

**INLAND AND WETLANDS COMMISSION
REGULAR MEETING**

May 4, 2011

Commission Chair Mary Davis called this meeting to order at 6:09 P.M. with the following in attendance:

MEMBERS:

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

OTHER:

Keith Rosenfeld, Town Planner, WEO
Wayne Zirolli, Borough Engineer
Sheryl Kimiecik, Secretary
Public, 0

1. Commissioner Davis took attendance and noted there was a quorum. She opened the meeting with the Pledge of Allegiance.
2. Executive Session with Borough Attorney. There was no Executive Session.
3. There was no public comment.

4. OLD BUSINESS

- A. Commission discussion for activities at 815 Maple Hill Rd., Owner: Matthew and Tracy DeBarber.

Mrs. DeBarber said that both Keith and Steve had been out to inspect the property, and that Keith had talked to Mr. DeBarber as there was some confusion about the water bars. She said that they will be installed in the next couple of weeks. Commissioner Davis asked about the bridge. Mrs. DeBarber said that it was a foot bridge where the brook runs into the depression, and it will help prevent it from splashing. Commissioner Davis asked if it was on the original plans. Mrs. DeBarber said that it was. Keith said that it was one of the things that they reviewed during the inspection, and explained the purpose of the bridge to the Commission. Commissioner Davis said that some of the silt fences were up, but it looks in the picture like some of them are not up. Keith replied that it's just how the picture looks, but that they are all in place. Mrs. DeBarber said that they will put in more wood chips to keep the bank back, and everything is greening up holding things in. Commissioner Davis said that it sounds like things will be moving along. Mrs. DeBarber asked if they still needed to come every month. Commissioner Davis replied that they need to come back monthly.

- B Report from Borough Engineer regarding storm water/drainage issues located within the Union City Road neighborhood.
Wayne said that there is no new information as of yet, and as work gets done he will inform the Commission.

5. NEW BUSINESS

A. Commission discussion/decision on permit extension for regulated activities (IW #06-02) Fieldstone Woods, located on Field Street. Applicant: Robert Cyr. Commissioner Davis said that this is an application for a permit renewal. Keith submitted plans that were approved by the Wetland Commission, and said that the subdivision is viable until 2013, and that the applicant was asking for an extension of the wetland permit. Sally asked when the permit expires. Keith said that it expires in June. Commissioner Davis asked if anything had been done on this. Robert Cyr replied that no work had been done at all. Commissioner Davis reviewed the regulations with the Commission, and said that it seemed to her that the reason they give extensions on permits is when the work can't be finished in the time that it was allotted, the five years, then they do allow up to another five years. She said however, that in this case, nothing has been done, and that it goes against the regulations. Wayne said that he just wanted to add that no work was to take place within the wetlands or buffer, and all the work is out of the regulated area. Keith said that as part of his recommendations that there have not been a substantial change in circumstances that that would now require a new permit application, nor have there been any enforcement action that has been undertaken with regard to any regulated activity for which the permit was issued. He said that he thought those were reasons for the Commission to extend the application. Joe Bakstis asked when the permit was issued if there were any restrictions at all on the issuance of the permit. Keith said that it is in his report, under previous vote. Commissioner Davis said that when we start issuing extensions for permits for activities that are now against the regulations we are setting a wrong precedent. It appears that extensions are given that do not adhere to the current regulations and setbacks. Mr. Cyr said that nothing has changed, that he has five years and over \$50,000.00 into this project and it will be a major hardship if the commission puts a stop everything, a lot of time, money and effort going nowhere. Mr. Cyr said that part of the project is taking some of the corner out going up the hill and it would benefit the town. Joe asked Commissioner Davis if she was proposing that Mr. Cyr submit a new application. Commissioner Davis said that when he is ready he will have to come back before the Board with a new application and that may not be for another five years. Wayne said that since the application was first approved the regulated area has moved from 50 ft to 100 ft, and now the construction would be in the review area where as when it was approved it was out of the review area. Commissioner Davis said that Wayne's name was on the plans and he should recuse himself from it. Joe asked Mr. Cyr if he could see himself proceeding with this. Mr. Cyr said that he is actually getting quotes and prices and may actually start this year. Keith said that he suggested the Commission give Mr. Cyr a two year or three year extension, and that an extension can be given up to five years, but it's not necessarily something that you have to do. Commissioner Davis said that she doesn't like to put someone in a financial bind, and she understands his predicament, and she doesn't want to make this a precedent, but in thinking about

the situation she would consider extending it for two years. Joe said that he would hate to have to have him come back with a new application.

VOTED: Unanimously on a motion by Sally MacKenzie to extend the IW #06-02 for two years, including the conditions from the previous permit of June 7, 2006.

- B. Commission discussion/decision for regulated activities associated with a proposed Special permit application of expansion of Shep's Auto (IW #11-01) located on 856 New Haven Road, Applicant: Dean Rotatori.
- Keith said that he had received and has a copy of the receipt that was signed by the tax collector, as well as copies of the wetland map, wetland report, and new site plan so everyone has all the information that is needed from the last meeting. Attorney Kevin McSherry of 38 Fairview Ave, Naugatuck, representing Shep's Auto and Dean Rotatori, said that there is presently a business on the site, selling automobiles and making repairs, and as part of the special permit process and part of the regulations he has decided to add a body shop within an existing building. Mr. McSherry said he is in the process of getting final approvals from the state, where much of the construction sequence is occurring in the roadway, and the wetlands are off the licensed area. He explained the location of the 50 ft upland review area and the 100 ft wetland area on the map. Commissioner Davis asked about the parking area. Mr. McSherry explained where the work would be taking place. Commissioner Davis asked if they were going to do anything with the gravel or are they just going to park cars there. Mr. McSherry replied that they would just be parking cars, and that using gravel would just be easier to maintain. Joe asked what was on the lower side of the new gravel driveway. Mr. McSherry explained that it is all gravel. Commissioner Davis reviewed the report from Wayne Zirolli. Joe said that everything is pretty much existing and the only thing they are doing is putting some gravel down.

VOTED: Unanimously on a motion by Joe Bakstis and seconded by Sally MacKanzie to declare the application IW # 11-01 as a non significant activity.

Commissioner Davis said that it didn't appear that there would be any issue with the upland wetlands and that Wayne had made a suggestion that there should be some type of a buffer. Wayne said possibly a low berm or a little delineation like dwarf junipers along the edge of the parking lot. Commissioner Davis said that it might be good to put something like a demarcation thing more than an actual buffer to keep water from moving because nothing will flow backwards. Joe said that a berm would be inadvisable. Wayne said that he agreed. Joe suggested arborvitae. The discussion continued regarding the type of buffer and the spacing from the property line.

VOTED: Unanimously on a motion by Joe Bakstis and seconded by Sally MacKenzie to GRANT application IW #11-01 with the addition of arborvitae being planted at five foot intervals off the limit of license area and with the addition of the standard conditions.

- C. Commission discussion/decision regarding re-subdivision of Lot 9-10 consisting of 21.09 acres, owned by Lavatec, Inc. at 300 Great Hill Rd. Applicant: Roland Desrosiers. Keith said that he is not here and that he has not received all of the information from him. Commissioner Davis said that it will have to be continued.
- D. Commission discussion/decision regarding permitted as a right of proposed timber harvest activities involving lands of Ct. Water Co. Applicant: John O'Donnell, Connwood Foresters, Inc.
- Keith said that he had sent a fax and application to Cindy at the water company who faxed back the application that was then submitted to the Commission, along with the narrative that was prepared by John. He said that it was an activity that is allowed by right as the upkeep of water company lands, and it has to be sanctioned by the Commission. Commissioner Davis asked where it says that they have a right, because she didn't see where it said that they specifically have a right. John O'Donnell, consulting forester with Connwood Foresters, agent working for Connecticut Water Co., said that timbering is as of right under farmland forestry's in the state of Ct, and the Wetlands Commission make that determination as of right. Keith said that to clarify then, it's not necessarily a right as a use to the water company, but a right as a farming operation. Mr. O'Donnell said that across the state timber production is as a right, and when it comes to Inland Wetlands Commissions, they have the decision to make it as a right. Commissioner Davis said that she doesn't have that information. Mr. O'Donnell said that it's in the State Statutes. Keith said that it would be as part of the application as permitted as of right section 1. A discussion took place regarding the as of right State Statute. Commissioner Davis said that with what is in front of them right now, she would have to say that it is not a as a right. She asked if there were any wetlands up there. Mr. O'Donnell replied that there are two portable bridge crossings and four intermittent water course crossings. Wayne read from the Municipal Inland Wetland Commissioners training program handbook, which said that activities that occur within a wetland or watercourse or are in non wetland or non watercourses but may impact or affect a wetland or watercourse are called regulated activities and may require a permit. However, in accordance with the Ct General Statutes, many but not all forestry activities in wetlands and watercourses are permitted as a right and therefore are not regulated activities. These as a right activities are described in section 22A-40 of the Ct General Statutes. Determinations of which activities are as a right may only be made by an Inland Wetland Agency. Wayne said that there is a little ambiguity. He read what is permitted as a right, and the definition of forestry according to Webster's 2, New Riverside University Dictionary. Keith said that it is saying that agriculture includes forestry of timber, which is a use that's allowed by right. Commissioner Davis asked for copies of the information. Wayne submitted copies. Commissioner Davis said that there should be a page inserted in our wetlands regulations to refer to this. She said that she feels that they do have an as a right. Joe said that on the first page it states that the Inland Wetlands Agency has the right to determine if a farming activity is exempt pursuant to this statutory subsection. The agency always has the authority to determine the reach

of its jurisdiction over inland wetlands and watercourses. Keith said that it really means that although he feels he has the right to do it, the commission is the only one that can tell him that he has a right. Mr. O'Donnell said that the property is 75 acres, and he has marked the timber personally. He said that there are two stream crossings that will require portable timber bridges and four stream crossings that will require a corduroy, which is laying logs in the stream bed for the equipment to roll over, which will be removed upon completion of the operation. Joe asked if he was looking to leave healthy oaks. Mr. O'Donnell explained that the goal of the water company is to have a long term forest management plan that recycles the forest. Commissioner Davis said that it is the commission's decision, and that they need to review everything, and make a decision. She said that it's a little ambiguous as to whether or not he has an as a right, and an application will be needed. Commissioner Davis asked Keith to send the commission a better copy of the map.

VOTED: Unanimously on a motion by Sally MacKenzie and seconded by Joseph Bakstis to declare the proposal of Connwood Foresters to harvest timber at the Mulberry Street reservoir to be not as a right use and a formal application is to be presented.

Commissioner Davis asked Keith if there was anything else that would be needed for the application. Keith replied that a wetlands report would be needed from a soil scientist. Mr. O'Donnell said that he has never done that and there is no way he is going to get a soil scientist up there and they better take this up with the water company. Keith replied that he understands, and said that he will contact the owner of the land and tell them what is required for an application. Mr. O'Donnell said that more times than not it is not as a right, but that he has never had to get a soil scientist. Keith said that maybe what they will do is contact the town attorney to see if he has any insight into the law and what is required. Commissioner Davis said that they don't want to make it any more difficult, but after looking at everything we decided that it is not as a right. Joe said to save time they should contact the town attorney and keep him abreast of everything that is happening rather than drag anything out. Mr. O'Donnell asked if he would be required to come to the next meeting. Keith said that they will figure that out. Wayne said that the DEP is a source as well that can be contacted, and as a licensed professional, even the forester may plan and design forest practices including forest management plans and silvicultural plans, and he would be careful of what the laws are and what's required, and typically they don't hire soil scientists to mark out the wetlands.

Commissioner Davis called a five minute recess at 7:42 P.M.

Commissioner Davis called the meeting back to order at 7:50

- E. Commission discussion/decision regarding rehabilitation of culvert located at Rubber Avenue Entrance over long Meadow Pond Brook, (IW # 11-02).
Applicant: Mancinone Realty
Commissioner Davis acknowledged that the applicant was not present. She read a letter from Pasquale M. Salvatore into the record requesting that the application be tabled until the next regularly scheduled meeting. Sally said that it seems that since it is no longer an entrance and they don't want people coming in and out of it then why don't they just get rid of it. Keith said that he thinks they want people to go in and out of it. A discussion took place regarding the entrance. Joe said that it might be there because the fire department may need to have access. Keith said that he thinks that's a good question and suggested that he contact the fire department to determine if this entrance is required for fire protection.
- F. Additional items require a 2/3 vote. There were no additional items.

6. **CORRESPONDENCE**

7. **WEO REPORT**

- A. Autohaus (IW #08-08): Keith said that they have not done anything since the winter and he would like to send a letter to them inquiring where they are in the project. He said he thinks they have a couple more years in their permit, but will push them along in their work and remind them that their permit is to relieve the situation of the cars and the trailer and all those things that they wanted to take out of the review area.
- B. Dmuchowski: Keith said that the pipe seems to be clogged up again, so he will write a letter and require her to clean up the headwall as she has done in the past.
- C. Pondsides Condominiums: Keith said that it is working great.

Sally asked about Trout Brook. Keith said that everything is holding fine.

8. **VOTED:** Unanimously on a motion by Sally MacKenzie and seconded by Joe Bakstis to **APPROVE** the April 6, 2011 Meeting Minutes with corrections.

9. **ADMINISTRATIVE BUSINESS**

Commissioner Davis said that the commission had received a warning about the bill that is going through the Legislature, House Bill 6400, and they are looking to reduce the cities and towns and commissions decision making process capabilities and place it in the hands of a biased few. She read the letter to the commission, and explained that when an Engineer comes in with a new self certification the commission has to accept their storm water control plan and can't ask an outside person to come in and review the plan. Wayne said that in some ways you do want to have the capability to have some review, and in some ways it would place

responsibility for having adequate controls on the licensed professional. He said in some ways the engineers do that now, and theoretically this might be more complete and the engineer would have to be licensed as a storm water professional or they would have to have an additional storm water professional involved in the process. He said that there is a concern that if we didn't like what they do, then we might call for a professional that we are comfortable with to review it, and I think we still want to reserve that right. Commissioner Davis said that many times we have looked at a plan that has been done by a certified engineer and see lots of things that need to be changed, and many times we send it out to a soil scientist such as Southwest, and they find even more things, and this would stop that. Joe Bakstis said that there is no way that the engineers hired by the developers, and the people submitting the applications, should have the final say in what is right in this regard. Wayne said that in the requirement of the bonding, if this came to pass, and the commission's role was much reduced, we would still have control over the bonding, and if we want to protect the town then he recommended that the bonds be set higher. Joe said that they would be opening themselves to litigation. Commissioner Davis asked the commission to send an email as a response to the letter, and said that Southwest was hoping that all the towns and commissions would get on board with the whole thing. Keith said that he looked up the information on the web and Jeffery Burger is one of the sponsors from Waterbury that can be contacted. Commissioner Davis asked Wayne how he felt. Wayne said that if it's set in concrete and no matter what you have to take their word for it then no, it's a bad idea.

10. ADJOURNMENT

VOTED: Unanimously on a motion by Joe Bakstis and seconded by Sally MacKenzie to **ADJOURN** the meeting at 8:32 P.M.

Respectfully Submitted

Sally MacKenzie, Secretary /sk

**INLAND AND WETLANDS COMMISSION
CONTINUED SHOW CAUSE HEARING
PROPERTY LOCATED AT 60 GUNNTOWN RD
OWNER: WILLIAM WERNER
May 4, 2011**

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

MEMBERS:

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

OTHER:

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

Commissioner Davis said that they had received a letter from Keith Rosenfeld and Wayne Zirolli showing what the town needs to do to remediate this. Keith said that the applicant had called the office and said that he wasn't going to be able to make it. Commissioner Davis said that the cost to remediate it, the town is going to do it, will be \$500.00. She asked Keith if Mr. Werner had any comment on it. Keith replied that he did not. Sally commented that she thought it was a bargain. Commissioner Davis asked how to enforce the bill. Keith replied that it would get sent over to the town attorney. Attorney Kevin McSherry, 38 Fairview Ave, Naugatuck, said that in a situation such as you are discussing, you are able to put a lien on the property. Commissioner Davis asked if whether the bill gets paid or not if a lien is put on the property until it gets paid. Mr. McSherry said that once the bill gets paid a release is put on the land records, and if it doesn't get paid, the lien goes on. Joe said that they should let the borough attorney decide, and there might be a procedure that they follow. Commissioner Davis said she thought it was up to the Commission, and that they will be very generous and give them thirty days to pay the bill. Keith said from the time the work gets done, and all work is to be done in dry weather. Sally said it sounds reasonable. The Commission agreed that it was the responsibility of Mr. Werner to pay the cost of mitigating the trench as a consequence of working within a municipal property in close distance of an inland wetland area. The Commission came to a consensus that when the mitigation work is completed, which will be probably within the next few months, the Borough should give Mr. Werner 30 days to pay the cost of the mitigation activity. If Mr. Werner does not pay, a lien should be put on the property at that point, and when he pays the bill the lien should be removed. Chairman Davis asked that Borough Attorney Fitzpatrick be notified, and said that it should be left under Old Business until the job is done.