

**CONSERVATION COMMISSION &
INLAND WETLAND AGENCY MINUTES
May 11, 2021**

I. CALL TO ORDER

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

II. ROLL CALL

Ms. Cherichetti took the roll call.

PRESENT: John Moeling, Chair; Matt Pentz; Farrah Marin; Jenn Balliett; Cheryl Brown and John Levin
Alexis Cherichetti, staff.

III. RECEIPT & DISCUSSION

a) **#S21-569 – 40 Princes Pine Road – Tate & Associates LLC** – Installation of an in-ground pool and associated retaining walls adjacent to a wetland and watercourse

Ms. Cherichetti introduced the application. She explained her concerns regarding what appeared to be a discrepancy between the soil scientist's sketch and the surveyed flag locations. She noted the extent of the wetland depicted on the typically very accurate sketches done by Mr. Otto Theall was noticeably different than the location of wetland flags on the land survey. She recommended the Agency require the soil scientist confirm the location of the flags in the field.

Ms. Cherichetti also noted she had visited the site yesterday and found all the trees within the buffer had been cleared.

Ms. Susan Kelley, property owner, stated the only trees taken down were the ones that were threatening the house and was an insurance issue. She added that the grass lawn went further back, but when all the branches were chipped, the wood chips covered all the ground vegetation, including lawn. She noted the wetland person delineated the wetlands in July 2020 because determining the wetlands and confirming she could have a pool was one of her requirements prior to signing a purchase agreement.

Ms. Kelley indicated she had the trees removed in the fall and winter of 2020.

Mr. Jim Tate, landscape architect and applicant, stated that when he prepares a site plan, he uses a professional survey and a professional wetland soil scientist to map. He stated those map lines are untouched and it is troubling that they would be questioned now. He stated he had concern with Ms. Cherichetti's statements. He said he went to the field and measured the location of the wetland flags and confirmed the distances on his site plan. He reiterated he used the information provided by professionals and that information is all accurate.

Mr. Tate described the project, which includes an 18' x 36' pool located about twenty feet to the rear of the garage. He said the pool was as close to the house as possible and the hardscape around the pool was minimized. He described the grading on the slope and said that 190 – 200 cubic yard would be excavated and then used as backfill. He described the stepped retaining wall design, where there would be an upper pool level and then a lower wall. He stated retaining walls would protect the wetland from encroachment. He stated plants would be added to the buffer strip next to the wetland.

Mr. Moeling asked if the stream Ms. Cherichetti noted previously was indicated on the site plan. Mr. Tate said that it was a wetland and the only clear watercourse was the Five Mile River, which was more than 300 feet away to the west.

Ms. Cherichetti clarified there was also an intermittent watercourse to the immediate rear of this property. Mr. Tate asked her to determine its distance to his project.

Ms. Kelley stated that the watercourse was far away on her back neighbor's property and that most of the wetlands were on their property, not hers. She noted a lot of trees had fallen in it and it was, at most, only four (4) inches wide. She stated her opinion that the only reason wetlands were present was because all the downed trees have backed up this little rivulet. She reiterated it was not on her property, but on her neighbor's.

Mr. Tate added that a wetland is a wetland, whether there is a watercourse or not.

Ms. Brown asked how many trees would be removed to accommodate the pool and asked if there was a plan for planting.

Mr. Tate stated there would not be any further tree removal and that everything to be removed had already been removed.

Mr. Moeling returned to the difference between the wetland sketch and the survey, noting there was about a thirteen (13) foot difference. Ms. Kelley stated it was just because the property stakes were not in and Mr. Theall was just guessing. She also said that Mr. Theall just paces to determine distance.

Ms. Cherichetti displayed a GIS map of the property and pointed to the watercourse that roughly parallels the rear property line. She displayed the soil delineation sketch. She noted the distance between wetland flag #5 and the back of the house was 67 feet.

Mr. Tate interjected that this information did not matter and this is why they hire a professional surveyor.

Ms. Cherichetti noted there was a difference of twelve (12) feet between the locations of wetland flag 5 on Mr. Theall's sketch versus the survey. She displayed an aerial photo of the property and pointed out the wetland area, the watercourse, and areas of inundation. She displayed an aerial photo from April 2021 and pointed out the limit of lawn; she referenced distances from the back of the residence to the lawn limit. She showed photographs taken the day before of the rear yard and pointed out the wetland flags.

Mr. Tate stated the placement of woodchips on the ground was not a big deal. Ms. Cherichetti noted all the trees had been cut down.

Mr. Tate stated all the work resulted in minimal or no wetland impact.

Mr. Moeling noted some of the removed trees appear to have been pretty far from the house. Mr. Tate noted there was wind damage to some of them. He also said that whoever cut down the trees was clearly respectful of the wetland because they stopped where the wetland flags were. He stated he did not see any impact to the wetland from the clearing and that the proposal before them would be an improvement.

Mr. Moeling returned to the issue of the wetland limit.

Ms. Cherichetti reiterated that she simply observed the wetland sketch was substantially different than the wetland location depicted on the survey, and when she visited the site it appeared the wetland flags were within the wetland, not at the limit of the wetland. The discrepancy may turn out to just be a mapping issue, but she would recommend having a soil scientist confirm the edge of the wetland.

Mr. Tate stated that they could not make any change to the maps they use, including the survey or the wetland sketch.

Mr. Moeling noted there was no way for an application to move forward if there was a discrepancy in the information provided in the application.

Mr. Tate argued that the request was a little crazy to have the applicant hire a soil scientist again. He suggested Ms. Cherichetti and the Agency should hire someone.

Ms. Kelley stated the flags were done in July, because she refused to buy the property without first knowing exactly where the wetlands were. She noted it was a critical part of the purchase. She noted she would not have purchase the property if the wetlands flags were not in the location shown on the survey because the wetlands were a big source of contention between her and the sellers.

Mr. Pentz explained Mr. Tate and Ms. Kelley were the applicants and there is discrepancy in the submitted information and the Agency just needs the applicant to provide clarification.

The applicant will confirm the extent of wetlands.

Ms. Cherichetti added if the wetland line changes, that should be reflected on a revised site plan. Additionally and as requested previously, the trees removed from the upland review area should be indicated and the watercourse and its 100-foot upland review area shown.

b) **#S21-570 – 40 Fullin Road – FRAP LLC** - Construction of twenty-eight (28) buildings (forty (40) residential units), with associated parking, site grading, wetland crossing and wetland creation, landscaping, utility connections and drainage systems, adjacent to a wetland and watercourse

Ms. Cherichetti gave a brief summary of the location of the site, noting it was once the rear portion of the Pepperidge Farms factory on Westport Avenue. She noted the apartments at 595 Westport Avenue are located at the former factory site, and this site contains a portion of the old factory parking lot and an adjacent woodland.

Attorney Adam Blank, representing the property owner and applicant, displayed an aerial photograph of the site and described the site and the surroundings. He described the location of the two wetland areas on the property. He displayed the site plan with the wetland and upland review areas highlighted and described the proposed design for the 40 residential units.

Mr. Moeling asked if the proposal was a Conservation Development. Attorney Blank described the Special Permit they are seeing under the section of the Zoning Regulations that allows elderly housing developments. There was some discussion regarding the 25% Conservation Area required by the Zoning Regulations.

Derek Daunais, Professional Engineer with D'Andrea Surveying & Engineering PC, described the proposed stormwater management for the development. He described existing conditions and the proposed conditions. He noted currently there is not stormwater treatment in place. He described the elements of the treatment train, including catch basins with hoods and deep sumps, swirl separator, and underground retention. He noted though there would be an increase in overall impervious surface (134,000 sq. ft.), the amount of asphalt surface would decrease (from 94,00 now to 56,000 square feet proposed).

Ms. Balliett asked if the proposed wetland crossing would be via a proposed bridge. Mr. Daunais explained a culvert and fill was proposed. He noted Matt Popp would further describe the wetland impacts and mitigation activities.

Ms. Balliett asked if the units directly adjacent to the proposed created wetland would have full basements. Mr. Daunais stated that currently that was the plan but it could change.

Matt Popp, Professional Wetland Scientist and Landscape Architect, described the property, which he divided for discussion into the western hillside wetland, the parking lot, the wooded area and the eastern wetland. He described the current conditions of each area. He discussed the functions and values that the wetland systems currently have, noting ground water discharge was a primary function. He also discussed sediment trapping, pollutant uptake, wildlife value and limited passive recreational uses as some of the wetland functions.

Mr. Moeling noted the access required filling a portion of the wetland and asked if any access alternatives had been explored. Mr. Popp discussed the options and noted the proposed location was obviously the best choice.

Mr. Popp described the proposed wetland creation and went over the square footage of wetland loss and wetland creation.

Mr. Pentz asked for the size of the wooded area and asked for the number of trees that would be removed from the woodland area. The applicant would return with answers at the next meeting.

Ms. Cherichetti, noting her consistent for accurate mapping, suggested the plans be revised to depict the intermittent watercourse and the expanded 100-foot upland review area.

Ms. Cherichetti asked that Mr. Popp provide metrics for measuring success of the created wetland.

Mr. Levin asked for clarification regarding the discharge point for captured stormwater. It was confirmed it would discharge into the intermittent watercourse near the proposed wetland crossing. Mr. Daunais described the water quality control measures proposed. He also discussed the measures for water retention and discharge rates.

Mr. Pentz asked about the amount of parking spaces proposed. Mr. Daunais stated that each unit would have a one car garage and there would be 25 extra spaces in the development. He added that the proposed driveways would be just long enough to accommodate a car as well.

Ms. Cherichetti noted the application was for a Significant Activity and a public hearing would be required at some point. She noted the application had been submitted on May 5th and she had not completed a full review of the proposal. She encouraged further discussion prior to setting a public hearing date.

IV. DISCUSSION &/OR DECISION

- a) **#S21-565 – 8 Shadow Lane – Garcia** – Installation of an in-ground pool and retaining wall adjacent to a wetland and watercourse

Mr. Moeling noted there was a staff report with a draft resolution to approve the activity. He noted he had inspected the site and did not have any issues with the proposal.

***** MR. MOELING MADE A MOTION TO APPROVE THE APPLICATION WITH THE ADOPTION OF THE RESOLUTION IN MS. CHERICHETTI'S MEMORANDUM.**

***** MS. MARIN SECONDED THE MOTION.**

***** MOTION PASSED UNANIMOUSLY.**

- b) **#S21 568 – 4 Half Mile Road – Alfano** – Corrective Action landscaping and debris removal in and adjacent to a wetland and watercourse

Ms. Cherichetti noted the application had been received at the previous meeting. She recalled during that meeting's discussion there was encouragement from Agency members for the revegetation of the disturbed buffer with shrubs that would also serve as a physical demarcation of the lawn limit. Ms. Cherichetti displayed a revised site plan from the applicants. In addition to the activities proposed previously, they added the installation of three (3) inkberry shrubs.

Ms. Brown asked what the length of the buffer area was. Ms. Cherichetti responded it was approximately 150 feet.

Ms. Brown recommended a shrub planting with greater density. She suggested a minimum spacing of 20 feet on-center, which would be at least eight (8) shrubs. The homeowners expressed concern regarding the costs and Mr. Moeling stated a staging of installation could be considered.

Ms. Alfano asked about the status of their permit application to construct a rear addition. Ms. Cherichetti noted the addition would be outside the upland review area and would just require a Conservation sign-off.

- c) **#S19-533A – In the vicinity of Scribner Avenue and Kellee Drive – Norwalk DPW** – Modification of permit to include additional related work at 264 West Cedar Street – Removal of debris, excavation & removal of accumulated sediment and bank stabilization in and adjacent to wetlands and watercourses

Ms. Cherichetti noted the applicants were present if there were any questions.

Mr. Moeling stated there was a draft resolution.

***** MR. LEVIN MADE A MOTION TO APPROVE THE APPLICATION WITH THE ADOPTION OF THE RESOLUTION IN MS. CHERICHETTI'S MEMORANDUM.**

***** MS. BALLIETT SECONDED.**

***** MOTION UNANIMOUSLY (5 in favor, 1 abstention - Brown)**

V. ENFORCEMENT ACTIONS

- a) **#V21-1021– 70 Witch Lane – Horvath – *Show-Cause Hearing*** – Removal of vegetation, construction of retaining walls, deposition of fill, grading and construction in and adjacent to a wetland and watercourse without benefit of a permit

Ms. Cherichetti briefly described the show-cause hearing process. She recounted the issuance of the order and the statements within the order. She displayed a 2019 aerial photograph of the property and described the location and scope of the recent unpermitted work. She noted an adjacent property had field-delineated wetlands and there was an intermittent watercourse on the property. She displayed site photographs of the property and pointed out the new boulder walls, fill and construction relative to the location of the wetland and watercourse.

Ms. Brown asked if the site had been stabilized.

Attorney Elizabeth Suchy was in attendance at the meeting and was representing the property owner, Jennifer Horvath. Ms. Horvath was also in attendance with her fiancée Tim Stepkoski. Ms. Suchy acknowledged some work had been performed within the upland review area. She indicated Otto Theall had been hired to field-delineate the wetland and Kate Throckmorton had been retained to develop a plan.

The deadlines listed in the Order were discussed. The deadline to provide a soil scientist's report was changed to May 25, 2021 and the deadline to file a Corrective Action Application was moved to June 15, 2021.

***** MR. MOELING MADE A MOTION TO UPHOLD THE ORDER WITH THE AMENDED DEADLINES NOTED.**

***** MR. LEVIN SECONDED THE MOTION.**

***** MOTION PASSED UNANIMOUSLY**

- b) **#V21-1022 - 20 Granite Drive – Lusardo – *Show-Cause Hearing*** – Construction of stone walls and removal of vegetation and removal established wetland/watercourse designated buffer and wetland restoration required by Permit #S14-445

Ms. Cherichetti noted the property owners were present at the meeting. She reviewed the regulated activities that had occurred without a permit. She read portions of the Order and its directives. She displayed aerial photographs of the property and described the location of the stone walls that were recently installed.

***** MR. PENTZ LEFT THE MEETING AT 8:38PM.**

Ms. Cherichetti described the wetland and watercourse locations and the condition of the front wetland area. She described the required wetland buffer area in the rear yard. She displayed site photographs of the walls, wetlands and area where the buffer should be maintained.

Richard and Brenna Lusardo discussed the scope of activities at their property. They had questions regarding some of the activities cited in the Order. Mr. Lusardo explained that he was under the impression work, including stone walls, would be fine as long as all the work was performed by hand.

There was a brief discussion regarding the deadlines in the Order. Ms. Cherichetti noted the wetlands were field-delineated in 2014.

***** MR. PENTZ RETURNED TO THE MEETING AT 8:55PM.**

***** MR. MOELING MADE A MOTION TO UPHOLD THE ORDER WITH THE AMENDED DEADLINE NOTED.**

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

***** MOTION PASSED UNANIMOUSLY WITH ONE (1) ABSTENTION (PENTZ)**

VI. CONSERVATION COMMISSION BUSINESS

a) **Open Space Fund Request - Norwalk Land Trust – Hoyt Island** – Request for \$200,000.00 for contamination remediation costs on Hoyt Island

***** MR. MOELING RECUSED HIMSELF FROM THE MEETING AND APPOINTED MR. LEVIN TO BE ACTING CHAIR DURING HIS ABSENCE.**

Mr. Levin introduced the item and then asked for a quick review of the previous discussion.

Ms. Cherichetti noted Mr. Hubbard was going to send additional information, but noted the City email system was having issues. She noted she had sent the requested information on the fund expenditures and revenues and a copy of the 2004 Draft Open Space Plan.

Mr. Hubbard was invited to speak. He described the PCB contamination and the events leading up to the current cost of \$300,000 to complete remediation of the island. He reviewed the state and federal requirements for remediation. He described the NLT's selection of a contractor and the process for remediation.

Mr. Pentz asked if there was any additional state funding. Mr. Hubbard stated he had consulted with Senator Bob Duff in April 2021 and it was Senator Duff who suggested the Open Space Fund.

Mr. Levin expressed his opinion that the fund was set up only for open space acquisition and the proposed remediation costs would not be in line with the fund purpose.

Mr. Hubbard recalled the establishment of the fund and the NLT's involvement. He countered that the situation at Hoyt Island entirely in line with the permitted use described in paragraph D of the ordinance.

There was a discussion regarding open space definitions and the state of the property at Hoyt Island and whether it was still open space.

***** MS. MARIN MADE A MOTION TO TABLE DISCUSSION AND ANY DECISION ON THE MATTER TO THE NEXT MEETING IN ORDER TO GIVE THE LAND TRUST OPPORTUNITY TO SUBMIT ADDITIONAL INFORMATION.**

***** MR. PENTZ SECONDED THE MOTION.**

***** MOTION PASSED UNANIMOUSLY.**

***** MR. MOELING RETURNED TO THE MEETING.**

- b) **40 Cross Street – Cross Street Medical Building, LLC – License Agreement & Access Easement**
- Termination of existing License Agreement and filing of new Easement related to installation and use of a 6-foot wide trail adjacent to the Norwalk River

Ms. Cherichetti quickly described the property, the existing license agreement and the history of the agreement. She noted Redevelopment Agency staff was present to answer any questions.

Mr. Moeling stated the easement made sense. He noted however that approval of the easement did not meet automatic approval of any future Wetland Permit application and there remained concerns regarding safety.

***** MR. MOELING MADE A MOTION TO AUTHORIZED MS. CHERICHETTI TO WORK WITH CORPORATION COUNSEL TO FINALIZE THE LANGUAGE AND FOR CORPORATION COUNSEL TO TERMINATE THE EXISTING LICENSE AND FILE THE NEW EASEMENT ON THE LAND RECORDS.**

***** MS. MARIN SECONDED THE MOTION.**

***** MOTION PASSED UNANIMOUSLY.**

VII. APPROVAL OF MINUTES

- a) April 27, 2021 minutes

This item was tabled.

VIII. PUBLIC COMMENTS

Diane Lauricella spoke about the Land Trust's request. She noted she is trying to help them with her expertise and that she was an expert in cost reduction. She also spoke of House Bill 6441, a bill on climate change and use of part of the conveyance tax to fund open space.

IX. COMMENTS OF STAFF

- a) Report of the Senior Environmental Officer

There were none.

X. COMMENTS OF COMMISSIONERS

- a) Report of the Commission Chair

Mr. Levin asked for more discussion on HB 6441 and on the open space fund's revenues and expenses. There was discussion of holding a non-wetlands meeting in the near future to allow adequate time to discuss conservation issues.

XI. ADJOURNMENT

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

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

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

Meeting adjourned at 10:00PM.