

**INLAND AND WETLANDS COMMISSION
REGULAR MEETING
September 1, 2010**

Commission Chair Mary Davis called this meeting to order at 6:02 P.M. with the following in attendance:

MEMBERS:

Mary Davis, Chair
Joseph Bakstis, Vice Chair, Absent
Sally MacKenzie, Secretary
Lars Johnson, Alternate

OTHER:

Keith Rosenfeld, Town Planner, WEO
Attorney Edward Fitzpatrick
Sheryl Kimiecik, Secretary
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1. Commissioner Davis took attendance and noted there was a quorum and placed Lars Johnson as a regular voting member. She opened the meeting with the Pledge of Allegiance.
2. **VOTED:** Unanimously on a motion by Lars Johnson and seconded by Sally MacKenzie to enter into the executive session at 6:10 P.M. to meet with Borough Attorney Fitzpatrick regarding on-going litigation, Manuel and Ilda Preta vs. Naugatuck Inland Wetlands Commission, inviting in Attorney Edward Fitzpatrick.

Commissioner Davis reconvened the regular meeting at 6:36 PM.

3. There was no public comment.

4. **OLD BUSINESS**

- A. Report from Borough Engineer regarding storm water/drainage issues located within the Union City Road neighborhood.
There was no report.
- B. Commission discussion/decision for regulated activities associated with the Paddock Ridge Subdivision, a proposed 13 Lot Subdivision (IW #10-03) located at the end of King Street, Applicant: Manuel N. and Carole J. Vieira.
No discussion.

5. **NEW BUSINESS**

- A. Commission discussion/decision regarding stipulation of approval of ongoing litigation, Manuela and Ilda Preta vs. Naugatuck Inland Wetlands Commission. Commission Chair Mary Davis noted that this is a public discussion. Edward Fitzpatrick, Borough Attorney, said that it is regarding pending litigation on an application for a site plan approval for 850 Rubber Avenue. He said it is currently

pending in court. He continued to say that the Inland Wetlands Commission had entered into discussion with the applicant after the applicant had filed an appeal from a denial on January 10, 2007 of its application. The case, for the record, has been pending for almost four years and as a result of the mediation and discussions there is a proposed agreement that is being presented tonight for the Commissions consideration. Attorney Fitzpatrick identified the stipulation for the record titled; Stipulation of Approval Manuel Preta vs. Beth Burns et al, Application for Preta Site Plan (IW #60-10) 850 Rubber Avenue Naugatuck Ct, and carries a revision date of 9/1/2010, 6:24 P.M. He noted that the Stipulation for Approval should be marked together with the map that was submitted for the record, and said that it is recommended that the Commission approve the site plan that has been revised through August 19, 2010. He said the highlights of the plan are a 25 X 50 ft. structure as shown on the site plan which contains a series of notes and a construction sequence. Part of the agreement is that the applicant will construct a 2 ft. high block wall to prevent further erosion of the property and reduce the volume of discharge of service water into the brook. There is also the addition of underground dry wall chambers along with a filter system which are required to be changed at least twice per year with the requirement that the applicant provide proof to the Commission that the filters have been changed. Also, Mr. Preta must notify the Commission no less than 48 hrs prior to the commencement of work. It is also proposed that an as-built A-2 survey be supplied. He continued to say that there is also a letter of credit which will be established by the Commission at a later date. Commissioner Davis called for public comment. There was no public comment.

VOTED: Unanimously on a motion by Lars Johnson and seconded by Sally MacKenzie to approve the stipulation of the application for the Preta Site Plan, (IW # 60-10) 850 Rubber Avenue, Naugatuck Ct, as revised 9/01/2010.

- B. Commission discussion/decision and determination of significant activity for regulated activities associated with Country Farms Subdivision (IW # 04-12). Commissioner Davis said that there were still a few questions on the status of the permit and if it was still valid. She acknowledged a letter from Keith that listed the timeline. Attorney Fitzpatrick said that a review of the files reveals that the WEO report concerning the appeal dates are correct. The question of an appeal from a land-use body is a matter that has been commented on by Attorney Fuller and also the appellate court, but final analysis of the policy seems to be that when someone obtains a land-use permit and as a practical matter is prevented from developing the property because of an appeal that the permit periods are tolled, or stopped. He cited a court case which talked about requirements. He said that the legal philosophy is that if an applicant has operated in good faith but is a subject of an appeal in the land use process then the period for the permit approval gets tolled. Pending the current situation the tolling of the permit is correct and assuming all of the requirements have been met, it is the Commissions discretion as to accept the application or not as a new application or a modified application. Commissioner Davis asked how the Commission would know if it is a modified application or if a

new application is needed. Attorney Fitzpatrick replied that all of the requirements would be the same and that the Commission should ask the applicant to show and explain the changes, and the Commission then gets to decide if the application should be a new application. Commissioner Davis asked if it is accepted as a modification then would the old regulations will apply. Attorney Fitzpatrick said that the Commission gets to make that determination. Sally asked why it is named differently. Attorney Fitzpatrick replied that the permit that was granted goes with the piece of land regardless of who owns it. Commissioner Davis said that it does matter because the taxes have to be paid. Attorney Fitzpatrick said that it is a matter of completeness and that is different from whether it is accepted as modified or not. Attorney Matthew Woermer, representing the applicant, addressed the Commission and said that the taxes had been paid. Keith said that the receipt was hand delivered by the tax collector. He said that part of his memo to the Commission was a list of eight items to start the comparison which he cited from his report. Mr. Woermer, addressing the first bench mark, said that there is a change in the 83 lot approval to a PDD, and under the PDD the applicant/developer would have to maintain sewer systems and utilities so there is no cost to the municipality. He said from a wetlands perspective the main road remains identical, and he referred to a map that Roland had prepared with an overlay showing the original plan and the current proposed plans, which was submitted to the Commission. He said that under the new regulations that a portion of the road would be in the 100 ft. setback. Roland referred to the map of the previously approved Country Farm Estates. He explained that the drainage that was approved has not changed. In the current proposal no units are within the 100 ft. setbacks. Roland said that the road is in the same location, and the only change is that the sidewalk will run along five or six houses on one side and then run along the other side, mostly for aesthetics. It will be a private road but they are expecting the public to be using it. He said that the changes are that they are eliminating the recreation field and putting in cul-de-sacs, and eliminating some houses to include a club house and swimming area. He showed maps to the Commission of lot 10, 38 and 40 of the grading that was approved. Keith said that some of the concerns were the number of units and the placement of those units, and he asked if they had examined the limit of disturbance. Attorney Woermer replied that the population is a very specific fifty and older community which tends to have less of a population than a single or multi family subdivision. Commissioner Davis asked if the detention basins were sized and placed accordingly. Roland replied that the overall disturbance is the same, and he showed the Commission on the maps. Commissioner Davis asked Keith about the soil and erosion controls. Keith said that he would have to do a little more research. Commissioner Davis said that there will be a lot more impact than what it was and felt a new plan should be submitted. Roland said that all discharge points were the same and are not disturbing any wetlands. Keith said that he would like to see how much area is being changed before commencing further. He said that what was approved was not a separation by raw land but a separation by a blended grading process which in itself may have more impacts. Commissioner Davis said that she believed the whole soil and erosion plan would have to change. Attorney Woermer suggested

that the Commission accept the application to amend, even though it might not be approved. Commissioner Davis said that just from looking at it that things would have to change because of the impacts from the units. A discussion took place regarding the erosion controls and whether or not the proposal is a new plan. Lars said that his main concern was the volume of water that would not be absorbed into the land. Roland said that they could present it at the next meeting. Keith said that he would like to see their calculations and have the information sent up to engineering to Wayne Zirolli. Commissioner Davis said that she would like Southwest to give a comparison. Sally said that the new plan could just be sent to them. The discussion continued regarding Southwest. Attorney Woermer asked if the Commission still used Milone & MacBroom, and that they did the last calculations and should know better than anyone what was there to compare it. Sally asked if the applicant was willing to pay for it. Attorney Woermer replied yes. The discussion continued regarding either using Southwest or Milone and MacBroom. Commissioner Davis said that they would need Milone and MacBroom to let the Commission know what the impact to the wetlands would be and if the soil and erosion plan needed to be changed then a new plan would be needed. He said that Roland had agreed to submit a letter indicating the differences between the maps. Commissioner Davis said that nothing would be accepted tonight. Attorney Woermer asked that the discussion appear on the Agenda for next month and that they would report to Keith Rosenfeld on their progress with Milone and MacBroom. The discussion was continued to the October 6, 2010 meeting.

- C. Additional items require a 2/3 vote.
No additional items were added.

6. **CORRESPONDENCE**

There was no correspondence.

7. **WEO REPORT**

- A. Keith asked the Commission if they had any questions regarding the inspection reports that he had submitted. Commissioner Davis asked for weekly reports on anything that has work that is currently being done. Keith said that he would like to state for the record that Steve Macary allowed a special permit to be recorded for Par Holdings without collecting the regulated area fees, as required by the Commission, and that a letter was being generated to them about the fees.

- 8. **VOTED:** Unanimously on a motion by Sally MacKenzie and seconded by Lars Johnson to **APPROVE** the August 17, 2010 Special Meeting minutes with corrections.

The August 4, 2010 meeting minutes were tabled to the October 6, 2010 meeting.

9. **ADMINISTRATIVE BUSINESS**

There was no Administrative Business.

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10. ADJOURNMENT

VOTED: Unanimously on a motion by Sally MacKenzie and seconded by Lars Johnson to **ADJOURN** the meeting at 8:52 P.M.

Respectfully Submitted

Sally MacKenzie, Secretary /sk

**INLAND AND WETLANDS COMMISSION
CONTINUED SHOW CAUSE HEARING
PROPERTY LOCATED AT 815 MAPLE HILL ROAD
OWNER: MATTHEW AND TRACY DEBARBER
September 1, 2010**

Commission Chair Mary Davis called this Continued Show Cause hearing to order at 5:50 P.M. with the following in attendance:

MEMBERS:

Mary Davis, Chair
Joseph Bakstis, Absent
Sally MacKenzie, Secretary,
Lars Johnson

OTHER:

Keith Rosenfeld, Town Planner, WEO
Sheryl Kimiecik, Secretary
Public, 0

Commissioner Davis took attendance and placed Lars Johnson as a regular voting member in place of Joe Bakstis. Keith said that he had not heard from the DeBarbers. Commissioner Davis asked if he had gone up there. Keith replied that he had been waiting for them to contact him. Commissioner Davis said that Roman (Southwest Conservation) was going to contact the DeBarbers as well. Keith replied that he would contact them and follow up. Commissioner Davis said that the hearing would have to be continued next month and the DeBarbers would need to be present. The Public Hearing was continued to October 6, 2010.

**INLAND AND WETLANDS COMMISSION
PUBLIC HEARING FOR
REGULATED ACTIVITIES ASSOCIATED WITH PADDOCK
RIDGE SUBDIVISION, A PROPOSED 13 LOT SUBDIVISION
(IW # 10-03) LOCATED AT THE END OF KING STREET,
APPLICANT: MANUEL N. AND CAROLE J. VIEIRA
September 1, 2010**

Commission Chair Mary Davis called this Public Hearing to order at 6:30 P.M. with the following in attendance:

MEMBERS:

Mary Davis, Chair
Joseph Bakstis, Vice Chair
Sally MacKenzie, Secretary,
Lars Johnson, Alternate

OTHER:

Keith Rosenfeld, Town Planner, WEO
Sheryl Kimiecik, Secretary
Public, 5

Commissioner Davis took attendance, noted there was a quorum and that Lars Johnson had been placed as a regular voting member. George Cotter of the OCC Group, Cheshire, Ct. cited a letter from Attorney Pilicy and read it into the record. He said that there was a site walk on August 17, 2010 at which time they reviewed lots 2 and 7, 8 and 9, for the house locations. They also walked around the wetland area. He asked if there were any questions concerning the walk, and there were no questions. Mr. Cotter said that his professional opinion is that the development of the individual lots will not have any adverse impacts on the wetlands. He also said that they have comments from staff that they are still addressing. Commissioner Davis asked if they would like to continue the Public Hearing. Mr. Cotter said that they would like to continue the hearing. Commissioner Davis asked that they put the request in writing for the Commission. A discussion took place regarding lot 8, and possible alternate solutions to the detention basin. Sally asked why the house on lot 8 is placed the way it is when the land starts to drop down in the center where the house is placed and when you look to the north there is a nice level spot. Mr. Cotter replied that in designing it the house location was kept outside of the original 50 ft setbacks, that it could be adjusted to the level area, and that the plan was approved by the Commission back in 2001 and 2005. Commissioner Davis said that since then the regulations have been tightened with the 100 ft setback. She asked about lots 2 and 7 being within the 100 ft setback, and the recommendation by the ERT report to eliminate the back lots to reduce unnecessary fragmentation of the upland habitat. Mr. Cotter replied lots 17, 16, 13 and an adjacent lot boarder up to the wetland area and have been developed around that wetland area. He said that he does not believe that having a house in the lower area will adversely impact the wildlife. Ken Stevens, of Soil Science and Environmental Services, said that he doesn't believe it is reasonable to say that the two lots are fragmenting the open space. Keith asked about an area on the map and whether or not it is a vernal pond. Mr. Stevens said that in 2004 it was a vernal pool, but in 2010 it wasn't. In order to be a vernal pool it has to support the reproduction

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of amphibians and their development. He said that in 2004 there were one or two green frogs in it and it was recognized at that point as a vernal pool. In 2010 they saw no reproduction in it whatsoever. Keith asked if the building of a detention pond would have a negative impact on this natural, intermittent pond. Mr. Stevens replied that it would not because all of the drainage is in a westerly direction and would not affect the water level in there at all. Mr. Stevens then talked about the Eastern Box Turtle, and said that they haven't seen any and that a good deal of the site really is marginal habitat. He said that the DEP recommends inspecting the site and if a turtle is found to move it.

Commissioner Davis asked if they would be coming back with a new map. Mr. Cotter said that they will meet with staff and evaluate revisions to the map. Commissioner Davis said that she would like to see what the detention basin would look like on lot 8 and what is suggested about the lot with the detention basin being moved and the house eliminated. Mr. Cotter said that he will also show an alternative to move the basin.

Commissioner Davis opened the hearing to public comment. There was no public comment. Lars asked if there was a biologist involved back in 2004 and 2010. Mr. Stevens said that Jennifer Beno is the biologist and she has been on their staff for fourteen years. Keith noted that the written request for an extension had been submitted. The public hearing was continued to October 6, 2010.