

**EAST LYME INLAND WETLANDS AGENCY
REGULAR MEETING
Monday, January 11, 2016
MINUTES**

PRESENT: Cheryl Lozanov, Chairperson, Chuck Reluga, Vice-Chair, Keith Hall,
Secretary, Norm Bender, Phyllis Berger, Harry Clarke, David Pazzaglia

ALSO PRESENT: Gary Goeschel, Inland Wetlands Agent
Karen Zmitruk, Recording Secretary
Attorney Edward O'Connell, Town Counsel
Scott Rabideau, Representing Gateway
Marc Salerno, Ex-Officio, Board of Selectmen

FILED IN EAST LYME
CONNECTICUT
Jan 15 2016 AT 11:40 AM/PM
Janis Galbraith
EAST LYME TOWN CLERK

ABSENT: No One

Call to Order

Mr. Salerno, Board of Selectmen Ex-Officio called the January 11, 2016 Regular Meeting of the East Lyme Inland Wetlands Agency to order at 7:02 PM. He said that they would observe the Pledge and that he would then conduct the Election of Officers.

Pledge of Allegiance

The Pledge was observed.

▪ **Election of Officers**

▪ **Chairman**

Mr. Salerno called for nominations for the position of Chairman of the Inland Wetlands Agency for 2016.

****MOTION (1)**

Mr. Reluga nominated Ms. Lozanov for the position of Chairman of the Inland Wetlands Agency for 2016.

Mr. Bender seconded the motion.

Mr. Salerno asked if there were any other nominations –

Hearing none –

He called for a vote on the nomination of Ms. Lozanov -

Vote: 6 – 0 – 1. Motion passed.

Abstained: Ms. Lozanov

Mr. Salerno congratulated Ms. Lozanov and turned the chairing of the meeting over to her.

• **Vice-Chairman**

Ms. Lozanov called for nominations for the position of Vice-Chairman of the Inland Wetlands Agency for 2016.

****MOTION (2)**

Mr. Bender nominated Mr. Reluga for the position of Vice-Chairman of the Inland Wetlands Agency for 2016.

Mr. Clarke seconded the motion.

Ms. Lozanov asked if there were any other nominations –

Hearing none –

She called for a vote on the nomination of Mr. Reluga -

Vote: 6 – 0 – 1. Motion passed.

Abstained: Mr. Reluga

• **Secretary**

Ms. Lozanov called for nominations for the position of Secretary of the Inland Wetlands Agency for 2016.

****MOTION (3)**

Ms. Berger nominated Mr. Hall for the position of Secretary of the Inland Wetlands Agency for 2016.

Mr. Clarke seconded the motion.

Ms. Lozanov asked if there were any other nominations –
Hearing none –

She called for a vote on the nomination of Mr. Hall -

Vote: 7 – 0 – 0. Motion passed.

I. Additions to the Agenda

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

Mr. Goeschel asked that 138 No. Bridebrook be added under New Business and that Executive Session – Discussion Pending Litigation be added to the end of the agenda as the last item just before Adjournment.

****MOTION (4)**

Mr. Bender moved to add 138 No. Bridebrook under New Business and that Executive Session – Discussion - Pending Litigation be added to the end of the agenda as the last item just before Adjournment.

Ms. Berger seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

II. Public Delegations

Ms. Lozanov called for Public Delegations noting that items on the Agenda could not be discussed at this time.

John Bialowans, 61 Walnut Hill Road said that he had a letter that he wanted to read but asked if he could read the parts that mentioned Centerplan -

Ms. Lozanov said no.

Mr. Bialowans read some parts about the Tinker House during the rainstorm and things that got wet from the rain. He said that Gary and Victor went out and inspected his driveway on 57 Walnut Hill Road and was told that they could not find any washouts. He said that if any of them were in his shoes that they would be doing the same thing that he is doing. He said that he wished that Gateway was doing the job instead. He said he had one copy of a picture of the area as his attorney had told him to provide only one copy. He said that he did have copies of his full letter for all of them to have a copy.

Ms. Lozanov instructed him to give everything to Mr. Goeschel.

III. Acceptance of Minutes

▪ Site Walk Minutes of December 12, 2015

Ms. Lozanov called for any discussion or corrections to the Site Walk Minutes of December 12, 2015.

****MOTION (5)**

Mr. Clarke moved to accept the IWA Site Walk Minutes of December 12, 2015 as presented.

Mr. Reluga seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

▪ Regular Meeting Minutes of December 14, 2015

Ms. Lozanov called for any discussion or corrections to the Regular Meeting Minutes of December 14, 2015.

Mr. Clarke asked that on Page 4 under correspondence where Mr. Goeschel is speaking that the Niantic River be changed to read: Pattagansett River.

****MOTION (6)**

Mr. Clarke moved to accept the IWA Regular Meeting Minutes of December 14, 2015 as amended.

Mr. Reluga seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

IV. Ex-Officio Report

Mr. Salerno reported on the following:

- They would be sharing a grappling arm piece of equipment with the City of New London who would be receiving a grant for a large portion of the cost.
- He has been re-assigned as Ex-Officio to the IWA.
- He congratulated the members that had been elected to the officer positions for this year.
- He is still working on the Blight Ordinance with the Zoning Official – the Town Attorney is reviewing it and providing language so that it does not violate any laws.

V. Pending Applications

- **Town Attorney – Procedural Review** – Note: By consensus the members agreed that this item would be moved to the last item under Old Business to allow for those present for Old Business items to appear first.

VI. Old Business

- **Cease, Desist & Correct Order – 20 Farm Meadow Road, East Lyme, CT – Centerplan Construction Company and GRE 314 East Lyme, LLC, Owner; Antares Solar Field on property located at 20 Farm Meadow Road, East Lyme, CT, Assessor's Map 52.0, Lot 126, East Lyme, CT**

(Note: 7:25 PM – Mr. Pazzaglia recused himself from this item and left the room)

Mr. Goeschel said that he had received a report from Mr. Harris stating that they were working on the as-built survey copies and that with the exception of that and the activities with regard to the Bialowans and Bengston property that all of the requirements of the Cease & desist have been complied with. They had anticipated that the work would have been done by now as they wanted to work on both properties together however Mr. Bialowans has refused to sign a very simple agreement which allows the Applicant on his land to complete the remediation measures. Mr. Harris indicated that he has spoken with Mr. Bialowans attorney on a few occasions and that Mr. Bialowans attorney said that he has recommended that his client sign the agreement. Recently, Mr. Bialowans forwarded a redacted form of the agreement (which removed the items that were contained in it for his very protection); once that is signed, the as-builts will be completed and delivered in the next few days. Given the time of the year – once the consent is signed; the earliest that the work would be done is the spring.

Mr. Goeschel noted that it was ordered that the work be done by September 30, 2015. If Mr. Bialowans does not sign the revised release that he requested he said that he would suggest that they serve an injunction for failure to complete the work on the Bialowans property.

Mr. Clarke asked what that would accomplish.

Mr. Bialowans shouted out 'Point of Order' and said that he had a right to speak –

Ms. Lozanov said that he did not and asked him to sit down –

Mr. Bialowans insisted that he had the right to speak –

Attorney O'Connell suggested to the Chair that she instruct the Recording Secretary to not write anything down –

Ms. Lozanov instructed the Recording Secretary not to write anything that Mr. Bialowans continues to say –

Ms. Lozanov said, along with Mr. Clarke's question – why an injunction against Centerplan as it is not because they did not want to do the work – it's because Mr. Bialowans won't sign the release to allow them on his property.

Mr. Goeschel said that it is due to the date specific time that was stated –

Attorney O'Connell explained that they have an outstanding order against Centerplan and no one else – if Centerplan has to enforce it against others then that is certainly a factor that they can consider. They can decide regarding how they had said that they want to do all the work together and have been waiting on the release for the one property.

Ms. Lozanov said that if they were to move forward with an injunction that it would not be appropriate weather now for them to do the work.

Attorney O'Connell said that they could make their own determination on the appropriate time for the injunction.

Ms. Berger asked who pays for the injunction.

Attorney O'Connell said that the Town has to pay and that it may be negotiated out later. He said that they could also do an amendment to the order by a date change due to the difficulty in dealing with the downstream owners.

Ms. Lozanov suggested that they could notify them that they are considering an injunction.

Mr. Bialowans spoke over the Chair as she was speaking, insisting on being heard –

Ms. Lozanov instructed the Recording Secretary not to write anything that Mr. Bialowans continues to say –

Mr. Goeschel said that Mr. Harris' letter essentially states that the date could not be met for issues outside of their control. They could request that the date be changed accordingly and the Agency could review that request. He said that he would speak with Mr. Harris on this.

Note: 7:41 PM – Mr. Pazzaglia returned to the meeting.

- **Cease, Desist & Correct Order – 286 Flanders Road, East Lyme, CT – Gateway Development, East Lyme LLC Owner, Assessor's Map 26.0, Lot 2, East Lyme, CT and –**
- **Cease, Desist & Correct Order – Flanders Road – Gateway Development East Lyme LLC Owner, Assessor's Map 31.0, Lot 1, East Lyme, CT**

Mr. Goeschel said that Mr. Rabideau was present this evening to update them.

Scott Rabideau, Wetland & Soil Scientist for Gateway said that he would update them on the two actions. He noted that they had walked the site on November 7, 2015 and that the one thing that was not finalized was the as-built on the CL&P utility road. He showed the before and after and explained what had been done and that it was fully stabilized and in compliance. He showed them the as-built and said that his hope is that they could allow Mr. Goeschel to sign off on the as-builts once they are reviewed by the Town Engineer and he has provided the signed copies.

Mr. Goeschel said that he has been out to look at it and that the travel portion is gravel and the sides have been planted. If the Town Engineer does not have any issues with it, then he is fine with it. This would close out Phase I.

Mr. Rabideau said that Phase II is the extension of the East Society road connection and that once they decide to move on it that they would be back before them for that. He asked if they would allow Mr. Goeschel to sign off and release the C & D's so that this would not have to go into February when it is completed now.

Mr. Clarke said that he would agree that Mr. Goeschel could sign off on this and release it once he had the signed copies and the Town Engineer had reviewed it.

****MOTION (6)**

Mr. Clarke moved that in the matter of the Cease, Desist & Correct Order – 286 Flanders Road, East Lyme, CT – Gateway Development, East Lyme LLC Owner, Assessor's Map 26.0, Lot 2, East Lyme, CT and the Cease, Desist & Correct Order – Flanders Road – Gateway Development East Lyme LLC Owner, Assessor's Map 31.0, Lot 1, East Lyme, CT that pending the submission of the as-builts and final review by the Town Engineer to authorize Mr. Goeschel, the IWA Agent to lift the above-mentioned Cease, Desist & Correct orders for the Gateway Development.

Mr. Reluga seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

▪ **Town Attorney – Procedural Review**

Attorney O'Connell said that Mr. Goeschel had asked that he provide them with this review. The IWA is a survivor of the conservation Commission that was divided some 10 years ago. They are authorized by the enabling acts (Statutes) of what they can and cannot do. They can:

- Adopt and amend inland wetland regulations (the group must always act by regulation)

- Determine maps and boundaries of wetlands. The former buffer areas are now known as the upland review area.
- They pass upon applications and requests for permits and must be feasible and prudent in doing so. Statutory timelines sometimes interplay between the IWA and Planning or Zoning.
- They can only make a decision based on evidence that they receive at public hearing. They can ask for information to be researched by staff or a professional however after the public hearing is closed no new evidence can be entertained.
- They enforce the regulations by various methods: they revoke a permit; they can issue a cease & desist; they can employ the fining system for a minor issue. The farming exemption must be brought before them so that they can make sure of the exemption and for an explanation of what the applicant will be doing.

Planning is for subdivision and if wetlands are involved then the IWA would give a report which Planning can take into account although Planning makes the ultimate decision.

Regarding the conduct of the members – there are three types of conduct that disqualify a member:

- Insufficient knowledge about the application – they must be familiar with the record and they must affirmatively state on the record that they have reviewed it.
- Predetermination or bias.
- Conflict of Interest – such as: you live next to the property or a relative owns the property or you have a financial interest in the property. The public must maintain confidence in the decision making of the Board.

Ms. Lozanov asked if a member states that they can be unbiased if they could remain seated.

Attorney O'Connell said that they could take that at face value - as it really is a personal decision by an individual member.

Mr. Clarke asked if a Board member could question another member if they thought that there might be a conflict.

Attorney O'Connell said that they could 'ask'.

Attorney O'Connell summed: that the information received in the hearing is what makes the record and that they can ask for advice from staff but it must be based on what was mentioned at the hearing and no new information can be brought into the record once the hearing is closed. They cannot discuss the matter outside with anyone and the decision must be based on facts. This is an FOI agency so the record can be reviewed except for Executive Session where minutes are not taken.

VII. New Business

▪ 138 North Bridebrook Road

Mr. Goeschel said that the Town issued a permit for a new house here that was not built however we are still holding a \$1000 bond. A 2004 Cease & Desist was issued on the property. He said that he would review that item to see what it was about.

VIII. Reports

♦ Chairperson's Report

Ms. Lozanov said that they do have openings for Alternates and asked that Mr. Goeschel send a memo out to the two parties asking if they have anyone interested.

♦ Inland Wetlands Agent Report

♦ Administrative Permits Issued

Mr. Goeschel said that he issued one permit for a single family dwelling on Darrow's Ridge.

♦ Commission Issued Permits: Status Update

Mr. Goeschel said that there have been none recently.

♦ Permit #12-9: 187 W. Main Street – Maine-Hope Enterprises, LLC

Ms. Berger asked that this item remain on the agenda until the work is completed.

♦ Enforcement – 4 Colton Rd., 15 Colton Rd., 170 Flanders Rd., Midway Plaza and 166 Upper Pattagansett Road, 4 Herster

Mr. Goeschel reported that the above mentioned remain unresolved. He said that he needs to send letters to 4 Colton Road – debris in the wetlands and filling of the yard; and 15 Colton Road – filling – clearing in the wetlands.

170 Flanders Road – the filling of debris adjacent to a watercourse – correspondence has been sent.

Midway Plaza – the couch and TV and large items have been removed and removal of the garbage that has been thrown in a path out behind the building has been resolved.

166 Upper Pattagansett – debris, rocks and fill materials have been brought in and he is working with the landowner to see if this is a wetland area – it did not seem to be one however he will check the soils and make sure that they are way beyond the 100' upland review area. He is working with the owner on a plan.

Mr. Goeschel reported that regarding the millings dumped at West Society Road was still being worked on. He also reported that at 4 Herster they were dumping concrete block materials in the stream and that he has had the owner remove them. They are in the process of addressing other concerns about work in the upland review area.

♦ **Correspondence**

Mr. Goeschel noted that he received notice from the DEEP regarding a water diversion permit for Well #5; a letter from Betsy Winfield regarding PA 15-68 and PA 15-85 and some minor changes to them which give the courts more action possibilities. He said that he would forward a copy of this in their next meeting packets. He also received notice from Eversource that they are doing some tree trimming along Town lines with Waterford.

♦ **Executive Session – Discussion: Pending Litigation**

****MOTION (7)**

Mr. Hall moved that they enter Executive Session at 8:54 PM for the purpose of discussion on pending litigation inviting Attorney O'Connell, Mr. Goeschel and Mr. Salerno to join them.

Mr. Bender seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

****MOTION (8)**

Mr. Reluga moved that they exit Executive Session with no action taken and return to regular session at 9:26 PM.

Mr. Clarke seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

ADJOURNMENT

****MOTION (9)**

Mr. Reluga moved to adjourn this Regular Meeting of the East Lyme Inland Wetland Agency at 9:27 PM.

Mr. Hall seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary

STEVENS, HARRIS, GUERNSEY & QUILLIAM, P.C.

ATTORNEYS AND COUNSELORS AT LAW

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P. O. DRAWER 660

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January 11, 2016

Mr. Gary Goeschel
Wetlands Enforcement Officer
Town of East Lyme
P.O. Box 519
Niantic, CT 06357

Re: Solar Farm/GRE 314 East Lyme, LLC (Terry's Solar Farm)

Dear Gary:

The purpose of this letter is to update you as to the current status from the owner's perspective of the Cease and Correct Order from the Commission regarding the above-captioned.

First and foremost, with the exception of the as-built survey which you recently noted, and those activities with respect to Mr. Bialowans and Ms. Bengston, we believe we have complied with all requirements of the Cease and Correct Order. With respect to the additional work on the Bialowans and Bengston property, we had anticipated this work would have been done by now, and wanted to complete both items simultaneous. Unfortunately until recently, Mr. Bialowans has refused to sign a very simple agreement which allows the Applicant on his land to complete the remediation measures, of which I believe the Commission is aware. I have spoken with Mr. Bialowans' Attorney on either two or three occasions and he has indicated to me that he had recommended to Mr. Bialowans that he sign the Agreement. Recently, Mr. Bialowans forwarded a redacted form of the Agreement, which quite honestly, removed the items which were contained in it for his very protection (for example GRE supplying liability insurance). The Agreement has been revised to remove the items requested by Mr. Bialowans, except for the last one relating to the admissions by either parties, which I have recommended to my client, not be removed. This is a typical provision for Agreements of this nature. I have enclosed a copy of the revised Agreement for the Commission's information.

Attachment IWA 1/11/15

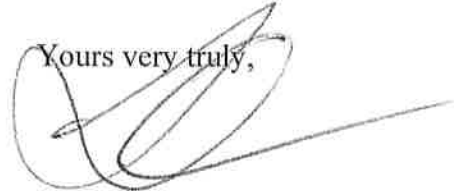
3 pg.

Mr. Gary Goeschel
January 11, 2016
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With respect to the as-builts, we had believed that the final reports and pictures were sufficient. We are in the process of overlaying the remediation on final as-builts for the site, and will be delivering them in the next few days.

Finally, my client is still willing to complete the work on Mr. Bialowans' property, as well as Ms. Bongstons, provided Mr. Bialowans sign the attached Consent. However, given the time of year, we would not anticipate this could be done until, at the earliest, this Spring.

Yours very truly,

A handwritten signature in black ink, appearing to be 'Theodore A. Harris', written over the typed name below.

Theodore A. Harris

TAH:jpl
Enclosure

PERMISSION FOR ACCESS

WHEREAS, John Bialowans, Jr ("Bialowans") is the owner of property known as 61 Walnut Hill Road, East Lyme, Connecticut; and

WHEREAS, said property is in close proximity to premises upon which a Solar Farm was constructed; and

WHEREAS, Centerplan Construction Company ("Company") is the Site Contractor with respect to construction of said Farm; and

WHEREAS, the Company would like to enter upon land of Bialowans for the purpose of making repairs as more specifically described in a certain Amended Order of the Inland Wetlands Agency of the Town of East Lyme dated June, 11, 2015.

NOW THEREFORE, the parties agree as follows:

1. Bialowans by these presents hereby gives the Company, its agents and servants permission to enter upon the premises for the specific purposes as outlined in Schedule "A" hereto.
2. Nothing herein shall be construed as an admission of liability by the parties.

Dated this _____ day of _____, 201__.

OWNER

John Bialowans

CENTERPLAN CONSTRUCTION COMPANY

By: _____

Duly Authorized