

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

MINUTES

Special Meeting - December 29, 2011

Call to Order and Seating of Members

The special meeting of the Essex IWWC was conducted on December 29, 2011 in Room A of the Essex Town Hall at 7:30 p.m. Those members in attendance were Chair, Daniel Lapman, Chuck Corson, Claire Tiernan, Barbara Zernike and Nancy Arnold. Also in attendance were Stella Beaudoin, Recording Secretary and Joe Budrow, Wetlands Enforcement Agent and Zoning Enforcement Agent.

Audience members included Attorney John Bennet, Michael Picard, property owner subject to the Cease and Desist Order, Robert Kolp, owner of property on Cove Rest Pentway and Thomas Metcalf, P.E.

Mr. Lapman called the meeting to order at 7:03 p.m.

New Business

- Cease and Desist property located at 141 Saybrook Road, Essex, CT re installation of a 15" wall at the shoreline without approval and extension of drainage pipe to south Cove without approval.

Mr. Budrow read into the record a Cease and Desist order dated December 20, 2011 which was sent to Michael C. Picard. This order may be obtained and viewed in the Essex Land Use Office.

The following enclosures which accompanied the Cease and Desist order were entered into the record by Mr. Budrow:

- Item #1: December 29, 2011 Special Meeting Agenda;
- Item #2: One Page document which was included with the Cease and Desist Order; the definition of regulated activities taken from the Essex IWWC regulations;
- Item #3: The Minutes of the Site Walk of August 23, 2011;
- Item #4: Two pictures labeled: "*Looking south along Cove Rest Pentway, New catch basin, #1*" and "*Looking west within the easement of 141 Saybrook Road. New catch basin #2*";
- Item #5: Two pictures labeled: "*Looking east along easement on 141 Saybrook Road. New catch basin, #4*" and "*Looking east along easement at 141 Saybrook Road, New catch basin #3*";
- Item #6: Two pictures labeled: "*15" wall with drainage pipes*" and "*15" wall looking northward*";
- Item #7: Two pictures labeled: "*Drainage pipe that was extended and directed closer to South Cove*" and "*Drain pipe, showing proximity to neighboring dock*";
- Item #8: A portion of a site plan which reflects handwritten notation "*the approximate location of the wall construction*";

- Item #9: A miniaturized survey states “Exhibit Map Approximate Tree Stump Locations and Photograph Locations and views Land of Michael C. Picard (Revocable Trust).

Motion made by Chuck Corson to accept the exhibits on behalf of the Cease and Desist Order for property located at 141 Saybrook Road, Essex, CT as read into the record by Joe Budrow, WEO.

Motion seconded by Claire Tiernan and passed unanimously (5/0/0).

On August 23, 2011 the IWWC conducted a site inspection for property located at Mallard Point. In addition to IWWC members, present was Tom Metcalf, P.E., Robert Doane, Town Engineer, Chuck Zinser, property owner and Joseph Budrow Wetlands Enforcement Officer. The purpose of the site inspection was to assess the drainage of water from the beginning of Cove Rest Pentway at Mallard Point Road to Middle Cove at appoint where two properties have a drainage dispute.

The Commission viewed an area where drainage comes from a culvert underneath Mallard Point Road. Mr. Doane explained that a pipe was extended southward from the culvert by a builder, Sal Sapia. The pipe was buried under fill. The pipe ended where a swale-like area continued drainage toward Cove Rest Pentway. Mr. Doane noted that the swale area was the same location as an old trolley bed. Mr. Doane stated that the town drainage ended where the pipe ended. The Commission reviewed an area on Cove Rest Pentway which is a private road where they viewed half buried drainage tubes. The tubes followed along the southern side of the road. Surface water was seen along the road. Mr. Doane noted that the tubes looked to be altered since he last saw the road a few years prior.

Attorney John Bennet presented on behalf of Michael Picard. Mr. Bennet stated that he is here this evening to address the cease and desist that was issued. Mr. Bennet noted that the cease and desist was received on the cusp of the Christmas holiday and as such, there were two people whom Mr. Bennet would have wished to testify on the behalf of Mr. Picard, however they were unable to do so with such short notice. Mr. Bennet stated that Richard Gates, Land Surveyor who has done survey work on the property was to testify, however Mr. Gates CAD system is down. Priscilla Bailey who is a botanist and soil scientist also was to testify, however Ms. Bailey had a conflict with this evening's meeting. At this time, Mr. Bennet asked for a continuance on this evening's Hearing. Mr. Bennet stated that he would address any issues this evening, however a discussion may not be entirely productive without the exhibits.

Chuck Corson stated that the IWWC had previously issued and conducted a Hearing on a cease and desist on this property. Mr. Corson noted that any work should have been reviewed by the Town to determine if a permit would have been required. Mr. Corson noted that there are drain pipes leading right to the water and Mr. Corson suggested that Mr. Picard submit a request for a wetlands permit and have Priscilla Bailey present at the next Hearing.

Mr. Bennet stated that the IWWC does not have jurisdiction as these waters which are subject to the cease and desist are tidal. Mr. Bennet noted that the IWWC Regs omit tidal waters.

Mr. Corson stated that the IWWC absolutely has jurisdiction over this property and tidal waters.

Mr. Bennet stated that the IWWC regs, more particularly Section 1 on Title, Authority, Jurisdiction defines the CT River and the tidal estuaries.

Ms. Arnold stated that the IWWC maintains co-jurisdiction with the CT DEEP.

Mr. Corson noted that the DEEP has jurisdiction of the tidal waters themselves and the IWWC has jurisdiction to the land adjacent to the tidal waters.

Mr. Bennet stated watercourses are specifically defined in the IWWC Regs and that definition excludes tidal waters.

Mr. Corson noted that the IWWC needs to have the Commission's attorney involved in this matter.

Mr. Bennet stated that we are not talking about tidal waters and the possibility exists that the IWW Commission does not have jurisdiction over the CT River waterfront property. Mr. Bennet noted that he is here with Mr. Picard in an effort to remediate any concerns that the IWWC may have. Mr. Bennet noted that the cease and desist order does not include catch basins but addresses drainage and Mr. Picard is not responsible for any of the discharge. The Order states discharge of waters. Mr. Bennet stated that no enforcement action has been taken against the person who has put the pipe in and is maintaining it. Mr. Bennet stated that Mr. Robert Kolp put in the drainage pipe and that there are no permits on file for that activity. Mr. Bennet noted that the discharge water belongs to the Town and to the other owners on the Pentway.

Mr. Corson stated that the IWWC conducted a site walk and reviewed that pipe and the Commission expected to be contacted when anything was going to be done.

Ms. Arnold asked Tom Metcalf, P.E. about the roof leaders and catch basins in conjunction with the drainage on the property.

Mr. Bennet stated that those are not Mr. Picard's roof leaders. They are however Mr. Kolp's roof leaders.

Ms. Arnold asked what the outcome would be if Mr. Picard simply cut off the pipe.

Mr. Bennet noted that if his client were to place a high pressure plug into the pipe, the Town's drainage will then backfire onto Mr. Picard's property. Mr. Bennet noted that there is no easement for this, there is no permission and there is no license. Mr. Bennet noted that he has placed phone calls to the land use office complaining that these are conditions created by Mr. Kolp and for which he is culpable.

Mr. Bennet noted that the cease and desist order addresses three issues. The first two are viable and the third issue is irrelevant. The pipe situation is not Mr. Picard's issue.

Ms. Arnold noted that the end portion of the pipe is situated on Mr. Picard's property.

Mr. Bennet agreed and noted that while the pipe is on Mr. Picard's property, it was placed there without the permission of Mr. Picard. The pipe was in place when Mr. Picard bought the property. Mr. Bennet went on to say that the cease and desist has to do with discharge of water and it is not our water and it never was.

Mr. Bennet stated that the second issue addressed in the cease and desist is the obstruction of a watercourse by a wall. There is a 15" landscaped wall which is not in a waterway and is not in a floodway. Mr. Bennet noted that this does not require a permit as it is a landscape detail. Mr. Bennet noted that under the Town's regulations, the construction of walls and fences are accepted without permit. This wall is an as-of-right and it is accepted under the Town's regulations as it is a minor exception to a residential use. Mr. Bennet distributed a map which shows boulders to the south side. The work on the existing wall is shown at the top of the map.

Mr. Corson stated that the IWWC feels that they have jurisdiction and the construction of the wall may be permissible, however the Commission wants it brought before them by way of an application so that the commissioners can make that determination

Joe Budrow commented on Section 6 - Application Requirements; 6.1 of the Essex IWWC regulations which states that No person shall conduct or maintain a regulated activity without first obtaining a permit for such activity from the Commission. As such this activity as by definition is within 100 feet of a watercourse which why the cease and desist was issued.

Mr. Bennet stated that per the IWWC regulations, the word watercourses is referenced and by definition it means only inland watercourses and not tidal watercourses. The cease and desist only raises two issues. Obstruction of watercourse by a wall and waste water discharge by South Cove. Mr. Bennet stated that he would like to resolve all issues on the table.

Ms. Arnold asked if Mr. Picard is willing to cease and desist any further activity until this Hearing is continued. Mr. Bennet agreed.

Ms. Arnold asked if Mr. Picard would be willing to submit a wetland application for the subject activities.

Mr. Bennet would not commit.

Ms. Arnold stated that the IWWC strongly encourages Mr. Picard to submit a wetlands application when the Commission reconvenes. Ms. Arnold noted that this would be done so without Mr. Picard conceding under whose jurisdiction this issue falls.

Mr. Bennet stated there has already been a coastal area management site plan approval from the Essex zoning Commission for this property in 1986 and that is why there is rip rap along the shore front. Mr. Bennet stated that that the whole area is a fill.

Ms. Arnold asked Mr. Bennet if he is inferring that the Zoning Commission has jurisdiction. Ms. Arnold went on to say that the IWWC regs talk about landward as 100 feet from a watercourse and Ms. Arnold noted that the Commission will respectfully disagree with Mr. Bennet's interpretation, particularly when it comes to zoning.

Mr. Bennet stated that he raised the zoning issue because of the nature of the cease and desist with reference to a waterway. Mr. Bennet stated that he has been in touch with the CT DEEP and it is their understanding and concern that there was the placement of an item within the floodway. Mr. Bennet stated that that is within the jurisdiction of the Zoning Commission. Mr. Bennet agreed that Mr. Picard will take no further actions until the IWWC reconvenes on this matter.

Ms. Arnold stated that the IWWC has a bit of a recent history with Mr. Picard and that makes the commissioners all very edgy. Mr. Picard had clear cut all of the trees on his property in the spring of 2011. Ms. Arnold noted that when a situation such as the one before the Commission this evening occurs so shortly thereafter, and Mr. Picard is once again seeking forgiveness rather than permission, the IWWC becomes skeptical of his motivation.

Mr. Corson noted that the applicant is not seeking our forgiveness, he is stating that the IWWC has no jurisdiction.

Ms. Arnold expressed her outrage over this comment. Ms. Arnold noted that the IWW Commissioners work with our applicants, however when such a short period of time has elapsed since the last cease and desist was ordered, and to tell the commissioners that we have no jurisdiction, places her on edge.

Mr. Bennet noted that he is sorry that this puts the Commission on edge. Mr. Bennett stated that Mr. Picard is not asking for forgiveness, he just wishes to have a reasonable conversation with the Commission in hopes of obtaining a reasonable result. Mr. Bennet stated that he will not compromise his client's rights.

Mr. Budrow stated that he did not think the wall construction was an issue. Mr. Budrow stated that the pipe that continually discharging is the problem.

Mr. Corson stated that the pipe has been extended which puts the run-off into South Cove.

Mr. Bennet stated that his client bought the property with the dock in place and has hired engineering help with the dock.

Mr. Corson stated that that is the jurisdiction of the CT DEEP.

Mr. Robert Kolp, Pent Cove Restway presented. Mr. Kolp stated that Richard Gates did the lot survey and that this survey has been filed with the Town showing the pipe where it currently exists. When Mr. Kolp purchased his house in 2004 there was a pipe running through the property. Mr. Kolp stated that when he obtained a permit to add onto the house, he was digging so as to place the septic away from the water, and he hit a pipe which was capped off. At that time Carol Lord was the Town Sanitarian and she informed Mr. Kolp that capping off the pipe would not work. Ms. Lord suggested placement of a catch basin at the top of the property and running a pipe down between the two properties. Mr. Kolp distributed a photo to the Commissioners of his property and Mr. Picard's property. Mr. Kolp stated that the goal at the time was to discharge the water at least 25 feet from the Cove so it would have a place to settle in. Ms. Lord did not want to go further uphill as it would interfere with Mr. Kolp's septic.

Mr. Kolp stated that this past summer Mr. Picard cut down trees which made the water issue apparent to Mr. Picard. Mr. Picard had a cease and desist sent to Mr. Kolp asking him to stop the water. Mr. Kolp purchased the cap and put it on the pipe which stopped the water flow.

Mr. Corson noted that the water will continue through but will not discharge where the pipe is.

On July 21, 2011 Mr. Kolp met with Mr. Picard and Mr. Metcalf and asked to have the pipe unplugged as it was creating too much run-off at the top of the property. On August 3, 2011, Chuck and Christine Zinser complained that due to the capping, a puddle was being created in their driveway. At that point it was decided that the pipe should be unplugged.

Nancy Arnold noted that Drawing 5 of 8 shows the pipe in question.

Mr. Kolp stated that in mid-August Mr. Metcalf presented a plan of action that he hoped would work. On August 26, 2011 an email was sent which Mr. Kolp stated he did not receive for several days as the hurricane hit and his computer was down. Mr. Kolp stated that shortly thereafter before the end of August, unbeknownst to him, Mr. Picard's contractors came in and tore up his driveway and installed catch basins. The pipe was still exiting in the stone wall on Mr. Kolp's property. Mr. Picard's construction company came onto Mr. Kolp's property and added an extension to the pipe and diverted the drainage off of the property.

Mr. Corson stated that the IWWC has two permit requests that should be before the Commission: A permit for a pipe that is private and was extended without consent from the IWWC and a permit for the work that is going on with the wall.

Ms. Arnold noted that the water is coming from the other side of Mallard Point.

Mr. Budrow noted that the IWWC conducted this Special Meeting within ten days of the issuance of the cease and desist. The next regularly scheduled meeting will occur on January 10, 2012.

Motion made by Nancy Arnold to continue the Hearing on the Cease and Desist Order for property located at 141 Saybrook Road, Essex, CT re installation of a 15" wall at the shoreline without approval and extension of drainage pipe to South Cove without approval. The Hearing on the Cease and Desist will be continued to January 10, 2012 which is the next regularly scheduled IWWC meeting.

Michael Picard, through his attorney John Bennet is in agreement and will cooperate with the cease and desist terms until after a decision is made at the January 10, 2012 meeting. Mr. Picard has been asked to have present at the January 10, 2012 meeting anyone he wishes to testify on his behalf. The IWWC strongly urges Mr. Picard to fill out and submit a Wetlands Permit application for any activities that may or will be taking place within a regulated area, on the subject property.

Motion seconded by Barbara Zernike and passed unanimously (5/0/0).

Motion made by Dan Lapman to adjourn.

Motion seconded by Claire Tiernan and passed unanimously.

The Special Meeting adjourned at 7:54 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 January 10, 2012.