

**CITY OF NORWALK
INLAND WETLAND AGENCY
MARCH 9, 2010**

PRESENT: Karen Destefanis, Chair; Matthew Caputo; Ed Holowinko; Emily Wilson; Lou Bonsangue; Gwen Briggs; Anne Cagnina

STAFF: Alexis Cherichetti, Senior Environmental Officer; Yarifalia Bletsas, Environmental Compliance Officer

I. CALL TO ORDER

Ms. Destefanis called the meeting to order at 6:01 pm.

II. ROLL CALL

Ms. Cherichetti took the roll call.

III. RECIEPT & DISCUSSION

- a) **#S10-367 – 131 North Taylor Avenue – Department of Public Works** – Excavation of excess sediment within a watercourse

Ms. Cherichetti described the project, in the absense of the applicant. She stated that the Public Works is looking to removed sediment that has accumulated in a watercourse at the outfall of a pipe. She described the location of the proposed project and its location relative to Oak Hills Golf Course.

Ms. Cherichetti noted that the applicant proposes to use a backhoe to remove the sediment. There was some discussion regarding the need for a plan to dewater the watercourse prior to excavation.

DISCUSSION &/OR DECISION

- a) **#S09-362 – 241 & 249 Silvermine Ave. – Silvermine Homes, LLC** – Construction of an 11-unit Conservation Development adjacent to a wetland and watercourse

Ms. Cherichetti reviewed the Agency's timeline for rendering a decision. She noted that the public hearing closed at the last meeting on February 23, 2010 and that the Agency has 35 days to render a decision from the conclusion of the hearing.

Ms. Destefanis noted that she had looked through the drainage report and understood it. She noted that her biggest concern was the neighbors' reports of the amount of flooding in the area. She noted that the engineering report indicates that the proposed stormwater drainage design would not cause additional flooding problems, but would actually relieve some of the local flooding issues described by the neighbors. She noted that the drainage plan was approved by the City and that the design incorporated pollution removal inserts.

Ms. Cherichetti confirmed that the drainage plan was approved by the City's principal engineer. She noted that they look at the runoff volume and the capacity of the existing system to accommodate the runoff quantity. Ms. Cherichetti noted that the City has stormwater quality standards, which are met through the various stormwater design elements proposed.

Ms. Destefanis added that she appreciated the response by the applicant with regard to incorporating rain gardens in some of the plan.

Mr. Hubbard noted that applications like this are the most difficult. He noted that he is also sensitive to the concerns and comments of neighbors. He added that most people understand that the Agency has limited jurisdiction and can look at only impacts to inland wetlands and watercourses.

Mr. Hubbard continued that he was most concerned by the neighbors' reports of additional watercourses that were not indicated by the applicant or that the wetlands were not properly flagged. He noted that he is familiar with and has much respect for the intervener's expert; he also noted that the applicant's experts were also well respected and knowledgeable. Mr. Hubbard acknowledged that the intervening expert was not allowed the access to the property that the intervener requested. However, he also noted that competent and fair experts for the applicant did testify. He noted that case law has confirmed that the Agency must go with expert testimony, when given, as opposed to speculative or observational testimony from neighbors.

Mr. Hubbard added that he had also been concerned about flooding that had been described by the neighbors. He added that the Department of Public Works had replaced the stormwater drainage system in the fall and that the flooding complaints all predated that work. He added the applicant's engineer had the proposed plan vetted with public works and confirmed that the system could accommodate the flow.

Lastly, he discussed the concerns regarding septic systems. He noted that system design is the bailiwick of the Health Department, and that the Agency would only look at them if there was a demonstrative showing that there would indeed be an impact on wetland and watercourses from them. Likewise, he noted, there was no demonstrative information presented that the activity would indeed impact the Silvermine River.

Ms. Destefanis agreed with Mr. Hubbard and further noted that they must look to the Health Department to assure compliance with the Health Code.

Ms. Cagnina noted that she agreed with Mr. Hubbard and also stated that she believed that the wetlands would be enhanced. She noted that there was invasive plant removal proposed and planting with native plants. She noted that she would not be voting on the matter because she has issues with the regulations allowing conservation easements (developments) and will abstain. She added that the Conservation Commission, not the Inland Wetland Agency, should set aside time to look at those regulations.

Mr. Caputo added that both sides provided thoughtful and energetic testimony throughout the public hearing process. He felt that everyone was allowed to speak and say their piece. He felt there was a tremendous amount of fairness that allowed a full discussion of the issues.

Mr. Caputo discussed the septic systems and noted that they were approved by the Health Department. He noted that there was discussion regarding a farmer's drain, but there is no known farmer's drain and the issue was dealt well by the applicant. The drainage system meets City standards. He noted the Mr. McAllister, engineer for the applicant, was the only engineer expert to testify and the engineer testified that the proposed system would actually reduce the amount of flooding.

Mr. Caputo noted that there was not any credible information that indicated that there would be negative impacts to the wetland or watercourse. He added that the applicant's experts' testimony was credible.

Mr. Holowinko stated that usually he liked this type of conservation development; however this particular one made him uneasy. He listed several issues. First, he noted that the watercourses on the property have not actually been well delineated. Secondly, he noted that two less houses and septic fields would result in no septic components with the purported watercourse area. He noted that a septic tank could be a real detriment because the Health Department was not aware of the active watercourse in that location.

Ms. Briggs noted that she was uncomfortable not knowing what to make of the neighbors' antidotal evidence of other watercourses on the property. She noted, on the other hand, that there are other issues that are beyond their jurisdiction.

Mr. Caputo clarified that they have no jurisdiction over issues such as the character of Silvermine, or traffic concerns. He noted that that was Zoning.

Ms. Destefanis asked if there were any other comments from commissioners. She noted that she felt that the applicant adequately addressed concerns. She noted that she was also concerned about the 'mystery wetland', but that the applicant's expert, Mr. Chris Allan, was very definitive and he is a licensed professional that is well respected in the field.

Ms. Destafanis confirmed that Ms. Caganina was abstaining and would not be voting, nor would Mr. Bonsangue, who became a Commissioner during the public hearing.

Mr. Caputo asked if there was a certain order in which the Agency should render decisions regarding the intervention petition Ms. Cherichetti confirmed that they would need to make two decisions, one regarding whether the allegations within the verified pleading are supported by the facts of the record, and then make a decision regarding the permit application.

**** MR. CAPUTO MADE A MOTION TO ADOPT THE FOLLOWING RESOLUTION:
RESOLVED:**

THAT THE CONSERVATION COMMISSION, UPON PUBLIC HEARING DULY NOTICED AND HELD AND FOLLOWING REVIEW OF THE RECORD, DOES NOT BELIEVE THAT THE APPLICATION AS SUBMITTED, #S09-362 BY SILVERMINE HOMES, LLC, WILL HAVE THE EFFECT OF UNREASONABLY POLLUTING, IMPAIRING OR DESTROYING THE PUBLIC TRUST IN THE AIR, WATER OR OTHER NATURAL RESOURCE OF THE STATE FOR THE FOLLOWING REASONS:

- 1. THE FACTS OF THE RECORD DO NOT PROVIDE EVIDENCE THAT THE PROPOSAL IS LIKELY TO RESULT IN THE ALLEGED IMPACTS;**
- 2. OTHER THAN STATEMENTS TO THAT EFFECT, THERE WAS NO CONCLUSIVE, CREDIBLE, EXPERT TESTIMONY OR EVIDENCE THAT SUCH ADVERSE IMPACTS WOULD LIKELY BE CAUSED BY THE PROPOSAL;**
- 3. THE PROPOSAL WOULD REQUIRE THE IMPLEMENTATION OF POLLUTION PREVENTATIVE MEASURES AND STORMWATER QUALITY TREATMENT DEVICES, INCLUDING RAIN GARDENS AND CATCH BASIN FILTER INSERTS, THAT WOULD PROVIDE SUFFICIENT POLLUTANT REMOVAL OPPORTUNITIES PRIOR TO STORMWATER LEAVING THE SITE;**
- 4. THERE WAS NO EXPERT TESTIMONY THAT THE SEDIMENTATION & EROSION CONTROL PLAN WAS NOT PROPERLY DESIGNED AND WOULD NOT EFFECTIVELY CONTROL EROSION AND PREVENT SEDIMENTATION OF WATER RESOURCES;**
- 5. THERE WAS NO CONCLUSIVE EXPERT TESTIMONY THAT THERE WOULD BE A REDUCTION IN THE VALUE OR FUNCTION OF THE EXISTING INLAND WETLAND HABITAT;**
- 6. THERE WAS NO EXPERT TESTIMONY THAT THE PROPOSED ON-SITE SEPTIC SYSTEMS OR THE STORMWATER DRAINAGE SYSTEM WERE NOT PROPERLY DESIGNED AND WOULD NOT PROPERLY AND EFFECTIVELY FUNCTION AS DESIGNED;**
- 7. THERE WAS NO EXPERT TESTIMONY THAT THE PROPOSED ON-SITE SEPTIC SYSTEMS WOULD ALTER THE FLOW OF, OR IMPACT IN ANY OTHER WAY, THE ON-SITE INTERMITTENT WATERCOURSE; AND**
- 8. THE RECORD SHOWS THAT THE APPLICANT PROVIDED FACTUAL EVIDENCE TO REFUTE THE ALLEGATIONS CITED.**

**** MOTION SECONDED BY MS. WILSON.**

**** MOTION PASSED WITH FIVE (5) IN FAVOR, ONE (1) IN OPPOSITION (HOLOWINKO) AND TWO (2) ABSTAINING (CAGNINA, BONSAUGUE)**

Ms. Destefanis stated that she thought that Mr. Aurelia had a good point regarding added stormwater quality requirements.

Mr. Caputo noted Special Condition #11 noted in the possible resolution for approval of the application. He noted that there cannot be a perfect system, but that the language goes a long way in attempting to establish a system as good as it can be.

- ** **MR. CAPUTO MADE A MOTION TO ADOPT THE RESOLUTION TO APPROVE THE PERMIT APPLICATION THAT IS CONTAINED WITHIN THE MEMORANDUM FROM MS. CHERICHETTI DATED MARCH 2, 2010 TO THE AGENCY.**
- ** **MR. HUBBARD SECONDED THE MOTION.**
- ** **MOTION PASSED WITH FIVE (5) IN FAVOR, ONE (1) IN OPPOSITION (HOLOWINKO) AND TWO (2) ABSTAINING (CAGNINA, BONSANGUE)**

- b) **#S10-364 – 6 Styles Lane – Valadares** – Corrective Action landscaping, filling and piping in and adjacent to a wetland and watercourse

Ms. Cherichetti noted that the application is a corrective action application. She noted that due to the extent of activities and impacts to the wetland and watercourse warrant a significant regulated activity and a public hearing.

Ms. Destefanis confirmed that a public hearing had been scheduled to begin at the next meeting on March 23, 2010.

Ms. Cherichetti encouraged Agency members to visit and view the site prior to the public hearing. She provided a recap of the discussion during the prior meeting and the information submitted by the applicant to date.

- c) **#S10-366 – 105 Richards Avenue – The Carriage House Association, Inc.** – Corrective action landscaping in and adjacent to a wetland and watercourse

Ms. Cherichetti noted that this application was also a corrective application and that a public hearing on the matter was also scheduled to begin at the next meeting.

Ms. Cherichetti briefly reviewed the submitted material provided by the applicant.

Mr. Caputo left the meeting at 6:55 pm.

BOND RELEASE/REDUCTION

- a) **#S06-257A – 25 Huckleberry Drive South - Tarala** – Release of bond held for the construction of a new single-family residence and watercourse relocation in and adjacent to wetland and watercourse.

Ms. Cherichetti stated that the permit was granted in 2006 with a variety of special conditions. A bond is held in the amount of \$5,600.

- ** MR. HUBBARD MADE A MOTION TO DENY THE REQUEST FOR BOND RELEASE.**
- ** MS. CAGNINA SECONDED THE MOTION.**
- ** THE MOTION PASSED UNANIMOUSLY.**

Ms. Wilson left the meeting at 7:06 pm.

APPROVAL OF MINUTES

- a) February 23, 2010

Ms. Destefanis noted three small corrections.

- ** MS. DESTEFANIS MADE A MOTION TO ACCEPT THE MINUTES AS CORRECTED.**
- ** MS. CAGNINA SECONDED THE MOTION.**
- ** THE MOTION PASSED WITH FOUR (4) IN FAVOR AND TWO (2) ABSTENTIONS (HUBBARD, BRIGGS).**

COMMENTS OF STAFF

- a) Compliance Summary

Ms. Bletsas reviewed the Compliance Summary and recent staff permitting actions. Ms. Cherichetti reviewed other enforcement actions.

- b) Report of Senior Environmental Officer

Ms. Cherichetti discussed the recent DEP Inland Wetland Commission Training program and encouraged members to attend the upcoming session to be held in New Canaan.

COMMENTS OF COMMISSIONERS

- a) Report of Commission Chair

Ms. Cagnina suggested that the Conservation Commission discuss the regulations regarding Conservation developments and the configuration of the easement area. Ms. Cherichetti clarified that the language is in the Zoning Regulations.

Ms. Cherichetti indicated that she would provide a copy of the Zoning Regulations and a map of other Conservation Developments at the next meeting to facility their discussion.

ADJOURNMENT

The meeting was adjourned at 8:00 pm.