

TOWN OF ESSEX
Inland Wetlands and Watercourses Commission
29 West Avenue
Essex, CT 06426
essexct.gov

MINUTES – Public Hearing and Regular Meeting

April 10, 2012

Call to Order and Seating of Members

A Public Hearing of the Essex IWWC was conducted on April 10, 2012 in Room A, of the Essex Town Hall at 7:30 p.m. Those members in attendance were Chair Daniel Lapman, Claire Tiernan, Nancy Arnold, Stephen Knauth, Barbara Zernike and Fred Szufnarowski who was seated for Chuck Corson. Also in attendance were Stella Beaudoin, Recording Secretary and Joe Budrow, Wetlands Enforcement Agent and Zoning Enforcement Agent.

The regularly scheduled meeting followed the Public Hearing

Mr. Lapman called the meeting to order at 7:30 p.m.

Joseph Budrow, Essex WEO/ZEO read into the record the legal notice on behalf of application #12-5 Ingham Hill Road, River Sound Development LLC. The legal notice was posted in the Hartford Courant on March 29, 2012 and on April 5, 2012.

- **Consideration of Application 12-5 Ingham Hill Road, 6-lot Open Space Subdivision, Applicant, River Sound Development, LLC.**

This is an application for a 6-lot Open Space subdivision at the end of Ingham Hill Road on a property that is 36.6 acres in size. There are four areas of wetlands and/or watercourses on the property. Two brooks, two swampy areas and a pond are located on proposed open space land. Lots 2 and 3 appear to have regulated activities just outside of the 100-foot upland review.

The CT River Coastal Conservation District has been asked to do an assessment of the project with regards to erosion and sedimentation controls, habitat analysis, etc. A report will be submitted and available to Commissioners at the May 2012 IWWC meeting.

Mr. Doane presented an overall exhibit of the River Sound Development property which totals 1,000 acres with a good deal of the property located in Old Saybrook and a portion of the property is situated in Westbrook. The six lots total 15.92 acres of area. The open space that wraps around the site is 20.7 acres.

This will be a stand-alone subdivision and the lots are wrapped in open space. The open space is on the Essex/Old Saybrook line and will be conveyed by deed in fee to the Essex Land Trust. The proposal is under review by the Acquisitions Committee of the Essex Land Trust.

Ms. Arnold noted that a good deal of the lots are situated on a steep grade and she questioned the consequences of developing lots where the run-off will flow towards the scenic road.

Mr. Doane commented on a report received by Trinkus Engineering. That firm wishes to carry the site development plan forward on the individual lots and they have asked Mr. Doane to demonstrate that the state's water quality standards can be met in terms of quality and volume. Mr. Doane stated that he will do ground water recharge for the driveway and for the houses. This study will qualify the amount of water coming off of the driveways onto Ingham Hill Road.

Ms. Arnold stated that this evening the Commission is being asked to decide per the plans presented whether there are wetlands that are being impacted by the proposed lot lines and whether you can change the proposed lot lines and create an alternative to the lot line proposal.

Mr. Doane stated that we are here because there was enough public interest to conduct a public hearing. It was not determined that there was a significant activity within the wetlands. If it were a significant activity, all of the alternatives would be reviewed. There is no proposed activity within 100 feet of the wetlands. There is no need to review an alternative if there is no regulated activity. Each lot has been developed to have no regulated activity and to demonstrate that a 4 bedroom home could be constructed without interfering with the wetlands.

Nancy Arnold commented on the proposed sanitary septic systems and the location of the test holes which were observed on the site walk.

Mr. Doane stated that the most suitable locations for the sanitary systems have been utilized. Mr. Doane noted that these are all individual sanitary systems that will be held to the scrutiny of the sanitarian pursuant to the public health code. The sanitarian has not yet approved the sanitary system, however he will review the proposed locations and the percolation rate, etc. Mr. Doane stated that the schematic designs were submitted to the Planning Commission which includes a design for each of the six lots. On that the soil test, the depth of the ledge and the depth of the ground water are shown, all in accordance with the health requirements.

Stephen Knauth stated that Mr. Doane has provided suitable alternatives as reflected on the plan.

Fred Szufnarowski noted that there is no proposed activity in the regulated area so the concerns of the IWWC are stormwater management to the roadway and to the watercourse and the functioning of the sanitary systems as they are surrounded by wetlands and watercourses. Mr. Szufnarowski commented on the proximity of the sanitary waste system to the wetlands and watercourses and questioned where would the effluent go if the system were to fail. Mr. Doane was asked to provide more detail by way of a report from the CT River Coastal Conservation District who will compile an assessment of the project with regards to erosion and sedimentation controls, habitat analysis etc.

Joseph Budrow, WEO/ZEO clarified that the CRCCD offers to review habitat, to draft an assessment of the erosion and sedimentation control measures and they will look at stormwater management practices. Once their report is complete their findings will be put in writing and the report will be submitted for the record.

Barbara Zernike questioned the preservation of the existing stone walls.

Mr. Doane assured the Commission that the integrity of the stone walls would be preserved.

Ms. Arnold noted that many trees will be cut and questioned the timber cutting implications.

Mr. Doane stated that when the drainage characteristics are changed, stormwater management is addressed to defray the potential of the stormwater runoff.

Attorney Christopher Smith presented. Mr. Smith is a land use attorney with the firm of Shipman and Goodwin. Attorney Smith distributed a Verified Intervention Pleading as provided by Section 22a-19 of the CT General Statutes. Mr. Smith represents Judith and Kenneth Bombaci and Suellen and Scott McCuin in the Intervention Pleading.

Mr. Smith commented on the filing of the documents of the subdivision application and the accompanying filing fee. Mr. Smith noted that the filing fee of the Inland Wetlands application was not received until March 7, 2012. Mr. Smith stated that the IWWC application and the Planning Commission application were filed out of order.

Mr. Smith distributed Exhibit A and noted that the applications should be withdrawn and resubmitted in the correct order.

Nancy Arnold asked if Mr. Smith is asserting that the applicant should re-file the application.

Mr. Smith stated that the planning application was filed out of order and that application should be withdrawn and re-submitted. Mr. Smith stated that he has an obligation as representing his clients Section 826(e) of the CT General Statutes speaks to the filing fee.

Mr. Doane stated that the applicant will be represented by legal counsel at the May 2012 IWWC meeting. Mr. Doane referenced Section 826 noting that the requirements of that Section requires that the applications be submitted simultaneously and they were. Mr. Doane stated that there was some question because there are no proposed regulated activities listed on the applications and there was some question if the IWWC application would be handled administratively. There was also a question as to whether there would be a fee associated with the application. Mr. Doane stated that the Planning Commission collects a fee after that Commission presents the application to their attorney, and the fee evolves from there. Mr. Doane indicated that the application and the plans were submitted on February 10, 2012 and they were taken into the Land Use office on that day. Mr Doane reiterated that he followed the requirements of Section 826 of the Statute.

Nancy Arnold suggested that this matter be tabled to the May 2012 meeting. Ms. Arnold stated that if there is a jurisdictional challenge she would rather table the matter to the May meeting when legal council for both parties are available. Ms. Arnold stated that Attorney Smith is challenging the jurisdiction of this Commission to move forward as he claims that the application was filed in error per the statutory requirements. Once jurisdiction is challenged, the IWWC is not in a position to take information as the jurisdiction has been challenged.

Mr. Smith stated that there is quite bit of information that the applicant should be providing in conjunction with this presentation. Mr. Smith noted that it is difficult to do an evaluation on an application that is not complete. Mr. Smith stated that he would like to request that the Commission ask the applicant to have available at the May meeting a list of questions and requirements.

Mr. Doane stated that this issue can be resolved before the Planning Commission Public Hearing which is scheduled to begin on April 18, 2012. To remedy the problem, Mr. Doane has offered to withdraw and resubmit the application at the Planning Commission meeting so that it is received behind the Inland Wetlands application. Mr. Doane stated that the IWWC will then be in a position to proceed with the application and address any concerns. Mr. Doane has stated that the jurisdictional issue can be resolved next week at the Planning Commission meeting. Ms. Arnold stated that this must be resolved before the IWWC moves forward.

Motion made by Nancy Arnold table **Application 12-5 Ingham Hill Road, 6-lot Open Space Subdivision, Applicant, River Sound Development, LLC** until the jurisdictional issue is resolved before the May 15, 2012 IWWC meeting

Motion seconded by Claire Tiernan and passed unanimously 6/0/0.

Approval of Minutes

Motion made by Nancy Arnold to approve the Minutes from the March 13, 2012 regularly scheduled meeting as presented.

Motion seconded by Stephen Knauth and passed unanimously 6/0/0.

Motion made by Claire Tiernan to approve the 3.20.2012 site walk Minutes for **Application 12-4, Donald Meyer, Rosewood Lane.**

Motion seconded by Nancy Arnold and passed unanimously 6/0/0.

Motion made by Claire Tiernan to approve the March 20, 2012 site walk Minutes on behalf of **Application 12-6, Peter Sarner, 10 Heron Pond Road.**

Motion seconded by Stephen Knauth and passed unanimously 6/0/0.

Old Business

- **Consideration of Application 12-4, property located at Rosewood Lane, Assessor's Map 39 Lot 1-25, Zoning District RU. The owner of Record is Donald Meyers.**

This is an application to construct a single family residence along with a septic system to the west. A pond is located 65 feet south of the proposed house and 84 feet south of the septic system. The property was cleared before seeking wetlands approval. A silt fence was installed between the pond and the work area.

Mr. Budrow stated that there is no evidence that the septic has been approved by the sanitarian. As such, Mr. Budrow notified the applicant that his presence was not required at this evening's meeting.

- **Consideration of Application 12-6 for property at 10 Heron Pond Road, Map 71 Lot 4, RU District, Applicant: Peter Sarner.** This is an application for an in ground swimming pool to be located in the rear yard. The proposed location is approximately twenty feet from a wetland.

Peter Sarner presented. Mr. Sarner stated that as suggested at the March 20, 2012 site inspection, he is amenable with moving the location of the pool. Mr. Sarner spoke with Murphy Pools and Shoreline Pools who provided Mr. Sarner with options on the relocation of the pool. Mr. Sarner was asked to move the proposed pool 20 feet to the east which he agrees to.

Mr. Sarner indicated that the trees are marked for removal and in the past few weeks he has planted twenty-five Arborvitae trees along the stream.

Ms. Arnold asked to table this application to the May 2012 IWWC meeting so that a formal plan for the pool location can be presented for the Commissioners review.

Mr. Sarner questioned if it would be acceptable to the IWWC if the pool is relocated so that it is situated twenty feet from the location of the original pool.

Ms. Arnold stated that she does not recall the twenty foot requirement coming up in discussion at the site walk, however it is up to Mr. Sarner to present a plan that is appropriate and will not infringe on the wetlands.

Mr. Budrow will work with Mr. Sarner to create a plan for the relocation of the pool.

Motion made by Fred Szufnarowski to approve of **Application 12-6 for property at 10 Heron Pond Road, Map 71 Lot 4, RU District, Applicant: Peter Sarner**. This is an application for an in-ground swimming pool to be located in the rear yard. The proposed location of the pool is approximately twenty feet from a wetland. The IW Permit is approved with the changes that were agreed to at the site walk and as confirmed at this evening's meeting. Based on the documents presented, on the site inspection and on the testimony given at this meeting, the Commission finds that the proposed activity is a regulated activity not involving any significant or major effect upon the inland wetlands or watercourse which occur on the property as defined in Section 2.2 (j), and that no reasonable or prudent alternative exists to the proposed plans. The Commission members feel that the proposed activities are well suited to the area.

The Commission makes a Summary Ruling and grants a permit and permission for the applicant to proceed with proposed activity as stated on said application and as shown on plans accompanying the application, subject to the following conditions:

1. The proposed plans will be revised to reflect the changes as discussed at this evening's meeting and as agreed upon at the Tuesday, March 20, 2012 site plan.
2. In accordance with the Commission's Regulations, the activity pursuant to said permit shall be initiated within 5 years of the date of publication and shall be completed within one year of the date of initiation and will occur between March 15th and October 15th of the year of initiation.
3. Should the applicant determine that the permitted activity will not be completed between March 14th and October 15th of the year of initiation, the applicant agrees to appear before the Commission and present a plan for the stabilization of the site during the non-permitted months.
4. The applicant agrees to follow the advice and direction of the Town of Essex Enforcement Officer with regard to any field changes she/he deems necessary or may require for the protection of the inland wetlands and water course during the process.
5. The Commission, through its Enforcement Officer, shall be notified in writing upon the initiation of the authorized activity and again upon completion of these activities

Motion seconded by Stephen Knauth with Nancy Arnold in opposition. Motion carried 5/1/0.

Ms. Arnold noted for the record that the discussion that took place at the site walk did not have consensus of the Commission.

New Business

Consideration of Application 12-7, property located on Westbrook Road, Assessor's Map 54, Lot 16-1, LI District, Applicant: Westbrook Road Properties, LLC. This is an application to clear the lot of unruly vegetation that exists and to replace with more attractive trees, grass and plants. The property is a 3.46 vacant lot on Westbrook Road and it contains a wetlands area in the center of the property. The lot is lightly wooded with undergrowth and young trees.

Robert Doane, P.E presented on behalf of Westbrook Road Properties, LLC. The property was clear cut and a wetland violation was incurred in 2006. Mr. Doane stated that there is a man made pond in the middle of the property and the area surrounding the pond was clear cut by the former owner of the convalescent property. The site has grown back with thirty foot thorny trees and shrubs. The owner would like to remove the invasive species and replant with grasses and hardwoods. The wetlands are

within the pond in the middle of the property. All of the invasives will be removed and the pond will be exposed. Rich Snarski, soil scientist will evaluate the property and make a recommendation on how to proceed.

Claire Tiernan suggested that Mr. Doane have the shrub analyzed and then make a determination on how to move forward with removal.

Motion made by Nancy Arnold to approve a Permit for Consideration of Application 12-7, property located on Westbrook Road, Assessor's Map 54, Lot 16-1, LI District, Applicant: Westbrook Road Properties, LLC. This is an application to clear the lot of unruly vegetation that exists and to replace with more attractive trees, grass and plants. Based on the documents presented, and on the testimony given at this meeting, the Commission finds that the proposed activity is a regulated activity not involving any significant or major effect upon the inland wetlands or watercourse which occur on the property as defined in Section 2.2 (j), and that no reasonable or prudent alternative exists to the proposed plans. The Commission members feel that the proposed activities are well suited to the area.

The Commission makes a Summary Ruling and grants a permit and permission for the applicant to proceed with proposed activity as stated on said application and as shown on plans accompanying the application, subject to the following conditions:

1. Prior to the removal of the invasive species, the samples will be sent to the CT Department of agriculture for identification and recommendations for removal and those guidelines will be followed.
2. Any replanting will be in conformance with best practices of wetlands-loving trees and shrubs and non-invasive species.
3. In accordance with the Commission's Regulations, the activity pursuant to said permit shall be initiated within 5 years of the date of publication and shall be completed within one year of the date of initiation and will occur between March 15th and October 15th of the year of initiation.
4. Should the applicant determine that the permitted activity will not be completed between March 14th and October 15th of the year of initiation, the applicant agrees to appear before the Commission and present a plan for the stabilization of the site during the non-permitted months.
5. The applicant agrees to follow the advice and direction of the Town of Essex Enforcement Officer with regard to any field changes she/he deems necessary or may require for the protection of the inland wetlands and water course during the process.
6. The Commission, through its Enforcement Officer, shall be notified in writing upon the initiation of the authorized activity and again upon completion of these activities

Motion seconded by Stephen Knauth and unanimously approved 6/0/0.

Correspondence and Invoices: No correspondence and no invoices.

Reports:

Wetlands agent Joseph Budrow

- Mr. Budrow reported that the CT Fund for the Environment will be submitting in May 2012 their intent to be an intervener. That document is not yet on record.
- Mr. Budrow reported on the enforcement issue for the property situated behind the Centerbrook Post Office. Mr. Budrow stated that the applicant has been informed that he has the option to install the fence in the location as required by the IWWC. If the property owner wishes to install the fence in a different location, he must apply for an IW Permit approval.

- Mr. Budrow reported on property located at 12 Racketts Lane which is owned by Andrew Guziewicz and Kelly Rock. Mr. Budrow received several phone calls in the past two months from a neighbor with complaints of the dredging materials which she claims are emitting an offensive odor. The spoils were to be used to grade the property. The neighbor has also complained of the installation of a perforated pvc pipe which is embedded in crushed stone and leads to the pond. Mr. Guziewicz would like for the existing pipe to remain intact and he would further request to install a second 30 foot pipe. Mr. Guziewicz presented pictures of the pond and explained to the Commission that the extension of the pvc pipe to the water was a part of the December 30, 2010 IW Permit approval. Mr. Guziewicz stated that his contractor suggested that he lay perforated pipe on the other side of the property as well. The area is moist with softer soil. The bottom of the pipe would sit just above the edge of the water. There is a 200 foot section along Route 154 that gathers water and there is no drain. The water goes onto Mr. Guziewicz's property and this drain helps to alleviate the drainage situation.

Motion made by Nancy Arnold to approve the field change to include the imbedded crushed stone as a modification to the previously approved Permit for **Application 10-15, property located at 12 Rackett Lane, Assessor's Map 51, Lot 12, property owned by Andrew Guziewicz and Kelly Rock**. Based on the documents presented, and on the testimony given at this meeting, the Commission finds that the proposed activity is a regulated activity not involving any significant or major effect upon the inland wetlands or watercourse which occur on the property as defined in Section 2.2 (j), and that no reasonable or prudent alternative exists to the proposed plans. The Commission members feel that the proposed activities are well suited to the area.

The Commission makes a Summary Ruling and grants a permit and permission for the applicant to proceed with proposed activity as stated on said application and as shown on plans accompanying the application, subject to the following conditions:

1. In accordance with the Commission's Regulations, the activity pursuant to said permit shall be initiated within 5 years of the date of publication and shall be completed within one year of the date of initiation and will occur between March 15th and October 15th of the year of initiation.
3. Should the applicant determine that the permitted activity will not be completed between March 14th and October 15th of the year of initiation, the applicant agrees to appear before the Commission and present a plan for the stabilization of the site during the non-permitted months.
4. The applicant agrees to follow the advice and direction of the Town of Essex Enforcement Officer with regard to any field changes she/he deems necessary or may require for the protection of the inland wetlands and water course during the process.
5. The Commission, through its Enforcement Officer, shall be notified in writing upon the initiation of the authorized activity and again upon completion of these activities

Motion seconded by Claire Tiernan and passed unanimously 6/0/0.

Chairperson Daniel Lapman:

- Mr. Lapman commented on the January 10, 2012 Minutes and Mr. Lapman noted that there was no motion put forward to hold a public hearing on the Foxboro Point Application.

Motion made by Nancy Arnold to retroactively amend the January 2012 regularly scheduled meeting Minutes to reflect that the IWWC received and accepted a petition and held a public hearing for the Foxboro Point application.

Motion seconded by Stephen Knauth and passed unanimously 6/0/0.

- Mr. Lapman suggested that from this point forward the approval of the meeting Minutes be placed at the beginning of the Agenda.

- Mr. Lapman asked Mr. Budrow that the applicants be copied on the site walk Minutes.
- Mr. Lapman noted that the Agenda reflected an application number of 12-4 assigned for the River Sound Development proposal as well as for the Rosewood Lane application.
- Mr. Lapman stated that he received a letter from the Essex Town Clerk informing the IWWC that Tom Hennick from Freedom of Information will present an information session on Tuesday, May, 22, 2012 at 7:00 p.m. Mr. Lapman asked members to contact the Town Clerk if interested in attending.

Planning Commission Representative Claire Tiernan

- Ms. Tiernan reported that the March 2012 Planning Commission meeting was a lengthy one.

Conservation Commission Representative: No report.

Zoning Commission Representative Larry Shipman. No report.

Motion made by Fred Szufnarowski to adjourn.

Motion seconded by Nancy Arnold and passed unanimously 6/0/0.

The regularly scheduled meeting of the Essex IWWC adjourned at 9:20 p.m.

Respectfully submitted,

Stella C. Beaudoin
Recording Secretary

The next regularly scheduled meeting of the Essex Inland Wetlands and Watercourses Commission will be conducted on May 8, 2012.