

Unapproved

**TOWN OF ESSEX**

**Inland Wetlands and Watercourses Commission  
29 West Avenue, Essex, CT 06426  
essexct.gov**

**MINUTES – Public Hearing and Regular Meeting**

**June 12, 2012**

**Call to Order and Seating of Members**

A Public Hearing followed by the regularly scheduled meeting of the Essex IWWC was conducted on June 12, 2012 in the auditorium, of the Essex Town Hall at 7:30 p.m. Those members in attendance for the Public Hearing were Acting Chair, Chuck Corson, Nancy Arnold, Fred Szufnarowski, Larry Shipman, Zoning Representative and Claire Tiernan, Planning Representative.

Staff: Joe Budrow, Wetlands Enforcement Agent and Zoning Enforcement Agent and Stella Beaudoin, Recording Secretary.

Mr. Corson called the meeting to order at 7:32 p.m.

**1. Public Hearing**

- **Consideration of Application #12-5 Ingham Hill Road, 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. Continued from the April 10, 2012 and May 8, 2012 IWWC meeting.

Mr. Budrow stated that this application was received on April 10, 2012 and as of that date, the IW Commission had 35 days to close the Public Hearing. At the May 8, 2012 meeting the applicant requested an extension to this evening's June 12, 2012 meeting.

**Attorney Brian Smith, Robinson & Cole presented on behalf of River Sound Development, LLC.** Mr. Smith introduced Michelle Moreska, an associate at Robinson & Cole. Mr. Smith noted that there are several environmental authorities on hand this evening who are here to present on behalf of this application. Mr. Smith stated that in response to staff comments and public comments, the proposed subdivision design is for open space preservation with reduced lot sizes and clustering. Mr. Smith stated that he worked within this proposal to protect the wetlands, the vernal pool habitat and the

rock outcrops. There are no proposed activities within the wetland area and there is no significant impact to the wetlands or to the watercourses on this property. The CT River Coastal Conservation District (CRCCD) prepared packets which were distributed to the Commissioners and to the applicant's legal counsel.

Robert Doane, P.E. presented. Mr. Doane pointed out, there were significant changes made on the overall 100-scale plans. Mr. Doane addressed the various issues and concerns that have been articulated at the previous meetings. The most significant change is in response to concerns regarding any proposed activity within 100-feet of the wetlands. It was a concern that once a lot has been purchased, someone might wish to build within the 100-foot review area. Mr. Doane stated that a conservation easement has been added on lot 2 within the 100 foot review area and the property line on lot 3 has been modified to take the lot outside of the 100-foot review area. Mr. Doane stated that he was able to accomplish this because he took the driveway that serviced lot 3 and moved it onto lot 4 and made a common driveway for lots 3 and 4. This reduces the paved area and moves the activity further away from the wetlands. The back property line was adjusted to lots 5 and 6 and those lots are completely out of the 100-foot review area. Mr. Doane noted that previously there was a question on the 100-foot review area and he has clarified and enhanced the graphics for the wetland review area on the plan, as was requested. The new total lot coverage is 13.72 acres and the open space is 22.87 acres with 2.91 acres with the addition of the conservation easement. The cleared area has been reduced two tenths of an acre. There are now 3 common driveways; lots 1 and 2; lots 3 and 4 and lots 5 and 6. A 5-car parking area and a trail head have also been added on to the open space and all of that activity is outside of the 100-foot review area. The parking area will be paved due to the slope.

Attorney Brian Smith stated that he will meet with the Conservation Commission on Thursday evening at their regularly scheduled meeting to discuss the open space conservation easement.

Mr. Doane stated that rain gardens and storm water management for low impact development is proposed for each of the lots. At the May 2012 meeting at which the preliminary analysis was conveyed, it was noted that there are no proposed detention basins and runoff to the property will be diverted. Mr. Doane distributed the plan which was revised to 6/4/2012. This plan shows lots 3, 4, 5 and 6 which reflect the watersheds and shows how the runoff has been diverted from lots to the wooded area on Ingham Hill Road. There is a common driveway for lots 5 and 6. The increase in runoff is insignificant and can be handled by the wooded area and the gutter line on Ingham Hill Road. Additional silt fencing may be added to the site, and the driveway for lots 3 and 4 was expanded. The house on lot 4 has been moved. The location of the house on lot 4 is reflected on the modified plan and shown an alternative to last month's plan. Mr. Doane stated that he has reduced the amount of impervious and reduced the size of the lots. The shared driveways will be paved.

Michael Klein, biologist and soil scientist presented. Mr. Klein noted that the conservation easement will be recorded on the land records. There is no proposed activity in the wetlands or to the upland area and a good deal of thought and effort has been given to preserve the environment to this property. There are four wetland areas at the site. Wetlands 3 and 4 are upslope and outside of any activity. Wetland 1 is located to the west between lots 2 and 3 which are to the south of lots 5 and 6. Mr. Klein stated that he looked closely at the functions and values of the wetlands. Wetland 1 contains several wetland vegetation types to include scrub shrub. Wetland 2 has the large vernal pool with wetland wildlife habitat.

Chuck Corson stated that he wants to close the hearing tonight but he will not do so until the commission has had the opportunity to review the results of the state environmental study. Mr. Klein stated that a request was submitted to the State of Ct Natural Diversity database on May 17, 2012 and the State has not yet responded.

Mr. Budrow asked if any soil testing has taken place on the property to coincide with the soil legend. Mr. Klein stated that the conditions are unchanged.

Dr. Michael Klemens addressed the biodiversity on the site in relation to the vernal pools. Dr. Clemens referenced vernal pool #6 which is a cryptic vernal pool. Dr. Clemens referenced vernal pool #24 which is 800 feet from the high water mark to the town line. Dr. Clemens spoke in length on the #6 vernal pools situated on the property and he referenced the spotted salamanders and the wood frogs, which make this vernal pool their home. Dr. Klemens commented on the population of the Ribbon snakes on site. Dr. Clemens stated that the corridor is the important parcel piece to this proposal.

Mr. Corson questioned if the roof drains could be placed in the ground. Mr. Doane stated that the footing drains are going into the level spreaders and they are going into the rain gardens. Mr. Doane stated that he eliminated the catch basin but there will be a head wall that goes down to a level spreader.

Attorney Brian Smith summarized the expert testimony presented this evening, noting that the evidence shows that there are no significant activities within the wetlands and the watercourses. Mr. Smith stated that he has shown the commissioner a number of alternatives and presented testimony as to the most feasible and prudent alternative. Mr. Smith stated that this is a very well thought-out plan.

Mr. Corson stated that he would like to have the Conservation Commission's response to this application and he would also like to have the DEEP study on the site.

**Attorney Christopher Smith presented. Mr. Smith is a land use attorney with the firm of Shipman and Goodwin and he represents the interveners.** Mr. Smith stated that he will address preliminary matters at the outset. The applicant's initial approach was seeking a declaratory ruling that this proposal does not affect the wetlands. Mr. Smith stated that a few of the lots should be combined so as to reduce the number of onsite lots. Mr. Smith stated that the Commission looked for an assessment of the

property which they received through Dr. Klemens. Mr. Smith discussed the vernal pools on the property and the intermittent watercourses on the property. Attorney Smith stated that testimony has been given attesting to the blasting which will be required prior to construction. He noted that this is an activity and it would be fair for the Commission to ask for a blasting plan and a construction sequence plan.

George Logan, Certified Professional Wetland Scientist presented. Mr. Logan spoke at length on the spotted salamander, the red spotted newts and the other various wildlife habitats indigenous to the wetland area. onsite.

Sigrun Gadwa Certified Professional Wetland Scientist presented additional details on the wildlife indigenous to this property.

Ms. Arnold commented on the location of the corridor in relation to the salamander breeding activity noting that she wants to be certain that the breeding pool is adequately protected by the plan.

Mr. Doane stated that the Commission may make the location of the corridor via easement a requirement.

Mr. Corson stated that there have been significant changes to this project since Kelly Starr reported and Mr. Corson asked Mr. Budrow to contact Ms. Starr and request for updated notes prior to the July 10, 2012 IWWC meeting.

**Attorney Charles Rothenberger from the CT Fund for the Environment (CFE) presented as an intervener.** Mr. Rothenberger stated a few key points merit reiteration. The IWWC has jurisdiction over all of the activities proposed on this site. There is a significant amount of development on the site and the Commissioners should address the question of the impacts to the regulated resources. Mr. Rothenberger suggested that the IWWC needs a more appropriate analysis of what the impacts will be based on the construction activities. Mr. Rothenberger noted that there is a lot of earth moving and a good deal of blasting due to the topography of the site and there has been no information provided to the IWWC on a blasting plan. There will be a significant amount of construction activity and there has been no information provided and no discussion as to what those impacts will be. Mr. Rothenberger noted that there was an indication of a wildlife analysis on the site. There has not been a lot of discussion on the impacts to some of the other species, particularly the wood frogs which had also been identified on this site. Mr. Rothenberger touched upon some of the endangered species which have been identified as habitants of this site and he noted that very little consideration has been given to the preservation of those endangered species.

At this time Mr. Corson opened the discussion to the audience.

Mr. Kenneth Bombaci, 86 Ingham Hill Road presented. Mr. Bombaci stated that he has constructed over 180 homes and he is also a licensed arborist. Mr. Bombaci stated that because of the seclusion of the area, if the subdivision approval goes through, it will be difficult to monitor those activities within the wetlands. Mr. Bombaci presented pictures

dated March 22, 2001 of an area on property located on Ingham Hill Road that had been identified as an area with very little standing water. The pictures distributed represented a very wet area.

Ms. Arnold reminded Mr. Bombaci that the IWWC would like for the Essex Conservation Commission to weigh-in and that has not yet occurred.

Mr. Bombaci commented on a row of specimen maple trees which are in the area of a proposed driveway, noting that they must be removed in order to construct the driveway.

Milan Bull, Senior Director of Science and Conservation for the Senior Audubon Society presented. Mr. Bull stated that he is here to support the testimony and the statements made by the interveners regarding this proposal. Mr. Bull commented on conservation easements which he noted are typically held by a certain party whether it is by the town or the person. Mr. Bull questioned how conservation easements are delineated.

Ms. Arnold stated that conservation easements are delineated typically via signage. Mr. Bull noted that the six lot units will house families which will negatively impact the wetlands. The box turtles and ribbon snakes on the site will be disturbed due to the development of the land. Mr. Bull stated that 2 or 3 lots on this site are a prudent alternative to what is currently on the table. Mr. Bull stated that he is, for the record, in support of the interveners.

Larry Fortier, 78 Ingham Hill Road. Mr. Fortier stated that there is a good deal of wetlands in the front of his property. In front of Mr. Fortier's mailbox there is a culvert that fills with water when it rains. Lot 6 is situated on the hill behind Mr. Fortier's property and currently any rain from that lot runs onto the wetlands on Mr. Fortier's property. Once the lot is developed, the polluted run-off will freely flow onto Mr. Fortier's property. Mr. Fortier commented on the environmental issue surrounding the disturbance of the box turtle who resides on this property and who has a low survival rate. Mr. Fortier stated that this site is comprised of mature trees, stone walls and a lot of things that you do not find anywhere else. Mr. Fortier stated that the IWWC is entrusted with the preservation of the area.

Bob Fisher, 47 Ingham Hill Road presented. Mr. Fisher stated that River Sound is attempting to shoehorn in 6 building lots into a wetlands area which does not work very well. Mr. Fisher noted that the question of a feasible alternative was never answered.

Chris Greider who lives in Old Saybrook and who is part of a group known as The Alliance for Sound area Planning (ASaP). This group is working to preserve these 1,000 acres of land that used to be called "The Preserve". There are over 300 members in the ASaP organization. Mr. Greider stated that the 1,000 acres that make up the Preserve is the last and largest coastal forest and wetland complex remaining in CT, within such close proximity to the Long Island Sound. Mr. Greider presented a picture of Vernal pool #6 dated June 10, 2012 and he stated that this vernal pool is one of the crowned jewels

in the town of Essex. This is a large, highly productive vernal pool and it is classified as the top 6 vernal pool of the 38 vernal pools comprised of the 1,000 acres.

Evelyn Fortier, Ingham Hill Rd. Ms. Fortier stated that Ingham Hill Road is a jewel and she asked commissioners to consider before a permit is granted as to how the blasting will impact the serenity of the neighborhood.

Suellen McCuin 24, Ingham Hill Rd. presented. Ms. McCuin spoke in opposition to this application. Ms. McCuin is a member of The Alliance for Sound area Planning. Ms. McCuin stated that the residents of Ingham Hill Road have petitioned to the Attorney General and the legislators in this region and 1,000 signatures were obtained in opposition to this proposal.

This concluded the audience testimony and presentation.

Mr. Corson stated that would like to see detail of the rain garden and detail on the plan of how it will be done. Mr. Corson stated that there should be a plant specialist to make suggestions as to which wetland plantings should be installed. Mr. Corson requested that Mr. Doane address the runoff. Mr. Corson noted that there are requirements of proper maintenance of the rain gardens and level spreaders and asked the applicant to look into that.

Ms. Arnold stated that the Commission requires more information on the impacts of blasting. Ms. Arnold stated that she would also like to see some impacts of the runoff. Ms. Arnold asked Mr. Klein to obtain from the DEEP the list of the State of Ct Natural Diversity database.

Attorney Brian Smith presented for the record a letter dated June 12, 2012 requesting an extension of 28 days

**Motion** made by Nancy Arnold to table **Application #12-5 Ingham Hill Road, Applicant, River Sound Development, LLC** for a 6-lot Open Space subdivision at the end of Ingham Hill Road to the July 10, 2012 regularly scheduled meeting of the IWWC.

**Motion** seconded by Claire Tiernan and passed unanimously.

The Public Hearing closed at 11:40 p.m. and the regular meeting was opened. Those members in attendance for the regular meeting were Acting Chair, Chuck Corson, Nancy Arnold, Fred Szufnarowski, Larry Shipman, Zoning Representative, Jeff Lovelace, Conservation Representative and Claire Tiernan, Planning Representative.

2. **Old Business**  
**Application #12 – 8, property located at 24 Cove Rest Pentway, Assessor’s Map 71 Lot 21-1, RU Zone, Applicant, Robert Kolp.** This is an application to extend an existing rock wall to enhance the stabilization of a bank. The applicant also requests to landscape the bank and plant vegetation that will also stabilize the bank.

This application is continued from the May 8, 2012 meeting. Mr. Robert Kolp presented. Mr. Kolp stated that at the May 2012 IWWC meeting, it was recommended that he have an A-2 survey drawn up on his proposal showing the wall as there is currently a dispute among the abutters. Mr. Kolp distributed pictures depicting a walkway prior the installation of a Maple tree on the walk down to the dock. Mr. Kolp presented an updated Survey which was an enlarged print of the shoreline and of the dock as was prepared by Richard Gates, L.S. dated June 12, 2012. The area is proposed to be comprised of stone granite, loose stacked stone, 4" thick which will form the front face of the retaining wall, and the broken piece will be filled in with gravel. There were 3 Beech trees on the old plan, and those trees have been removed. Mr. Kolp will work with Ann Penniman to determine the plantings for the fall installation.

Mr. Budrow stated that the proposal last month was to rebuild by hand the rock wall and questioned how Mr. Kolp was planning to proceed.

Mr. Kolp stated that the wall will be constructed of free-standing, interlocking stone.

Mr. Budrow stated that the request was to build the wall and to vegetate.

Tom Metcalf, P.E., stated that he is working with Michael Picard whose property abuts Mr. Kolp's property and Mr. Picard has some concerns about this proposal. Mr. Metcalf questioned if this proposal requires a zoning permit and a Coastal Site Plan Review because it is proposed to be constructed at the high tide line. Mr. Metcalf commented on the shoreline flood and erosion control structure and noted there is statutory language that requires coastal site plan review from the DEEP.

Mr. Corson stated that the Zoning requirement along with the Coastal Site Plan Review may both be permits that are required in addition to an IWWC Permit.

Mr. Metcalf asked to have this application tabled for another month so as to have an opportunity to review the plans.

Attorney Amy Bloom on behalf of Mr. Kolp. Ms. Bloom questioned if the Commission routinely allowed the public to comment on applications. Ms. Bloom stated that it is not proper for comments to occur between the two parties as there is currently litigation between Mr. Picard and Mr. Kolp.

Mr. Szufnarowski stated that the construction is 50 feet from the abutting property line.

Ms. Arnold stated that a DEEP requirement associated with Mr. Kolp's proposal is Mr. Kolp's responsibility.

Mr. Corson stated that if Mr. Kolp is excavating, he must have measures in place to protect south cove.

Mr. Kolp stated that the DEEP wrote him a letter indicating that the construction of this retaining wall is not within their purview. Mr. Kolp stated that he will not do any digging on the water side of the retaining wall.

**Motion** made by Nancy Arnold to grant a Permit for **Application No. 12 – 8**, property located at **24 Cove Rest Pentway, Applicant/Owner, Robert Kolp** for the extension of an existing rock wall and landscaping. 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 of the regulations 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. No excavation will be done within one-foot of the high tide line and erosion control will be in place to prevent any erosion into the cove.
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 15<sup>th</sup> and October 15<sup>th</sup> of the year of initiation.
3. Should the applicant determine that the permitted activity will not be completed between March 14<sup>th</sup> and October 15<sup>th</sup> 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 Fred Szufnarowski and passed unanimously.

**3. New Business**  
**Application #12-9, 147 Saybrook Road, Applicant, Michael Picard. This is an application for site clearing and house demolition.**

Thomas Metcalf, P.E. presented on behalf of this application. Mr. Picard is proposing to clear/remove invasive, non-invasive plants from the wetland area on his property. The result of this work, which would take place under the supervision of Richard Snarski, Wetland Scientist, would not disturb the natural and indigenous character of the wetland area. Mr. Picard is proposing to remove trees that were blown down or significantly

damaged during last year's hurricane and early season snow storm. This work will be performed by a licensed arborist. As with the removal of invasive, non-native plants, this work will not disturb the natural and indigenous character of the wetland area. No machinery will enter into the delineated wetland areas and these activities are permitted as of right, pursuant to Section 3.2.

Mr. Picard is also proposing to demolish the existing structures on the property. The structure is dilapidated. The septic is inadequate and the well is inadequate. The structures are within 100 feet of the wetland limit that was field delineated by Richard Snarski. All demolition materials will be loaded directly into dumpsters or dump trucks and removed from the site. Clean fill will be placed to fill any voids and the area will be top-soiled, seeded and mulched. Appropriate erosion control measures, predominately silt fencing will be employed until site stabilization.

Mr. Corson questioned, during the construction, how much of the wetlands will be disturbed.

Mr. Metcalf noted that a bucket truck will be utilized to remove the vines from the tree limbs.

Mr. Kolp asked if the tidal wetlands were delineated on the property.

Mr. Metcalf stated that the wetlands were delineated on the map of the property.

**Motion** made by Fred Szufnarowski to grant a Permit for **Application #12-9, 147 Saybrook Road, Applicant, Michael Picard. This is an application for site clearing and house demolition.** 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 of the regulations 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 submitted narrative of removal of the non-invasives within the wetlands will be followed.
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 15<sup>th</sup> and October 15<sup>th</sup> of the year of initiation.

3. Should the applicant determine that the permitted activity will not be completed between March 14<sup>th</sup> and October 15<sup>th</sup> 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 Larry Shipman and passed unanimously

## 5. **Other Business**

### Approval of Minutes - Regular Meeting, May 8, 2012

Corrections:

Page 6, 1<sup>st</sup> paragraph; "Mr. Doane noted that all of the fill in the sanitary system is on the other side of the ridge." Change to: "Mr. Doane noted that all of the fill in the sanitary system is on the other side of a ridge *between the system and the wetland.*"

Page 11 under D, to read: "letter was presented at the April 17, 2012 meeting requesting the proposed 150 foot *open space* easement be *deded to the Town* of Essex."

**Motion** made by Nancy Arnold to approve the Minutes of the May 8, 2012 meeting as amended.

**Motion** seconded by Larry Shipman and passed unanimously.

## 6. **Adjournment**

**Motion** made by Chuck Corson to adjourn at 12:10 a.m.

**Motion** seconded by Claire Tiernan and passed unanimously.

Respectfully submitted,

Stella C. Beaudoin, Recording Secretary