

**NORWALK CONSERVATION COMMISSION MINUTES**

JULY 12, 2005

ATTENDANCE: Matt Caputo; Anne Cagnina; Marny Smith; Ed Holowinko;  
Andy Kydes; Susan Llorca; Karen DeStefanis (6:15 p.m.);  
D. Seeley Hubbard (6:16 p.m.)

STAFF: Alexis Cherichetti, Sr. Environmental Officer

OTHER: Richard Roina, Attorney; Matthew Popp, Environmental Land Solutions;  
William Kenny, William Kenny Associates, LLC; Al Torre;  
Igor Kurbatov

CALL TO ORDER

Mr. Caputo called the meeting to order at 6:05 p.m.

ROLL CALL

Ms. Cherichetti read the roll call.

RECEIPT/DISCUSSION

a) #S05-223 – Dr. Martin Luther King, Jr. Drive – Pat J. Cutrone Builder, LLC –  
Construction of a non-residential structure and associated parking, stormwater drainage  
and wetland mitigation, in and adjacent to a wetland.

Ms. Cherichetti asked the Commission to make the confirmation that this application will  
require a public hearing. She then distributed a soils report that goes with original  
application.

Mr. Richard Roina, an Attorney from 160 Water Street, Norwalk, CT spoke on behalf of  
the applicant, Pat J. Cutrone, Builder, LLC. Mr. Roina said the application submitted is  
for the development of a 1-acre parcel on Dr. Martin Luther King, Jr., Drive consisting of  
a little more than an acre of property and has 9,000 sq. ft. of wetland area. The proposal is  
for the construction of a warehouse just over 11, 000 sq. ft., an 11-space parking lot, and  
the relocation of approximately 3,000 square feet of wetland area to be replaced by  
approximately 3,700 sq. ft. of mitigated wetland area on the inland portion of the lot. Ms.  
Cagnina asked about the 2 ft. wide terrace with plantings. Mr. Bill Kenny, principal of  
Kenny Associates, replied to Ms. Cagnina and said that the plantings are proposed in that  
area with the terrace to break up the slope. The plantings should provide additional  
habitat benefits. Ms. Smith asked where the 500 yards of excavated wetland soils would  
be stockpiled when relocating. Mr. Roina said that the contractor believes there will be  
sufficient room in the back of the property to store the material.

Ms. DeStefanis arrived at 6:15 p.m.

That excavation will take place before the building goes in. Ms. Smith noticed that it said  
"The wetlands are in a degraded state", and asked if someone knew what that meant.

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

Mr. Kenny explained to Ms. Smith that this is not a wetland that you would find in an undisturbed area. He said he would be better prepared to discuss this at the public hearing. Ms. Smith further discussed the effect of manmade wetlands. She asked him to bring along any information he had to the public hearing. Ms. Cagnina asked if the storm drains all go under Martin Luther King Drive, and if the flow can be traced. Mr. Roina said that the pipe is set up in such a way so as to preserve a certain level at an elevation of 37 1/2 inches. The parking lot drains will all be equipped with oil filters.

MR. CAPUTO MOVED TO APPROVE THE PUBLIC HEARING FOR APPLICATION #S05-223.

MS. SMITH SECONDED.

MOTION PASSED WITH SEVEN VOTES IN FAVOR (CAPUTO, CAGNINA, DESTEFANIS, HOLOWINKO, HUBBARD, KYDES, SMITH) AND ONE ABSTENTION (LLORCA)

It was agreed to have the public hearing on August 9. There are 65 days from the date of the receipt to commence the hearing. Mr. Holowinko asked for alternatives to the plan. Mr. Roina said the alternatives were addressed in Mr. Kenny's report. Mr. Kydes said the City is in desperate need of a development like this, intended for warehouse, light assembly and distribution.

b) #S05-224 – 7 Renzulli Road – Torre – Corrective Action restoration, with associated grading and planting, in and adjacent to a wetland.

Ms. Cherichetti explained that Mr. Torre had been given two separate directives and a notice of violation dated May 23, 2005 to either implement a restoration plan or go through the permit process and apply for the work that had already been done. Mr. Matthew Popp, Landscape Architect and Professional Wetlands Scientist, of Environmental Land Solutions, said he has been retained by the property owner. He explained that approximately 6-12 inches of fill had been brought in to enhance the lawn area, but it was in wetlands and near an existing retaining wall. He presented photos and explained that the proposal is to fine grade the area in the back, remove the stones, remove the bumps, and maintain the maximum depth of 9 inches of soil over the wetland area. He also proposed mitigation plantings in the corner of the property consisting of 25 shrubs and 1 small tree, and to rebuild the stone wall (without mortar), and to install a fence in front of the wall. He had received letters from two of the neighbors, at #3 and #5 Renzulli Road, because they were concerned about drainage issues. Ms. Cagnina asked where the Westport property line is. Mr. Al Torre, the homeowner, pointed out where the Westport line cuts across the property. There is a portion of the wetland that is in Westport. Ms. Smith asked about how the wetland lawn would be planted. Mr. Popp explained that it would be a lawn area within a wetland. Ms. Llorca asked how far the septic drain field is from the wetland. Mr. Popp said it's 30 feet from the wetland. Ms. Cherichetti said she would confirm that the property owner's wetlands are in Westport. Mr. Torre explained for the Board that a phone call was made to the Renzulli's about

them cutting down trees and dumping them in the back. He said that someone called Westport and complained about resulting drainage problems. He said that the water table in the back has changed.

There was discussion among the Commission that because letters had been received from people in the Strathmore Condominiums, the owners of #3 and #5 Renzulli Road, as well as the Town of Westport, it would go to a public hearing.

MR. CAPUTO MOVED TO APPROVE THE PUBLIC HEARING FOR APPLICATION #S05-224.

MR. KYDES SECONDED.

MOTION PASSED WITH SEVEN VOTES IN FAVOR (CAGNINA, CAPUTO, DESTEFANIS, HOLOWINKO, HUBBARD, KYDES, SMITH) AND ONE ABSTENTION (LLORCA).

#### DISCUSSION/DECISION

a) #SO5-217 - Glover Ave - Merritt River Partners, LLC – Construction of a new office & residential building with associated parking garage, stormwater drainage and landscaping adjacent to a watercourse

Ms. Cherichetti said at the last meeting on June 28, 2005, a public hearing was held for this application, but no members of the public attended. She had prepared a staff report with draft resolutions. It was decided to discuss this further, and Ms. Smith wanted to confirm that Mr. Holowinko's concerns were about the flooding and the underground garage. Mr. Holowinko said that he had concerns beyond the flooding. He said that there aren't any plantings, the applicants weren't asked to move the building farther back, it's too close to the river, and no alternative building plans have been offered.

Ms. DeStefanis said she thought that Attorney David Waters said the building was changed to be a trapezoid. Plans were submitted on May 10, 2005 for a rectangular building. The stream channel encroachment line was 10 ft. away from the building. After the Commission made their comments at the last meeting, the applicant altered the plan and made the southeastern corner of the building approximately 16 feet from the stream channel encroachment line. The parking lot is 21 ft. from the stream channel encroachment line. The eastern edge of the building parallels the stream channel encroachment line. They did submit revised architectural drawings to include the third level of parking, which is three full levels of parking and one half level below the grade of the river. It was confirmed that all the buildings north of this proposed development are below the grade of the river, but they are open.

Mr. Holowinko said the main concern is if the building should be moved back. The closest level of disturbance is 25 ft away. The building itself is 50 ft away. Mr. D. Seeley Hubbard asked if the construction itself is in the flood plain or the floodway. Ms. Cherichetti said the building is not in the floodway or the flood plain. The limit of disturbance will encroach into the 100 year flood zone. Mr. Holowinko said that there is a manual with the FEMA data, and it says that the flood line implies that is where it would

flood again. The applicant didn't mention that the proposed building is in a flood zone. There should have been calculations presented to the Commission that weren't. Mr. Holowinko again suggested that the applicant come back with an alternative plan, such as no underground parking. It was mentioned that the parking is needed for the building across the street.

Ms. Cherichetti said she felt the regulatory decision-making process should not include the prediction that there would be debris flowing down the river in the next flood and pose problems for the building, occupants and parking lot.

Mr. Holowinko said all buildings need a buffer, and if the building is moved back 10 feet, he would recommend a wider buffer because that is consistent with what the Commission has done in the past.

MR. CAPUTO MOVED TO APPROVE APPLICATION #S05-217 AND MAKE ANY APPROVALS AND CONDITIONS ON IT WITH REFERENCE TO THE MEMO DATED JULY 6, 2005 FROM MS. CHERICHETTI, FROM THE FIRST PAGE TO THE THIRD PAGE, STATING PARAGRAPHS 1-10 AS A SERIES OF CONDITIONS.

MS. CAGNINA SECONDED.

MOTION CARRIES WITH FOUR VOTES IN FAVOR (CAPUTO, CAGNINA, DESTEFANIS, HUBBARD), THREE OPPOSITIONS (HOLOWINKO, LLORCA, SMITH) AND ONE ABSTENTION (KYDES).

b) #S05-219 – 4 May Drive – Davidson – Corrective action clearing, filling, and construction of deck adjacent to a wetland and watercourse

Ms. Cherichetti said that she didn't go out to this property again, Ms. Davidson is not present, and recommended that the Commission table this decision to the next meeting.

Mr. Holowinko left the meeting at 7:30 p.m.

c) #S05-220 – 3 Watson Court – Miller – Addition to single family residence adjacent to wetland and watercourse

Ms. Cherichetti said that at the last meeting, the applicant proposed a large side addition, an addition to the front of the house, and a connecting deck and front porch. There are no wetlands on the property, but there are wetlands just across the eastern property line. There were some concerns raised regarding the proximity of the proposed addition to the wetlands line. The applicant's rebuttal seemed to allay the concerns of the Commissioners, and the applicant had proposed to redo and extend the retaining wall along the property line.

MS. CAGNINA MOVED TO APPROVE APPLICATION #S05-220 WITH THE EIGHT CONDITIONS AS STATED IN THE MEMO DATED JULY 5, 2005 FROM

MS. CHERICHETTI TO THE CONSERVATION COMMISSION.  
MS. SMITH SECONDED.

It was noted that the application # was incorrect on the memo dated July 5, 2005.

MOTION PASSED WITH SIX VOTES IN FAVOR (CAGNINA, CAPUTO, DESTEFANIS, HUBBARD, LLORCA, SMITH) AND ONE ABSTENTION (KYDES).

d) #SO5-221 – 29 Orchard Hill Road – LaPak – Stabilization and landscaping of stream bank in and adjacent to a watercourse and wetland

Ms. Cherichetti gave a background of the history and explained that the homeowner had complied with everything.

MS. SMITH MOVED TO APPROVE APPLICATION #S05-221 WITH THE FIVE CONDITIONS AS STATED IN THE MEMO DATED JULY 6, 2005 FROM MS. CHERICHETTI TO THE CONSERVATION COMMISSION.  
MS. LLORCA SECONDED.  
MOTION PASSED UNANIMOUSLY.

e) #SO5-222 – 8 Eastwood Road – Kurbatov – Corrective action restoration of slope adjacent to a wetland and watercourse

Ms. Cherichetti explained that at the last meeting, the application was officially received. The applicant was directed by a cease and desist order to perform either a restoration plan or submit a corrective action permit application. The applicant elected to do a corrective action permit application. The applicant was in attendance. She informed the applicant that there were questions regarding the woodpile, the proposed retaining wall, and concerns that the retaining wall would be in too close proximity to the wetlands. Ms. Destefanis confirmed that the May 18, 2005 map is the most updated one.

Ms. Smith asked if he was going to seed or mulch. Mr. Igor Kurbatov, the applicant, said he wants to put seed everywhere. Ms. Cagnina asked when the woodpile would be removed. Mr. Kurbatov said he would relocate it to another area when he builds the retaining wall. Ms. Cherichetti said for the construction of the retaining wall, it would have to be built approximately 150 ft in linear length. Mr. Kurbatov, a mason, said the large rocks were there from the previous owner. He will use mortar to build the wall. Ms. Smith asked how far beyond the woodpile would the wall be. He replied that it will be 40 ft. away. The woodpile comes up to the 42 inch oak tree between wetland flags #6 and 7. There will be natural shrubs to the east of the wall, and lawn to the west. The area would become a buffer and will be planted with a mixture of 35 shrubs, 20 small shade trees and a combination of seed mix and wood chips. Mr. Kurbatov said he would need two days to move the woodpile. Ms. Destefanis asked if the Commissioners had concerns about the west side of the wall on the east side of the property where the 50-foot setback is, and is there any destabilization. Ms. Cherichetti said at the last meeting, the Commissioners were concerned that the proposed wall is 21 ft. from the wetland line, and the limit of

disturbance is 20 ft. from the wetland line. That would keep a 20 ft. buffer. There were also concerns that uphill of the wall, there is a slope on the property that slopes to the east, and then the property slopes steeply to the east. It was mentioned that the wall is proposed to be built in the middle of the slope.

Ms. Destefanis thanked Mr. Kurbatov and said they will make a decision at the July 26 meeting.

#### RELEASE OF BOND

a) #S03-139 – 7 Allen Road – Pinsky – Release of bond for construction of a rear addition and associated landscaping adjacent to a watercourse

Mr. Pinsky received a permit to do a rear addition adjacent to Three-Acre pond. He was required to do 15 plantings, and they have been living for a year. The staff recommended releasing the bond.

MR. CAPUTO MOVED TO APPROVE THE RELEASE OF BOND FOR #S03-139.  
MR. KYDES SECONDED.  
MOTION PASSED WITH FIVE VOTES IN FAVOR (CAPUTO, DESTEFANIS, HUBBARD, KYDES, SMITH) AND TWO ABSTENTIONS (CAGNINA, LLORCA).

b) #SO3-167 – 87 East Rocks Road – Oestmann – Release of bond for construction of a detached storage shed and associated site grading adjacent to a wetland and watercourse

Ms. Cherichetti explained that the applicant was required to do a wetland mitigation planting around the shed. The applicant has previously asked for a partial release of the bond related to the sedimentation and erosion controls, which was granted six months ago. The plants have been living for a year.

MR. CAPUTO MOVED TO APPROVE THE RELEASE OF BOND FOR #S03-167.  
MS. SMITH SECONDED.  
MOTION PASSED UNANIMOUSLY.

#### MINUTES

a) March 15, 2005 minutes (copies distributed at last meeting)

MR. CAPUTO MOVED TO APPROVE MINUTES OF MAY 15, 2005.

Ms. Cherichetti said there was no quorum. Mr. Caputo withdrew his motion. This was tabled to the next meeting.

b) April 12, 2005 minutes (copies distributed at last meeting)

Ms. Cherichetti will redistribute the April 12, 2005 minutes in everyone's packets. This was tabled to the next meeting.

c) May 24, 2005 minutes

The corrections to the May 24, 2005 minutes are as follows:

On page 1, under Other, it should read Lepofsky, not Lapofsky.

On page 2, under Receipt/Discussion, #a, 2nd sentence, it should read Lepofsky, not Lapofsky.

On page 4, paragraph #2, 2nd sentence, the word they should be changed to the intervenors.

On page 4, under #b, 5th sentence, the word distinguished should be changed to delineated.

On page 4, paragraph #6, the two sentences should be combined as one.

On page 6, at top of page, the word prepared should be changed to removed.

On page 6, 1st paragraph, 7th sentence, the word disagreement should be changed to question.

On page 6, 3rd paragraph, last sentence, it should read - She felt that an apology may be necessary if the wetlands and watercourses were not listed anywhere.

On page 6, under Comments of Staff, #a, it should read 7 Renzulli Road, not Rinzuli Road.

On page 7, under 12 Chipmunk Lane, the words too close should be changed to adjacent.

MS. SMITH MOVED TO APPROVE THE MINUTES OF MAY 24, 2005 AS AMENDED.

MS. CAGNINA SECONDED.

MOTION PASSED WITH FIVE VOTES IN FAVOR (CAGNINA, CAPUTO, DESTEFANIS, HUBBARD, SMITH) AND TWO ABSTENTIONS (KYDES, LLORCA)

d) June 14, 2005 minutes

The corrections to the June 14, 2005 minutes are as follows:

On page 1, under Attendance, it should read D. Seeley Hubbard.

On page 1, under Receipt/Discussion, 2nd paragraph, 2nd sentence, it should read The USDA-NRCS soil survey indicates that their rear yard contains alluvial soils.

On page 2, #c, should have the numeral 5 added into the application #.

On page 3, 2nd paragraph, 3rd sentence, the word Otto should be changed to Mr. Theall.

On page 3, last paragraph, 1st sentence, DeNario should be spelled Denaro.

On page 5, 5th paragraph, 4th sentence, the word intervener should be changed to intervenor.

On page 5, 5th paragraph, 6th sentence, omit the word was.

On page 5, 5th paragraph, 8th sentence, the word fair should be changed to far.

On page 6, 1st paragraph, 3rd sentence, the intervener should be changed to intervenor.

On page 6, in the motion, the ninth line that starts with CHERICHETTI, the words LIKE TO should be omitted from the motion.

On page 7, in the motion, 3rd line down, the word HEAL should be changed to HELD.

Mr. Caputo said he was concerned about page 7. Ms. Cherichetti said she will approve it for him. The Staff will bring their resolutions to the next meeting. This was tabled to the next meeting.

#### ELECTION OF OFFICERS

MR. CAPUTO MOVED TO NOMINATE KAREN DESTEFANIS AS CHAIR OF THE CONSERVATION COMMISSION, AND ANNE CAGNINA AS VICE CHAIR OF THE CONSERVATION COMMISSION.

MR. KYDES SECONDED.

MOTION PASSED UNANIMOUSLY.

#### COMMENTS OF STAFF

##### a) Declaratory Permits and other Enforcement Actions

Ms. Cherichetti said that at 7 Rising Road, for patio adjacent to wetlands and watercourse, there was no action, but official enforcement.

Ms. Cherichetti wanted to discuss the 8 Heron Road property. She was waiting for Corporation Counsel to let her know if the alleged trespassing on that property was an issue. She said they told her to confirm it with photographs of the property. She went to Westport on June 28 and took photos. She returned July 12 to take more photos. A call was made on July 1st, and the homeowners had machinery at the property. There is evidence of some fine grading and possibly some filling in, in the front portion of yard. The woodchips are still visible. She wants to confirm that she is to reissue the notice of violation asking them to install mulch. It has been hydro-seeded and extensively stabilized. The homeowner maintained he only cut down four trees, but she counted eight. Corporation Counsel suggested that if there is evidence that they performed work in a wetland area, that they would go ahead with the notice of violation. Ms. Cherichetti said she is most concerned about the wood chips, and the most recent filling in of the side yard area where trees have been removed. She observed skunk cabbage growing under woodchips.

It was agreed to issue a Cease and Desist Order for this property. She would list the original violations, show cause hearing, further direct them to submit a restoration plan, or corrective action permit application, include a bond posting and direct them to plant 8 native shrubs. Ms. Cherichetti will issue the Cease and Desist Order today or tomorrow, and that is sufficient time to meet a show cause hearing in 10 days.

MR. CAPUTO MOVED TO APPROVE ISSUING A CEASE AND DESIST ORDER AT 8 HERON ROAD IN NORWALK, CT WITH THE FOLLOWING DIRECTIVES:

SUBMIT A RESTORATION PLAN, OR OBTAIN A CORRECTIVE ACTION PERMIT APPLICATION, ON OR BEFORE AUGUST 9, 2005. THE CORRECTIVE



ACTION PERMIT APPLICATION MUST INCLUDE A SITE PLAN. 8 NATIVE SHADE TREES AND 35 NATIVE SHRUBS ARE TO BE PLANTED.

THE ABOVE RESTORATION PLAN MUST BE FILED BY SEPTEMBER 13, 2005, AND BOND MUST BE POSTED ON OR BEFORE AUGUST 9, 2005.

ANY FURTHER VIOLATIONS WILL RESULT IN FURTHER ENFORCEMENT ACTION.

MS. LLORCA SECONDED.

Ms. Cagnina is in as Vice-Chair. Ms. DeStefanis has recused herself.

MR. CAPUTO MOVED TO AMEND MOTION TO SAY THAT WOODCHIPS ARE TO BE MOVED TO WITHIN 100 FT. OF ANY WATERCOURSE.

D. SEELEY HUBBARD SECONDED.

MOTION PASSED UNANIMOUSLY WITH SIX VOTES IN FAVOR (CAGNINA, CAPUTO, KYDES, HUBBARD, LLORCA, SMITH) AND ONE ABSTENTION (DESTEFANIS).

#### COMMENTS OF COMMISSIONERS

Ms. Cherichetti said that a member of the public asked to bring a matter to the Commission regarding the State wanting to reclassify the groundwater at Woodward Avenue and Harbor Avenue. It used to be a furniture company. It is currently rated GA, which has very stringent regulations, and they want to change it to a GB rating. It has been investigated for several years. They will have to meet certain criteria, i.e. soil cleanup, protection of groundwater, discharge of surface water, etc. The State did hold a public hearing on this. It is not a superfund site or a brownfield. There is arsenic in the soils but not much in the water. Comments regarding this site have to be received by August 3, 2005 at 4:30 pm. in the DEP office. The investigation is being lead by the EPA..

It was agreed to have a meeting on Tuesday, September 20, 2005 to present draft changes to regulations.

Ms. Cherichetti said she will make 45 copies and send out notices so that everyone has ample time.

She typed up an attachment for the Regulations handbook and distributed it to the Commissioners.

The Silvermine River Restoration work has begun. She invited everyone to stop by.

All the tag sale properties have wetlands.

MR. CAPUTO MOVED TO ADJOURN MEETING.  
MR. KYDES SECONDED.  
MOTION PASSED UNANIMOUSLY.

The meeting was adjourned at 9:20 p.m.

Respectfully submitted,

Carolyn Marr  
Telesco Secretarial Services

