

**CITY OF NORWALK
CONSERVATION COMMISSION
September 9, 2008**

PRESENT: D. Seeley Hubbard, Chair; Anne Cagnina, Vice Chair; Karen Destefanis; Matthew Caputo; Gwenn Briggs

STAFF: Alexis Cherichetti

OTHERS: Theodore Giapoutzis; Stephanie Dellolio, Ury & Moskow, PC

CALL TO ORDER

Mr. Hubbard called the meeting to order at 6:15pm

ROLL CALL

Ms. Cherichetti called the roll.

RECEIPT & DISCUSSION

a) #S08-329 – 8 Mary Austin Place – City of Norwalk DPW – Replacement of storm water drainage pipe in and adjacent to a wetland and watercourse.

Ms. Cherichetti explained that she was under the impression that the applicant was going to attend the meeting, but that she would try and describe the application.

She described a flooding situation on Silvermine Avenue, which DPW has determined is caused in part due to undersized drainage pipes. The applicant intends to replace an existing 15" pipe with a 36" pipe. The City has a 15 foot wide drainage easement over a portion of 8 Mary Austin Place. The pipe outlets at the rear of this property at the top of the western bank of the Silvermine River.

She noted that the invert of the new pipe would be the same as the existing pipe. She discussed the location of the existing headwalls adjacent to the river. She also discussed the location of the pipe outlet in the inside meander of the river, where a substantial point bar of cobbles has been deposited by flows.

Ms. Destefanis inquired about the increased flow that would be able to discharge from the outlet. Ms. Cherichetti directed Commissioners to some of the additional submitted application materials, which, she believed were provided to show that the volume of water from the pipe is insignificant in comparison to the flow rates anticipated in a 10 or 50 year storm event.

Mr. Hubbard wondered how the flow rate of the existing 15-inch pipe compared with the proposed larger pipe and if the increase would result in bank erosion. Ms. Cherichetti explained the 10'x15' area of excavation proposed below the new

headwall. She added that because of the location of the outlet and the size of the cobbles, she did not believe increased erosion would be an issue.

DISCUSSION &/or DECISION

a) #S08-326 – 115 Maywood Road – Barringer – Corrective Action deposition of wood chips in and adjacent to a wetland

Ms. Cherichetti noted that she was under the impression that the applicant was going to attend the evening's meeting. She added that, without an extension from the applicant, the Commission's deadline to render a decision on the application is tonight.

She pointed to the site sketch of the property that had recently been submitted by the applicant. Unlike the initial sketch provided, this new plan was to scale. She pointed to the two areas of woodchips and the location of the flagged wetland line. Ms. Cherichetti also noted that the applicant has proposed restoration activities, which were listed on the right-hand side of the plan. She explained that the applicant proposed removing the woodchip pile outside of the upland review area and thinning the woodchips in the "spread woodchips" area, including within the wetland, to a depth of not more than three (3) inches.

Ms. Briggs indicated that she was not in favor of having any woodchips within the wetland area. Ms. Cagnina concurred.

- ** MR. CAPUTO MADE A MOTION TO ADOPT THE FOLLOWING RESOLUTION:**
- WHEREAS, THE CONSERVATION COMMISSION HAS CAREFULLY CONSIDERED ALL THE INFORMATION SUBMITTED AND THE FACTORS FOR CONSIDERATION OF DECISION, AS DETAILED IN SECTION 60A-8 OF NORWALK'S INLAND WETLAND AND WATERCOURSES REGULATIONS; AND**
- WHEREAS, THE PROPOSED ACTIVITIES, AS CONDITIONED BELOW, WILL LIKELY MITIGATE THE NEGATIVE IMPACTS ON THE WETLAND OR WATERCOURSE THAT RESULTED FROM THE DEPOSITION OF WOODCHIPS IN AND ADJACENT TO THE WETLAND;**
- NOW THEREFORE BE IT RESOLVED:**
- THAT CONSERVATION APPLICATION #S08-307, FOR CORRECTIVE ACTION DEPOSITION OF WOODCHIPS IN AND ADJACENT TO A WETLAND AND WATERCOURSE, BE GRANTED TO PAUL BARRINGER, FOR PROPERTY AT 115 MAYWOOD ROAD, NORWALK, CT [5-62-43], WITH THE FOLLOWING CONDITIONS:**
- 1. PRIOR TO RECOMMENCEMENT OF ANY ON-SITE PERMIT RELATED ACTIVITY, THE APPLICANT SHALL PROVIDE PHOTO DOCUMENTATION OF THE SITE AND CROSS-REFERENCE THE PHOTOGRAPHS ON A SITE PLAN. PHOTOGRAPHS SHOULD**

REPRESENT WIDE-ANGLE VIEWS AND SHOULD INCLUDE WETLAND AND WATERCOURSE AREAS.

2. WOODCHIPS IN THE AREA DELINEATED AS “SPREAD CHIPS” SHALL BE REMOVED SO THAT THE DEPTH OF WOODCHIPS NOT EXCEED THREE INCHES (3”) WITHIN AREAS OF THE UPLAND REVIEW AREA. ADDITIONALLY, RECOGNIZING THAT WOODCHIPS POLLUTE WETLANDS AND WATERCOURSES AS THEY DECOMPOSE BY RELEASING EXCESS NUTRIENTS, ALL WOODCHIPS SHALL BE REMOVED FROM THE WITHIN THE WETLAND AND WITHIN FIVE (5) FEET OF THE WETLAND LIMIT LINE.

3. THE CORRECTIVE ACTION PLAN, AS DETAILED ON THE PLAN ENTITLED, “OUTDOOR ROPES PLAY AREA”, DATED AUGUST 29, 2008, AND AS MODIFIED ABOVE, SHALL BE FULLY IMPLEMENTED WITHIN THREE (3) MONTHS OF ISSUANCE OF THIS PERMIT.

4. ANY OTHER REGULATED ACTIVITIES WITHIN THE UPLAND REVIEW AREA SHALL REQUIRE CONSERVATION COMMISSION REVIEW PRIOR TO COMMENCEMENT.

**** MS. BRIGGS SECONDED THE MOTION.
** THE MOTION PASSED UNANIMOUSLY.**

b) #S08-328 – 104 Dry Hill Road – Torrano – Corrective action construction of a low retaining wall, filling and grading in and adjacent to a wetland and watercourse

Ms. Cherichetti reminded Commissioners that the public hearing for this application had opened and closed at the last meeting on August 26, 2008, however the Commissioners had not yet had any discussion following the hearing's close. She recalled that one abutting neighbor, Ms. Skutch of 102 Dry Hill Road, had spoken in opposition of the application and that she had also hired an arborist, Mr. Pierce, to comment on the application.

Ms. Cherichetti added that she could distribute any of the information presented at the hearing or provide clarification of any of the information presented in the record.

Ms. Briggs noted that testimony from the arborist that Ms. Skutch had brought in did not address any impacts that the activities have caused or would cause to the wetlands and watercourses on the properties. Ms. Briggs added that their argument seemed to focus on the applicant's stated reason (soil erosion) for the activity and that the reason was false.

Mr. Hubbard recalled that there had been a wood timber retaining wall in the same location, and that lawn had previously been maintained in the area of fill. He noted that he felt the activities, though needing a permit, were more similar to a maintenance activity and had not changed the landscape or the wetland.

Mr. Caputo stated that he did not have a problem with the activities proposed in the application and that he heard no expert testimony otherwise.

Ms. Cagnina agreed that the activities were fairly minimal but was concerned about the loss of trees along the wall. Ms. Cherichetti clarified that none of the current trees by the wall were being proposed for removal. Ms. Cagnina questioned the deposition of fill around the trees. It was then recalled that the arborist testified that the amount of fill over a portion of the tree roots would not likely result in the demise of the trees.

Mr. Hubbard noted that Commissioners appeared ready to render a decision on the application. Mr. Caputo suggested that Ms. Cherichetti take their comments and prepare a draft resolution for their consideration at the next Commission meeting.

Noting that there were only ten minutes prior to the scheduled continuance of the public hearing, there was a brief discussion regarding resolving other items on the agenda.

- ** MS. DESTEFANIS MADE A MOTION TO AMEND THE AGENDA AND REVIEW THE MINUTES OF PREVIOUS MEETINGS.**
- ** MR. CAPUTO SECONDED THE MOTION.**
- ** THE MOTION PASSED UNANIMOUSLY.**

MINUTES

a) August 12, 2008 minutes

Ms. Destefanis noted that the date for the public hearing on #S08-324, in the resolution on page 6, should refer to August 26, 2008, not September 9, 2008.

- ** MR. CAPUTO MOVED TO ACCEPT THE AUGUST 12, 2008 MINUTES AS AMENDED.**
- ** MS. BRIGGS SECONDED THE MOTION.**
- ** THE MOTION PASSED WITH ALL IN FAVOR.**

b) August 26, 2008 minutes

- ** MR. CAPUTO MOVED TO ACCEPT THE AUGUST 26, 2008 MINUTES AS AMENDED.**
- ** MS. CAGNINA SECONDED.**
- ** MOTION PASSED WITH FOUR IN FAVOR AND ONE ABTENTION (DESTEFANIS).**

Noting that the approval of the minutes went quickly, there was discussion regarding review of other portions of the agenda prior to the start of the public hearing.

- ** MR. HUBBARD MADE A MOTION TO AMEND THE AGENDA AND REVIEW THE REQUESTS FOR BOND RELEASE AND REDUCTION.**
- ** MS. DESTEFANIS SECONDED THE MOTION.**

**** THE MOTION PASSED UNANIMOUSLY.**

BOND RELEASE/REDUCTION

- a) #597.P96 – 395 Connecticut Avenue - Stop & Shop Supermarket Co. - Release of bond held for construction and associated activities**

Ms. Cherichetti recommended that the matter be tabled.

- b) #540A.P94 – 380 Main Avenue – Ceruzzi/HD Main LP – Release of bond held for construction**

Ms. Cherichetti, noting that the bond had been held for a long time, indicated that the intent of the planting plan had been met. Additionally, she stated that the property owner had cleaned the two detention basins of debris and shopping carts upon her request.

***** MR. CAPUTO MOVED TO RELEASE THE BOND.**

***** MS. DESTEFANIS SECONDED.**

***** MOTION PASSED UNANIMOUSLY.**

- c) #S07-296A - 20 Betmarlea Drive – McGettigan – Reduction of bond held for sedimentation & erosion controls**

Ms. Cherichetti indicated that the plantings, as modified by the last permit modification, had been completed and that the applicants were looking for a release of the portion of bond that was held for general site stabilization and sedimentation & erosion controls.

***** MR. CAPUTO MOVED TO REDUCE THE BOND BY \$1,000.**

***** MS. CAGNINA SECONDED.**

***** MOTION PASSED UNANIMOUSLY.**

PUBLIC HEARINGS

- a) #S08-324 – 379 Chestnut Hill Road – Canevari/Vey (continuation of hearing) – Corrective Action clear cutting and preparation of land adjacent to a wetland**

Mr. Hubbard reopened the hearing at 7:05 pm. Ms. Cherichetti called the roll.

Mr. Caputo asked for confirmation of the reason why the hearing was continued. Ms. Cherichetti recalled that there were some questions regarding the interpretation of recent case law, including the “Sackler case” that was often referred to by the applicant’s counsel. Ms. Cherichetti reported that she had talked to both Attorney Maslan and McCann and that neither were able to attend this evening.

Mr. Hubbard explained that he does not hold the opinion that the activities performed so far would be considered to have a significant or substantial impact on the wetlands. He added that if that opinion is the Commission’s consensus, then a

permit for the activity should be granted. He continued to explain that if, on the other hand, there was a consensus to deny the application, then the Commission would have to further explore whether all or some of the activities are indeed as-of-right.

Mr. Caputo asked what the Sackler case means for the subject application before them. Mr. Hubbard indicated that he did not think that it necessarily mattered. Ms. Cherichetti added that the Sackler case confirmed that horse grazing is farming and is as-of-right, however it does not provide any additional rights to pollute downstream waters or to degrade a wetland.

Mr. Hubbard asked for confirmation that the tree cutting had not occurred within the wetland itself. Ms. Dellolio confirmed and indicated that a twenty five foot area remained between the wetland and the grazing area. Ms. Cherichetti concurred that tree clearing did not occur within the wetland, though added that trees were removed less than twenty-five feet from the wetland limit line.

Ms. Cagnina recalled that the applicant had stated, during the beginning of the hearing, that once the cut timbers were removed from the cut area, there would be enough grazing area to meet his needs. Ms. Dellolio nodded in agreement and noted that the horses just spend the warmer months of the year in Norwalk, and that they are transported to Florida each winter.

Ms. Cherichetti advised that the Commission could condition that the area of grazing be confined to the cleared area, based on the testimony of its sufficient size. She added that the remaining uncut area adjacent to the wetland would greatly assist in limiting impacts to the wetland area itself.

Mr. Caputo agreed but stated that he was concerned about the amount of horse manure in the area and the impacts that volumes of horse waste would likely have to the wetland. He wondered if the Commission should consider limiting the number of horses to a certain number as a condition of a permit. Ms. Cherichetti responded that she would not advise that limitation. Instead, she explained, the Commission would more reasonably require a grazing plan that indicated the area of grazing and included a horse manure management plan and other details of best management practices.

Mr. Caputo explained that he would still be concerned about polluted runoff and wondered if there was a reasonable way to monitor water quality coming off of the site. Ms. Destefanis indicated that there were certainly parameters that could be collected and used to monitor water quality, such as various bacteria, nitrogen and phosphorus levels. Ms. Destefanis further explained how such a water quality testing protocol would be set up. She noted that she is a professional hydrogeologist, and that she has extensive experience in testing groundwater and surface water. Additionally she noted, she is currently involved in monitoring the interaction between surface runoff and horse manure at a facility in Greenwich Connecticut.

Mr. Caputo agreed and noted that it was not that he was concerned with the number of horses per se, but the degradation to the wetland that their presence could cause.

ENFORCEMENT ACTIONS

b) **SHOW-CAUSE HEARING – Cease & Restore Order #V08-814 – 4 Little Fox Lane – Giapoutzis – Filling, grading, removal of vegetation, construction of patio & stone wall structures, alteration and obstruction of flow in and adjacent to a wetland and watercourse**

Ms. Cherichetti briefly described the Cease and Restore Order and described the work that was done along the pond. She distributed photographs of the pond area as well as aerial photographs.

Ms. Cherichetti noted that she first noticed the property because of the piles of soil that had been deposited in the rear yard between the house and the pond. During her review of maps and aerial photos on file in City Hall, she explained, she noticed that other regulated activities had occurred on the property between 2003 and 2007. A stone wall was constructed along the eastern bank of the pond, a patio area was constructed on the pond edge, and cap stones were placed on the dam during this time period.

She noted that she and Yari Bletsas had met the property owner at the site last week and he indicated that he had purchased the property with all of the walls in place. He indicated that some of the cited activities had been done prior to his purchase of the house, and that some of the more minor activities he had done in the recent past.

Ms. Cherichetti then invited the property owner to speak. Mr. Giapoutzis indicated that he had performed some of the described activities in the first year that he owned the residence, and that the remainder of the work described was done earlier this summer. He indicated that most of the work was prompted by the rearrangement of the various common driveways that previously crossed the property.

Ms. Cherichetti asked Mr. Giapoutzis about the dam and questioned work done to the dam itself. Mr. Giapoutzis replied that he had redone the top of the dam, but now just as capstones on either end of the narrow spillway.

***** MR. CAPUTO MOVED TO CLOSE THE HEARING.**

***** MS. BRIGGS SECONDED.**

***** MOTION PASSED UNANIMOUSLY.**

***** MR. CAPUTO MOVED TO UPHOLD AND MODIFY (WITH AN EXTENSION OF TIME TO FILE FOR A PERMIT) THE ORDER.**

***** MS. DESTEFANIS SECONDED.**

***** MOTION PASSED UNANIMOUSLY.**

c) **SHOW-CAUSE HEARING – Cease & Restore Order #V08-815 – 147½ East Rocks Road – Zacklewicz – Filling, grading, and removal of vegetation in and adjacent to a wetland and watercourse**

Ms. Cherichetti indicated that she had not heard anything from the property owner. She recommended that the matter be sent to Corporation Counsel to file for a court injunction.

***** MR. CAPUTO MOVED TO CLOSE THE HEARING.
*** MS. DESTEFANIS SECONDED.
*** MOTION PASSED UNANIMOUSLY.**

***** MR. CAPUTO MOVED TO UPHOLD THE ORDER.
*** MS. DESTEFANIS SECONDED.
*** MOTION PASSED UNANIMOUSLY.**

COMMENTS OF STAFF

a) Minor Permits and Enforcement Actions

There were no comments from staff.

COMMENTS OF COMMISSIONERS

a) Report of Commission Chair

There were no comments from the Chair.

ADJOURNMENT

***** MR. CAPUTO MOVED TO ADJOURN.
*** THE MOTION FOUND UNANIMOUS APPROVAL.**

MEETING ADJOURNED AT 8:45PM.