

**CONSERVATION COMMISSION &
INLAND WETLAND AGENCY MINUTES
November 12, 2019**

I. CALL TO ORDER

Mr. Verel called the meeting to order at 6:00 p.m.

II. ROLL CALL

Mr. Verel called the meeting to order.

Ms. Cherichetti took the roll call.

PRESENT: John Verel, Chair; Ed Holowinko, Vice Chair; Karen Destefanis; Lisa Shanahan; Thomas Keegan; Cheryl Brown

Mr. Verel announced there would be a brief presentation by middle school students prior to the start of regular business and introduced Steven Kim, engineering mentor volunteer at Roton Middle School.

Mr. Kim introduced himself and then introduced seven 7th grade students from Roton Middle School's Robotics Team. The students are competing in FIRST Lego League (FLL) and described their project. First, they explained the requirements of FLL and then used the diorama they constructed of the Norwalk waterfront to demonstrate the sources of pollution and how stormwater runoff transports pollution to Long Island Sound. Next, the students described and displayed the water quality monitoring buoys they had constructed and deployed in Long Island Sound just off of the Norwalk coast. The students brought in one of the buoys and discussed its design and construction.

III. RECEIPT & DISCUSSION

There were no new items to be received.

IV. DISCUSSION &/OR DECISION

- a) **#S19-545 – 8 Norden Place – Summit Saugatuck LLC** – Grading and widening of existing gravel accessway adjacent to a wetland and watercourse
- b) **Conservation Easement Amendment - 8 Norden Place – Summit Saugatuck LLC** – Amendment of existing Conservation Easement to add emergency vehicle access use to existing pedestrian and bicycle use

Mr. Verel discussed the meeting agenda and noted there was not a public hearing scheduled on the Norden Place application this evening. He noted the Commission would determine tonight whether a public hearing was warranted, and if yes, would set a future hearing date.

Attorney Timothy Hollister, of Shipman & Goodwin, represented the applicant and provided the Commission with additional information. He described the history of the area and of the access way. He described the previous use of the access way by Northrup Grumman. He noted the 2006 emergency access easement to Summit Development. And he reviewed the access way, along with the existing bollards and signage, in the approved Avalon site plan.

Mr. Hollister indicated that the first 150 feet of the access way is too steep at a 15% grade and is overgrown with vegetation.

Mr. Hollister gave an overview and history of the Saugatuck Landing development in Westport, starting with the 2017 application to the 2019 denial by Westport P&Z. There was discussion regarding the fire/emergency access and the Westport P&Z's requirement for additional access.

Mr. Hollister stated there was no proposed substantial change to easement; the request would just make the emergency vehicle use explicit in the language of the easement. He added there will also be a plan for maintenance and snow removal.

Mr. Hollister addressed two questions asked by Commissioners at the previous meeting. He confirmed there would be no tax implications or changes due to the language amendment, and he confirmed there would not be any increase in drainage and the existing pipes would be protected during construction.

Mr. Holowinko noted the Conservation Easement was not for Westport and did not provide access to Westport. He reiterated his opinion that an alternative must be found.

Carolyn Matthews, ecologist with William Kinney Associates, described the on-site meadow and forested wetlands. She noted the bottom of the detention basin constructed in 2009 was included as a wetland. She stated that the proposed activity will not have adverse impact on the wetlands and there were no direct long-term nor short-term impacts proposed. Regarding indirect impacts, she noted to control short-term impacts there was proposed sedimentation & erosion controls and inlet protection. She did not find any likely long-term impacts, noting the proposed stormwater management plan.

Ms. Matthews described the activities proposed within the upland review areas, including filling to change the grade of the access way closest to the detention basin. She noted they were proposing to do the minimum of earthwork to achieve the access Westport is requiring. She also noted they would implement an invasive plant management plan for the areas closest to the access way.

Ms. Brown inquired what entity would be in charge of implementing and maintaining the vegetation plan. Mr. Hollister replied Summit Saugatuck would be responsible and he would add such clause to the snow removal and maintenance agreement.

Ms. Destefanis asked about snow removal and expressed concern regarding the lateral spread of gravel with each plowing. She noted the gravel would slough off into the wetland area. Mr. Hollister noted the agreement could specify the plow height.

Mark Shogren, P.E. of Divney, Tung Schwalbe, spoke regarding the stormwater management. He noted there were three drain pipes existing under the access way and those would be protected during construction. He noted there would be not disturbance to, or change in capacity of, the detention basin at Avalon.

Mr. Shogren added that the proposal included the deposition of approximately 2,200 cubic yards of fill, with half that amount being gravel and the other half general fill. He noted the access way already has buried conduit carrying electric and other utilities. Regarding runoff, he stated there would be a 0.2 acre increase in gravel area, but a 0.14 acre reduction in asphalted area and the net runoff would not increase.

Mr. Moeling asked about the structural capacity of the access for large vehicles such as fire trucks. Mr. Shogren noted they had retained a geotechnical engineer and had completed compaction tests.

Ms. Destefanis asked if the filling to correct the slope would extend past the first physical fitness station. Mr. Shogren confirmed it would not extend that far.

Mr. Hollister noted that within the packet of information distributed earlier that night was a compliance chart that referred to the Inland Wetland Regulations.

Mr. Felix Charney, Summit Development owner, introduced himself and described the various developments he had been involved with since the 1980's. He displayed and discussed an aerial photograph of the site from 1990 which showed the access way.

Mr. Holowinko stated that he felt they needed to look at the Easement first. He stated he wants to know why exactly Westport Fire feels it would need access from Norwalk.

Mr. Keegan and Ms. Shanahan both commented on the Easement language. Mr. Hollister responded that the existing, as well as proposed, language is pretty restrictive and protective.

Ms. Brown questioned the use of pesticides in the invasive plant control plan. Mr. Hollister indicated they would review the proposed plan.

Mr. Verel asked the Commissioners to discuss whether the applications warranted a public hearing. He indicated he did.

***** MR. KEEGAN MADE A MOTION TO REQUIRE A PUBLIC HEARING ON THE PROPOSALS DUE TO PUBLIC INTEREST.**

***** MR. VEREL SECONDED THE MOTION.**

***** MOTION PASSED UNANIMOUSLY.**

Mr. Verel discussed the timing of the public hearing with staff.

***** MS. SHANAHAN MADE A MOTION TO SCHEDULE THE PUBLIC HEARING FOR TUESDAY, DECEMBER 10, 2019 AT 7:00PM IN A LOCATION TO BE DETERMINED.**

***** MR. VEREL SECONDED THE MOTION.**

***** MOTION PASSED UNANIMOUSLY.**

***** MR. HOLOWINKO LEFT THE MEETING AT 7:10PM.**

- c) **#S19-541 – 9 Burlington Court - Nechaeva** – Corrective Action removal of hardscape with restoration landscaping in and adjacent to a wetland and watercourse

Mr. Verel opened discussion on the item.

***** MR. KEEGAN & MS. BROWN RECUSED THEMSELVES**

Ms. Cherichetti noted this application has a receipt date of September 10, 2019 and without an extension tonight's meeting would be the decision deadline. Ms. Nechaeva provided a written request for extension so that she might complete her application for decision at the next meeting on December 10, 2019.

***** MR. KEEGAN & MS. BROWN RETURNED TO THE MEETING**

- d) **#S19-543 – 45 Devil’s Garden Road – Welte** – Corrective Action removal of fill in a wetland and watercourse

Ms. Cherichetti stated the decision deadline for this application was also tonight, but the applicant had also asked for an extension of time until the next meeting.

V. PUBLIC HEARINGS (begin at 7:00PM)

- a) **#S19-544 – 5 Chipping Lane** – Corrective Action restoration of watercourse channel and landscaping in and adjacent to a wetland and watercourse

Mr. Verel opened the public hearing and Ms. Cherichetti took the roll call. Ms. Cherichetti confirmed the hearing notice had been published in the newspaper and asked Mr. Goodwin for his notice letter and proof of mailing.

Mr. Goodwin distributed copies of his application materials.

Ms. Cherichetti noted members of the public had been in to the Conservation Office to look at the proposal. The Regulations require new application materials be submitted at least ten days prior to the hearing.

Mr. Verel suggested the public hearing be tabled to the next meeting on December 10, 2019 to allow the Commissioners and the public an opportunity to look at the submitted materials.

Mr. Goodwin disagreed and commented that the information submitted tonight was part of other submittals had had made previously. He stated that he felt he had submitted plenty of information and that no delay was needed.

Ms. Brown asked if the Commissioners could give comments on the submitted materials tonight in order to provide guidance to the applicant. It was agreed that would be in everyone’s best interest. She stated that the submitted materials appear to be a sketch or rendering, not a site plan. She stated that she felt the activity warranted an A2 & T2 land survey as a base map, observing she could not decipher where the proposed restoration would be on the property. She also noted the landscaping plan should have a plant schedule with number, size and species clearly noted.

Mr. Goodwin expressed dismay at the suggestion that more information was needed and stated he had provided everything they had asked for. There was discussion regarding the contents of Ms. Cherichetti’s preliminary review letter.

Mr. Verel noted that they had just received the additional information, so they would look it over. However, members of the Commission have expressly noted information they felt was warranted, and once the public hearing closes, there will be no more opportunity for the applicant to provide any additional information.

***** MS. DESTEFANIS MADE A MOTION TO CONTINUE THE PUBLIC HEARING TO TUESDAY, DECEMBER 10, 2019.**

***** MR. VEREL SECONDED THE MOTION.**

***** MOTION PASSED UNANIMOUSLY.**

VI. ENFORCEMENT ACTIONS

- a) **#V19-995 – 37 North Avenue & 40 East Avenue – IJ Group LLC – *Show-cause hearing*** – Unauthorized clearing, grading and filling adjacent to a wetland and watercourse

- b) **#V19-996 – 40 East Avenue – Freding – Show-cause hearing** – Unauthorized clearing, grading and filling adjacent to a wetland and watercourse

Ms. Cherichetti noted the show-cause hearing for both of these enforcement actions had been continued from the previous October meeting.

Ms. Cherichetti noted this order cites unpermitted work on two separate properties. She described the properties and their geographical location relative to each other. She noted that the photographs and maps she was about to distribute were also pertinent to Order #V19-996. She distributed site photographs depicting piles of brick over an area that was filled, graded and repurposed as lawn. She distributed aerial photographs showing the location of wetlands and Betts Brook relative to the recent deposition activity. She pointed to a site plan for 37 North Avenue filed by Verizon that showed the limits of the field delineated wetland. She distributed a 2018 Google map photo of a mini-excavator entering the disturbed area from the rear of the parking lot at 37 North Avenue. She noted that the bricks had been removed from the site since the issuance of the order.

Stephanie Laska, attorney with Harris, Harris & Schmid, represented the Fredings, owners of 40 East Avenue. She stated that her clients had owned their home for 28 years and they also owned two separate rear lots. In June 2018, she relayed that the owners had realized there was landscaping activity in the rear lot and contacted Mr. Milligan, the owner of the adjacent lot. She stated they received a reply from Milligan's employee Mark, who noted there had been landscape debris dumping, but that practice would cease and they would groom the area. She continued that in 2019 truckloads of bricks were dumped in the same location. She stated that her clients emailed Mr. Milligan again and they soon saw that he was offering the bricks for sale on Facebook Marketplace.

Ms. Laska encouraged the Commission to uphold Order #V19-995, but withdraw Order #V19-996. She stated it was clear that her clients, the property owners of 40 East Avenue had not done the work on their property, but rather the owner of 37 North Avenue had entered 40 East Avenue and did the work cited in the Orders.

Ms. Laska noted her clients cannot access their rear property unless they either cross the brook and wetland, or go over Mr. Milligan's property.

There was discussion regarding the enforcement of the regulations. Ms. Cherichetti stated she sent Orders to all property owners where there is a wetland violation and noted all property owners would be compelled to remedy the violation.

Ms. Laska argued that one party can be responsible and the order against her clients should be withdrawn.

Mr. Verel suggested the Commission hold off on making a decision until staff conferred with the Law Department.

***** MS. DESTEFANIS MADE A MOTION TO CONTINUE THE SHOW-CAUSE HEARINGS TO TUESDAY, DECEMBER 10, 2019.**

***** MR. KEEGAN SECONDED THE MOTION.**

***** MOTION PASSED UNANIMOUSLY.**

VII. BOND RELEASES

- a) **#S17-508 – 248 West Norwalk Road - Derene** – Release of bond held (\$780.00) for landscaping with filling and grading adjacent to a wetland and watercourse

Ms. Cherichetti noted the permittee had completed the required planting plan in the rear yard and recommended release.

***** MS. DESTEFANIS MADE A MOTION TO RELEASE THE BOND.**

***** MR. KEEGAN SECONDED THE MOTION.**

***** MOTION PASSED UNANIMOUSLY.**

VIII. APPROVAL OF MINUTES

a) October 22, 2019 meeting minutes

Mr. Verel suggested tabling discussion of the minutes to the next meeting.

IX. PUBLIC COMMENTS

There were none.

X. COMMENTS OF STAFF

There were none.

XI. COMMENTS OF COMMISSIONERS

There were none.

XII. ADJOURNMENT

***** MS. DESTEFANIS MADE A MOTION TO ADJOURN.**

***** MR. KEEGAN SECONDED THE MOTION.**

***** THE MOTION PASSED UNANIMOUSLY.**

Meeting adjourned at 8:43PM.