

**CITY OF NORWALK  
INLAND WETLAND AGENCY  
August 11, 2009**

---

**PRESENT:** Karen Destefanis, Chair; Ed Holowinko; D. Seeley Hubbard; Gwen Briggs; Emily Wilson; Matt Caputo (6:25 pm)

**STAFF:** Alexis Cherichetti, Senior Environmental Officer

**OTHERS:** Michael Klein; Robert Jontos; Kate Thockmorton; Fred Mascia; Clayton Fowler; Brian Stobbie; Marie Sacco; James Conte; Earl Goven; Atty. Richard Rowina

**CALL TO ORDER**

Mr. Hubbard called the meeting to order at 6:09 pm.

**ROLL CALL**

Ms. Cherichetti took the roll call.

**DISCUSSION &/or DECISION**

- a) **#S09-353 – 5 Driftwood Lane – Allimant**–Corrective Action deposition of fill, grading, and removal of vegetation adjacent to a wetland and watercourse

Ms. Cherichetti noted that the applicant was still working on fixing some of the topographic discrepancies in the proposal. She added that the applicant had granted a full 65 day extension of time and that a public hearing on the application must commence by the last meeting of October.

- b) **#S09-350 – 8 Norden Place – Norden Place, LLC** – Construction of a multi-family residential building, four detached single-family buildings and associated parking, drainage and other activities in and adjacent to wetlands and watercourses [PH on or before 9/8 w/o extension]

Ms. Destefanis recused herself.

Ms. Cherichetti observed that the consultants for the applicant were in attendance and available to answer any comments or questions from Agency members. She then introduced Michael Klein of Environmental Planning Services, who was hired by the City to do a peer review of the application.

Mr. Hubbard asked if Mr. Klein was willing to give a preliminary report. Mr. Klein noted that he had not yet drafted a written report, but could give an overview of his thoughts so far. Mr. Klein stated that he had some 'conceptual' concerns regarding the very ambitious wetland creation and mitigation. He wondered if the environmental gain of the plan would approach the financial cost of the plan. He noted that the plan lacked detail that is necessary to make some conclusions about the final success of the plan. He observed that the wetland creation plan

lacked metrics for success, so the end goal was unclear. Mr. Klein illustrated his point by describing some specifics that should be in the mitigation plan.

Ms. Cherichetti stated that she would be setting up a meeting with Mr. Klein and LandTech Consultants, Inc. early next week to go over more detailed comments. She added that preliminarily the proposal is scheduled to commence the public hearing at the September 8, 2009 meeting, though that date could be extended with an extension and request by the applicant.

Ms. Destefanis returned to the meeting.

- c) **#S09-349 – 10 Douglas Drive – Nenin - Corrective** Action deposition of fill and removal of vegetation in and adjacent to a wetland and watercourse

Mr. Caputo recused himself.

Ms. Cherichetti explained that the applicant had submitted copies of the A-2 & T-2 survey required by the Agency earlier in the week. The survey indicated the existing (2009) topography and the pre-existing (1978) topography. She noted that the applicant had not calculated the total amount of fill and did not update the proposed conditions at the site.

Ms. Cherichetti noted that she had received a ten (10) day extension from the applicant, which in addition to the previous thirty day extension, would require that the Agency hold the public hearing during their September 8, 2009 meeting. Mr. Hubbard noted that the Agency should schedule the hearing.

**\*\* MS. DESTEFANIS MADE A MOTION TO COMMENCE THE PUBLIC HEARING ON THE APPLICATION AT 7:00 P.M. DURING THE SEPTEMBER 8, 2009 MEETING.**  
**\*\* MS. WILSON SECONDED.**  
**\*\* MOTION PASSED UNANIMOUSLY.**

Mr. Caputo returned to the meeting.

- d) **#S09-354 – 6 Mystic Court – Pepiciello -** Construction of a rear addition and storage shed adjacent to a watercourse and wetland

Ms. Cherichetti noted that this application was received at the last meeting. Discussion during receipt was generally positive and no Agency members expressed concerns with the proposal. She added that Ms. Bletsas had included a draft resolution for approval with conditions in her memorandum.

Ms. Cherichetti distributed an aerial photograph of the subject property.

**\*\* MR. HUBBARD MADE A MOTION TO ADOPT THE RESOLUTION IN THE MEMORANDUM FROM MS. BLETSAS ON THE SUBJECT APPLICATION DATED AUGUST 6, 2009.**  
**\*\* MR. CAPUTO SECONDED.**  
**\*\* MOTION PASSED UNANIMOUSLY.**

## **BOND RELEASE/REDUCTION**

- a) **#S06-264 – 27 Ferris Avenue –Tchersak** – Release of bond for construction of a six-unit residence and associated parking and stormwater drainage adjacent to a wetland

Ms. Cherichetti provided a brief overview of site conditions.

**\*\* MR. CAPUTO MADE A MOTION TO RELEASE THE REMAINDER OF THE BOND.  
\*\* MR. HOLOWINKO SECONDED.  
\*\* MOTION PASSED UNANIMOUSLY.**

- b) **#S05-223A – Dr. MLK Drive – Kurylko** – Release of bond for construction of a warehouse with associated parking, stormwater drainage, and wetland mitigation and creation in and adjacent to a wetland and watercourse

Ms. Cherichetti described the site and went over the conditions of the permit. She noted that construction of the warehouse had not started. She described the existing and created wetland area.

Mr. Caputo expressed concern about releasing a bond for an incomplete project.

**\*\* MR. CAPUTO MADE A MOTION TO DENY THE REQUEST FOR RELEASE OF THE BOND.  
\*\* MR. HOLOWINKO SECONDED.  
\*\* MOTION PASSED UNANIMOUSLY.**

- c) **#S07-298 – 166 Fillow Street – Ceja** – Reduction of bond for corrective action restoration of a pond and adjacent wetlands

Ms. Cherichetti noted that the project was complete and in compliance with the permit, however, the portion held for mitigation plantings did not appear to be eligible for release. There was discussion regarding the permit conditions and the site conditions.

**\*\* MR. CAPUTO MADE A MOTION TO REDUCE THE BOND BY \$750, AND TO HOLD THE REMAINDER (\$2,500) FOR THE PLANTINGS UNTIL THE END OF TWO FULL GROWING SEASONS.  
\*\* MS. WILSON SECONDED.  
\*\* MOTION PASSED UNANIMOUSLY.**

Ms. Destefanis noted that only ten minutes remained before the start of the public hearings.

**\*\* MS. DESTEFANIS MADE A MOTION TO AMEND THE AGENDA AND PROCEED TO THE APPROVAL A MINUTES.  
\*\* MR. HOLOWINKO SECONDED.  
\*\* MOTION PASSED UNANIMOUSLY.**

## **MINUTES**

- a) July 14, 2009 minutes

**\*\* MR. HUBBARD MADE A MOTION TO ADOPT THE MINUTES.  
\*\* MS. DESTEFANIS SECONDED.  
\*\* MOTION PASSED UNANIMOUSLY**

b) July 28, 2009 minutes

\*\* MR. HUBBARD MADE A MOTION TO ADOPT THE MINUTES.  
\*\* MS. DESTEFANIS SECONDED.  
\*\* MOTION PASSED UNANIMOUSLY WITH ONE ABSENTIONS (BRIGGS)

## PUBLIC HEARINGS

a) **#S09-343 – 252 Fillow Street – Sacco**– Construction of a bridge and associated activities in and adjacent to a watercourse and wetland

Ms. Destefanis opened the hearing. Ms. Cherichetti called the roll. Ms. Cherichetti added that this was a public hearing continuation and that the hearing had commenced during the June 9, 2009 meeting. Following a discussion regarding the Agency's statutory deadlines, she concluded that without a special meeting, the Agency would need to close the hearing this evening.

Ms. Destefanis invited all interested members of the public to sign the speaker's sheet and then asked the applicant to provide a brief presentation about the proposal.

Marie Sacco explained that she and her husband were the owners of the subject property. She noted that it was always the intent of the subdivisions, which were done by her father, to have each of the lots have their own driveway. She noted that they had spent more than \$20,000 dollars on putting together this and previous applications. She added that the land was designated for a driveway and that their property value would decrease without access to the land.

James Conte introduced himself as the brother of Marie Sacco. He noted that he and his father developed the property together. He noted that the drainage pipes that are there were put in by him in the 1950's. He discussed the various subdivisions of the land in the 1950's, which he noted were very different from current times, and that about five years ago they started to 'clean things up' with regard to the easements.

Mr. Conte noted that the proposed access was always the final plan when the subdivision was done 'back in the old days'. He added that the watercourse was just a drainage ditch in the 1950's and only slowly became a brook. He concluded that it is not an active brook, just a drainage brook. He added that they are not developers seeking to build something new, just as homeowners trying to access their property of 20 plus years.

He noted that the applicants had done everything the right way and applied for all of the proper permits. He noted that they were willing to do whatever is necessary to install the driveway, even if it took a 60-foot long bridge.

Earl Goven introduced himself as a Landscape Architect with Blades & Goven of Shelton, CT. He recollected that they had previously applied in 2006 as an intermediate application. He read a letter by Alexis Cherichetti from that time noting that that application warranted a significant application and it needed additional information. Mr. Goven read the list of additional information and stated that all of the information had been submitted.

He discussed the three alternatives to accessing the site. He described Alternative 1 as what was originally considered a temporary measure to access their property across the Giapoutizis

property. He noted that Mr. Giapoutzis has since put a Belgium block across the driveway and planted trees.

He described Alternative 2 as the access that they use now to access their property, which he noted was across a CL&P easement.

He described Alternate 3 as the proposed route.

He noted that Alternative 1 is not available because of the poor relationship with the current owner (Giapoutzis) with his clients. He noted that Alternate 2 is "messy" due to multiple easements for electric, water, et cetera and the fact that the Saccos cannot get access to City water service from this same location. He concluded that Alternative 3 is really the only viable alternative.

Mr. Goven continued to describe alternative designs for the proposed watercourse crossing. He first described a box culvert, which he admitted was considered a last resort by the DEP Fisheries Division. He then described a bridge with a 25-foot span that was supported by planted side slopes. Lastly, he described the last alternative of a bridge with a retaining wall that would have just its corners 'bump into' the wetland but would span across the watercourse. He noted that when it was all done there would be very little impact to the watercourse. He noted that the applicants would look into expanding the span of the bridge.

He noted that the stream is just intermittent. He noted that the wetland scientist agreed that design of Alternate 3 would have the least impact to the wetland and watercourse of the three different designs.

Mr. Goven expressed to the Agency that the issues went beyond just a stream crossing and noted that one neighbor had continued to do work without any permits and that the other neighbor, the Carbonells, wished to fence off their property for the safety of their children. Mr. Goven expressed hope that the Agency would consider these issues as well. He noted that the neighbors are looking to 'renew' on their easement and that water service would require a stream crossing as well.

Chairman Destefanis confirmed that there were no members of the public wishing to speak on the application and asked if Commissioners had any questions.

Mr. Hubbard asked for clarification of the location of the property noted in the easement as the land of Paula Sands. Marie Sacco noted that that land was purchased by the Carbonells. Ms. Cherichetti confirmed that the Sands/Carbonell lot is depicted as Lot 4 on the filed map and that the subject lot is Lot 5.

Mr. Hubbard noted that the applicant had entered into an easement for access and asked for its location on the map. Mr. Conte discussed other easements and pointed to the map. Ms. Cherichetti clarified that the easement clearly crossed Lot 4, although a physical driveway may not currently be there. Mr. Conte noted that the easement was only done to satisfy taxes after his parents passed away and that it was made with his sister. He noted that the easement cut across lots, but that that was the way things were done in the 1950's. Ms. Cherichetti interjected that the easement was filed in 2001, not the 1950's. Ms. Sacco added that the Carbonells had given them the easement, but with the understanding that it was only temporary.

Ms. Cherichetti added that the map referred to depicts a 1983 subdivision. She reviewed the 1983 subdivision file and read a memorandum regarding the proposed subdivision from Mr.

Schwartz, the Conservation Officer at the time, to the City's Planning Engineer. The memo indicated that the proposal would be unacceptable unless lot 5 was accessed by an existing watercourse crossing off of Fallow Street. She added that the filed subdivision map includes a note that states that Lot 5 be accessed by the existing common driveway – which was shown starting at Fallow Street.

Mr. Conte argued that the access from Fallow Street will not last and that it will be challenged. He added that a crossing will mean that the lot will finally be 'cleaned up' and have its own access and be severed from the other lots.

Ms. Cherichetti asked for more information regarding the environmental analysis of the proposal by Mr. Jaenig.

Mr. Caputo stated that he has had the same questions regarding property access from the beginning. He noted that he had requested a title search upon the receipt of the application because he felt that it was essential to understand whether or not there was the option of keeping the existing access to the property. He noted that the applicant was seeking to access the property in a desired location by crossing a watercourse, while there is existing legal access that does not require a watercourse crossing.

Ms. Wilson noted that she agreed with Mr. Caputo regarding most of his statements. She questioned whether the document provided by a title search could be rescinded and that the document was an agreement, not an easement. She felt that the document was potentially more complicated than the Agency could decipher and was concerned that the applicant may not have any access to their property if it were rescinded. She noted that the Agency should look at the proposed project.

Mr. Caputo suggested that Corporation Counsel have the opportunity to look at the document to assist the Agency in deciphering the document.

Mr. Caputo and Ms. Wilson discussed the document further.

Mr. Caputo asked that Ms. Cherichetti review the submitted information by the applicant's wetland scientist. Ms. Cherichetti noted that Paul Jaenig had written a report regarding the three design alternatives. She noted that it was not a standard analysis of wetland functions and values and the proposal's potential impacts to wetland values and functions. She added that the report was more of a comparison of the three designs – and the comparisons were mainly based just on the amount of permanent and temporary disturbance to the wetlands, not so much the amount of impact to the wetland. She added that the report concludes that Alternative 3 would have the least amount of impact, but does not discuss what the impact would be.

Mr. Goven added that they could propose a bridge will no inland wetland or watercourse impacts and asked if such a design would be approved. Mr. Caputo asked if this zero-impact design had been drawn out or analyzed. He added that the applicant could reapply with such a design, but that it could not be considered at this late stage of this application's review.

Ms. Destefanis confirmed the Agency's statutory deadlines for closing the hearing. Ms. Cherichetti confirmed that without a special meeting, the public hearing must close at this evening's meeting.

**\*\* MR. HUBBARD MADE A MOTION TO CLOSE THE HEARING.**

**\*\* MR. CAPUTO SECONDED.  
\*\* MOTION PASSED UNANIMOUSLY.**

- b) **#S09-352 – 310 Ely Avenue – Cutrone** – Construction of a multi-unit residential building with associated drainage, parking and watercourse relocation in and adjacent to a wetland and watercourse

Ms. Destefanis opened the public hearing and invited all members of the public interested in speaking to please sign the speaker sheet.

Cherichetti took the roll, then read the legal notice and stated that she had received certificates of mailing from the applicant.

Ms. Destefanis invited the applicant to make a presentation.

Attorney Richard Roina provided a brief overview of the project and described the work done so far under the expired permit.

**\*\* MR. HUBBARD MADE A MOTION TO CLOSE THE HEARING.  
\*\* MR. HOLOWINKO SECONDED.  
\*\* MOTION PASSED UNANIMOUSLY.**

#### **DISCUSSION &/OR DECISION II**

- a) **#S09-343 – 252 Fillow Street – Sacco**– Construction of a bridge and associated activities in and adjacent to a watercourse and wetland

Ms. Destefanis suggested that the matter be tabled.

- b) **#S09-352 – 310 Ely Avenue – Cutrone** – Construction of a multi-unit residential building with associated drainage, parking and watercourse relocation in and adjacent to a wetland and watercourse

Mr. Caputo noted that the proposed project is the same as the previously approved project and that he had no objections.

**\*\* MR. CAPUTO MADE A MOTION TO CLOSE THE HEARING.  
\*\* MS. WILSON SECONDED.  
\*\* MOTION PASSED UNANIMOUSLY.**

**\*\* MS. DESTEFANIS MADE A MOTION TO AMEND THE AGENDA AND PROCEED TO  
ITEM B) UNDER ENFORCEMENT ACTIONS.  
\*\* MR. HOLOWINKO SECONDED.  
\*\* MOTION PASSED UNANIMOUSLY.**

#### **ENFORCEMENT ACTIONS/SHOW-CAUSE HEARINGS**

- b) **#V09-846 – 291 Rowayton Avenue – Permit Violation Enforcement Order** - Failure to follow the conditions, terms and limitation of Permit #S07-300

Ms. Destefanis opened the hearing. Ms. Cherichetti gave a brief review of the previous Wetland

Permit and its conditions.

Mr. Weisheit was present and apologized to the Commission for failing to finish the required plantings. He indicated that the shrubs had been delivered and were ready to plant.

\*\* MR. CAPUTO MADE A MOTION TO CLOSE THE HEARING.  
\*\* MS. WILSON SECONDED.  
\*\* MOTION PASSED UNANIMOUSLY.

\*\* MR. CAPUTO MADE A MOTION TO AMEND THE ORDER TO REQUIRE  
COMPLETION OF THE PLANTING PLAN BY AUGUST 25, 2009 AND TO UPHOLD  
THE AMENDED ORDER.  
\*\* MS. WILSON SECONDED.  
\*\* MOTION PASSED UNANIMOUSLY.

a) **#V09-845 – 4 Klim Lane – Cease & Restore Order** - Deposition of fill, grading, removal of vegetation and construction of a raised patio in and adjacent to a wetland and watercourse without benefit of a permit.

Ms. Destefanis opened the hearing. Ms. Cherichetti noted that the respondent was not present.

Ms. Cherichetti proceeded to give an overview of the activities she felt were in violation. She distributed photographs taken at the site as well as an aerial photo. Ms. Cherichetti described the original 1999 permit to construct the house and noted that a conservation easement had been filed in favor of the Conservation Commission. She added that the recent activities, in her opinion, were in clear violation of the easement agreement.

Ms. Cherichetti further described the areas of construction, the areas of filling and the areas where vegetation had been cleared. She noted that the Order sent to the respondent required that the disturbed areas immediately be seeded and mulched and that silt fencing or hay bales be immediately installed. She noted that inspection of the site showed that the property owner had planted grass seed but had failed to install sedimentation & erosion controls.

Mr. Caputo indicated that he was concerned about the extent of the violations to the wetlands and watercourse. He added that he was also concerned that the property owner appeared to be aware of the regulations and of the conservation easement, but proceeded with these detrimental activities anyway. Mr. Hubbard expressed his concurrence and suggested that staff ask Corporation Counsel to pursue the matter concurrently in court.

\*\* MR. CAPUTO MADE A MOTION TO CLOSE THE HEARING.  
\*\* MS. WILSON SECONDED.  
\*\* MOTION PASSED UNANIMOUSLY.

\*\* MR. CAPUTO MADE A MOTION TO UPHOLD THE ORDER AND TO HAVE STAFF  
REFER THE MATTER TO CORPORATION COUNSEL TO PERSUE A COURT  
INJUNCTION.  
\*\* MS. WILSON SECONDED.  
\*\* MOTION PASSED UNANIMOUSLY.

## REFERRALS

a) **Zoning Commission -#7-09R/#7-09SP - Norden Place, LLC - 8 Norden Place -**



Proposed amendments to Section 118-711 to permit multifamily and single family dwellings by special permit in Restricted Industrial Zone.

Ms. Destefanis recused herself.

Ms. Cherichetti asked if there were any additional comments and suggested that she could draft a response if given some direction by the Commissioners.

Mr. Caputo asked if anyone had any issues with the referral letter sent in 2006. Ms. Cherichetti suggested that she distribute the letter again and encouraged Commissioners to send any comments to her.

Ms. Destefanis returned to the meeting.

#### **COMMENTS OF STAFF**

Ms. Cherichetti indicated that she had no other matters that required discussion this evening.

#### **COMMENTS OF COMMISSIONERS**

There were none.

#### **ADJOURNMENT**

**\*\* MR. CAPUTO MADE A MOTION TO ADJOURN.  
\*\* MR. HOLOWINKO SECONDED.  
\*\* MOTION PASSED UNANIMOUSLY.**

The meeting was adjourned at 9:35 pm.