

**EAST LYME INLAND WETLANDS AGENCY
MEETING OF MONDAY 11 SEPTEMBER 2017**

PRESENT

Members: Cheryl Lozanov, Chairwomen, Phyllis Berger, Secretary, Harold Clarke, Vice Chairmen, Jesse Baldwin, and Kim Kalajainen

Absent: David Pazzaglia and Jack Chomicz

Staff: Gary Goeschel II, Director of Planning/Inland Wetlands Agent,
Ex-officio – Paul Dagle
Mary Jane Gaudio, Recording Secretary

CALL TO ORDER: C. Lozanov called the East Lyme Inland Wetlands Agency Meeting of September 11, 2017, to order at 7:03 p.m.

PLEDGE OF ALLEGIANCE - The Pledge of Allegiance was observed.

C. Lozanov introduced the members of the Commission, Recording Secretary, and Staff.

I. ADDITIONS TO THE AGENDA. None.

FILED

II. PUBLIC HEARINGS. None.

III. PUBLIC DELEGATIONS. None.

IV. ACCEPTANCE OF MINUTES.

Sept 20 2017 AT 8:20 AM/PM
(Karen Gaudio, ATC)
EAST LYME TOWN CLERK

A. Meeting Minutes of July 24, 2017 Special Meeting.

Correction - on page 5, paragraph 2, last sentence – after the word “major” add “issue”.

MOTION (1): P. Berger moved to accept the meeting minutes of July 24, 2017, as amended. Seconded by H. Clarke. Motion passed (5-0-0) unanimous.

B. Meeting Minutes of August 7, 2017 Special Meeting.

Correction - on page 8, the bottom of the page, P. Berger was absent at the 7/24/17 meeting.

Correction – on page 6, paragraph 9, remove “have fewer lots, like less than 25, and they would be” and add “have”.

MOTION (2): K. Kalajainen moved to accept the meeting minutes of August 7, 2017, as amended. Seconded by P. Berger. Motion passed (5-0-0) unanimous.

C. Meeting Minutes of August 14, 17, 23, 28, 2017 Special Meetings.

C. Lozanov requested that the approval of meeting minutes August 14, 17, 23, 28 be tabled until the next meeting as she did not get a chance to review them.

V. EX-OFFICIO REPORT

P. Dagle said the Board of Selectman agreed to authorize the First Selectman to enter into an agreement with the Eastern Conservation District which is going to be providing a grant for the installation and incorporation of stormwater best management practices in and along Grand Avenue. There will be no cost to the town.

VI. PENDING APPLICATIONS.

- A. Application of Thomas and Nancy Kalal Applicant/Owners;** Application to remove fill material from wetlands crossing at 80 Grassy Hill Road, Assessor's Map #50.0, Lot #9, East Lyme, CT.

G. Goeschel brought the Commission up to speed saying that it was previously determined that the activity did not require a permit. It was appealed late by Mr. Mattson in which case the judge dismissed the appeal as it pertained to the town. He continued to litigate against the Kalals. They reached a settlement which is brought in front of the Commission tonight to remove the sediment material we had found to be a right activity. With that, the application is pending before the Commission. We heard from Attorney Cronin at the last meeting and he gave you the background in a little more detail.

G. Goeschel provided the Commission with a memo with the findings. G. Goeschel said there are general findings with input from Staff and Attorney Cronin.

MOTION (3): K. Kalajainen moved to approve the application based on the findings on record before the agency known as Thomas and Nancy Kalal Applicant/ Owners; Application to remove fill material from a wetland crossing at 80 Grassy Hill Road, Assessor's Map #50.0, Lot #9, East Lyme, CT which are further subject to the following administrative requirements, any required modifications, site plans, and other material submitted in this application:

1. All disturbed areas shall be controlled and stabilized at all times.
2. Disturbed areas shall be loomed and seeded with a conservation meadow or low maintenance lawn such as fescue which requires the minimal application of fertilizers and pesticides.
3. Notify the Inland Wetlands Agent two days prior to the start of any site work.
4. Any proposed additional work beyond this permit with wetlands and watercourse or regulated areas will require approval from the Conservation Commission or certified agent.
5. No site work shall commence until all applicable conditions are satisfied.
6. Notify Inland Wetlands Agent upon completion of all regulated activities for final inspection.

This approval is specific to the site development plan submitted as the Application of Thomas and Nancy Kalal Applicant/ Owners; Application to remove fill materials from wetlands crossing at 80 Grassy Hill Road, Assessor's Map #50.0, Lot #9, East Lyme, CT. Any change or modification to the plan or development plan layout shall be identified and or shall constitute a new application unless prior approval from the Inland Wetlands Agency is granted. The applicant/owner shall be bound by the provisions of this application.

Seconded by H. Clarke. Motion passed (5-0-0) unanimous.

- B. Application of Douglas Dubicki, Esq. Applicant/Landmark Development, Owner;** Application for a Determination of Non-Regulated activity for a Tree Farm at Oswegatchie Hills, Boston Post Road and Quarry Dock Road to be known as River Valley Farm.

Doug Dubicki introduced himself as stated this is a continuation of last month's hearing.

We were asked for some additional information which we provided. It is simply a sketch of where some of the proposed activities will be taking place. There is a drawing which you will see lines in orange which show where the existing farm roads are and some areas generally marked out in blue that show approximate locations of where we are considering planting initially. There is a little bit of a narrative with it and we would ask that the Agency rule that our farming activities are exempt from the Agency's jurisdiction.

C. Lozanov said that at the last meeting you said the planting of trees would be in a small area of the property. D. Dubicki said at this time we are looking at about 5 acres and depending on how it goes they will expand to more areas. D. Dubicki said there was never any intention of limiting it to a specific amount of acres. C. Lozanov asked what type of trees they were planning on planting, would they be of the same species. D. Dubicki said the plan is to plant mostly white pine.

D. Dubicki said he is in consultation with a forester or supervising harvester. C. Lozanov wants the contact information on file with the town.

H. Clarke asked G. Goeschel if it is subject to a CAM review. G. Goeschel said that he is not sure and doesn't have the answer at this moment. G. Goeschel said it is up to the applicant to apply for it.

K. Kalajainen asked if a survey will be done to determine if there are any wetlands on the 240 acres. D. Dubicki said he had no intention of doing a survey as it will cost a lot of money to do.

K. Kalajainen asked if there are any wetlands within 100 ft of this road. D. Dubicki said if you look at the second map it shows where the wetlands show up. Based on this map and the existing roads I have circled the general areas where there are existing roads that touch any type of wetland, upland review area, or anything else.

J. Baldwin noted that there are six wetland crossings. D. Dubicki said that on the second map there appear to be four crossings.

G. Goeschel said as it goes for improvement of the roads the application indicated that there would be 9,000 square feet of fill material within a 100 ft of the wetland watercourse. Is that correct? Is that disturbed for crop or crossing? D. Dubicki said it would be on the roads only.

G. Goeschel provided a memo to the Commission for reference.

G. Goeschel talks to the letter from Attorney Janet Brooks about Statutory Exemptions within the Inland Wetlands & Watercourses Act from November 8, 2008.

G. Goeschel provided a case law from Connecticut Wetlands Law dated July 7, 2016 – Farm roads exempt: Indian Spring Land Company v. Inland Wetlands and Watercourses Agency, Part II.

D. Dubicki doesn't believe that any of those cases say that he cannot maintain those roads. You could stretch it say he can't build a new road. These roads have been there for generations.

J. Baldwin questions that the fill he is using could affect the wetlands. D. Dubicki argues that is not the case and they are only repairing the roads to make them passable. He is not filling any wetlands only the roads.

G. Goeschel provided a legal opinion from Mark Zamarka dated 8/23/17. He points the Commission to look at paragraph three. G. Goeschel asks are you replacing the roads or filling them. D. Dubicki said at this time there are coverts that are impassable that need to be replaced. They may need to be replaced but not filling in wetlands.

C. Lozanov points the Commission to Section 4.1.a of the Inland Wetlands Regulations.

The following operations and uses shall be permitted in inland wetlands and watercourses, as of right

a. grazing, farming, nurseries, gardening, and harvesting of crops and farm ponds of three acres or less essential to the farming operation, and activities conducted by, or under the authority of, the Department of Environmental Protection for the purposes of wetland or watercourse restoration or enhancement or mosquito control. The provisions of this subdivision shall not be construed to include road construction or the erection of buildings not directly related to the farming operation, relocation of watercourses with continual flow, filling or reclamation of wetlands or watercourses with continual flow, clear-cutting of timber except for the expansion of agricultural crop land, the mining of top soil, peat, sand, gravel or similar material from wetlands or watercourses for the purposes of sale;

J. Baldwin asks what he plans to do at each crossing. He asked if he had an idea what he was going to do. If filling existing road within existing footprint it's fine. If moving outside the footprint it may affect the wetlands.

G. Goeschel refers and speaks to documentation provided by DEEP about Agriculture Forestry & Connecticut's Inland Wetlands and Watercourses Act.

K. Kalajainen asked if we needed to have the assessment done how we would request this information. G. Goeschel responded that you should ask the applicant. K. Kalajainen asked if we would hire a wetlands consultant. Goeschel said he suspects we could. He believes it would be in the applicant's best interest to hire a wetland scientist.

J. Baldwin asked how the number was derived on how much fill would be needed. D. Dubicki said it was a guess based on the width and length of the road. D. Dubicki said that based on his experience and Russo's experience on land that sounded like a reasonable number. He said he did look at each crossing. D. Dubicki said they will be crossing intermittent watercourses there is no wetland. Coverts were put under these roads over 100 years ago. We will be removing and replacing some of the coverts because they are old and broken and need to be replaced.

G. Goeschel read from Inland Wetlands Regulations 4.1.d

d. uses incidental to the enjoyment and maintenance of residential property, such property defined as equal to or smaller than the largest minimum residential lot site permitted anywhere in the municipality provided that in any town where there are no zoning regulations establishing minimum residential lot sites, the largest minimum lot site shall be two acres. Such incidental uses shall include maintenance of existing structures and landscaping, but shall not include removal or deposition of significant

amounts of material from or onto a wetland or watercourse, or diversion or alteration of a watercourse;

G. Goeschel read from Inland Wetlands Regulations 4.1.f

f. Maintenance relating to any drainage pipe which existed before the effective date of any municipal regulations adopted pursuant to section 22a-42a of the Connecticut General Statutes or July 1, 1974, whichever is earlier, provided such pipe is on property which is zoned as residential but which does not contain hydrophytic vegetation. For purposes of this subdivision, "maintenance" means the removal of accumulated leaves, soil, and other debris whether by hand or machine, while the pipe remains in place.

G. Goeschel said that per 4.1.a farming is an exempt activity.

K. Kalajainen asked if he was going to hire someone who has the experience to replace the roads. D. Dubicki answered that Russo is in construction and may fix the roads, but not sure who is going to do it.

K. Kalajainen asked if D. Dubicki will get a quote with the cost estimate to repair with contractors. D. Dubicki said that farming is low profit and he doesn't plan on spending money to do any estimates. D. Dubicki will probably get a certified forester to plan the crop as to make a profit.

J. Baldwin asked if the width of the road being widened? If not and it's staying in footprint it should be exempt. D. Dubicki said the road will not be widened but repaired.

C. Lozanov would like the applicant to provide before and after pictures to the Enforcement Agent.

P. Berger would like silt fences and best management practices used.

C. Lozanov asked them to use a licensed forester who will provide erosion/sedimentation plan. D. Dubicki argued this was not necessary.

MOTION (4): K. Kalajainen moved to approve the application with a jurisdictional ruling as follows: Based on the above findings, I find the activities in the proposed application are directly related to the farming operation and hereby determine the proposed activities are permitted as of right. However given the lack of information presented by the applicant/owner and the Agency's concern denoted in Section 4.1.a of the Inland Wetlands and Watercourses Regulations regarding the potential filling of wetlands the applicant/owner is required to complete the following activities:

1. 15-20 days prior to starting site work the applicant/owner must review the plan changes with the Inland Wetlands Agent to confirm the extent of the repair work to be undertaken.
2. Notify the Inland Wetlands Agent two days prior to the start of the site work at each crossing.
3. Notify the Inland Wetlands Agent upon completion of all regulated activities for final inspection. Should our Inland Wetlands Agent feels any of our regulations have been violated he will be able to take the appropriate action.

Seconded by J. Baldwin. Motion passed (3-2-0) – C. Lozanov, J. Baldwin, and K. Kalajainen (approved). H. Clarke and P. Berger (opposed).

VI. NEW BUSINESS. None

VII. OLD BUSINESS

B. Inland Wetlands and Watercourses Regulations – Update on Status of Changes.

1. G. Goeschel said there are no new updates.
2. G. Goeschel to do research on setbacks of the buffer to wetlands. J. Baldwin had mentioned at last meeting that Waterford has a setback buffer of 75 feet.
3. J. Baldwin asked proximity of outfalls to wetlands? There is nothing in regulations about distance. Should we consider adding something? G. Goeschel noted that we can't be less strict than DEEP.
4. H. Clarke said that for the 25 lot Subdivision Green Valley Lakes he is concerned about the lack of review by Ledge Light on the septic systems. As a Commission could we ask for Nitrogen Hydraulic Analysis? J. Baldwin asked do other towns/cities have something in place already. We need to do some research. H. Clarke asked is there an approved design we could use and not just a concept. G. Goeschel said he would look into this. C. Lozanov asked if we could add a caveat to our regulations "Area of special concern including but not limited to? G. Goeschel will come up with some language for next meeting.

VIII. REPORTS

A. Chairman's Report

1. **Hays Landscaping on 15 Colton Road** has repaired the parcel and revegetated.

B. Inland Wetlands Agent Report

1. Administrative Permits Issue. None.
2. Commission Issued Permits. None.

C. Enforcement

1. **24 Green Valley Lakes Road** has a dock that was installed illegally and they never submitted paperwork.
2. **13 Green Valley Lake Road** has a dock that was installed illegally and we are issuing a cease and desist letter before the next meeting.
3. **249 Old Black Point Road** construction has stopped.
4. **Property across from the town dump** is filling the lot with soil near a wetland. G. Goeschel sent the owner a cease and desist. G. Goeschel needs to follow up.
5. **301 Chesterfield Road, Aces High R.V. Park.** Received correspondence from Attorney that Owner has obtained CLA Engineering Bob Russo for the restoration plan. Won't see plan until October 16, 2017, meeting. Gary will inspect site periodically after rainfall before next meeting. We will seek an injunction if they don't comply.

D. Correspondence.

1. **CT Association of Inland Wetland Commissions** – CAIWC Annual Meeting at Radisson in Cromwell, CT on November 18, 2017. If you want to attend let Gary know as soon as possible.
2. **Gateway Project (COSCO) – Dave Detton** – Received from DEEP back in June an approved application to conduct regulated activities. Water quality permit was attached.

X. ADJOURNMENT

MOTION (5): P. Berger moved to adjourn the meeting at 9:03 pm. Seconded by H. Clarke. Motion passed (5-0-0) unanimous.

Respectfully Submitted:
Mary Jane Gaudio
Recording Secretary



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