

NORWALK CONSERVATION COMMISSION MINUTES

SEPTEMBER 27, 2005

ATTENDANCE: Karen Destefanis, Chair (6:13 p.m.); Susan Llorca; Marny Smith; Ed Holowinko; Elizabeth Ackerman; Matthew Caputo; D. Seeley Hubbard (6:20 p.m.).

STAFF: Alexis Cherichetti, Senior Environmental Officer

OTHERS: Kate Throckmorton, Environmental Land Solutions; Otto Theall; William Kenney, William Kenney Associates; Don Strait; Michael Lovell; Amy J. Livolsi, Attorney; Pat Cutrone, Pat J. Cutrone, LLC; Richard Rowena, Attorney; Dean Martin, Grumman Engineering, LLC.

CALL TO ORDER

Mr. Caputo called the meeting to order at 6:10 p.m.

Ms. Cherichetti took the roll call.

RECEIPT/DISCUSSION

#SO5-230 – 40 Kettle Road – Rojo – Construction of a rear addition adjacent to a wetland and watercourse.

Ms. Cherichetti indicated the applicant was in attendance. Ms. Kate Throckmorton of Environmental Solutions spoke on behalf of the applicant. Ms. Throckmorton stated that she and her team helped the applicant prepare his application. She stated the application was for a small addition at the back of the house where the existing deck is, and the deck would be shifted to the other corner of the house. The owner found that the wetlands line came up directly behind the house and takes up more than half the yard. After viewing the property, Ms. Throckmorton had some concerns that there was no indication of the area being a real wetland. She had gone there during the cold, wet spring and the area was dry; the existing trees along the perimeter of the property were all red maples growing up out of the ground, which was indicative of trees growing in a very wet area. She noted there is a watercourse piped adjacent to the area but open through the property and then picked up in another pipe just off the property. After speaking with her team and looking at the area in more detail, it was their opinion that the property must have been drained at the same time the house was constructed, because the area was not functioning as a wetland. She said the City does still maintain a drainage easement through this watercourse which has been actively dredged and cleared through the years, indicated from dredge spoils along the bank.

Ms. Destefanis arrived at the meeting at 6:12 p.m.

Ms. Throckmorton said that in this case there was less concern because the area was no longer functioning as a wetland. She said her team suggests that the addition of some native plants and shrubs would slightly add to the variety and increase habitat for wildlife.

Otto Thiele, a professional soil scientist, addressed the Commission. He indicated he was the one who did the wetland delineation on May 6, 2005. The upper portion near the street is a man-made fill soil and the back portion that wraps around the house is wetland soils. He stated he agreed with everything Ms. Throckmorton said and also with what was indicated in the memo from staff. He also believed that the ditching of the channel has lowered the water table and this was why there was no evidence of the water table when they were out at the property that they would normally expect. He said that based on the limited observation he had on May 6, and Ms. Throckmorton's observation, they don't have the wetland any longer and it has lost much of its wetland function. Mr. Thiele said that the planting plan proposed is going to be an improvement to the current condition and it was his personal opinion, based on the way the conditions are now, this proposed addition, while somewhat closer to the wetland than the previous construction, would not have any additional impact on the area. There is no direct impact on the wetland, and with the additional planting there is a net positive for the wetland functions.

Ms. Smith asked if there was any indication as to when the area was last dredged. Ms. Throckmorton said she had no idea and that's why she hesitated to do live planting because she suspected it was fairly active. Ms. Cherichetti said she had gone back into the records to see if she could pinpoint when the area might have been originally dredged. She found that 1963 maps show adjacent stormwater installations may have occurred to the existing ditch. The house was built in 1966. After discussion between the Commissioners it was determined that there was no need to hold a public hearing on this application.

#SO5-231 – 34B Bayne Street – Lovell – Construction of a side garage addition, side addition and decks adjacent to a wetland and watercourse.

Mr. Michael Lovell, the owner of the property, was in attendance. Ms. Cherichetti said he was not required to give a presentation but if he would like to speak to the Commission he could. Ms. Cherichetti said she had indicated in her report to the Commission that she had not required the applicant to flag the wetlands on the property.

Mr. Lovell stated the additions consisted of a deck on the side of the house. He said that each side of the house was approximately sixty feet from the wetlands, and on the side of the house where the deck would go there was a pond downslope from where the addition was going on. There would be no significant runoff from construction to the pond. On the driveway side of the house where a garage would be added there are wetlands and pond overflow from the neighbor's property across a gravel driveway which might pose a problem due to emissions but he saw no significant impact.

Ms. Cherichetti indicated the house was on a bit of a rise and the property dropped off behind it into a valley. There were condos adjacent to the property and she did see evidence of wetland systems and swampy areas.

After some discussion between the Commissioners it was determined to hold the application over to the next meeting for further discussion.

#SO5-232 – 129-131 East Rocks & 10 Brookhill Roads – Stone Ridge Builders, LLC – Three (3) lot subdivision of land in and adjacent to a wetland and watercourse.

Ms. Cherichetti stated that the applicant seeks to make a three building lot subdivision with this application. The property is on a slope on the western side of East Rocks Road with the highest elevation at the northeast corner. There is a stone wall along the western property line. At the bottom of the slope is a riparian wetland valley and Woods Pond Brook, and dense woods. The applicant proposes three half-acre lots in this area. There is an existing house on the property which has a septic system and public water. The applicant wants to keep the existing house and develop two lots on either side of it and connect the two lots to the city sewer.

Attorney Amy J. Livolsi stated that the applicant wants to create a plan to allow drainage and that the lots would be serviced by existing water on East Rocks Road. She said they plan to install a force main four feet deep, encased in concrete, under Woods Pond Brook which the DPW has already approved. The closest sewer line is 250 feet to the south on Allen Road. She stated there is a five-foot retaining wall behind House #1 and a 10-12-foot grading around the house with an existing fieldstone wall on the property. There is a wetland to one side of the house, dry property on the other. When asked if the applicant can't put in a septic system or doesn't want to, Ms. Livolsi explained that the applicant can't put in a septic system as there is no land flat enough to use for drainage, and what is flat enough is too close to the wetland line.

Mr. Caputo said that the applicant could have a Conservation permit but if they kept the existing system, they would still have to be found to be code-compliant. Ms. Livolsi said that Lot #3 may possibly be able to have a septic system but Lot #1 doesn't have the ability due to the slope, the wetlands and the property line. She said that if they have to put in a septic system they may lose the ability to have the two houses.

Mr. Caputo said if the DPW has approved the sanitary sewer plan, are there any other approvals. Ms. Livolsi said she would be happy to submit the plans to the Commission if needed. Mr. Hubbard asked what was the cost of the sewer line versus a septic system. Mr. Dean Martin of Grumman Engineering explained what was entailed by putting in a sewer and said it could conceivably be forced mains. Ms. Smith asked if they thought of extending sewer lines up East Rocks Road. Mr. Hubbard said they would have to get a reserve area and put in a whole new system. He said it might be appropriate or it might not. He said the lot on the far right could do a septic system, but there was a sensitivity about crossing Woods Pond Brook.

Mr. Caputo wanted to know the cost of what was being proposed versus installing a sewer 250 feet away, along with a time frame and educating the public. Mr. Martin suggested there would have to be soil testing with the Health Dept., and said the time frame would be probably some time next week. Ms. Livolsi said the area was very heavily wooded and backhoes would have to be used on the property. Mr. Caputo asked Mr. Martin if he had any guess how the testing would come out. Ms. Smith said the Commission's concerns were justified as the idea of crossing a brook with a sewer line is something she was not ever comfortable with, and asked if there had been any consideration of putting in two houses instead of three. Ms. Livolsi said that if they have to put in a septic system they would have to cut down a lot of trees.

Ms. Cherichetti said there were still many questions to be answered by the applicant. Ms. Livolsi said they will give a submission by October 11 in order to address the further concerns of the Commission at the October 25th meeting. Mr. Caputo wanted them to be more specific about the impact of crossing Woods Pond Brook with a sewer line.

PERMIT/MODIFICATION

#SO3-160A – 310 Ely Avenue – 310 Ely Avenue LLC – Modification of permit to allow alteration of location of retaining wall (the limit of development) and a reduction of units in and adjacent to a wetland and watercourse.

The applicant was unable to attend and requested this item be tabled until the Commission's next scheduled meeting on October 11, 2005.

The Commission recessed for five minutes to prepare for the public hearing portion of the meeting.

PUBLIC HEARING (to begin at 7:00 p.m.)

Ms. Destefanis called the public hearing to order at 7:03 p.m.

Ms. Cherichetti took the roll call.

#SO5-223 – MLK Drive – Cutrone Builders LLC – Construction of a non-residential structure and associated parking, stormwater drainage and wetland mitigation, in and adjacent to a wetland.

Mr. Richard Rowena, attorney for Pat J. Cutrone, LLC, builder, said the property was 1,200 acres on Dr. MLK Drive which was owned by the Chiminella family. He said that in 1984 when the City mapped the area for MLK Drive it cut the property into two pieces. He said the information and maps supplied by the DPW show the grade and elevation of the highway to be higher than the property. Mr. Rowena said there have been drainage pipes installed by the City, with a twenty-four inch diameter concrete pipe ending in a drainage pond. He said since its installation the pipe has never been cleaned out which caused it to back up, and recently the DPW spent two to three days blasting silt

out of the pipe which created a three to four inch opening and lowered the water level in the drainage pond significantly. Mr. Rowena said the applicant proposes a warehouse/distribution use for the property which would be the best use as it is less intrusive and requires the least amount of paved parking area.

Mr. William Kenney, principal, William Kenny Associates of Fairfield, a soil scientist, said he has reviewed the existing conditions and the applicant's plans. He said the blocked drainage pipe created an increased area of wetlands and enhanced wetland functions. The property was in an area where there was residential to the east and light industrial to the north. The stormwater management basin would catch any chemicals, create biofiltration and help make the wetland more viable and get rid of phragmites. Ms. Smith asked if the phragmites were the native species and said that they should put in things like sumac. Mr. Kenney said there would be added enhancements such as sediment catchers, a sump, which will prevent the condition that allowed the phragmites to take hold. He said the area would hold water longer and allow sediment to settle and pollutants to come out. He said the flow path was quite long and there would be no vehicular activity. Activity would be limited to walking, cutting and planting with hand tools.

Ms. Destefanis said the inlet pipe seemed to be coming in at quite a distance from the edge of the wetland. She was concerned that road salts would hurt the shrubs. Mr. Kenney said that the greatest threat was from spray hitting trees but that was all. Mr. Holowinko asked if the building could be made smaller and more wetland retained, as he had some concerns about a regulation he had heard about in Milford regarding the relocation of wetlands and said that any disturbance of a wetland was significant. Mr. Rowena said that the parking area was going to be less than half of the usual required use.

Mr. Don Strait of Grumman Engineering, landscape architect, said the applicant needs the parking area in order to get trailers in and turned around. Mr. Kenney said that if this was a perfect situation they would want to separate out car traffic from trailer traffic as the parking areas are the worst site for pollutants such as grease and oil. He asked if there were any other areas in the City where wetlands were protected for the functions they provide, and wondered if a new area would meet the definition of "wetland." Mr. William Andreopolis said that what we need to do is to look at what we have now and what we might have in twenty-five years.

Ms. Destefanis asked if Mr. Kenney was confident the soil types were the same. He said they were varied soils, glacial till and wetland soils with a high water table. There was a higher percent of organic material. Mr. Pat Cutrone, developer, said he remembered playing hockey in the area as a boy and remembered plenty of water there which came right up to the railroad tracks. Mr. Holowinko asked if there would be any type of fencing. Mr. Strait said there would be a wall at the end of the parking lot and a six-foot chain link fence all the way around the wetland. He said it wasn't really necessary to fence the entire wetland area, they could eliminate the south and west side. Ms. Smith asked why they were planning flowering cherry trees along MLK Drive and suggested dogwoods or other native shrubbery. Mr. Strait said they just wanted to plant several

trees, it was not a problem to change the trees and they could even continue by using red maples.

Ms. Destefanis asked if there were any further questions. Mr. Rowena stated that he had spoken with a representative of Macedonia Church who was in favor with the project. Ms. Ackerman questioned the type of stone being used. Mr. Caputo said he thought it was called riprap. Mr. Strait said that if they use small stones it allowed plant growth.

Ms. Destefanis called for a motion to close the public hearing.

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

** MS. SMITH SECONDED.

** MOTION PASSED UNANIMOUSLY.

It was stated for the record that Ms. Destefanis recused herself from the next application.

Mr. Caputo called the public hearing to order at 7:55 p.m.

Ms. Cherichetti took the roll call.

#S05-229 – Strathmore Lane – Strathmore Lane Condominium Association – Installation of drainage system, with associated grading and discharge, adjacent to a wetland and watercourse.

Ms. Cherichetti informed the Commission that, although notice of this item for public hearing had been posted in The Hour newspaper twice, the applicant failed to notify neighbors, and she recommended adjourning the item to a later date. Mr. Caputo asked what later date. Ms. Cherichetti said the application was originally received on August 23, 2005 and the Commission had thirty-five (35) days from this evening to take action on the item. She said they could adjourn to either October 11th or October 25th. After brief discussion it was decided to adjourn the item to the October 25th meeting.

** MS. SMITH MOVED TO ADJOURN THIS ITEM TO RESUME AT THE OCTOBER 25TH MEETING.

** MS. ACKERMAN SECONDED.

** MOTION PASSED UNANIMOUSLY.

Ms. Destefanis returned to the meeting at 7:57 p.m.

DISCUSSION/DECISION I

#SO5-224 – 7 Renzulli Road – Torre – Corrective Action restoration, with associated grading and planting, in and adjacent to wetland.

It was stated for the record that Ms. Destefanis would recuse herself from this application. Mr. Caputo stated that he assumed the role of Acting Chairman for this application.

Ms. Smith said she couldn't recall the nature of the deposited fill. Mr. Caputo said it was a mix of sand, loam and a range of stone from pebbles to larger stone. Mr. Hubbard said he was troubled by the applicant going along and doing without a permit. Mr. Caputo said he was not swayed by the applicant's proposal to put in storm drainage. Mr. Holowinko asked what should be done. Mr. Caputo said the area was a small wetland with not much impact. Mr. Holowinko agreed but said that he didn't want other residents to get the idea they could fill in their wetlands as well. Ms. Smith said if they make the applicant remove the fill would that remediate the situation. A brief discussion followed.

**** MS. ACKERMAN MOVED TO APPROVE CORRECTIVE ACTION RESTORATION WITH A NUMBER OF CONDITIONS LISTED BY MS. CHERICHETTI IN HER MEMO OF SEPTEMBER 27, 2005 TO THE CONSERVATION COMMISSION, WHEREIN ITEM #5 WILL READ AS FOLLOWS: "THE SITE PLAN SHALL BE AMENDED TO INDICATE THAT ALL RECENTLY DEPOSITED FILL WITHIN THE WETLAND LIMIT SHALL BE REMOVED. A SOIL AMENDMENT OF TOPSOIL OR COMPOST MAY BE DEPOSITED WITHIN THE WETLAND AT A MAXIMUM DEPTH OF TWO (2") INCHES;" ITEM #7 IS ELIMINATED IN ITS ENTIRETY, ITEM #8 BECOMES #7, AND ITEM #9 BECOMES #8.**

**** MR. HOLOWINKO SECONDED.**

**** MOTION PASSED WITH ONE ABSTENTION (MS. SMITH)**

Ms. Destefanis returned to the meeting at 8:15 p.m.

#SO5-227 – 203 Silver Creek Lane – Slapin – Construction of a new residence adjacent to a wetland and watercourse.

Mr. Caputo said the applicant's earlier plan did not comply with zoning and that it should be noted that the earlier plan was dated August 5, 2005 and revised August 17, 2005. Ms. Destefanis said that because the plan is at the wetland line, should they take it to a public hearing. Ms. Ackerman said that from consistency's sake that would be the thing to do. Mr. Don Strait, landscape architect, said the homeowner was anxious to begin and had a time constraint to begin the work, and requested the Commission not go to public hearing. Ms. Destefanis told him to convey to the homeowner that, where the neighbors might be okay with the plan, it is the job of the Commission to hold a public hearing, and the proposed work is too close to a wetland. Ms. Destefanis said she sympathized with the homeowner but the best thing would be to hold a public hearing. Mr. Caputo said that if the Commission holds the public hearing on October 11, they don't make decisions at public hearings, which will move the application to October 25th. He asked Ms. Cherichetti if she had everything she needed for the application. Ms. Cherichetti said she thought she did, but could discuss it further with Mr. Strait by phone the next day if necessary.

** MR. CAPUTO MOVED TO TAKE THIS ITEM TO PUBLIC HEARING AT THE NEXT SCHEDULED MEETING OF OCTOBER 11, 2005 AT 7:00 P.M.

** MS. SMITH SECONDED.

** MOTION PASSED UNANIMOUSLY.

#S05-223 – MLK Drive – Cutrone Builders LLC – Construction of a non-residential structure and associated parking, stormwater drainage and wetland mitigation, in and adjacent to a wetland.

Ms. Ackerman discussed the issue of court cases where created wetlands were called into question. Ms. Smith said that Mr. Cutrone used to skate in the area as a child and the area was a wetland to begin with. Mr. Caputo said there is a great need for warehouses. Ms. Llorca said she objects to bringing that into the discussion. Ms. Smith felt it was a good wetlands mitigation plan. Ms. Destefanis said the Commission has approved projects with mitigation before. The Commission discussed the ideas for the building, wetland plantings and the chain link fence around two sides of the wetland area.

#S05-229 – Strathmore Lane – Strathmore Lane Condominium Association – Installation of drainage system, with associated grading and discharge, adjacent to a wetland and watercourse.

After brief discussion the Commission decided to table this item since the public hearing was closed.

ENFORCEMENT ACTIONS

4 May Drive – Davidson – Corrective action clearing, filling, and construction of deck in and adjacent to a wetland and watercourse.

Ms. Cherichetti said that there was question of there ever being any reaffirmation to continue with any enforcement action. She said this was on the agenda to clarify if that was true, and also to inform the Commission that the applicant has re-applied. Ms. Cherichetti said with the Commission's approval she will send another Notice of Violation.

10 Birchside Drive – Larusso – Performing regulated activities, including clearing, deposition and filling in and adjacent to a wetland and watercourse.

Ms. Cherichetti updated the Commission on this item. She noted that after a visit to the property, the applicant has apparently cleared fallen trees and old stacked wood and had it chipped. The chips were distributed over a significant portion of the property, under the impression that this was making an improvement to the area. Ms. Cherichetti said a Notice of Violation has been sent. The applicants did not appear at the meeting.

390 Flax Hill Road – Carlo – Performing regulated activities, including clearing, deposition and grading in and adjacent to a wetland and watercourse.

Ms. Cherichetti said the applicant did not come to the meeting. To update the Commissioners she noted that she had directed the applicant to submit a Permit Application or a Restoration Plan by today; as of the time of the meeting she has not received it.

RELEASE OF BOND

#SO4-197 – 23 Adams Lane – Couch – Release of bond for dredging of pond and associated sedimentation and erosion controls in and adjacent to a watercourse.

** MS. SMITH APPROVED THE RELEASE OF BOND.

** MS. ACKERMAN SECONDED.

** MOTION PASSED UNANIMOUSLY.

#S02-126 – Cottonwood Chase/Newtown Avenue – Kerschner Development Co. – Release of bond for construction of Conservation Development and associated landscaping, stormwater drainage, and sedimentation & erosion controls in and adjacent to a wetland and watercourse.

Ms. Cherichetti asked the Commissioners to table this item until the October 11 meeting in order to determine all conditions have been met.

#S03-165 – 150 Glover Avenue – US Surgical – Release of bond for soil remediation project and associated landscaping adjacent to a wetland and watercourse.

** MS. SMITH MOVED TO RELEASE BOND.

** MR. SEELY HUBBARD SECONDED.

** MOTION PASSED UNANIMOUSLY.

#SO2-124 – Keeler Avenue – Spagnuolo – Release of bond for construction of a new residence and associated landscaping adjacent to a wetland and watercourse.

Ms. Cherichetti reported that this applicant had a significant invasive plant issue. The applicant had removed the invasive weeds and replanted the area with shrubs and other plantings and the invasive plants returned and took over the area. Ms. Cherichetti gave permission for the applicant to remove as much invasive vegetation as possible. She said the invasive plants included Japanese knotweed and others. There was a brief discussion between the Commissioners regarding returning a portion of the applicant's bond as the item has been ongoing for some time.

** MR. CAPUTO MOVED TO RETURN A PORTION OF THE APPLICANT'S BOND IN THE AMOUNT OF \$2,500.00.

** MS. ACKERMAN SECONDED.

** MOTION PASSED UNANIMOUSLY.

MINUTES

Ms. Cherichetti said she had not yet received the minutes from the September 20th meeting. It was decided to table approval of the minutes to the next meeting on October 11th.

COMMENTS OF STAFF

Declaratory Permits and other Enforcement Actions

Ms. Cherichetti said there were no Declaratory Permits and no Enforcement Actions other than what had already been discussed.

Report of Senior Environmental Officer

There was no report at this time.

COMMENTS OF COMMISSIONERS

The Commissioners had no comments at this time.

ADJOURNMENT

** MS. SMITH MOVED TO ADJOURN THE MEETING.

** MR. SEELY HUBBARD SECONDED.

** MOTION PASSED UNANIMOUSLY.

The meeting was adjourned at 8:20 p.m.

Respectfully submitted,

Linda J. Hayes
Telesco Secretarial Services

