

Unapproved

TOWN OF ESSEX

Inland Wetlands and Watercourses Commission

29 West Avenue, Essex, CT 06426

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MINUTES – Public Hearing and Regular Meeting

May 8, 2012

Call to Order and Seating of Members

A Public Hearing followed by the regularly scheduled meeting of the Essex IWWC was conducted on May 8, 2012 in Room A, of the Essex Town Hall at 7:30 p.m. Those members in attendance were Chair Daniel Lapman, Chuck Corson, Nancy Arnold, Stephen Knauth, Larry Shipman, Zoning Representative, Fred Szufnarowski who is now a member-at-large and Jeff Lovelace who is the newly appointed Conservation Commission liaison. Also in attendance were Stella Beaudoin, Recording Secretary and Joe Budrow, Wetlands Enforcement Agent and Zoning Enforcement Agent.

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

Ms. Arnold asked to have the review and approval of the April 10, 2012 meeting Minutes Agenda item moved up to follow directly after the Public Hearing.

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 IWWC meeting.

The CT River Coastal Conservation District (CRCCD) did an assessment of the project with regards to erosion and sedimentation controls, habitat analysis, etc. Their report is dated April 24, 2012.

In a letter dated May 3, 2012 from the Town of Essex Health Department to Joseph Budrow, Essex WEO, Mr. P. Bradford Cheney, P.E. has reviewed the design data and plans for the proposed 6-lot open space subdivision located on Ingham Hill Road and based on the information submitted, soil testing and design plans, Mr. Cheney states that the lots may be developed in compliance with the Health Code.

Brian Smith, Robinson & Cole presented on behalf of River Sound Development, LLC. Mr. Smith stated that at the March 2012 IWWC Public Hearing it was noted that there was a sequence problem with regard to the wetlands application being technically received after the subdivision application to the Planning Commission. Mr. Smith stated that the applicant has withdrawn the subdivision application and resubmitted it and this application will be heard on June 14, 2012 by the Essex Planning Commission. Mr. Smith stated that he will consent to an extension of time by thirty-five days to continue the Public Hearing to June 12, 2012.

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 is withdrawing his objection noting that the defect that he alleged existed has been cured.

Robert Doane, Doane-Collins Engineering presented on behalf of this application. Mr. Doane stated that he did receive a copy of the CT River Coastal Conservation District April 24, 2012 memorandum and review compiled by Kelly Starr, Natural Resource Specialist. Mr. Doane stated that he went through the calculations so as to address those concerns as noted by Ms. Starr. Mr. Doane presented briefly on storm water management, rain gardens, sedimentation and erosion control and the DEEP requirements. Mr. Doane stated that he completed a preliminary analysis which he will review with Kelly Starr and Steven Trinkus, engineer, prior to revising and submitting final plans.

Mr. Doane stated that the storm water analysis for the property moves the activity into the 100-foot wetland review area, noting that this is different from what was reviewed at the site visit. The initial application stated that there was no activity in the wetland review zone, however with this revision, Mr. Doane stated that there will be activity into the 100-foot review area.

Mr. Doane addressed the preliminary calculations as related to the detention basins noting that lots 3 and 4 have combined the driveways. Mr. Doane presented briefly on the preliminary calculations and passed along for the record those calculations to Mr. Budrow.

Mr. Corson addressed the rain gardens noting that with this proposal, there will still be ponds at the bottom of the hill. Mr. Corson suggested the use of underground storage to avoid creating a second pond. Mr. Corson stated that Mr. Doane has increased impacts to the site

Mr. Doane stated that he is not certain that the request for storm water mitigation up to the 100-year storm is an appropriate application of the low impact development and he noted that he has addressed a typical individual site development where you do storm water management which takes care of the first inch of runoff from a rainfall event.

Mr. Doane stated that he did not feel it was necessary, with appropriate grading to mitigate the storm water run-off up to the 100-year storm. The alternative is to back off that requirement and be sure that the gutter lines and the flow on Ingham Hill Road do not adversely affect the functioning of the gutter flow. Mr. Doane noted that Ingham Rill Road has no drainage as it is flat and there is a good deal of ponding. Mr. Doane suggested redirecting the runoff from a

highpoint to each culvert. There is a culvert at the pond which was viewed at the site walk and there is another culvert further up in the woods. Mr. Doane stated that he would redirect roadside drainage to those culverts. Mr. Doane noted that the retention basins are conservative in design and analysis. In this early phase of the proposal these items would not be addressed unless a town roadway was being proposed.

Mr. Doane stated that as a site is developed, the woods as they sit now may have coefficient of runoff of .4 or .5. When a driveway is constructed, the runoff is changed up to .9 and the increase in runoff doubles in that area alone. If you have a house with a 1,200 square footprint, the runoff from the site is altered.

Mr. Knauth asked if Mr. Doane gave any thought to swales in the driveway to help to divert water.

Mr. Doane commented on a pervious pavement, noting that the pavement no longer remains pervious when sand is put down on the slopes. Mr. Doane stated that he would like to put down an all-weather surface that can be easily maintained. Mr. Doane noted that many issues in a low impact development become maintenance issues and require more work.

Ms. Arnold stated that in certain circumstances, vernal pools should not be identified and should remain anonymous in certain areas.

Eric Davidson, a biologist from Environmental Planning services, presented. Mr. Davidson stated that he will address the issues that were raised by the CRCCD and he will have a full presentation at the June Public Hearing. Mr. Davidson stated that in general, maintaining the anonymity of vernal pools is not an issue. Mr. Davidson stated that a variety of common species habitat the vernal pools on this property. Mr. Davidson indicated that he will get a fresh review from the database and submit to Mr. Budrow prior to the next IWWC meeting. Mr. Davidson will make available the Calhoun and Klemens vernal pool analysis as well.

Ms. Arnold noted that as per the CRCCD report, consideration should be given to the installation of permanent markers or signs along the open space boundary to delineate open space. Ms. Arnold suggested that the applicant present before the Essex Conservation Commission to address what has been previously done with open space issues. Ms. Arnold noted that in the CRCCD April 24, 2012 memorandum, items #1 through 6 are all Conservation Commission matters. Ms. Arnold noted that the recommendations made by the Essex Conservation Commission will be very helpful to the applicants.

Mr. Budrow submitted the Steven D. Trinkaus, P.E., Trinkus Engineering, LLC report dated March 22, 2012 along with the CRCCD April 24, 2012 report for the record.

Attorney Chris Smith requested that the applicant address the issues in the Trinkus and CRCCD reports re drainage, vernal pools and soil and erosion issues. Mr. Smith stated that under Section 6.9 of the IWWC regulations, the Commission may request additional information from

the applicant regarding functionality and impacts to the vernal pools. Mr. Smith stated that he is looking for a wetlands analysis and a study on the impacts associated with regulated activities and Mr. Smith noted that he would like an opportunity to review and comment on the those reports.

Motion made by Nancy Arnold on behalf of **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, that the applicant will address all points raised and recommendations made based on Attorney Christopher Smith's reference to IWWC regulation 6.9, subsections d, e and f with regard to vernal pools, as well as items #4, 8 and 9 of the CT River Coastal Conservation District April 24, 2012 memorandum. The IWWC is looking for a report on wetland quality and the impact this proposal will have on the wetlands to be made available for review prior to the June 2012 Public Hearing.

Motion seconded by Chuck Corson and passed unanimously 7/0/0.

Attorney Chris Smith stated that a soil analysis was last conducted in 2000 and he would like that report updated.

Mr. Davidson stated that there is no reason to re-flag the wetlands as there has been no development on the property since the wetlands were previously flagged.

Attorney Charles Rothenberger from the CT Fund for the Environment (CFE) presented. Mr. Rothenberger stated that CFE is a separate intervener. Mr. Rothenberger stated that the IWWC has the jurisdiction to regulate activity throughout this parcel. Mr. Rothenberger noted that the IWWC is not restricted to the regulation of activity only within the wetlands, but any proposed activities that occur on the property that would affect the wetlands. Mr. Rothenberger noted that a few of the concerns for basis of the 2005 denial of the Old Saybrook IWWC on this proposal surrounded the fact that this parcel is physically and ecologically connected and part of a 1,000 acre parcel.

Mr. Rothenberger stated that there is a need for a soil analysis report along with a plan showing erosion and sedimentation control. Mr. Rothenberger stated that he is also concerned about acid leaching entering into the wetlands due to the proposed blasting of rocks that are high in sulfide. Mr. Rothenberger emphasized the importance of the collection of data on the impacts of the ecological communities. Wood frogs have been identified on this property and how this subdivision proposal will impact those species is very important.

Mr. Budrow submitted into the record, Attorney Charles J. Rothenberger, CT Fund for the Environment, Inc., New Haven, CT Notice of Intervention and request for notice of meetings.

Motion made by Nancy Arnold to amend the former motion on behalf of **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, that the applicant will address all points raised and recommendations made based on Attorney Christopher Smith's reference to IWWC regulation 6.9, subsections d, e and f with regard to vernal pools. Additionally, the applicant will address

all points raised and recommendations made in the April 24, 2012 memorandum from The CT River Coastal Conservation District, with the exception of items #4, 5 and 6 which discuss the open space management. The applicant will further address items #8 and 9 with regard to erosion and sedimentation control measures and blasting. The IWWC is looking for a report on wetland quality and the impact this proposal will have on the wetlands to be made available for review prior to the June 2012 Public Hearing.

Motion seconded by Chuck Corson and passed unanimously 7/0/0.

Motion made by Dan Lapman to continue to June 12, 2012, the Public Hearing on **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.

Motion seconded by Nancy Arnold and passed 7/0/0.

Approval of Minutes

Regular Meeting, April 10, 2012

The following corrections were noted:

Page 5, under the Permit conditions: site plan changed to site *walk*.

Motion made by Fred Szufnarowski to approve the April 10, 2012 meeting Minutes as amended.

Motion seconded by Nancy Arnold and passed unanimously 7/0/0.

Old Business

- **Application #12 – 4. property located at Rosewood Lane – Applicant, Don Meyer**
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. Continued from April 10' 2012 IWWC meeting

In a letter dated May 2, 2012 from the Town of Essex Health Department to Joseph Budrow, Essex WEO, it has been determined that Mr. Meyer's property on Rosewood Lane currently does not meet the public health code for septic installation. The next course of action will be for the applicant to apply to IWWC to bring in approximately 200 yards of fill onto the property; place and test the soil in the area of the proposed system and then have it approved by the Health Department

In a letter dated May 1, 2012 from Doane Collins Engineering Associates to P. Bradford Cheney, Essex Sanitarian, Mr. Doane has emailed the revised plans and noted that Mr. Meyer has decided to proceed with the IW Permit process prior to placing necessary fill.

Robert Doane, P.E. presented on behalf of Don Meyer who owns Lot 25 on Rosewood Lane. Mr. Meyer has constructed a driveway that comes off of the cul de sac and he would like to construct a house with a sanitary system. The sanitarian stated that he cannot sign off on a system unless there is 4 feet of existing soil. Mr. Doane stated that there is not four feet of soil, however he would like to do a controlled fill and Mr. Doane has submitted a letter to that effect to Brad Cheney. Mr. Doane stated that he needs approval from the IWWC so that he can begin filling-in the area of the sanitary system. Mr. Doane noted that all of the fill in the sanitary system is on the other side of the ridge. The placement of the sanitary system put the amount of fill where the system goes.

Mr. Doane stated that it is about 500 or 600 feet down slope from another wetland and he noted that the fill will come from an approved source, i.e., Haynes, or another gravel pit company.

- **Motion** made by Nancy Arnold to grant a Permit for **Application #12 – 4, property located at Rosewood Lane – Applicant, Don Meyer**. This is an application to construct a single family residence along with a septic system. 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 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 Essex Town Sanitarian must approve all post-fill activity to insure that the septic is in conformance with the Town's health code and rules. The IWWC requires a file copy of the Town Sanitarian's written approval.
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 Fred Szufnarowski and passed unanimously 7/0/0.

New Business

- **Application #12 – 8 property located at 24 Cove Rest Pentway, Assessor’s Map 71 Lot 21, 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.

Mr. Robert Kolp presented. Mr. Kolp stated that considerable damage was caused to the property as a result of Hurricane Irene. Bombaci Tree company came in and removed the Beech trees. Mr. Kolp stated that he submitted to the Land Use office an outline and In March 2012 Mr. Budrow gave verbal approval to plant a Maple tree on the property.

Mr. Kolp stated that the existing dock has a stone wall at the base, which extends 5-10 feet on either side of the dock. Mr. Kolp intends to build a stone wall at a two-foot height along the base of the bank to serve as a barrier during unusually high tides. Mr. Kolp submitted a letter from the CT DEEP which states that the existing wall is above the high tide line and is not within their jurisdiction. Mr. Kolp stated that he will utilize a laser level to install the wall. Once the wall is installed, the plantings will take place. Mr. Kolp has retained Anne Penniman, landscape architect who will advise in the plantings which will be installed in the fall. The stone wall will be constructed from a loose, stacked granite which Mr. Kolp will purchase from Haynes Quarry. Mr. Kolp stated that he has researched this project and it was recommended to slope the stone wall into the bank and orient the rocks eighteen inches back from the bank. The height of the wall near the dock does collect debris during seasonal high tide. The wall is also backfilled with gravel and there are no drainpipes. The plantings will lock into the rocks with the long roots. The wall needs to be stabilized at this point. The fold-out plan reflects the five trees that were already planted. The first four trees are outside the 100 foot.

Mr. Corson noted that at the south side of the property that is perpendicular to the existing wall, there are the two short trees which should be excluded, surrounding the litigation issue on the property dispute.

Attorney John Bennet presented on behalf of Michael Picard. Mr. Bennet referenced the map as presented this evening noting that the two shorelines do not match on the two maps. Mr. Bennet stated that there has never been an approval for the existing wall along the dock area and Mr. Bennet noted that there is no tidal wetlands line shown on the map.

Ms. Arnold noted that one map has a Richard Gates, land surveyor stamp dated April of 2012. The second map however has no such stamp.

Mr. Kolp stated that the second map is his modified version of the Richard Gates map.

Mr. Corson stated that the IWWC typically does not require an A-2 survey however the Commission needs to have the plans marked up showing what is existing and what is proposed. Mr. Corson suggested that Mr. Kolp contact Mr. Gates for assistance with a complete drawing of this proposal.

Ms. Arnold stated that the Commission would like an engineered document showing the wall as there is currently a dispute among the abutters.

Attorney Bennet commented on the first page of the photograph below the tree stump where a white drain pipe coming out of the wall and a second one that is somewhat visible can be detected. Mr. Bennet noted that those are concerns that might need to be reviewed more carefully.

Motion made by Nancy to table **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.

Motion seconded by Steve Knauth and passed unanimously 7/0/0.

- **Application #12 – 9, Assessor’s Map 53 Lot 5-1 LI Zone. Property located at 99 Westbrook Road, Applicant, Greg Peterson**. This property is 1.86 acres and is zoned industrial and has a small single family dwelling on it. In order for the applicant to attain an industrial use and building on the site, the dwelling must be removed as a limited industrially-zoned property has to be vacant for an initial industrial use to be located there.

Robert Doane, P.E., presented. This application is for the construction of a 35’ x 80’ structure for Peterson’s Dirt Works Construction Company and septic system. The building will be used for the purpose of storing vehicles and equipment. The proposed location is 48.2 feet from a wetland area. A primary septic field is 70 feet from the wetland area. Richard Snarski, soil scientist flagged the wetlands in April 2012. The site plan reflects silt fence proposed along the entire width of the site between construction and wetlands. In order to meet the LI zone requirements, parking must be 50 feet back from the property line, the building has to be 75 feet back which places the building closer to the wetlands. The residential structure is coming down.

Motion made by Chuck Corson to grant a Permit for **Application #12 – 9, Assessor’s Map 53 Lot 5-1, LI Zone, property located at 99 Westbrook Road, Applicant, Greg Peterson**. This is an application for the construction of a 35’ x 80’ structure and septic system. The building will be used for the purpose of storing vehicles and equipment. 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 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 plan presented this evening will be amended to show underground storage for runoff for the first inch of rain from the building to be connected with the drainage, as shown on the plan.
2. If this proposal goes before the Essex ZBA to include the house on the property, that the site plan will not change.
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 Fred Szufnarowski and passed unanimously 7/0/0.

Other Business

- **Wetland regulations update:**
 - Mr. Budrow reported that he wished to address shoring up the regs to include language and definitions surrounding the upland review area. Mr. Budrow will draft an amendment and have it available at the June 2012 meeting. Ms. Arnold asked that Mr. Budrow seek clarification from Attorney Campbell Hudson regarding previous comments made by Attorney John Bennet. Ms. Arnold suggested that Attorney Hudson draft the language.

Reports

a. **Wetlands agent Joseph Budrow:**

- Mr. Budrow reported on **Wetlands Agent Approval #12A-3 for property located at 54 Main Street, Ivoryton, Assessor's Map 56 Lot 10-1, VR/RU Zone. Michael Crivelli.** This property is 2.31 acres and is a deep lot with a low area at the road and a steep hill leading to where the house is located. In October 2011 the low area was heavily wooded with power lines running from the street through the woods to a pole along the driveway. After Tropical Storm Irene blew through the property the owner clear-cut the wooded area for fear of potential tree damage knocking down the power lines. The clear cut exposed a pond area that dried up soon afterwards. The clear cut was done without approval from the IWWC. Richard Snarski, soil scientist flagged the area in March 2012. The area of wetlands is small and is the result of a natural leakage from the slope on the property. The IWWC authorized Mr. Budrow to grant agent approval for the permitting process.
- Mr. Budrow reported on **Wetlands Agent Approval #12A-4 for property located at 87 Main Street, Centerbrook, Assessor's Map 43 Lot 8, VR Zone. John and Linda Volpe.** This property is .21 acres is runs along the shore of the Falls River. There is a single family dwelling located on the property as well as a shed. There are no known wetlands on the property, however a 100' upland review area exists from the River. The property is within a special flood hazard area. This application is for the location of a fence to run along each side of the property line from the area of the dwelling to the rear of the property to the rear property corners. The installation of fence posts does constitute a regulated activity that is of little impact to any wetland or watercourse. The fence design is one that allows any potential floodwaters to pass through easily.
- Mr. Budrow reported that his office has received applications from the DEEP for removal of phragmites in the Corey and Viney Hill Brook Park ponds. All Habitat Services will perform the work. Centerbrook pond and Mill pond will also be treated.
- Mr. Budrow reported Midstate Medical received an IWWC Permit approval for a dry hydrant a few years ago and they are just installing it.

b. **Chairperson Daniel Lapman:**

- Mr. Lapman noted at the November 2011 meeting the installation of posts connected by a chain was made in order to prohibit vehicles from entering the wetland area on property behind the Centerbrook Post Office. Mr. Budrow stated that he has been trying to reach the property owner who has been out of town. Mr. Budrow stated that the property owner will run a cable from the two posts and put

up larger signage. Mr. Corson stated that the signage must have high visibility coloration to avoid a serious accident. Mr. Budrow noted that the work will be completed hopefully by week's end.

- Mr. Lapman stated that Attorney Tom Hennick will conduct a Freedom of Information seminar at the Essex Town Hall.

c. Planning Commission Representative Claire Tiernan: No report.

d. Conservation Commission Representative Jeff Lovelace:

- Mr. Lovelace stated that he is pleased to be on the IWWC. Mr. Lovelace noted that the Essex Planning Commission has asked for input from the Conservation Commission on the Foxboro Road 6-home subdivision application relative to its opinion on open space, parks and playgrounds. The letter was presented at the April 17, 2012 public hearing. In their letter the Conservation Commission requested a 150-foot easement of the deeded open space with public access to the CT River North Cove from Riverview Street and from Foxboro Road.

e. Zoning Commission Representative Larry Shipman:

- Mr. Shipman reported that the Zoning Commission is going to review the Gateway Regulations for revisions and there are a few applications upcoming to the Zoning Commission.
- Mr. Lapman asked Mr. Budrow to secure the auditorium for the May 10, 2012 IWWC meeting. Mr. Lapman noted that he will not be at the May 10, 2012 IWWC meeting.

Adjournment

Motion made by Dan Lapman to adjourn at 9:32 p.m.

Motion seconded by Chuck Corson and passed unanimously 7/0/0.

Respectfully submitted,

Stella C. Beaudoin, Recording Secretary

