

**EAST LYME INLAND WETLANDS AGENCY
REGULAR MEETING
Monday, MARCH 10th, 2014
MINUTES**

FILED IN EAST LYME

CONNECTICUT

May 17, 2014 AT 10:00 AM/PM
Debra A. Blair
EAST LYME TOWN CLERK

PRESENT: Cheryl Lozanov, Chairperson, Chuck Reluga, Vice-Chair, Keith Hall,
Secretary, Norm Bender, Joe Mingo, Harry Clark

ALSO PRESENT: Bob Pfanner Jr., Representing the applicant
Jason Pazzaglia, Applicant
Gary Goeschel, Inland Wetlands Agent
Attorney Edward O'Connell, Town Counsel
Attorney Tracy Collins, Town Counsel
Karen Zmitruk, Recording Secretary

ABSENT: Phyllis Berger

Call to Order

Ms. Lozanov called the March 10, 2014 Regular Meeting of the East Lyme Inland Wetlands Agency to order at 7:04 PM. She introduced the members of the Commission, Inland Wetlands Agent and Recording Secretary.

Pledge of Allegiance

The Pledge was observed.

I. Additions to the Agenda

Ms. Lozanov asked if there were any additions to the agenda.

Mr. Goeschel said that there was one – Attorney O'Connell would present a Legal Review of their Statutory Authority and this should be added as Item B. under New Business.

****MOTION (1)**

Mr. Mingo moved to add Item B. under New Business – Legal Review of IWA Statutory Authority by Attorney O'Connell.

Mr. Reluga seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

II. Public Delegations

Ms. Lozanov called for Public Delegations.

There were none.

III. Acceptance of Minutes

▪ Regular Meeting Minutes of February 10, 2014

Ms. Lozanov called for any discussion or corrections to the Regular Meeting Minutes of February 10, 2014.

Ms. Lozanov asked that on Page 3 at the top in the second paragraph that the word caliper be added after 2.5". She also asked that the letter to 4 Winchester should be for debris removal and not trees.

****MOTION (2)**

Mr. Mingo moved to accept the Inland Wetlands Agency Special Meeting Minutes of February 10, 2014 as amended.

Mr. Bender seconded the motion.

Vote: 5 – 0 – 1. Motion passed.

Abstained: Mr. Clark

IV. Ex-Officio Report

Mr. Seery was in attendance at a Board of Selectmen meeting therefore there was no report.

V. Pending Applications

- **233 Upper Pattagansett Rd., East Lyme, Assessor's Map 39.0, Lot 6, Pazz Construction. LLC, Applicant/Owner – Application for grading within the 100 foot upland review area for the construction of a detention basin to mitigate run-off from development of property associated with an eight lot subdivision of land – Date of receipt – 1/13/2014.**

Ms. Lozanov called for the applicant or their representative for further presentation as they had determined that a public hearing was not necessary.

Robert Pfanner, representing the applicant passed out the most current revision of the plans and noted that they had added two drywells – either side of the driveway that are connected and they have one spillway out of Basin #1. #8 was moved out of the upland review area entirely. Additionally caliper was added to the 2.5". Notes appear on Sheet 7 indicating the stockpile areas that are not within 400' of the upland review area and no equipment would be placed there. Also included is the detail for the drywell in the retention basin area; and the detail for construction entrance; both as proposed are completely out of the upland review area.

Mr. Goeschel asked if the driveways were paved or gravel.

Mr. Pfanner said that they are paved as they are shared driveways. He also noted that they are at 5% impervious area – a question that was asked at the last meeting.

Mr. Goeschel asked about the maintenance plan.

Mr. Pfanner said that the detail is all on Sheet #6 – spring and fall inspections; mowing in the late spring and early fall with the debris to be raked and removed.

Mr. Goeschel noted that he had provided them with a copy of his memo dated today noting that there is no direct impact on the wetlands as all of the construction activities will be over 100 feet from the inland wetland or watercourse.

Ms. Lozanov said that she thought that there was one thing in the upland review area.

Mr. Pfanner said that he has stated several times that all of the work has been removed from the upland review area.

Mr. Mingo said that if there is no activity affecting the upland review area then no permit is necessary.

Mr. Goeschel said that he feels that the applicant has stated the methodology that will be employed to mitigate any possible impact to the upland review area.

****MOTION (3)**

Mr. Mingo moved that the application for 233 Upper Pattagansett Rd., East Lyme, Assessor's Map 39.0, Lot 6, Pazz Construction, LLC, Applicant/Owner – for the construction of a detention basin to mitigate run-off from development of property associated with an eight lot subdivision of land is complete.

Mr. Clark seconded the motion

Vote: 6 – 0 – 0. Motion passed.

****MOTION (4)**

Mr. Mingo moved in the Application for 233 Upper Pattagansett Rd., East Lyme, Assessor's Map 39.0, Lot 6, Pazz Construction, LLC, Applicant/Owner that as no work is being done in the regulated area no permit is necessary.

Ms. Lozanov said that she wants a note sent to the Planning Commission regarding the 80% survival rate of the plantings; that maintenance be done at the proper times as indicated on Sheet #6 and that wetland tags be installed/posted.

Vote: 6 – 0 – 0. Motion passed.

VI. Old Business

There was none.

VII. New Business

A. 259 Upper Pattagansett Rd., East Lyme, Assessor's Map #39.0, Lot #5, Nicholas T. Zito, Applicant for William Walden, Owner – Application for determination of Permitted/Non-regulated Activity for timber harvest.

Mr. Goeschel said that Mr. Zito was present this evening.

Mr. Zito said that he is a forester and that they are doing a timber harvest on the Walden property. Access will be through the Torrance property. There will be a 1-3 man crew with a skidder. They have listed the soil types and there are no wetland crossings. If it should rain or there is running water they will place a portable bridge where and as necessary.

Ms. Lozanov asked what the recommendations are for timber harvest.

Mr. Zito said that there are none but he prefers not to work during the wet time/season.

Mr. Mingo said that this is a farming item – an 'as of right' item and that all of the other questions go away. They are to determine if this is an 'as of right' item, which it is.

Mr. Goeschel cited Section 4.1 of their regulations stating that farming is an as of right; as is harvesting. He noted that it appears to be absent of any actual stream crossings.

Mr. Zito said that they would employ Best Management Practices during this timber harvest and that this is the second harvest on the Walden property. The property has been harvested before and what they will clear would allow for more trees to propagate. Many of the new trees propagating from the stump of one taken down will be stronger than if they were to start by seed.

Mr. Bender said that he feels that this is an 'as of right' item and as such it does not require a permit. The consensus of the members was that this was an 'as of right' activity.

****MOTION (4)**

Mr. Reluga moved in the application for 259 Upper Pattagansett Rd., East Lyme, Assessor's Map #39.0, Lot #5, Nicholas T. Zito, Applicant for William Walden, Owner – for determination of Permitted/Non-regulated Activity for timber harvest that the activity is an 'as of right' and does not require a permit.

Mr. Bender seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

B. Presentation – Legal Review of IWA Statutory Authority – Attorney Edward O'Connell

Attorney O'Connell noted that he came to see them about two years ago and provided them with a brief outline of their scope of authority and responsibilities. The Inland Wetlands Agency is the survivor of the previously existing Conservation Commission which was divided into two parts – IWA and CNR (Conservation of Natural Resources). Inland Wetland Agencies are enabled by the State Statutes which cite what they can and cannot do. There are five basic functions:

- Adopts and amends Inland Wetlands and watercourses regulations

If they want to change their regulations they have to give a pre-hearing notice, publication of the suggested changes and mail notices to respective parties for comment. They must act by regulation which has to be adopted or amended by proper procedure and notice to the public.

- Determines the maps and boundaries of the inland wetlands

There are maps for these. He noted that buffer areas are now called upland review areas which are just outside of the regulated areas and that some problem arose when agencies tried to regulate well beyond the actual area – which is why they are now called upland review areas. If wildlife and plants are found in the actual wetland area they can regulate them – but not in the upland review area.

- Passes and rules on applications/permits

The theory on granting a permit is saying that something 'shall' happen. He noted that they are required to look for any other feasible method of doing the same thing. Permits have to follow the various time requirements and also determine if the activity is a minor one. Statutory timelines have to be observed and

are uniform within all the land use groups – there are time limits with extensions that can be granted by the applicant only.

If Zoning or Planning wait and do not do anything within the time limit the application is deemed to be approved. This is not the case with IWA – if they do not do anything within the time limit it goes to the DEEP to decide and they are very backed up. The IWA decides if the application is complete and also if a Public Hearing is necessary or not. They can only make a decision based on the evidence submitted as part of the record.

- Enforces the regulations, issues C & D's, fines or pulls permits if or as necessary

There are various methods of enforcement – when someone violates an already issued permit – they can call them in and give notice of a hearing prior to the permit revocation. When someone does work without a permit they can issue a Cease & Desist and a hearing would be held regarding the activity. They also have a fining system and a hearing officer and can go to court and get an injunction.

He said that a regulated activity = any operation within a wetland or watercourse excluding tidal lands.

Excluded activities include farming; residences; forestry etc.

An appeal of their decision goes to the Superior Court based on the record where the judge looks to see if there is substantial evidence to support the decision.

- Provides information to Planning and Zoning on applications as necessary

He noted that the Planning and Zoning enabling statutes provide great detail on what they can do while the IWA one does not. He said that this could quite possibly be because they were under close control of the DEP and the regulations would have to be very closely aligned to apply to all of the Towns. While they may give advisory information to Planning and Zoning – it is Planning and Zoning who ultimately make their own decisions.

Conduct of the members – three things - items that disqualify:

- Insufficient knowledge of the application process evidence; i.e. public hearing record - meaning that the member is not familiar with the record. They have to keep track of which people attended and make sure that the people who are seated are familiar with the record of the application – the group that votes has to be familiar with the record. Those having to review items should state on the record that they have done so.
- A predetermination or bias – if a member has a predetermination on how the application will be decided and is not open to the information being presented.
- Conflict of Interest - Personal or legal issues – a member lives next door to the property that is the subject of the application or a relative owns the property next door to it, or a best friend; or there is a financial interest – the member should step aside. It does not have to be an actual conflict but rather if it “might” conflict. They must maintain the public confidence in the administrative process at all times.

Attorney O'Connell continued that the receipt of evidence cannot be done after the Public Hearing is closed. They can however receive items/advice from staff, Attorneys or specialists that is based on items already in the public record. They also have to be cognizant not to discuss outside any matters that are to be determined at the meeting or Public Hearing. They cannot speculate or predict – there must be a substantial basis and more than a possibility of something happening. If necessary this may be where they would need an expert to help them make a determination.

He stressed that the Inland Wetlands Agency is the group that balances items and does not push them in one direction or another. They are supposed to be neutral and disinterested. Further, everything except for Executive Session falls under Freedom of Information (FOI).

The members thanked Attorney O'Connell for the presentation.

VIII. Chairman's Report

Ms. Lozanov said that she would like to introduce Kim Barber Bradley who is present this evening and who is interested in becoming an alternate on the Commission. She also noted that they have her letter of interest in their packets.

Mr. Goeschel explained that the role of this Commission would be to forward a favorable recommendation to the Board of Selectmen to appoint her as an alternate to the Commission.

The consensus of the members was to have Mr. Goeschel forward a favorable recommendation to the Board of Selectmen to appoint Ms. Bradley as an alternate member of the Commission.

IX. Wetland Enforcement Officer Report

▪ **Open Permits – Gateway Development**

Mr. Goeschel reported that he would be going out there tomorrow morning and that he has received one complaint from a pedestrian which he forwarded to their site inspector for action.

▪ **Administrative Permits Issued**

Mr. Goeschel said that he had issued two and that he would bring them the information on them for the next meeting.

▪ **Enforcements**

Mr. Goeschel reported on the following enforcements:

- **16 Attawan Road** – Encroachment/filling in of tidal marsh – He said that he has not had the opportunity to go out to the site to look at this or to get hold of the owner. With the snow on the ground it is difficult to see. He said that he could call the DEEP to see what is going on with the property.

Ms. Lozanov suggested sending a certified letter.

- **336 Boston Post Road** – Unresolved – he has reached out to Attorney O’Connell and has not heard back yet.
- **Boston Post Road/Scacciaferro Pond** – Unresolved – Attorney O’Connell is still working on this. He added that it has been quiet lately regarding any complaints.
- **4 Winchester Street** – A letter has been sent regarding the cutting of trees/debris in the area.

ADJOURNMENT

****MOTION (5)**

Mr. Bender moved to adjourn this Regular Meeting of the East Lyme Inland Wetland Agency at **8:54 PM**.

Mr. Hall seconded the motion.

Vote: **6 – 0 – 0**. Motion passed.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary