlands would be disturbed during construction. Mr. Zulik suggested they would prefer to construct the home on the wetlands mound but need that area for the well and must also maintain a separation distance. In summary, Mr. Zulik felt there were no prudent and feasible alternatives to the construction of the home in the wetlands.

Chairman Baker suggested an alternative would be not constructing the home at all. The proposal really cuts the existing wetlands in half. He questioned the current flow of water, and what will it be after construction? Mr. Zulik indicated the water currently flows east to west; Attorney Barbieri suggested the drainage across the road is in the northeast corner. Chairman Baker questioned if the riprap pool will handle the run off? Mr. Gary Merriman reported the engineer has looked at this; the elevation of the garage floor is 100 feet while the street elevation is 101. He suggested they have positive pitch. Mr. Zulik noted the plans before the Commission are conceptual plans; they would return with more detailed plans showing erosion controls, etc.

Attorney Barbieri suggested that the wetlands laws were put into place to preserve the wetlands, and if work was to be done that it was done in a thoughtful way. He felt that didn't mean not to do anything. He reiterated that the Town thought it was an existing lot because they built in a lateral at the road, and the original family has owned this since the beginning and thought they could do something with it. Attorney Barbieri indicated they didn't want to get into a taking; it's not their intent to do that. Commissioner Osborn noted the concern isn't just where the house is built but also what the buyer does after purchase; often a buyer will fill in nearby wetlands without seeking permission from the Commission. That's a problem for the Commission. Mr. Zulik suggested installing tags at the wetlands line, and advisement to the buyer. Chairman Baker cited the tags are usually used for Conservation Easements; people often just cut them down. He reiterated this is a tough lot. Discussion continued regarding options for wetlands preservation. Attorney Barbieri cited other lots with similar conditions which he felt were buildable; he referenced a lot on Tromley Road where the house was torn down and someone was allowed to rebuild as an example. Mr. Gary Merriman noted they had constructed 5 houses on Tromley Road in sensitive areas, and have had no problems with those lots. Chairman Baker welcomed the Merrimans to return with a plan, which should include the following:

1. What can be included for wetlands protection after purchase by a new, or subsequent, owners?
2. Address flooding issues.
3. Indicate the amount of permeable pavement utilized.
4. Keep filling to a minimum.
5. Where will the dirt go during construction?

Wetlands Enforcement Officer Rairigh suggested an option to minimize enforcement for the new owner would be including a Conservation Easement on the lot; the conservation

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area would go with the land and could be marked. Chairman Baker concurred that option would be legally binding. Wetlands Enforcement Agent Rairigh suggested the Conservation Easement could be referenced on the deed.

Discussion concluded.

MOTION: To TAKE THE AGENDA ITEMS OUT OF ORDER to hear Item IX MISCELLANEOUS, bullet 3: 47 Broad Brook Road – Herbert and Kathleen Holden - As-Of-Right-to-Farm activity at 47 Broad Brook Road, Broad Brook – Permit Modification.

Talamini moved/Osborn seconded/DISCUSSION: None

VOTE: In Favor: Unanimous (Baker/Osborn/Smith/Talamini)

Appearing for this discussion was Herb Holden, Jr., representing his parents, Herb and Kathleen Holden. Also present were Herb Holden, Sr., and Paul Muniz, licensed environmental professional, of environmental partners, lock.

Mr. Holden, Jr. reported that in October of 2015 his family presented a plan for construction of a new barn for their cow farm. They have found that the soils on their property weren't working; they have been looking for other soils. About 3 or 4 weeks ago they were contacted by CREC, which is building Two Rivers High School on Griffin Road in Bloomfield. CREC has found some of the soil on that property is contaminated with pesticides as the property was previously used as a tobacco field. That project would generate approximately 60,000 to 70,000 cubic yards of material. This material is considered agricultural soil; CREC, and DEEP would like to see that soil repurposed on another farm rather than have the material sent to a landfill.

Mr. Holden, Jr. reported the plan for their proposed barn is impacted by some wetlands to the south. Those wetlands were flagged in 2015 by John Gianni. Because the barn is an agricultural use it's a right-to-farm use/permit. The soil from the CREC location is a low concentration residual pesticide. Mr. Holden, Jr. indicated they would bulldoze the native soil into a boundary berm, install silt fence in front of it, then bring in the CREC soil, and finally push the berm of native soils back over the contaminated soil.

Wetlands Enforcement Official Rairigh indicated he has spoken with Mr. Muniz, and Maurice Hamel, of DEEP. The amount of contamination isn't enough to require DEEP jurisdiction, however they would like the agricultural soil to be used for another

agricultural purpose. Commissioner Osborn questioned if the contamination was EDBs? Mr. Muniz replied negatively, noting it was chlordane. Wetlands Enforcement Official Rairigh had asked Mr. Hamel if the native soil could be "capped"; he had responded

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negatively. Wetlands Enforcement Official Rairigh offered an e-mail exchange as documentation.

Commissioner Osborn questioned how many years had the Bloomfield property been farmed? Mr. Muniz reported it was a former tobacco field on Griffin Road which has been abandoned for some time. CREC is starting their building project and wants to remove the contaminated soil before installation of playing fields. Mr. Muniz referenced a similar situation in Enfield where soil was used for school recreational fields which was later found to be contaminated; those fields were required to be replaced after several years of use by students. Mr. Muniz suggested CREC is driving this proposal; DEEP doesn't want to see the agricultural soil go to a landfill. Mr. Muniz suggested all parties want assurances from the others they are aware of the situation and are in agreement as to the resolution. He referenced an e-mail of 1/30/2017 in which Mr. Hamel indicated that DEEP "supports the soil reuse....." Chairman Baker suggested the Commission wants supporting documentation as well.

Chairman Baker cited State land nearby the Holden property; he noted a fenced in pasture can be seen, and cows can be heard, from the State property. He questioned the location of the Holden property in relation to the State land? Mr. Holden, Jr. referenced a site plan, noting some distance from the property mentioned by Chairman Baker.

Commissioner Smith noted that they are providing this information to the Commission; he questioned from a regulatory standpoint what jurisdiction the Commission has? Mr. Muniz suggested the Holdens are providing information to the Commission regarding their previous application, and the impact of the proposed changes. He indicated that the source location in Bloomfield is closer to the Farmington River than the Holden's location is to the Scantic River.

Wetlands Enforcement Official Rairigh suggested Mr. Hamel had discussed a range of cubic yards involved in this reuse; he questioned Mr. Holden if they would be taking any surplus material as well? Mr. Muniz suggested it could be 50,000 to 70,000 cubic yards of material removed from the CREC location; there could be an additional 10,000 cubic yards of additional material not needed for the barn project. Mr. Hamel had suggested any surplus could be spread on pasture land.

The Commission thanked the Holdens for bringing this plan modification to their attention.

MISCELLANEOUS/2) Melrose Bridge Grant:

Wetlands Zoning Official Rairigh reported the American River Heritage Commission had applied for a grant to repair the Melrose Bridge for foot traffic. Under the Connecticut Recreational Trails Program they have received approximately \$80,000 towards a \$107,000 repair cost. The original trusses and decking of the bridge are gone; the

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proposal is to drop a pre-fab bridge between the existing supports. They would not be touching the stream bank, they would also be striping the parking lot and adding a kiosk. They also need to remove one tree near the west bridge abutment; the bid for removal is \$15,000. People will also now be able to launch canoes from this location. The bridge will provide pedestrian access only; it will no longer be available for vehicle use.

AGENT DECISIONS:

Wetlands Enforcement Official Rairigh has nothing pending. He will advise the Commission regarding the Wilcox application assigned to him this evening.

STATUS REPORTS:

See discussion under **VIOLATIONS.**

VIOLATIONS:

Wetlands Enforcement Official Rairigh suggested the Connecticut Mulch issue currently remains a Violation until remedial plans are submitted.

CONFERENCES/SEMINARS/TRAINING:

Wetlands Enforcement Official Rairigh reported he recently attended a conference sponsored by CAZEO which gave a presentation on a new permitting standards for wastewater system management. He gave the Commission a brief description of the presentation

CORRESPONDENCE/1) Steele – Southeast Road Reconstruction Project (Enfield):

Wetlands Enforcement Agent Rairigh advised the Commission East Windsor received notification of a repaving project scheduled for Steel Road in Enfield. Approximately $\frac{3}{4}$ of a mile of road is involved. East Windsor has been advised as the project is within 500' of the proposed project.

GENERAL BOARD DISCUSSION:

Chairman Baker referenced staff e-mail of the availability of a CACIWC conference on legal processes.

PUBLIC PARTICIPATION (Discussion on non-Agenda items only):

No one requested to speak.

ADJOURNMENT:

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MOTION: To ADJOURN this Meeting at 8:12 p.m.

Smith moved/Talamini seconded/VOTE: In Favor: Unanimous

Respectfully submitted:

Peg Hoffman, Recording Secretary, Inland Wetlands and Watercourse Commission