

NORWALK CONSERVATION COMMISSION MINUTES

MAY 24, 2005

ATTENDANCE: Karen Destefanis, Chairwoman; Anne Cagnina; Marny Smith; Ed Holowinko; D. Seeley Hubbard (6:16 p.m.); Matthew Caputo (6:25 p.m.)

STAFF: Alexis Cherichetti

OTHER: David Waters, Esq., Lepofsky, Lepofsky, and Lang;
Susan Kiskin, P.E., Redniss & Mead

CALL TO ORDER

Chairwoman Destefanis called the meeting to order at 6:15 p.m.

ROLL CALL

MS. SMITH MOVED TO SUSPEND RULES TO GO TO ENFORCEMENT
ACTIONS ON AGENDA.
MS. CAGNINA SECONDED.
MOTION PASSED UNANIMOUSLY.

ENFORCEMENT ACTIONS

a) 10 Woodland Road – Girouard – Commission consideration of issuance of Notice of Violation

Ms. Cherichetti explained that the Commission had received a complaint regarding this property. She met with the representatives of the property owner. They produced a soils report from Mr. Muller that indicated there were no wetlands on the property. Therefore, no notice of violation was issued nor was there any enforcement taken.

D. Seeley Hubbard arrived at 6:16 p.m.

Ms. Cherichetti said that the majority of the people in the room tonight were neighbors of the above-mentioned property. They had signed a petition asking the Commission to reconsider their decision. They felt that the property did have wetlands on it. Ms. Cherichetti then handed out a draft of the notice of violation and the directives it would have. Ms. Cherichetti recapped the draft: sitework may be causing the degradation of the wetlands through unauthorized sitework; evidence suggests that a wetlands does occur; topography, trees species, trees structures, are often characteristic of a wetlands. He does acknowledge that he has a soil scientist that says the contrary. The first directive would be to immediately allow a soil scientist retained by the city to investigate soils within the northwestern portion of the property. The first directive has the caveat that if the results of the city's investigation indicates that a wetland is not present, then the following

directives would not apply.

Ms. Cherichetti said that Mr. Muller stands by his evaluation of the property, and he commented that the neighbors had mentioned excessive ponding during rainstorms. He felt that the ponding situation was not present for a significant part of the year. Ms. Destefanis agrees with Ms. Cherichetti to get a soil scientist

out to the property. Ms. Smith said she was there the day before, which was after a heavy rain, and saw no sign of ponding.

Mr. Caputo arrived at 6:25 p.m.

MS. SMITH MOVED TO ISSUE A NOTICE OF VIOLATION AND INCLUDE THE DIRECTIVES THAT ARE ON THE MEMO RECEIVED TONIGHT BY THE COMMISSION.

D. SEELEY HUBBARD SECONDED.
MOTION PASSED UNANIMOUSLY

RECEIPT/DISCUSSION

a) Glover Avenue - #S05-217 – Merritt River Partners, LLC – Construction of a new office and residential building with associated parking garage, stormwater drainage and landscaping adjacent to a watercourse.

Ms. Cherichetti said that the applicant is proposing an 8-story building on top of a parking garage, and this is right in line with all the other Merritt River developments between Main Avenue and Glover Avenue. Mr. David Waters, of Lepofsky, Lepofsky, and Lang, represented the applicant. He explained the plans for the development. It is planned for the old Caldor executive building. This is the last piece of the Merritt on the River parcel. The proposed use is 78,000 sq. ft. of office on 3 floors and 40 residential units on 4 floors. The ground level is parking and below that will be two levels of garage. There are a total of 262 parking spaces planned. This project will require zoning approval, site plan and/or special permit because of the mixed use. There is one corner of the building that is close to the river. Easement by the state has already been taken into consideration. Ms. Susan Kiskin, P.E, from Redniss and Mead Professional Engineers joined Mr. Waters in the presentation. Mr. Waters asked the Commission if they needed a more formal presentation, or if they wanted a public hearing. Ms. Kiskin explained that a row of shrubs would be moved to accommodate the proposed edge of development. Ms. Smith asked how the two levels of parking would be constructed underneath the building. Ms. Kiskin said that the other buildings along Merritt 7 are similarly constructed. It is an engineering design issue, and the parking levels would be built 16 feet under the building. The flood elevation will be lowered several feet when they renovate the Glover Avenue bridge. Ms. Cagnina asked if the building could be angled to eliminate the proximity to the river. Ms. Kiskin explained that the state take line is close and can't be adjusted. Ms. Destefanis asked if the Commission wanted to go to a public hearing. Some discussion

followed regarding the development being too close to the river. The Commission agreed to go to a public hearing.

MR. CAPUTO MOVED APPROVAL OF A PUBLIC HEARING FOR THIS PROPOSED DEVELOPMENT.

MR. D. SEELEY HUBBARD SECONDED.

MOTION PASSED UNANIMOUSLY.

Ms. Cherichetti suggested June 28, 2005 for the public hearing.

b) #IWWRI-05 – Regulation Amendments – Proposed amendments and additions to, and reorganization of, Chapters 1-20, inclusive, of the Inland Wetland and Watercourses Regulations to increase conformance with the Connecticut General Statutes and Connecticut Model Municipal Regulations and additionally, to add details and clarifications to Chapter 2 (Definitions), and to modify the schedule in Chapter 18 (Application Fees).

Ms. Cherichetti handed out a replacement for page 11. It showed changes to subsection C, which was completely new.

Ms. Smith asked what hydrological stability, mentioned on page 1, meant. Ms. Cherichetti explained that certain things can impact watercourses to make them hydrologically unstable. Stormwater patterns from a typical urban area that has little discharge and surface water runoff can lead to erosion of a bank. The Silvermine River is a good example of that.

One correction is that the word herbaceous is mentioned twice under “Marsh”.

Ms. Destefanis asked if the Commission was comfortable with the changes in the application fees. The Commission was in favor of the changes. The document has to be formally received as amended, and a public hearing date has to be set. The document has to be sent to the DEP 35 days prior to the public hearing.

MR. CAPUTO MOVED TO ACCEPT REGULATIONS AS AMENDED.

MS. SMITH SECONDED.

MOTION PASSED UNANIMOUSLY.

The date for the public hearing will be the end of July at the earliest. It will be sent to the DEP the first week of June.

DISCUSSION/DECISION

a) 595 Westport Avenue (Pepperidge Farm) - #S05-211 – FF Realty, LLC – Construction of three multi-unit residential structures, additional office space, and associated parking lots and garages, stormwater drainage and landscaping in and adjacent to wetlands and watercourses.

Ms. Smith suggested taking a preventive approach to sedimentation, which was a big issue. She also suggested requiring a specific maintenance plan, which would include sweeping the roads within the complex at least twice a year, installing filter inserts, and installing buffers around the wetlands that would be at least 20 ft wide.

Mr. Caputo said there was a great amount of public input. Several experts presented to the Commission. All the advocates and experts believed the information presented was correct and valid. He felt that the experts for the applicant were substantially more credible in terms of the information presented.

Mr. Hubbard said he looked at the intervenor statute from the environmental protection act. After the second hearing, he felt that the basic problem was the storm water treatment. He said that they did not present a reasonable, feasible alternative.

Mr. Holowinko felt that the applicant hadn't presented an alternative, and they should go back to the drawing board. In addition to the wetland, there should be a storm water retention pond to maintain the quality of the water going downstream. It should be tested at the beginning of the construction to monitor for contamination. A Cease and Desist Order would be issued if it is found to be contaminated. There should be a proposal to monitor the surface water. The discharge is going to a culvert at the Indian River. Ms. Destefanis said that this is a concern and a post construction issue.

Ms. Smith suggested having them issue a timeline. Ms. Cagnina suggested using an outside environmental officer to monitor the project because it is so big.

Mr. Holowinko asked if more of a buffer will be made along Hills Lane. He suggested making the building shorter in order to widen the buffer.

Ms. Cherichetti explained that the City has a general policy for developments when there is an increase in the impervious surface, the stormwater generated by the impervious surface should be kept on site in some form of retention.

A decision has to be made at the next meeting scheduled for June 14.

Ms. Cherichetti will draft a resolution.

b) 3 Ridge Farms Road - #S05-216 – Kong – Installation of a new pool adjacent to a wetland.

Ms. Cherichetti explained that the disturbance was 5 ft. from a wetland, but now the limit of wetland disturbance is 15 ft. at a minimum. There is a two foot retaining wall above the silt fence, and the pool is above that wall at approximately 32 ft. from the wetland line. There are 10 shrubs proposed for between the retaining wall and the silt fence. Ms. Smith suggested extending the planting area further to the north along the silt fence and pool area. Mr. Jeff Kong, the owner and occupant, delineated the outline of the pool. He asked why the shrubs were needed. Ms. Smith explained that the shrubs are a vegetative

protection and act as a natural filter for water runoff before the wetlands. Mr. Kong said that he didn't use chemicals on his lawn, and there wouldn't be any additional chemical runoff. The Commission explained to him that the shrubs would be in place in case the home changed ownership.

MR. CAPUTO MOVED APPROVAL OF APPLICATION #S05-216, KONG, 3 RIDGE FARMS ROAD, INSTALLATION OF NEW POOL, PATIO, BOULDER WALL ADJACENT TO A WETLAND WITH THE CONDITIONS NUMBERED 1-8 ON THE MEMORANDUM DATED MAY 19, 2005 TO THE NORWALK CONSERVATION COMMISSION.

MS. SMITH SECONDED.

MOTION PASSED UNANIMOUSLY.

ENFORCEMENT ACTIONS (CONTINUED)

b) #V05-736 – 8 Eastwood Road – Kurbatov – Failure to meet directives of Cease & Desist Order

Ms. Cherichetti said that the homeowner received the original Cease and Desist order on February 16, and he has repeatedly missed the deadline. He has retained an attorney. Ms. Cherichetti received a fax from Mr. Kurbatov, and he asked for a new deadline of June 17. Mr. Kurbatov has continued to stockpile wood and put wood chips down. There have been three extensions granted already, and clearly this is not working. It was suggested to have June 13 as a deadline. If it is not resolved then, it will then be turned over to Corporation Council. An amended Cease and Desist Order will be sent to Mr. Kurbatov and his attorney via certified mail and regular mail.

c) #V05-738 – 4 May Drive – Davidson – Failure to meet directives of Notice of Violation

The homeowner cleared a wetland and partially filled it. Ms. Davidson had missed the deadline of May 16. Ms. Davidson has submitted a full application as of May 24, 2005.

d) #V05-740 – 8 Heron Road - Markow – Failure to meet directives of Notice of Violation

Ms. Destefanis recused herself at 8:35 p.m.

Ms. Cherichetti explained that this is clearly a wetlands dispute. She went out to the property on two occasions at the end of April. On both occasions, she knocked on the door and no one answered. She then conducted an inspection of the property and found that it did have wetlands and a watercourse. Trees had been cut down, there was standing water, and there were wood chips in the wetlands. The house was built in 1970 before the wetlands regulations were established. The photos she distributed to the Commission were taken on April 29. The aerial photo was taken in 2003.

Mr. John Markow read his prepared statement, which is in response to the notice of violation he received, along with a request to appear. He is requesting specific alleviation from the Commission that the Notice of Violation be repealed. In April of 2005, he undertook three activities on his property: He cut down 4 trees adjacent to the house on the south side; he removed the existing stumps with the aid of a stump grinder; and he chipped an existing brush pile adjacent to the tennis court at the back of the property. The brush pile had been left there by the previous owner. Mr. Markow had met with Ms. Cherichetti after he received the notice, and she had stated that while she was out at the property, she had noticed work being done. She knocked on the door, no one answered, and she then conducted her inspection. Mr. Markow felt that the entrance of Ms. Cherichetti onto his property was an unlawful and willful trespass, and he referred to Section 60-A10. He asked the Commission to repeal the memo of May 5, 2005. There was some question as to whether Ms. Cherichetti was accompanied by another person that day. She was alone, and had arrived in an official city car. She had only inspected the property along the southern line.

For the record, Mr. Caputo asked Ms. Cherichetti to state her qualifications, i.e. education and experience. She stated that she was an Environmental Analyst for the town of Bolton. She performed site inspections and from 2001 to the present has been the Senior Environmental Office in Norwalk, with responsibilities including enforcing regulations, performing site inspections, viewing aerial photographs, soil maps, etc.

Mr. Markow claimed that he doesn't know if he has wetlands; he won't dispute the watercourse issue. He had no idea about any regulations, and he felt that they were unclear anyway. He agreed to halt all work on the property. Ms. Smith said that the title and deed of a home purchase are considered buyer beware. She felt that an apology may be necessary if the wetlands and watercourses were not listed on the deed.

Mr. Caputo asked Mr. Markow if he was available to meet the following day, and Mr. Markow said that he wasn't. Mr. Markow thanked the Commission for their time. It was suggested to Mr. Markow to wait for a letter from either the Commission or Corporation Counsel. If it is put on the agenda for the June 14 meeting, Mr. Caputo suggested to Mr. Markow that he call first to see where he is on the agenda, as a public hearing is scheduled for that night.

Ms. DeStefanis reentered at 9:30 p.m.

COMMENTS OF STAFF

a) Enforcement Actions –

36 Willow Street – Notice of Violation issued. The homeowner had applied for a permit to deposit fill.

7 Renzuli Road – Notice of Violation issued. The homeowner was required to file a corrective application or do a restoration plan.

379 Chestnut Hill Road – Notice of Violation issued. The homeowner is in the process of regrading a carriage road to remove trees to make a pasture for horses. Ms. Cherichetti advised the homeowner to come in and file proper permits.

347 Rowayton Avenue – Ms. Cagnina asked if it was settled yet. Ms. Cherichetti said no, they haven't gotten to the deadline yet. They are required to hire a soil scientist by May 30, and file a restoration plan by June 6.

12 Chipmunk Lane – They are about to receive a Declaratory Permit. The plans are to build a back deck, which would be adjacent to wetlands.

RELEASE OF BOND

a) 46 Old Rock Lane – Cornerstone Development LLC - #S02-110 – Construction of a new single-family residence adjacent to a wetland and watercourse.

Ms. Cherichetti said that Cornerstone Development built this residence. 80% of the plants survived that were planted at the start of the construction in 2002. They have done one replanting to replace the 20% that didn't survive.

MS. SMITH MOVED TO RELEASE BOND.
D. SEELEY HUBBARD SECONDED.
MOTION PASSED UNANIMOUSLY.

MINUTES OF APRIL 26

MR. CAPUTO MOVED TO APPROVE MINUTES OF APRIL 26 AS AMENDED.
MS. DESTEFANIS SECONDED.
MOTION PASSED WITH ONE ABSTENTION (MR. HOLOWINKO).

MS. SMITH MOVED TO ADJOURN.
MOTION PASSED UNANIMOUSLY.

The meeting was adjourned at 9:45 p.m.

Respectfully submitted,

Carolyn Marr
Telesco Secretarial Services