

**CONSERVATION COMMISSION &  
INLAND WETLAND AGENCY MINUTES  
December 10, 2019**

**I. CALL TO ORDER**

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

**II. ROLL CALL**

Ms. Cherichetti took the roll call.

**PRESENT:** John Verel, Chair; John Moeling; Steven Klocke; and Cheryl Brown.  
Alexis Cherichetti and Brenda Hrtanek, staff.

**III. RECEIPT & DISCUSSION**

There were no new items to be received.

**IV. DISCUSSION &/OR DECISION I**

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

**\*\*\* COMMISSIONER BROWN RECUSED HERSELF AND LEFT THE MEETING.**

With Ms. Brown's leaving, there was not a quorum and the item was tabled to the next meeting of January 14, 2020.

Ms. Cherichetti noted the next meeting on January 14<sup>th</sup> will be their decision deadline.

- b) **#S19-543 – 45 Devil's Garden Road – Welte** – Corrective Action removal of fill with restoration landscaping in a wetland and watercourse

Ms. Cherichetti noted the decision deadline for this application is also the January 14<sup>th</sup> meeting. She noted the applicant had delivered a revised site plan and narrative yesterday. She added that she had not yet had the opportunity to do a full review of the material, but observed they had been done by a registered landscape architect with Environmental Land Solutions, LLC.

Ms. Cherichetti distributed copies of the new materials and talked through the major elements of the restoration plan.

Mr. Welte, property owner and applicant, was present and further described the activities shown on the submitted site plan. There was discussion regarding the components of the plan. The Agency members agreed the plan and scope of activity was now clear. There was further discussion on the proposed restoration activities.

Mr. Verel asked Ms. Cherichetti to complete a review of the plan and draft a staff report for their next meeting in January.

**\*\*\* MR. KLOCKE MADE A MOTION TO AMEND THE AGENDA TO SKIP TO SECTIONS VII-XII .**

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

**\*\*\* MOTION PASSED UNANIMOUSLY.**

## VII. 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 hearings for both of these enforcement actions had been opened at the October 22<sup>nd</sup> meeting. She explained respondent Jason Milligan had contacted her and stated that he could not attend tonight, but wanted to appear at the January 14, 2020 meeting. Likewise, the attorney for the other respondent was seeking to continue to the January meeting. Commissioners indicated they did not have an issue with tabling the matter once again.

Ms. Cherichetti did note that at the last meeting on November 12, 2019, the Commissioners had asked her to report back regarding the possibility of upholding one of the orders, but withdrawing the other. Ms. Cherichetti stated that she stands by her process of where there is a noted wetland violation, the property owner receives a written enforcement order. She noted that in the event the contractor that did the work is known, or if it appears that a neighbor did the activities, those parties would also be cited. She noted that law presumes a property owner is responsible for their property and there is no clause in the Wetland Regulations that remove that responsibility due to ease of access or neighbor relations.

## VIII. BOND RELEASES

- a) **#S16-491 – 9 Lancaster Lane – Cummings** – Release of bond held (\$570.00) for Corrective Action removal of fill, construction of a retaining wall and re-vegetation of the wetland in and adjacent to a wetland and watercourse

Ms. Hrtanek described the activities that were bonded. She noted the owner had completed all of the corrective action work and the site looked good. She recommended release of the bond.

\*\*\* **MR. MOELING MADE A MOTION TO RELEASE THE BOND.**

\*\*\* **MS. BROWN SECONDED THE MOTION.**

\*\*\* **MOTION PASSED UNANIMOUSLY.**

- b) **#S17-509 – 3 Old Kings Highway – Glazer** – Release of bond held (\$1,500.00) for construction of a new residential dwelling, detached garage and pool, with associated grading and stormwater management adjacent to a wetland and watercourse

Ms. Hrtanek explained there were two bonds held on this property; this bond for the construction of the residence and associated work was eligible for release. She added this bond covered the original planting plan and there was another bond held for the corrective action plants added to the wetland and watercourse buffer. She recommended release of this bond.

\*\*\* **MR. MOELING MADE A MOTION TO RELEASE THE BOND.**

\*\*\* **MS. BROWN SECONDED THE MOTION.**

\*\*\* **MOTION PASSED UNANIMOUSLY.**

## IX. APPROVAL OF MINUTES

- a) October 22, 2019 meeting minutes

\*\*\* **MR. VEREL MADE A MOTION ACCEPT THE MINUTES.**

\*\*\* **MR. MOELING SECONDED THE MOTION.**  
\*\*\* **MOTION PASSED UNANIMOUSLY.**

b) November 12, 2019 meeting minutes

\*\*\* **MR. MOELING MADE A MOTION ACCEPT THE MINUTES.**  
\*\*\* **MS. BROWN SECONDED THE MOTION.**  
\*\*\* **MOTION PASSED UNANIMOUSLY.**

## **X. PUBLIC COMMENTS**

There were none.

## **XI. COMMENTS OF STAFF**

There were none.

## **XII. COMMENTS OF COMMISSIONERS**

There were none.

At 6:30PM, there was no other business for the Commission other than the public hearing.

\*\*\* **MR. VEREL CALLED A RECESS UNTIL 7:00PM.**

At 7:00pm, Mr. Verel re-opened the meeting.

## **V. PUBLIC HEARINGS (to 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

This hearing was tabled to the January 14, 2019 meeting.

- b) **#S19-545 – 8 Norden Place – Summit Saugatuck LLC** – Grading and widening of existing gravel accessway adjacent to a wetland and watercourse
- c) **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 opened the public hearing. He took a moment to address any concerns regarding potential conflict of interest and/or predetermination on his part. He acknowledged the fact that his spouse, Mary Verel, had posted her opinion regarding the application on social media. He stated that her opinion was her own and that he would make his own opinion on the application only after reviewing the facts and circumstances contained within the record.

Mr. Verel addressed the audience and explained the public hearing procedure. He described the various elements of the hearing and explained the purpose of the public hearing.

Ms. Cherichetti took the roll call. Ms. Cherichetti confirmed the hearing notice had been published in the newspaper and the applicant had properly mailed notice to adjacent property owners.

Attorney Timothy Hollister, of Shipman & Goodwin, represented the applicant and started his presentation of the application. He began with an aerial photograph of Westport and pointing out the local roads in the vicinity. He described the most recent site plan to develop at the end of Hiawatha Road in Westport where 30% of the units would be affordable housing. He noted the Conservation

Commission in Westport had thoroughly reviewed the housing proposal and approved it due to the minimal negative impacts to the environment. He added the proposed residences exceeded the fire code standards.

Mr. Hollister described portions of the Conservation Easement and the paragraph that details reservation of certain rights. He then referred to portions of the agreement filed on the land records regarding emergency access. He then went through photographs of the site, beginning with the western end at the edge of the Avalon parking lot and ending at the eastern end of the access way in Westport.

Bill Kenny, wetland scientist, discussed the proposed activities and potential impacts to wetlands. He described the two wetland types he encountered within one hundred feet of the accessway. He described the forested wetland that dominates the area to the south of the access way and the meadow wetlands to the north of the access way. He described the recently constructed detention basin that now contained poorly drained soils and it a wetland. He noted there were no direct wetland impacts proposed. He stated the activity would take the existing gravel way with its 10-15 foot width and shallow depth and improve it to a twenty foot wide and twelve inch deep gravel road. In addition to no direct wetland impacts, he noted the two intermittent watercourses that were conveyed via culverts under the existing access.

Mr. Kenny discussed potential indirect impacts and their proposed mitigation of them. He noted stormwater runoff would not be increased on the site, the access would have very infrequent use, and sedimentation and erosion controls. He discussed alternatives considered, but noted none could achieve the crossing of the property with a gravel access road with less impact to the wetland than the preferred plan.

Mr. Kenny described the submitted maintenance and monitoring plan and stated that invasive plants would be monitored and managed for three years.

Commissioner Moeling asked questions regarding the area of filling and inquired about the width of the base of the wedge of fill. Mr. Kenny referred to the site plan, SK-1, with the cross-section. He pointed to the retaining wall proposed on the southern side of the fill.

Mark Shogren, P.E. of Divney, Tung Schwalbe added information regarding the proposed retaining wall, describing the modular block, its maximum height of eight feet, and the curb and guardrail at the top.

Commissioner Klocke asked for clarification regarding the maximum road grade required by fire code, while noting there were references to a maximum of 5% as well as 10%. There was further discussion with the application regarding applicable fire code and the elements that are at the discretion of each fire district.

Attorney Hollister returned to the issue of the Fire Marshal requirements and noted he was submitting the additional background information regarding fire safety requirements that was requested by a Norwalk Conservation Commissioner. He described the correspondence the Fire Marshal and other Westport commissions in the materials distributed. There was discussion regarding the required width and grade of any access and fire code standards.

Mr. Hollister stated that some of the emails sent to the Commission were also included in his submitted document and he took a moment to reply to some of the statements in the written comments of the emails. He emphasized that his client was not installing any new road, there would be no change in traffic, there would be no change in runoff, the easement does allow amendments, there is no adverse impact to

residents, and there is no adverse impact to the town character. He summarized with reasons the Commission must approve, including no direct impacts to wetlands, no substantial change to the Conservation Easement, that Summit has a protected right to access, and that the access is a demand of the Town of Westport.

Mr. Klocke asked for clarification regarding the stated rights of Summit that Mr. Hollister referred to in the Restrictive Covenant that discusses emergency vehicle access. He observed the language says they have the right to seek approval, not the right to install it.

Mr. Verel opened the public comment portion of the public hearing. Ms. Cherichetti called the names of those wishing to speak.

Gail Lavielle, State House Representative, stated her constituency included both Norwalk and Westport, and she resides in Wilton. She expressed dissatisfaction that a developer was seeking to build in Westport, and not proposing any positive for Norwalk, but asking for an accommodation by Norwalk. She opined that any change in the Conservation Easement be allowed only if the change would result in an enhancement of the easement and this proposed change would violate the intent. She stated the conservation easement was a negotiated settlement and this change would violate the good faith of that settlement. She reiterated there were not positives for Norwalk in the proposal and the larger affordable housing proposal had been denied in Westport many times.

Jaimie Freitas, resident at 3 Sasqua Pond Road in Norwalk, stated that she lived proximally to the site and she commutes from Norwalk to Saugatuck. She is very familiar with the area. She stated she is concerned about the wetlands. She indicated her property contains designated wetlands and the applicant must be held to the same high standards for wetland protection that she is held to. She noted that the proposal in Westport offers no benefits to Norwalk and the proposals under consideration tonight should be denied.

James McDonald, Westport resident and self-declared amateur biologist, wanted to hear the specific names of the invasive plants the applicant pointed to in his slides. He stated that he just saw goldenrod. He observed that the conditions in the swamp had deteriorated over the years.

Matthew Mandel, Westport RTM member for the past 14 years, stated he represented the Saugatuck area and was involved ten years ago for the conservation easement deal. He recalled the 2005 denial by the Norwalk Conservation Commission for a proposal to construct three multi-family residences on the site. He discussed the history of the Avalon development on the site and stated no road for vehicular traffic of any kind was part of the agreement. He argued that the emergency access easement referred to by the applicant is not an easement but a restrictive covenant. He submitted written materials to support his statements, as well as a petition against the proposal by some Avalon residents and a CEPA intervention petition. He introduced Attorney Keith Ainsworth, retained by the group Save Old Saugatuck.

Keith Ainsworth, attorney on behalf of Save Old Saugatuck and Carol Ann Curry, submitted a brief in opposition to the application. He stated he felt the applicant's presentation to be misleading. He noted the applicant was seeking a wetland permit, which would result in physical impacts, for no reason. He pointed to the environmental impacts further described by Steve Danzer, wetland scientist. He stated the applicant has no protected property rights to have the proposal approved. He noted a conservation easement is in the public trust and to change it, there must not be a loss of environmental resources. He urged the Commissioners to not undermine the integrity of the conservation easement and deny the request to amend the conservation easement.

Linda Gibson, resident at 44 Park Hill in Norwalk, read a letter from her Westport friend Ms. Valerie Jacobs in opposition to the change in the conservation easement.

Carl Dickens, resident of East Rocks Road in Norwalk, wanted to concur with the testimony so far and noted a change in the easement is a slippery slope to more changes.

Gerald Romano, Jr., resident of 38 Saugatuck Avenue in Westport, spoke in opposition to the proposal and noted the developer wants the amendment only for his own benefit and there is only one road into the old Saugatuck neighborhood.

State Senator Tony Hwang, representing the 28<sup>th</sup> District which includes a portion of Westport, urged rejection of the proposal, noting the Conservation Commission is tasked with protecting open space. He read from portions of the materials submitted by Mr. Mandel.

Debora Goldstein, Norwalk resident, noted that she was also a former elected official in East Norwalk. She questioned the amount of emergency vehicle traffic that would result and noted the frequency of ambulance and emergency medical calls that occur. She also questioned the proposed snow plowing and its impact on the gravel over time. She questioned the security of the bollards and the low likelihood that they would be secured after every plow or ambulance went through. She stated the proposal should be denied and noted a road could be the foundation for a higher-use road in the future.

Seeley Hubbard, president of the Norwalk Land Trust, stated the non-profit was opposed to the change in the conservation easement. He recalled the conservation easement was a negotiated easement nine years ago to help compensate for the loss of wetlands associated with the development of the Avalon dwelling.

Diane CeCe, resident of Olmstead Place in East Norwalk and representative of East Norwalk Neighborhood Associations (ENNA), asked the Commission to deny both requests. She presented a petition in opposition to the proposals with 350 signatures. She expressed concern that amending the conservation easement would undermine all CEs in the City.

Mathew Levine, representing Save Westport Now, expressed opposition to the proposed amendment of the conservation easement.

Kate Davies, Norwalk resident and member of the Norwalk Land Trust, stated there should not be loss of environment or reduction of the easement for the sake of development. She noted the development team needs to better assess what the land can hold.

Lisa Brinton, resident of Norwalk, stated she agreed with all who previously spoke in opposition. She stated the development would negatively impact the neighborhood's character and stated that individual home owners have rights too.

Sarah Hunter, East Norwalk resident, agreed with the opposition.

Gabriele Kallenborn, resident of Westport for 25 years, stated she had wetlands as well and all should be protected, especially in light of global warming and its effects.

Karen Ann Kramer, Westport resident and RTM member, read a statement in opposition. The statement included a NY Times article from 1977 regarding homes improperly constructed in Norwalk over wetlands.

Diane Lauricella, resident at 49 Taylor Avenue in Norwalk, observed that she was familiar with the area with her driving to the Westport train station. She asked the Commission to deny both proposals. She noted the Commission saw many corrective action wetland applications and more must be done to limit environmental impacts. She noted she read that Norwalk has the least tree cover in Fairfield County.

Lisa Henderson, Norwalk resident, reiterated the view that the requests must be denied.

Carol Ann Curry, Westport resident at Hiawatha Lane Extension, discussed the long term history of the neighborhood, pointing to maps of the area. She felt that each time the developer was rejected, he returned with an even bigger development proposal. She reviewed the denials by the Town of Westport and opined that the developer and its attorney saw all of this as just a money maker.

Chris Gazzelli, Westport resident, stated that access is what the developer needs, not Westport P&Z. He expressed concerns about the residential development proposed in Westport.

Bill Collins, resident of 32 Allen Road in Norwalk, stated he was in favor of it. He confirmed that the Commission needs to weigh the actual amount of environment danger and make their finding. Regarding the crowd at the hearing, he questioned the true interest in a gravel road, but rather suggested they did not want lots of affordable housing units in Westport. He discussed affordable housing in Norwalk and Westport. He suggested Norwalk is being used as a pawn in Westport's battle to protect itself from affordable housing.

Selma Miriam, Westport resident since 1961, stated the Old Saugatuck neighborhood was already an affordable housing neighborhood and questioned why the developer had to demolish affordable housing stock to construct more and make a profit.

Mr. Verel asked if there was anyone else from the public wishing to speak. None responded.

Mr. Verel invited the applicant to start his rebuttal. Mr. Hollister indicated due to the late hour and the volume of written testimony received, he would ask to continue to the next meeting to start his rebuttal. There was discussion regarding the next meeting scheduled for January 14, 2020 and continuing the hearing just to allow the applicant's rebuttal.

While the room cleared, Mr. Verel suggested a five minute recess.

**\*\*\* MR. VEREL CALLED A RECESS UNTIL 10:10PM.**

At 10:10pm, Mr. Verel re-opened the meeting. It was noted that the next item on the agenda was for discussion of the 8 Norden Place application, however because the public hearing remained open, they could not discuss the application.

## **VI. ADJOURNMENT**

**\*\*\* MR. VEREL MADE A MOTION TO ADJOURN.**

**\*\*\* MR. MOELING SECONDED THE MOTION.**

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

Meeting adjourned at 10:13PM.