

**CONSERVATION COMMISSION &
INLAND WETLAND AGENCY MINUTES
February 25, 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; Steven Klocke; and Cheryl Brown.
Alexis Cherichetti, staff.

III. RECEIPT & DISCUSSION

There were none.

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

Ms. Cherichetti noted the public hearing on the application closed during the January 14, 2020 meeting and it was there deadline to render a decision on the application. She added the regular meeting of February 11, 2020 ended up being cancelled, however the applicant had granted an extension of time to get to this evening.

Ms. Cherichetti called the Commission's attention to her February 5, 2020 staff memorandum. She noted at the January 28, 2020 the Commission had denied the applicant's related request to amend the Conservation Easement on the property.

Mr. Verel asked Commissioners for comments.

*** **MR. MOELING MADE A MOTION TO ADOPT THE RESOLUTION TO DISAGREE WITH THE INTERVENOR AND TO DENY THE PERMIT APPLICATION DUE TO INCOMPLETENESS.**

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

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

- b) **#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 recalled the earlier discussions regarding the proposal. She noted a copy of the revised landscaping plan and information on the proposed conservation easement was before them. She also noted they had received a copy of a letter or petition from members of the public seeking input on the application, and in particular the proposed conservation easement.

Attorney Adam Blank, representing the applicant, introduced the others with him tonight, including Derrick Daunis, engineer, and the project developers Jason Enters, Steven Hardy, and Brian Deits. He

noted they had been before the Commission twice before and recapped the previous discussions. He hopes tonight they can get wetland permit approval and iron out the discussion regarding the conservation easement. He reviewed the location of the site, access to the site, and the proposed development. He reviewed the revised landscaping plan before them. He discussed the improvements to the stormwater management of the site. He summarized that no portions of the development have been shown to be anything but a positive impact to the wetland and watercourse. He asked that the wetland permit application therefore be approved at this evening's meeting.

Regarding the conservation easement, Attorney Blank acknowledged the receipt of a letter signed by a group of neighbors and others. He noted the letter does not bring up any inland wetland issues, but instead focuses on the proposed Zone change and conservation easement. He gave a history of the zone change amendment by the Zoning Commission and the subsequent requirement to put 20% of the land in easement. He explained the requirement and clarified that if they decide to grant the easement to the City, they would grant it to the Conservation Commission.

Mr. Moeling asked for clarification regarding the size of the area proposed for the easement area.

Attorney Blank described the two alternatives to the area included within the proposed easement area. He noted option A, which his client prefers, is the largest area but does include passive recreation land and fire access. Alternative B would remove the proposed recreation area from the easement area. The use of the recreation area was discussed.

Ms. Cherichetti asked for clarification regarding the proposed conservation easement and that it was not proposed as wetland mitigation and does not even include the watercourse area. She distinguished the difference and noted there was a wetland permit application pending, and separately there was a proposed conservation easement, but the easement was not tied to the wetland permit proposal. Attorney Blank concurred.

Mr. Verel asked about the proposed Conservation Easement. Mr. Blank discussed text amendments to the Zoning Regulations and new requirements for special permits to add self-storage facilities within the Business 2 zone include 20% of a site be put under conservation easement. He did note the easement area proposed is well in excess of the required amount.

Mr. Jason Enters described the conditions of the area where the passive recreation is proposed. He described the proposed use of the recreation area as a dog park.

Mr. Klocke asked for more input from the other Commissioners regarding the recreation area. He noted he was particularly asking regarding making sure there was understanding of all activity proposed within the upland review area. Mr. Moeling reiterated the need for adequate information for the land under the jurisdiction of the wetland agency.

There was a discussion regarding the need for a public hearing on the wetland permit. Mr. Verel asked Ms. Cherichetti to read the regulations regarding holding public hearings on applications. There was discussion regarding the issues raised in the letter from the public.

Mr. Verel indicated he was inclined to let there be public comment on the application.

Mr. Enters informed the Commission that Zoning Commission will hold its own public hearing on March 5th.

Mr. Holowinko did not think the permit application required a hearing, but the conservation easement proposed, if granted to the City, should have a hearing.

Mr. Klocke stated the concerns were not relevant to the inland wetland permit.

Ms. Brown observed the conservation easement was separate from the wetland permit and there should not be a hearing on the wetland permit, but there should be a public comment opportunity if the City is granted the conservation easement.

***** MR. KLOCKE MADE A MOTION TO DETERMINE A PUBLIC HEARING WAS NOT WARRANTED FOR THE INLAND WETLAND PERMIT APPLICATION.**

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

***** THE MOTION CARRIED UNANIMOUSLY.**

Mr. Verel tabled decision on the item to the next meeting and asked staff to prepare a staff report with a draft resolution.

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

Ms. Doreen Rich updated the Commission on the completion of her application and described the work of the two soil scientists, the updated survey, and a site plan by a landscape architect. She noted the fill to be removed was a significant amount, on the order of 1,000 to 1,300 cubic yards. She noted other home renovations would be proposed, but the wetland restoration work would remain their first order of business.

Ms. Cherichetti went over the deadlines for holding a public hearing, which must open at their March 10th meeting.

***** MR. KLOCKE MADE A MOTION TO SCHEDULE A PUBLIC HEARING ON THE INLAND WETLAND PERMIT APPLICATION AT THE MARCH 10, 2020 MEETING.**

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

***** THE MOTION CARRIED UNANIMOUSLY.**

II. 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 both respondents were present at tonight's meeting. She provided an overview of the show-cause hearing process and procedure.

Ms. Cherichetti gave a detailed review of events to date, beginning with a complaint of piles of bricks at the properties and her office's issuance of enforcement orders to the two property owners. She noted there was evidence of recent fill, which was now a flat grassy area, where the brick piles were located. She issued orders to both properties where there was unpermitted regulated activity.

Ms. Cherichetti displayed aerial photographs of the area. She described Betts Pond Brook and the adjacent wetland areas. She distributed photographs of the site and aerial photographs from various years and indicated the area ringed in a red outline was the area of fill. She described the fill area and the new grass now growing on it. She noted orders were mailed on October 11, 2019 and a show-cause hearing opened during the October 22, 2019 regular meeting. She noted neither respondent could attend the October 22nd meeting, so the hearing was tabled to November 12, 2019. She reviewed the testimony provided by the property owners of 40 East Avenue during the November 12th meeting, including email correspondence between Ms. Freding and Mr. Milligan describing activities in the area in the summer of

2018 as well as the fall of 2019. She distributed a photograph of the filling and grading in progress captured by a September 2018 streetview photo on Google Maps. She distributed photographs of the site in November showing the brick piles had been removed. She described the flagged wetland line, which was submitted as part of a minor permit in 2016 at 37 North Avenue, and noted much of the filling activity in 2018 occurred within the wetland itself. She noted she had met both respondents at the site yesterday and distributed additional site photographs from the site. Lastly, she described a topographic map of the area with 2016 contour lines, predating the recent filling, and compared the previous topography with the extant site conditions, concluding about 35 feet of the fill area is within the wetland.

Ms. Cherichetti recalled the discussion regarding the issuing of orders to all impacted properties. She noted at the request of the owners of 40 East Avenue, the Commission had asked her to confirm with the law department the need to issue orders to all impacted property owners. She stated she stands by her usual protocol for the issuance of orders to all parties involved. She noted the Commission cannot solely order one party to do corrective work on a property they do not own, the property owner where the work occurred must be cited as well as the party that was involved with the conduct being cited. She reiterated the protocol of citing the property owner where a violation is located. She noted she is aware the Fredings did not likely engage in the activity, although the submitted emails indicate they were aware regulated activities were occurring on their property in 2018.

Mr. Verel invited the owner of 37 North Avenue to speak.

Jason Milligan, principal of IJ Group and manager and principal at Milligan Realty, introduced himself and noted Milligan Realty manages the property at 37 North Avenue. He acknowledged he had put the bricks there because he was temporarily stockpiling the bricks from the historic renovation at another building. He indicated he thought they were placed on his property, but he had since been in contact with the owners of 40 East Avenue and told them he would get rid of the bricks quickly. He stated that was the limit of activities in that area that he is aware of, though he did mention there had been storms and some trees had fallen. He added his property was very close to the river and other portions have a similar grass strip and steep rip-rock wall that are not a problem. He added he did not do or authorize any fill there.

Mr. Milligan stated Ms. Cherichetti's hand drawing of the fill area was not accurate and was probably drawn to deliberately include his property at the request of the law department. He contended his property has nothing to do with the Inland Wetland Agency and requested the order be removed. He added he felt badly for the neighbors and wondered if the whole thing was the imagination of Ms. Cherichetti. He described the neighborhood and watercourse, noting past development activities, and concluding the area was not pristine anyway.

Attorney Stephanie Laska, representing the Fredings of 40 East Avenue, recalled her clients first noted activity in 2018 on their rearmost lot. She noted they do not have physical access to their rear lot from their home. She added they reached out to Mr. Milligan in 2018 after they first noticed activity on their rear lot, but she noted they never themselves did any work, nor hired anyone to do work, on this portion of their property. She added there was no problem until 2019 when the piles of bricks appeared. She noted her clients reached out to Mr. Milligan again and reached out to the City, but they were issued an order. She reiterated her clients could not access the property to fix it if they wanted to. She asked that her clients be withdrawn from any Cease and Restore order.

Ms. Laska noted her clients did not conduct any activity nor did they not have any intent. She noted there was precedent to withdraw an order and cited an order issued and withdrawn last year at a property on Kensett Ridge.

Mr. Klocke inquired about the similarity of the current situation to the withdrawn order Ms. Laska referred to. It was determined the situations were very different and that the order was withdrawn after

the respondent had the wetlands delineated and it was determined the clearing activities had occurred outside of the upland review area.

Ms. Laska reiterated her clients did not engage in the activity on their property and therefore they should be removed from the order.

Mr. Moeling observed that someone had done activities that have resulted in a negative effect on the wetlands on these two properties. He noted the Commission's charge was to see to the protection and, in this case, restoration of wetlands and watercourse.

Mr. Milligan interjected that the regulations had changed, pointing out sheds, walls, buildings, parking lots built close to the watercourse, and argued that how much was put there and when it was put there was really unknown, and was minimal in his opinion.

Mr. Moeling stated the Commission does the best it can and they can use aerial photos, photographs, topographic maps, soil reports as a framework to base their determinations. He added that it appears that the wetland area has been impacted on both properties. He stated the Commission's duty is to protect when possible, and restore when needed, the wetlands and watercourses in Norwalk.

Mr. Milligan stated he needed to make two points and stated there were storms that probably resulted in the river accreting the material. He added there was a lot of innuendo, allegations and guessing but no facts presented. He stated the only way to get to facts is litigation. He asked to review the map where Ms. Cherichetti was claiming his property was affected.

Mr. Klocke agreed that a land survey would be helpful.

Mr. Klocke confirmed there was consensus to uphold orders to owners of all properties impacted.

Mr. Moeling agreed and added there was the need to quantify the impact of the filling on the wetland and restore appropriately.

There was a discussion regarding the extent of grading and whether the activity encroached onto 43 North Avenue. Ms. Cherichetti began to describe the information she used to determine which properties were impacted. Mr. Milligan stated that Ms. Cherichetti admits her map was crudely done.

Mr. Holowinko asked about the confidence level that fill was deposited there. Ms. Cherichetti confirmed and described the accurate 2016 topographic map and how the current topography of the area clearly differs. Ms. Cherichetti distributed a site plan based on a land survey from a minor permit for 37 North Avenue from 2016.

Mr. Milligan stated that he was just being roped into this matter because Ms. Cherichetti spoke with the law department with which he stated he was currently involved with five different lawsuits.

Mr. Milligan urged the Commissioners to use their discretion and asked if it was truly affecting anything.

Ms. Cherichetti was asked to read the directives aloud. There was discussion regarding new deadlines for the directives in the order.

Mr. Milligan stated that if the order is upheld he will appeal. He stated he wanted to know when Ms. Cherichetti first spoke with Corporation Counsel and why his property was involved with this. He said he knows a lot about litigation. He added the matter will escalate because of his relationship with the Corporation Counsel's office.

Ms. Laska clarified her clients still encourage a withdrawal, but if not, she asked the modified deadlines of the order be realistic.

- *** MR. KLOCKE MADE A MOTION TO UPHOLD BOTH ORDERS WITH CERTAIN MODIFICATIONS TO THE DIRECTIVE DEADLINES.**
- *** MS. BROWN SECONDED THE MOTION.**
- *** THE MOTION PASSED UNANIMOUSLY.**

III. APPROVAL OF MINUTES

- a) January 14, 2020 meeting minutes (to be tabled until February 11th meeting)
- b) January 28, 2020 meeting minutes (to be tabled until February 11th meeting)

VI. PUBLIC COMMENTS

There were none.

VII. COMMENTS OF STAFF

Ms. Cherichetti informed the Commission the Conservation Office will be relocated to the first floor, in the location where Recreation & Parks was housed previously, in the middle of March.

She noted her office received a copy of an appeal of the 8 Norden Place conservation easement amendment decision.

There was a discussion regarding expert testimony.

VIII. COMMENTS OF COMMISSIONERS

Mr. Moeling stated his affirmation that the Commission has excellent staff.

V. ADJOURNMENT

- *** MR. KLOCKE MADE A MOTION TO ADJOURN.**
- *** MS. BROWN SECONDED THE MOTION.**
- *** THE MOTION PASSED UNANIMOUSLY.**

Meeting adjourned at 8:21PM.