

**CONSERVATION COMMISSION &  
INLAND WETLAND AGENCY MINUTES  
January 14, 2020**

**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; Ed Holowinko, Vice Chair; John Moeling; Karen Destefanis; Steven Klocke; and Cheryl Brown.  
Alexis Cherichetti and Brenda Hrtanek, staff.

**III. RECEIPT & DISCUSSION**

- a) **#S19-546 – 10 Willard Road – 10 Willard LLC** –Removal of existing warehouse building and construction of new residential apartment building, self-storage building, parking lot, two foot bridges, new landscape and recreation areas, install new utilities and drainage improvements in and adjacent to a wetland and watercourse

Ms. Cherichetti gave a brief summary of the proposed project and the location of the property. She noted the property did contain a wetland area and intermittent watercourse and encouraged the Agency members to visit the site to get a better idea of the existing conditions. She noted the applicant's representatives were present and ready to give a brief presentation.

Attorney Adam Blank, representing the applicant, introduced the applicant's other representatives. He described the location of the property and its current uses. He described the structures that would be demolished and the structures that would remain. Finally, he described the proposed development and the proposed new multi-family residence and new commercial building for a self-storage facility. He pointed out the location of the on-site intermittent watercourse and wetland areas.

Derek Daunais, PE from D'Andrea Surveying & Engineering, PC, described the proposed site plan in more detail. He discussed the submitted drainage report and the current impervious cover of the site. He noted the total impervious area would be reduced from its current 63% down to 51% of coverage.

Ms. Brown asked about the proposed accessway to the west of the new buildings. Mr. Daunais described the proposed emergency vehicle access plan and stated the access way on either side of the watercourse would be engineered to support the emergency equipment, but also be topped with grass.

Ms. Cherichetti inquired if there was a landscaping plan that included the areas beyond the foundation plantings around the buildings.

Commissioner Brown also asked if the applicant had calculated the number of trees that needed to be removed and if there was a tree replacement plan. Earl Goven, landscape architect for the project, responded with a brief description of the proposed landscaping plan.

Ms. Cherichetti reviewed the definition of regulated activity and there was a discussion regarding the permit level this application warranted based on the volume of materials to be moved and re-graded. There was a discussion regarding the proposed scope of work and the type of excavation and grading work proposed.

Ms. Cherichetti asked the Commissioners to determine whether the application warranted a Significant Regulated Activity application. There was additional discussion and then consensus that the application could stay an Intermediate Regulated Activity application.

Ms. Cherichetti noted she had not yet completed a technical review of the application but would be reviewing it later in the week and would communicate to the applicant any deficiencies she found.

Mr. Verel confirmed the application would return on the agenda for the next meeting on January 28th for further discussion.

- b) **#S19-547 – Grist Mill Road and Old Belden Hill Road – City of Norwalk – NRVT**  
Construction of +/- 2,015 feet of stone dust trail, boardwalks and associated culvert crossings in and adjacent to a wetland and watercourse

Ms. Cherichetti gave introductory remarks regarding the proposed installation of the NRVT in Wilton and into the northernmost portion of Norwalk.

Phillip Katz, Stantec, represented the applicant, and introduced Antonio Dicamillo, Project Manager with Stantec, Charlie Taney, NRVT Executive Director, and Jay Fain, Soil Scientist.

Mr. Katz described the proposed location of the trail and the location of two small wetland areas and locations where a culvert would be installed to maintain drainage. He described the methods used for establishing the location of the trail and described other installed NRVT portions designed and installed by Timber & Stone LLC. He described the trail design and the proposed boardwalks where the trail crosses wetlands.

Mr. Fain briefly described the wetland areas and the scope of the proposed work in and adjacent to the wetland areas. He determined the proposed activities would not result in a negative impact to the wetlands.

Ms. Destefanis inquired about the number of trees that would need to be removed. Mr. Dicamillo explained the trail design further and noted, by design, the trail would avoid removal of trees. The trail area needed to be cleared of vegetation was discussed.

Mr. Verel noted the application was before them for receipt only. He asked staff to prepare a draft resolution for the Agency members to consider at their next meeting.

- c) **#S19-548 – 35 Huckleberry Drive South – Rich – Corrective Action** removal of fill, remediation of wetlands and construction of a two-story addition in and adjacent to a wetland and watercourse

Ms. Cherichetti gave a brief overview of the enforcement action that led to the filing of the corrective action application before them. She noted she had not yet had the opportunity to complete a thorough review of the application and do a preliminary review letter, but her glancing through the application

suggests it is currently very incomplete. She noted there does not appear to be a proposal within the packet, just a survey.

David Rich, applicant, appeared before the Agency. He noted his wife is technically the property owner. He stated that he and his family live there and knew there was an issue with the wetland area in the back of the property. He described having Otto Theall, wetland scientist, out to the property to flag the wetland area and having Mr. Theall return when they dug some test pits.

Ms. Destefanis asked if there was a wetland delineation report provided. Mr. Rich indicated he emailed it to Ms. Cherichetti. Ms. Cherichetti reiterated her request to provide copies for the Agency members.

Mr. Verel stated the application would be on the next meeting agenda for continued discussion.

Ms. Cherichetti noted she would complete a preliminary review. She noted this application is a Significant Regulated Activity and would require a public hearing. It was agreed no hearing would be scheduled until the application was more complete.

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

- d) **#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.**

Ms. Cherichetti stated the decision deadline for the application was at this evening's meeting. She recounted that the applicant had granted and requested extensions of time to complete her application.

Ms. Cherichetti noted the receipt of a revised sketch from the applicant. It was submitted yesterday. She briefly reviewed the application and gave a comparison of the information provided previously and the current revised sketch. She noted the applicant included removal of the timbers, boulders and landscaping fabric, in addition to the patio gravel, within the wetland in the sketch. A portion of the wetland was proposed as lawn. No wetland buffer is proposed.

Ms. Nechaeva gave a brief presentation and gave her reasons for keeping the drain pipe in place and keeping portions of the wetland lawn.

Ms. Cherichetti noted there was a memorandum with approval but with conditions and modifications to the proposal.

Mr. Klocke expressed dismay at the lack of accurate locational information. He recalled the Agency had stated at the previous meeting that the submitted sketch was inadequate and he noted a very similar sketch had been submitted as a revision. He expressed concern that it appeared the applicant decided to stall until the last minute and refused to provide adequate information to support her application.

Mr. Holowinko asked Ms. Cherichetti if corrective action permittees generally implement the approved work.

Ms. Destefanis stated she was leaning toward approving just so that the violation could be rectified in a somewhat timely manner. Mr. Moeling concurred.

Mr. Verel asked for a motion on the matter.

\*\*\* **MR. KLOCKE MADE A MOTION TO DENY THE APPLICATION DUE TO INCOMPLETENESS.**

\*\*\* **MR. HOLOWINKO SECONDED THE MOTION.**

\*\*\* **MOTION FAILED (1-4).**

\*\*\* **MS. DESTEFANIS MADE A MOTION TO APPROVE THE APPLICATION WITH THE MODIFICATIONS AND CONDITIONS IN THE DRAFT RESOLUTION CONTAINED IN MS. CHERICHETTI'S MEMORANDUM.**

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

\*\*\* **MOTION PASSED (4-1).**

At just after 7:00PM, Mr. Verel noted they would move to the public hearing portion of the night's meeting, but would return to this point in the agenda and resume with discussion/decision on item #S19-543.

\*\*\* Ms. Brown returned to the meeting.

## **V. PUBLIC HEARINGS**

- a) **#S19-544 – 3&5 Chipping Lane** – Corrective Action restoration of watercourse channel and landscaping in and adjacent to a wetland and watercourse

Ms. Cherichetti noted the public hearing for this application had opened at the November 12, 2019 meeting, but it was continued at the request of the applicant. She noted the hearing in November was properly noticed.

Mr. Verel invited the applicant to make a presentation.

Kate Throckmorton, Landscape Architect with Environmental Land Solutions LLC, representing the applicant, spoke regarding the revised site plan. She described elements of the plan, which calls for stabilization of the watercourse and restoration of the wetland.

Ms. Destefanis asked about the effect on 3 Chipping Lane regarding the enforcement order. Ms. Cherichetti clarified that Mr. Goodwin had permission from the owner of 3 Chipping Lane to make application and complete the restoration work on both properties.

Mr. Verel invited any members of the public to speak. None appeared.

Mr. Moeling asked about any changes to the volume of runoff. Ms. Throckmorton clarified that no changes to runoff were made, however the deepening of the channel may have dewatered a portion of the wetland and altered the amount of water entering the channel. She described the function of the proposed check dam.

\*\*\* **MR. KLOCKE MADE A MOTION TO CLOSE THE PUBLIC HEARING.**

\*\*\* **MR. HOLOWINKO SECONDED THE MOTION.**

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

- b) **Conservation Easement Amendment - 8 Norden Place – Summit Saugatuck LLC** – Conservation Easement to add emergency vehicle access use to existing pedestrian and bicycle use

- c) **#S19-545 – 8 Norden Place – Summit Saugatuck LLC** – Grading and widening of existing gravel accessway adjacent to a wetland and watercourse

Mr. Verel reopened the public hearing on the amendment and application. He noted there were some Commissioners present at this evening's meeting that were not present at the opening of the hearing. He asked Ms. Destefanis and Mr. Holowinko to confirm they had taken the time to listen to the audio recording of the previous meeting. Both confirmed they had and both were seated.

Mr. Verel noted they were at the point for the applicant's rebuttal.

Mr. Matthew Mandel asked if he could first speak and Attorney Hollister, for the applicant, stated he had no issue with Mr. Mandel speaking.

Mr. Mandel noted the applicant was given a month to prepare his rebuttal. He noted that he submitted a one page summary and asked that Attorney Ainsworth be allowed to speak.

Attorney Hollister, representing the applicant, suggested he yield to Attorney Ainsworth before beginning his closing remarks. Mr. Verel appreciated the offer but suggested Attorney Ainsworth may want to comment after hearing Attorney Hollister's remarks and invited Attorney Hollister to speak.

Attorney Hollister stated that in his opinion, the proposed physical activity was very minimal, and therefore he was going to focus on his client's vested property right and his client was just exercising that pre-existing right. He went over his reasons why the 2011 Conservation Easement is pre-empted by the access agreement filed in 2006. He stated that his client was just exercising their right to widen the path because of the requirements placed by the Westport Fire Marshall and Planning & Zoning. He stated the Commission cannot ignore Summit's property rights and the Commission has an obligation to allow the widening.

Attorney Hollister suggested to the Commission that they consult their own legal opinion, but also cautioned them that the City's Corporation Counsel is from the same firm as the Town of Westport and warned there may be a conflict due to that Town's denial of the housing application in Westport.

Attorney Hollister reviewed the history of the use of the lot, the filing of the 2006 emergency vehicle access agreement, the 2009 approval of the Avalon development, and the 2011 conservation easement. He stated that in his opinion, everything he just listed recognized emergency vehicle use. He noted that the 10-foot wide gravel nature path for pedestrian and bicycle use still had the express underlying right to emergency vehicle use. He noted he asked for another attorney's opinion and that backs up Summit Saugatuck's right. He argued that Attorney Ainsworth did not do a title search and just does not understand all of the rights of Summit Saugatuck, and so his testimony is faulty due to the incompleteness of his understanding.

Attorney Hollister noted the CT DEEP did not have any issue with the change to the easement. He added there would be no change to the storm drainage, no change to site acreage, no change to water quality, no change to the open space, no change to long-term maintenance plan, no change to erosion, and use of vehicles would be rare. He noted they were proposing this because of a problem presented by the Westport Planning and Zoning Commission.

Regarding written comments submitted by the opposition, Mr. Hollister took issue with the comments in Mr. Danzer's report and stated reasons why the Commission should disregard his report. He stated that the applicant's experts have testimony that there would be no impact to the wetlands and watercourse and there was nothing in the intervenor's report to back up their claim of impact. He continued with a summary of his previous statements at the opening of the public hearing.

Mr. Klocke asked Attorney Hollister to comment on how Norden's signing of the conservation easement appears to have limited Summit Saugatuck's use of the land. Hollister noted paragraph 20 of the conservation easement included all existing encumbrances on the land, which he further described as anything that was filed on the land records, including the 2006 agreement that he refers to as an access

easement. Mr. Klocke stated that he does not see where the 2006 agreement gives them the right to have emergency vehicle use, just the right to apply. Attorney Hollister stated it would be silly to only have the right to apply but not the easement right. Ms. Cherichetti noted to Mr. Klocke they had the primary document in the record for review.

Mr. Verel requested clarification of Attorney Hollister's statement that the amendment request before the Commission is not necessary because his clients already have the right to have emergency vehicle access. Attorney Hollister returned to his statement that the problem of the Westport Fire Marshall requiring fire access through Norwalk and they could either fight that in court or just resolve it by getting permits in Norwalk.

Mr. Moeling questioned Attorney Hollister's written statement that the Commission does not have a factual or legal basis to deny either application and is obligated to approve both. He asked Hollister to then explain what he believes is the Commission's role. Attorney Hollister stated that he is not asking to change the easement because it already acknowledges the pre-existing right to emergency access.

Mr. Verel invited Attorney Ainsworth to speak.

Attorney Ainsworth noted that a request for an amendment of the easement is by definition a change to the easement. He noted the applicant is applying because they do need to change the easement and they need a wetland permit. He continued with discussion of the consideration of the Conservation Easement amendment and the Inland Wetland Permit application. He noted that the 2006 Agreement is not, though Attorney Hollister refers to it as such, an easement. He read and explained the actual language in the 2006 agreement between the two developers and land owners. He provided a brief explanation of the points noted in the CEPA intervention.

Attorney Ainsworth stated he disagreed with Attorney Hollister's assertion that the encumbrance of record is an easement, when it is not. It is a right to apply and ask. He noted the Conservation Easement is a real easement. Summit was not vested in its right at the time of the Conservation Easement.

Mr. Matthew Mandel made statements regarding his recollection of conversations in 2006 through 2011, and more recently, regarding the properties. He contests the applicant is distorting the facts.

A member of the public asked to speak, Mr. Verel clarified the public comment period had closed at the previous meeting and they were solely taking comments from the applicant and intervening party.

Attorney Hollister was invited to provide any concluding remarks. Hollister suggested the member of the public be allowed to speak. Mr. Verel declined. Hollister argued against the assertion that their proposal was less protective, as suggested by the intervenors. He noted it made no sense that his client would have the right to apply for a permit to install access if his client did not have the inherent right to access.

\*\*\* **MR. KLOCKE MADE A MOTION TO CLOSE THE PUBLIC HEARING.**

\*\*\* **MR. HOLOWINKO SECONDED THE MOTION.**

Ms. Destefanis asked for confirmation they could close the hearing but still receive an opinion from the law department. Ms. Cherichetti noted the Commission would still be basing their decision on the record and all information that has been submitted, and City staff, whether herself or counsel, can help interpret any of the submitted information.

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

Ms. Cherichetti noted next up was a return to where they left off on the agenda, which was Discussion/Decision at item b).

\*\*\* Mr. Verel first called a ten minute recess.

\*\*\* Mr. Verel resumed the meeting.

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

- 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 was upon them. She recounted the previous discussions regarding the application. She noted the applicant did very recently retain a landscape architect to assist him in coming up with a plan. She noted the applicant is not in attendance, nor is any representative. She described the mitigation activities described in the plan.

Ms. Cherichetti noted there was a review of the plan and a draft resolution in the written staff report.

\*\*\* **MR. MOELING MADE A MOTION TO ADOPT THE RESOLUTION TO APPROVE WITH CONDITIONS IN MS. HRTANEK’S MEMORANDUM.**

\*\*\* **MS. DESTEFANIS SECONDED THE MOTION.**

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

#### VI. DISCUSSION&/OR DECISION II

- a) **#S19-544 – 3&5 Chipping Lane** – Corrective Action restoration of watercourse channel and landscaping in and adjacent to a wetland and watercourse

Ms. Destefanis stated she was glad to see that the plans now seem to address the impacts to the wetland and watercourse. Mr. Holowinko concurred.

Mr. Verel asked if anyone wished to make a motion. Ms. Cherichetti stated a decision did not need to be made that evening and she recommended she draft possible resolution for them to utilize at the next meeting. Ms. Cherichetti clarified they had 35 days to render a decision following the close of any public hearing.

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

Mr. Verel noted the public hearing on the two items had just closed and asked the Commissioners’ thoughts.

Ms. Destefanis asked Ms. Cherichetti to confer with the City’s counsel regarding the confusing statements regarding what are the Commission’s rights regarding the decisions before them. Mr. Verel indicated he is not an attorney. Ms. Cherichetti clarified the point needing clarification was the determination of vested property rights and the rights and restrictions in the Conservation Easement and other documents.

Mr. Moeling indicated he was not persuaded about the proposed design of the accessway was sufficient for emergency vehicle use.

Mr. Verel indicated it was the Commission’s prerogative regarding the decision on the easement. Ms. Cherichetti agreed and noted they had received the expert opinion of two different attorneys on the matter. She added the Conservation Easement decision is procedurally different than an Inland Wetland Permit

application. She noted there were multiple decisions to be made and listed needing a decision on the intervention petition, the easement amendment and the wetland permit.

Ms. Destefanis stated she wanted more opportunity to look through all of the information before commenting. Mr. Verel noted they would wait for staff's analysis in two weeks on January 28<sup>th</sup>. Ms. Cherichetti asked for any other comments to help guide her upcoming staff report.

Mr. Holowinko noted he had read the Conservation Easement and observed that if the applicant's access agreement was so important it should have been spelled out in the Conservation Easement and he just does not see it carved out in the Conservation Easement. He added he does not see any reason to change the easement. He said he would like to see staff prepare a draft resolution for denial.

Mr. Verel indicated he was torn and would seek a guiding analysis of the case. He asked for more information regarding property rights, but on the other side he notes the proposal does not have any positives for Norwalk.

Mr. Klocke stated he would like to focus on the intent of the Conservation Easement, which lays out its terms very specifically. He noted the entire matter was really an exercise on paper, with the reason for the application to meet requirements for development in Westport. He did not think what is proposed is in line with the intent of the Conservation Easement.

Ms. Destefanis agreed with Mr. Klocke, but thought the road would be physically maintained differently if they were to approve the change. Mr. Verel wondered if the road improvement would invite greater and greater use. She asked for clarification of the width of the existing access, noting the easement describes it as 10 feet wide, but it is wider in some places. Ms. Brown stated the proposed 20 foot wide accessway would become not a path, but a true road.

Mr. Moeling indicated that he has not been persuaded that the proposal is something that is needed or something the Commission should approve.

Mr. Holowinko stated the Commission has an obligation to protect the area under the Conservation Easement, not to provide access to a proposed development in Westport. Mr. Verel agreed, but noted he is careful regarding property rights.

Mr. Verel tabled discussion to the next meeting and asked staff to prepare a report.

## **VII. FEE WAIVER/REDUCTION REQUEST**

- a) **#S19-547 – Grist Mill Road and Old Belden Hill Road – City of Norwalk – NRVT proposal of the construction of +/- 2,015 feet of stone dust trail, boardwalks and associated culvert crossings in and adjacent to a wetland and watercourse**

Ms. Cherichetti described the proposed waiver. She noted the Commission provided a waiver of the base fee amount last year in another NRVT trail proposal. She indicated the legal notice fee and the state fee, which are \$150 in hard costs, were charged the last time.

**\*\*\* MR. KLOCKE MOVED TO REDUCE THE FEE TO \$150 FOR APPLICATION #S19-547 FOR THE NRVT.**

**\*\*\* MS. DESTEFANIS SECONDED THE MOTION**



Ms. Destefanis suggested making it clear the waiver did not include the state fee and the legal notice fee.

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

### **VIII. 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 following Orders issued on October 11, 2019. She noted both property owners were issued orders. She gave a very brief overview of the previous meetings, mostly where the show-cause hearing was tabled due to the absence of the respondents. She noted both respondents have asked the matter be again tabled to the Agency's February 11, 2020 meeting so that they can meet staff at the site beforehand.

It was agreed to table the matter one last time.

### **IX. APPROVAL OF MINUTES**

- a) December 10, 2019 meeting minutes

Ms. Destefanis suggested a few minor changes.

\*\*\* **MS. DESTEFANIS MADE A MOTION ACCEPT THE MINUTES.**

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

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

### **X. PUBLIC COMMENTS**

Ms. Cherichetti noted public comments were for public comments, but cannot be about any pending applications. The member of the public indicated he was interested in speaking about 8 Norden Place; but he was told he could not. He indicated he would like to comment on general conservation matters and was invited to speak.

Mr. John Levin indicated he and his wife had lived in Norwalk many years and had been involved in many conservation matters. He discussed their activity regarding land preservation in town. He thanked the Commissioners for their commitment of time and thought.

Mr. Levin began to discuss affordable housing in the region. Mr. Klocke indicated he was not willing to hear about the subject. Mr. Levin concluded he just wanted to convey to the Commission the complex and intertwined nature of their decisions.

### **XI. COMMENTS OF STAFF**

There were none.

### **XII. COMMENTS OF COMMISSIONERS**

There were none.

### **V. ADJOURNMENT**

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

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

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

Meeting adjourned at 9:20PM.