

**EAST LYME INLAND WETLANDS AGENCY
REGULAR MEETING MINUTES
AUGUST 13, 2018**

MINUTES

Members Present:

Gary Upton, Chairman
Ann Cicchiello, Vice Chairman
Phyllis Berger, Secretary
Jessie Baldwin
Todd Bellucci, Alternate

Members Absent:

Harry Clarke
Peter DeRosa
Jack Chomicz
Theodore Koch, Alternate
Paul Dagle, Board of Selectman

Also Present:

Gary Goeschel, Director of Planning/Inland Wetlands Agent
Mark S. Zamarka, Town Attorney

CALL TO ORDER:

Chairman Gary Upton called the Inland Wetlands Agency meeting of August 13, 2018 to order at 7:13 p.m.

PLEDGE OF ALLEGIANCE: Observed

Chairman Upton welcomed the audience and agency members to the meeting, and thanked them for attending.

Chairman Upton seated Todd Bellucci, Alternate.

I. Additions to the Agenda

Motion by Ann Cicchiello to add to the Agenda under New Business the following:

Item B. Application of Town of East Lyme for Determination of Permitted/Non-regulated Activity at 10 Memorial Drive

Item C. Application of Town of East Lyme for Determination of Permitted/Non-regulated Activity at Oswegatchie Hills

Item D. Application of Leonard Brian McPartlin, Owner for construction of a stone wall at 132 N Bridebrook Rd

And to add to the Agenda under Enforcement the following:

Item 2. Roxbury Road, Cease Desist and Restore

Second by Jesse Baldwin. Motion passed 5-0-0.

II. Public Hearing – NONE

FILED IN EAST LYME
CONNECTICUT
Aug 20 2018 AT 11:36 AM/PM
[Signature]
EAST LYME TOWN CLERK

III. Public Delegations - NONE

IV. Acceptance of Minutes

- A. Approval of Minutes Show Cause Hearing July 16, 2018.

Ann Cicchiello moved to APPROVE the East Lyme Inland Wetlands Show Cause Hearing Minutes of July 16, 2018. Second by Jesse Baldwin. Motion passed 5-0-0.

- B. Approval of Minutes of Special Meeting of July 16, 2018.

**Phyllis Berger moved to APPROVE the East Lyme Inland Wetlands Special Meeting Minutes of July 16, 2018 with the following corrections:
Page 13, paragraph 4, line 13, "rhea" should be "area";
Page 18 paragraph 3, line 3 "ads" should be "adds";
Page 18, paragraph 5, line 7, "form" should be "from".
Second by Jesse Baldwin. Motion passed 5-0-0.**

- C. Approval of Minutes of Special Meeting of July 30, 2018.

The Agency tabled the approval of the Special Meeting Minutes of July 30, 2018 for further review.

V. Ex-Officio Report – None

VI. Pending Applications

1. Twin Valley 23-Lot CDD Re-subdivision, Green Valley Lakes Road and Spring Rock Road; Frank & Rajko Maric Owners, Real Estate Services of CT, Inc., c/o Bob Fusari, Jr., Applicant; Application to conduct regulated activities within the 100-foot upland review area from wetlands and watercourses associated with the construction of a road.

Chairman Upton opened the discussion on the pending application.

Todd Bellucci recused himself for this discussion.

Mr. Goeschel stated that with the Agency discussion and his memorandum reviewed at the last meeting, he had drafted a resolution with additional findings. It is substantial in content.

He reviewed the findings of the application that are part of his draft resolution. He also read the resolution into the record.

Mr. Goeschel asked the Agency if they wanted to discuss the findings, they asked that he continue with the conditions of the proposed approval.

He continued stating that if the Agency were to condition the approval for septic systems to be outside of upland review areas, and relocate the cul-de-sac to locate it outside of the upland review; if both conditions were applied the applicant would no longer need an Inland Wetlands permit.

Chairman Upton stated that the applicant would still need it for the detention basins and storm water infiltration systems. Mr. Goeschel reminded him that as they are currently designed they are only partly in the review area.

Chairman Upton asked the Agency how they would like to proceed. Mr. Baldwin wanted to discuss the findings.

Mr. Baldwin stated that the Agency expected a resolution that included the reasonable and prudent alternative, as they decided there was one and it is not there.

Mr. Goeschel advised the Agency that in discussion with Attorney Zamarka he inquired about the applicant having proposed regulated activities in the upland review area versus within the wetland or watercourse and asked for case law. He was provided with Avalon Bay v Wilton, the Agency can regulate areas outside of wetlands and upland review, only those activities that are likely to adversely affect the wetlands, not just the wildlife, the impact must be likely and severe and supported by substantial evidence in the record.

If the Agency conditions the approval to activities outside of the review area and wetlands, there must be substantial evidence within the record that the locations of the septic and cul-de-sac is likely to adversely affect the wetlands and watercourses. The agency is limited to the existing record. Is there substantial evidence that it would likely adversely affect wetlands and watercourse? Based on his opinion and findings, and the evidence by Danzer and Trinkhaus he did not find that information; they don't substantiate their claims, therefore there is no evidence to support the relocation of the road or septic systems. He cautioned the Agency that by moving and conditioning them, while they are allowed to move and condition, he feels it is an over reach in regulatory hand. The applicant is entitled to conduct work in upland review and wetland areas like anyone else in the community who wants to put up a deck, shed, etc.

Mr. Baldwin stated this is a question about proof, what is considered proof, as Mr. Goeschel stated there was not enough evidence of adverse impact, is there evidence there wouldn't be adverse impact. What would be proof?

Chairman Upton stated there was discussion about a potential failed septic and if it is within an upland review without having laid out evidence of how would affect now, 100 years from now, he feels different professionals stepped up, how far do they go for burden of proof. A failed septic system would create a problem in our review area.

Attorney Zamarka, to address the key phrase is the potential failure of a septic; recall what Mr. Goeschel read, the potential for adverse impact is not enough, it must be likely and severe and supported by substantial evidence in the record. This is a fairly high standard to meet; our Agent has found no direct impact to wetlands and watercourses as proposed is what lead to these findings as well as applicable case law.

Mr. Baldwin is looking as the tree clearing south of the area disputed as the vernal pool area. We are relying on two opposing experts. One says will have an impact one says it won't. What level of proof, scientific studies, calculations, numbers, would be needed for the legal definition of substantial.

Attorney Zamarka there is nothing as exact as that. As noted in the resolution you as the deciding body decide which evidence and testimony you are going to find credible. He read the definition of substantial evidence from the Connecticut Courts as evidence that affords a substantial basis of fact from which the fact at issue can be reasonably inferred. You may have competing expert opinions, it is up to this agency to determine which is more credible, as long as there is substantial evidence in the record for your decision.

Ms. Cicchiello Mr. Russo said that he knew there was or was not a vernal pool, because at his house there was not a vernal pool. He talked about his own house not the area. Mr. Baldwin stated he used the vernal pool near his house as a reference pool, based on that would use to time to visit other vernal pools to see each subject location to see what was there, that was how he remember that conversation. Chairman Upton agreed.

Chairman Upton whether or not it is a vernal pool it is a wetland. Mr. Baldwin they were competing about whether it was a vernal pool. Based on the DEEP definition, that seemed to fit although the applicant's professional said it wasn't a vernal pool. We don't regulate it any differently anyway.

Mr. Baldwin said his question is Mr. Goeschel identified no reasonable and prudent alternative to yielding 23 lot subdivision of land located on land properly zoned for this use that would eliminate or further reduce the potential for wetland impacts. He disagrees with the statement because they came up with an alternative with the same number of lots that would reduce impacts.

Chairman Upton said they had asked the applicants engineer Mr. Wren and he said it could be done, it was further discussed during deliberation and it could be done. Ms. Cicchiello noted Mr. Wren said it was a trade off.

Mr. Baldwin it is counsel's opinion there is not enough substantial evidence in the record to support conditioning the application to move back the cul-de-sac to where discussed for less impervious area directly between the wetlands and would further reduce required clearing.

Attorney Zamarka stated he is not rendering an opinion on the evidence in the record. He hasn't reviewed everything to the detail the Agency has. His reply was based on the CT Supreme Court case and the standard for regulating outside the upland review area, and Mr. Goeschel's finding it did not result in harm to wetlands and watercourse. The Agency can condition anything in its purview as long as it supported by substantial evidence in the record.

Mr. Goeschel if you point out the substantial evidence in the record and point to Mr. Danzer and Trinkhaus reports you may.

Attorney Zamarka reminded the agency if you do base your decision on a reasonable and prudent alternative, you must state in the resolution what it is and the reasons for it, the condition must state a reason and would need to be fleshed out.

Mr. Baldwin asked why the prior application that was denied in 2017 was sent back to this Agency. Attorney Zamarka stated it was not. The 2017 application is still pending in Superior court. The current application was filed by the applicant in response to the denial, as the applicant was purporting to address the reasons for the 2017 denial.

Chairman Upton asked the members how they felt about a condition. Ms. Cicchiello thinks it is prudent and feasible to make a condition of the cul-de-sac, no direct impact, there is impact to the wetland. In the evidence it did show there would be a direct impact with the separation of the connectivity of the two wetlands. I think it was Ms. Moch; her testimony was credible as to the connectivity.

Chairman Upton speaking to 150' movement of the center of the cul-de-sac to the northeast, moving it out of the upland review area.

Mr. Goeschel stated so you feel there is evidence of a direct impact or significant impact in the bifurcation of the wetlands as a result of the cul-de-sac in its current configuration. Mr. Baldwin said in addition to the clearing of trees shading the area disputed as the vernal pool and any reduction of clearing south of that area would reduce impact to the vernal pool specifically thermal pollution.

Chairman Upton stated this was the concept of the southern exposure.

Mr. Goeschel asked they just note Mr. Danzer noted the clearing was going to be within 25' to 50' so you still have vegetative buffer and the wetland is forested, it is a wooded wetland, you have a buffer and wooded wetland, not sure without solar analysis not sure how much the proposed clearing would reduce thermal pollution without a solar analysis.

Mr. Baldwin asked about proof can you do a solar analysis based on tree clearing to water body. Mr. Goeschel said he's never seen it done.

Mr. Baldwin asked if it needs to be incontrovertible proof, what that looks like. All we have is two different opinions. Ms. Cicchiello said it depends on which expert you believe is what you go with. Mr. Baldwin is thinking of the legal requirement if there needs to be proof on the record that there is severe impact.

Attorney Zamarka said that is correct, in order to regulate outside of the review area there has to be substantial evidence that there is potential and the impact is likely and severe. Those impacts are in the upland review area. Mr. Baldwin asked if in the upland review, do they still apply. Attorney Zamarka read the definition of substantial evidence again.

Ms. Berger is not sure at this point, still listening.

Chairman Upton in memo there is language about the agency's ability to weigh which expert it is listening to. Mr. Baldwin said it is in the resolution. Chairman Upton stated at the top of page 3; it is the agency's discretion regarding the credibility of witness testimony and evidence in the record.

Attorney Zamarka said what is necessary to regulate outside of the review area/wetlands; impact on the wetland area is not sufficient, it has to be likely and adverse, it can't be general impact, speculation, or concern that is not substantial evidence for the purpose of finding.

Mr. Baldwin so in order to justify an impact; in order to regulate impact outside of the review area we would have to find significant impact; but aren't we just talking about impacts within the upland.

Mr. Goeschel said what your considering is activity within the upland and its impact on watercourse, the activities those are regulated. We are not looking at the impact to the upland review area, but to the watercourse and wetlands as a result of the activities. Chairman Upton said to clarify they are not trying to regulate outside of the review area.

Mr. Goeschel said in his opinion if condition road relocation and septic, you have to go back and say if it's a feasible and prudent have to state why on the record and identify the exhibits in the record that speak to that. So if you were to take the draft resolution and incorporate the existing conditions and the relocation of cul-de-sac 150' to the northwest so it is outside of the upland review area and condition the septic locations outside 100' upland review area.

Mr. Baldwin we would have to dig into the rest of the statements such as on page 4 no feasible would have to rework it to those conditions. Mr. Goeschel said we would just scratch the inapplicable. Chairman Upton just condition based on facts not a feasible alternative.

Mr. Goeschel stated you would eliminate the facts that don't apply. Mr. Baldwin said yes we would have to make some changes.

The Agency discussed having the town attorney and Mr. Goeschel amend and adjust the language on the resolution and come back. Mr. Baldwin asked if the Agency should find the conflicts and refine findings and resolution now. Mr. Goeschel said some of the findings are still valid.

Ms. Berger asked how much these changes would affect the applicants structure as far as the road, is it significant. Mr. Goeschel responded that the Agency asked Mr. Wren on the record if it was possible and he said it was feasible.

Mr. Goeschel if moving 150' there are engineering issues with water main down the center line of the road, stub will be extended to the proposed home. Whether the utilities engineer is comfortable with that he doesn't know. The applicant would have to redesign the plan to accommodate that, while the public hearing is open at Planning. The applicant would have to present the changes to Planning for review.

Mr. Baldwin said this is not an easy fix for the engineer, there is re-engineering to be done. The drainage calculations would need to be redone. This is not a small task. There will be money spent on this to meet the condition if that is what the Agency decides to do. Chairman Upton said hopefully this is offset by the 150' of pavement reduction.

Ms. Berger said she is ok with the condition, but doesn't want to push it through tonight. Chairman Upton agrees. Ms. Berger stated they should put it in and have Gary re-write per condition.

Chairman Upton noted September 17 is the next regular meeting. Ms. Berger asked if there is flexibility in that date, and would the applicant grant additional time. Mr. Goeschel noted that if the applicant doesn't grant additional time it is NOT automatically approved, the application still has to wait for a decision.

Mr. Baldwin said his question is the way this went last time, we had two decisions in front of us to vote on. They are frustrated as commission thought after last meeting. Mr. Goeschel said it is his professional opinion he is interjecting, I don't feel there is substantial evidence in the record. I disagree with the Agency. He is not a voting member.

Attorney Zamarka spoke with Mr. Fusari, he is present, he has agreed to an extension to next regular meeting on September 17, which would give adequate time to follow up on the discussion.

Chairman Upton said this would include making the changes to the Whereas and the conditions they are requesting be imposed. Mr. Baldwin asked Attorney Zamarka if the applicant did not feel there was substantial evidence to support condition, what their recourse is. Attorney Zamarka responded they would file an appeal to the superior court. Mr. Baldwin noted the Intervener would be involved there again, as old case. Mr. Baldwin understood this was a continuation of the 2017 application but it sounds like that application is still in limbo. Attorney

Zamarka said the 2017 application is still pending in the court; it is on the administrative appeals calendar, presumably because of this application. It is the applicant's choice to move it forward.

The Agency discussed the question of moving the cul-de-sac as it was proposed to Mr. Wren and the evidence in the record. While Mr. Wren indicated it was feasible, the Agency was not comfortable saying it was what the applicant or his engineer wanted to do.

Mr. Goeschel began going through his resolution, the Agency removed some findings of fact, eliminating on page 3 the 2nd Whereas and the last Whereas. On page 4, the 4th Whereas would be eliminated, Mr. Goeschel still agreed with that. Chairman Upton agreed to leave it. Last Whereas on page 4 and beginning of page 5. On page 5, remove the second Whereas, and the third Whereas.

On condition #8 correct Agency name.

Add condition 14, that the subsurface sewage disposal systems be located outside the review area.

Add condition 15, the relocation of the cul-de-sac to the northwest, 150' outside the upland review area, substantiated by Ms. Moch's testimony and Mr. Danzer's report, Exhibit U, and clarification of Exhibit DD.

Mr. Baldwin thanked Mr. Goeschel for finding the Whereas that were inconsistent. He agreed to removal of the sections described and then adding the conditions 14 and 15. They need to find evidence in support of moving the septic systems outside of the upland review areas. Ms. Cicchiello noted Exhibit Y.

Mr. Baldwin said he is not wedded to the conditions on the septic systems. Mr. Goeschel noted that in Exhibit Y Mr. Trinkaus discussed septic and rain gardens. Mr. Baldwin felt we should remove this as a condition; Mr. Goeschel doesn't feel there is any information about the impact.

Ms. Cicchiello asked when Mr. Goeschel determines an application needs to come to the Agency. Mr. Goeschel noted he has thresholds he uses for determining what comes before the agency, if there is 100 cubic feet of material being disturbed or within 25' of a wetland, he will refer to the Agency, otherwise it is an administrative approval by the agent. They still need a permit.

Mr. Baldwin agree they should remove that as a condition, which the Agency agreed to, therefore adding only the moving of the cul-de-sac as a condition, with supporting evidence as Exhibits U and DD.

Condition #14, would be to relocate cul-de-sac 150' northwest outside of the upland review area, thereby reducing the required clearing for the proposed driveways on lots 12 and 13.

The Agency discussed a new condition #15 that lots 11, 12 and 13 shares a gravel driveway minimizing the required clearing, supported by exhibits U and DD.

It is a feasible and prudent alternative because would reduce the required clearing in association with the cul-de-sac in the proposed location. Relocation of the proposed cul-de-sac to the northwest 150' outside of the upland review area, access to a shared driveway 11, 12 and 13 thus minimizing direct impacts within the upland review area currently proposed.

Mr. Baldwin requested finding about bifurcation of the two wetland systems. Mr. Goeschel wrote another finding regarding minimizing the impacts to the adjacent wetlands systems that would be inevitable from the bifurcation of the two wetland systems (to the south and north) by the currently proposed cul-de-sac.

Mr. Baldwin spoke about condition #5, the limits of disturbance – is that referencing currently proposed and in condition 14 we are then trying to minimize the limits of disturbance, this is inconsistent. Mr. Goeschel stated that because we are reducing the limit of disturbance, we can add to say the proposed limits of disturbance; or we could renumber and put #5 at the end, stating the limits of disturbance resulting from the conditions. Mr. Goeschel renumbered the conditions on the resolution.

Chairman Upton asked that in condition 9 Mr. Goeschel change may to will; will require commission approval. The agency discussed Mr. Goeschel's purview and what they want to see for permits. The asked that major changes go to the Agency. Mr. Goeschel stated he would report to the Agency on changes, he wouldn't necessarily bring them forward. Chairman Upton said the Agency is trying to consider the sensitivity of the application. Mr. Baldwin doesn't want any change to the plans stuck coming back here, for a small change. Mr. Baldwin is comfortable leaving it as may. Ms. Berger is comfortable with it. Ms. Cicchiello is too.

Attorney Zamarka stated it was his recommendation that they, he and Mr. Goeschel make these changes for review at the next regular meeting. The applicant has consented to an extension to September 17, 2018.

The Agency took a break at 9:08 p.m.
The Agency resumed its meeting at 9:17 p.m.

Todd Bellucci returned to be seated.

VII. New Business

- A. GDEL Residential B, LLC, and Gateway Development/East Lyme, LLC; Application for Construction of 120 residential units including but not limited to road improvements and construction of parking areas at property located at East Society Road, 286 Flanders Road (Map 26.0 Lot 2) and Flanders Road, (Map 31.0, Lot 1).

Scott Rabideau, Professional Wetland Scientist of Natural Resource Services presented on behalf of the applicant. He has been working on the Gateway project since 2008. He was asked to present tonight because the engineer from BL Companies was not able to be present. He will give a brief overview and the applicant assumes this will go to a public hearing.

He presented a graphic of an April 2018 aerial photograph. The vernal pools are mapped, and have been inventoried for five years, with hard data. The project has been reviewed by the US Army Corp of Engineers and was done in accordance with their protocols. A peer review on the locations was performed. The wetlands are designated, some of which are Costco on the other side of the site. The Costco site has a roadway system. East Society Road has a wetland crossing, it has US Army Corp Certification and DEEP permits, and they will be provided at public hearing.

A grading plan was presented. The wetlands are delineated in green; blue is the vernal pool location. There is a 100' offset from every vernal pool, they have respected it in every area of this project, whether interior or exterior of the wetland.

The roadway system has a direct and permanent alteration proposed of 1,925' and temporary of 2,945 sq ft. They have to construct the road laterally into the wetlands during construction; there will be temporarily impact to that area.

The US Army Corp plan was presented. Mr. Baldwin asked what are the temporary impacts associated with the road. Mr. Rabideau responded the road construction and space to construct the road; it is an impact and is temporary.

Chairman Upton observed that the closest open water is the Pattagansett River. It was pointed out on the map; the project is outside of impact to that water body. There is a maintained upland review area outside of that.

There are 4.2 acres of impact area as part of this proposed project. Mr. Rabideau has shown grading, within 20' of the wetland in two locations. This is a very topographically challenged site. The impact areas are in close proximity, will see throughout. It is outside the floodway of Pattagansett River. They will maintain the integrity of the 100' boundary.

Chairman Upton asked about the buildings. Mr. Rabideau responded there are 14 buildings proposed throughout the site, they are scattered and similar to buildings already constructed.

Newt Brainard, Vice President of KGI, stated they are a different product than done on the hill, these are townhomes, 6 and 8 unit groups, manor homes which are 12 unit flats, 4 units per floor, 12 garage units on the ground floor.

Mr. Baldwin asked if they are apartments like the existing buildings. Mr. Brainard responded these will be apartments, yes.

Mr. Baldwin asked where they were in reference to the existing buildings. Mr. Brainard indicated on the map where the existing units were located and the new units would be located.

Chairman Upton asked if this was discussed or applied for as part of the initial application. Mr. Brainard responded that 120 is part of master plan.

Mr. Rabideau stated this is a large project, Attorney Harris is away, and the Engineer is not here, were there any wetlands question he could answer. All of the federal studies have been completed. There are five years worth of vernal pool studies of the area. They are trying to create this green corridor. The preservation of the green corridor will offset preservation of the preservation of wetlands. There is a mitigation plan. 11 acres of land are preserved, 2 acres of upland through conservation easements. There is habitat restoration going on where there are invasive, phragmites, otomolive, Japanese Knotweed, there is an eradication plan and replanting plan for after.

Mr. Bellucci asked if the vernal pools were active. Mr. Rabideau responded that the interior of the larger wetland are very active, another is very shallow and doesn't have a history of staying wet through the lifecycle of the tad poles.

Ms. Berger asked how Costco relates to this. Mr. Rabideau responded that it doesn't, as there are no shared roadways, it doesn't go all the way through. Mr. Brainard indicated on the map where the Costco is and where these units would be. Ms. Cicchiello asked if this is residential. Mr. Goeschel asked where does the road terminate. Mr. Brainard showed him on the map; it is internal to the apartment complex.

Mr. Goeschel stated they are permitting a wetland crossing. Mr. Rabideau noted it on the map.

Chairman Upton asked when we would have public hearing on this matter. Mr. Goeschel responded if there is public interest in the project and the Agency determines there are significant regulated activities, that is justification for a public hearing. Mr. Rabideau stated the applicant acknowledges this is important and a larger project and anticipate public hearing.

Mr. Baldwin said the federal permits should be submitted; Mr. Rabideau noted that the Agency has the plants.

The Agency discussed the Site Walk of September 8, 2018, which they chose to cancel and hold a site walk on September 15, with a Public hearing on September 17, 2018.

Dave Yetton, of KGI said the walk would be good especially with the topography, as it would help the Agency to understand what they are asking for, even for the crossing. He said they are welcome to do on their own time if they want or if you would like company they can do that too. Welcome to walk, there are paths, will help to see the challenge of the land. He felt it would help the Agency in its discussion.

- B.** Town of East Lyme; Application for a Determination of Permitted/Non-Regulated Activity for construction of a rain garden for Oswegatchie Hills Nature Preserve at 10 Memorial Park Dr, East Lyme Assessor's Map 16.2, Lot 43.

Mr. Goeschel stated that the Eastern Connecticut Conservation District, Judy Rondeau, would like to propose a rain garden to address runoff issues in Clark Pond. Because it is in the upland review area and because it is a rain garden, Mr. Goeschel suggested Ms. Rondeau request a determination from the Agency. He read the regulation under Section 4, and noted that while not taking place in a wetland or watercourse, under 4.2 this project is a conservation of soil and vegetation and is an exempt activity, etc.

Chairman Upton asked how the water gets to the rain garden. Mr. Goeschel responded it is just runoff, the runoff from the millings and sheeting will be caught in the rain garden.

Chairman Upton asked about the stockpile and if there was a detention basin?

Mr. Goeschel stated the stockpile is getting relocated; it will overflow to where the stock pile was, in that direction. Chairman Upton asked who is designing this and do we know it is sufficient. Mr. Goeschel responded that Ms. Rondeau has done this, a lot of this and knows what she is doing. Ms. Berger noted their recent newsletter with information from recent projects for Ms. Rondeau. Mr. Goeschel commented that she is currently working behind the baseball field at the high school for a massive rain garden. It is for runoff coming from the ball field which is causing erosion. Ms. Berger did not feel this needed a permit, neither did Mr. Baldwin. Ms. Cicchiello asked if there was a fee for a determination and Mr. Goeschel advised, no, there is not.

Mr. Bellucci asked if there was an erosion issue or sedimentation issue. Mr. Goeschel said yes, it will be reseeded with fescues, and the stockpile will be out of the 100' upland review area. Chairman Upton asked if currently the runoff is going into the pond with the clay material. Mr. Goeschel responded yes.

Phyllis Berger moved that no permit is required for this non-regulated activity. Second by Todd Bellucci. Motion passed 5-0-0.

- C. Town of East Lyme; Application for a Determination of Permitted/Non-Regulated Activity for a proposed pitch pine conservation tree nursery at Oswegatchie Hills Nature Preserve.

The Friends of Oswegatchie Hills are asking for a pitch pine tree nursery. Mr. Decker had discussed this with Gary, it does not include work in the wetland, the effort is to filter the storm water off of Clark Pond, and this is a conservation effort. There will be no other disturbance as a result of this project.

Mr. Baldwin said a bridge was proposed there. Mr. Goeschel responded yes, but it was not built there. Judy Rondeau did an eradication project there with knotweed which was not pursued as a commission member was not comfortable with it. Every year more and more seed is dropping into the watercourse and running downstream. It is getting worse. Clark pond is in a pristine watershed, there are no structures in its drainage basin.

Chairman Upton asked how many trees, and how much land? Mr. Goeschel stated he was unsure.

Mr. Baldwin stated he would like a site plan and more detail; the number of trees and the approximate area. Mr. Goeschel will talk to Mr. Decker and ask him to attend the next meeting. The Agency tabled the matter to request for more information.

- D. Leonard Brian McPartlin, Owner, 132 N Bridebrook Rd; Application for Determination of Permitted/Non-Regulated Activity for construction of a stone wall at property located at 132 N Bridebrook Rd, East Lyme Assessor's Map 14.0, Lot 75.

Mr. Goeschel met with him on site, he has an erosion issue; the stream increases in height at each rain event, his lawn grows right to the edge of watercourse on both sides. There is an existing stone wall and a bridge going over the stream to access his home, the driveway crosses it. He would like to construct a stone wall at that bridge to minimize erosion. The Agency may want to arrange a site walk and view the site.

Mr. Goeschel felt the activity may fall under Section 4, maintenance of residential property.

Chairman Upton asked if there was any backfill behind the wall. Mr. Goeschel said there is some grading behind the wall and they will have to fill it in. They would line the bank with filter fabric and then place stones.

There is a pipe in the existing wall that is a roof leader. Section 4.1 d allows as of right uses incidental to residential property.

Some of this work occurs at the edge of the water, the question is should it be regulated.

Mr. Baldwin wants to look at it. Mr. Goeschel will let the applicant know we will site walk it. Chairman Upton asked if under Section 4.1 d does it have to be applied for?

Mr. Goeschel stated the commission must determine that no permit is required, not Mr. Goeschel, not the owner, must come before Agency.

Mr. Goeschel stated there was a similar application on Gurley Road by Quinn. The bank was eroding and he was losing his yard, he applied for a permit to do corrective action, it was stone, not really wall, and flat stones to keep soil from eroding, boulders in stream bed.

The Agency tabled the matter until after the site walk next month.

VIII. Old Business

IX. Reports

A. Chairman's Report – no report.

B. Inland Wetlands Agent Report

1. Administrative Permits Issued - None

2. Commission Issued Permits - None

C. Enforcement

1. **Cease, Desist and Restore Order; 13 Green Valley Lakes Rd; Thomas & Kristen Chantrell, Owner;** Installation of a dock which encroaches approximately 20-feet into a watercourse located on an abutting property and the clearing, grading, removal and deposition of material on the land within 100 feet of a watercourse without an Inland Wetlands Permit. (Agreement to remove by August 31, 2018).

2. **Cease, Desist and Restore Order, Roxbury Road;** for the clearing, grading, removal and deposition of material on land within 100-feet of a wetlands and watercourse at the above referenced address without any permit under the East Lyme Inland Wetlands and Watercourses Regulations authorizing the regulated activities on property located on the southwest side of Roxbury Road across from the entrance of the Town's Municipal Transfer Station, Assessor's Map 16.1, Lot 43, Niantic, Connecticut.

Mr. Weiss has received the Cease & Desist order, as the green card was received the day after the Show Cause hearing. Mr. Goeschel is still waiting on the stamped and signed plan. Mr. Weiss hasn't responded to the order or the notices, the Agency may do what wish with it.

The next step is to find out where Mr. Weiss is at with it, Mr. Goeschel can call him, the Agency can have council pursue an injunction or issue fines. They can fine up to \$1000.00 per infraction for a maximum of \$3000.00. Ms. Berger noted there is no equipment there now and is this for filling? Mr. Goeschel responded yes this is for filling and clearing.

The agency discussed injunctions and fines. Mr. Baldwin felt that an injunction would be in order. Mr. Goeschel stated they can do both. Ms. Cicchiello stated she wouldn't fine him. Mr. Goeschel said the court may fine him.

Chairman Upton stated Mr. Weiss clear cut and then started digging out the dirt. We cannot trespass on private property, can only go by what is seen from road, overhead, or from a neighboring property. Once the wetlands application is signed you may enter during regular hours.

Mr. Goeschel stated the enforcement order is to get him in front of the Agency, but he isn't taking advantage of that. He hasn't contacted Mr. Goeschel.

Mr. Weiss can dispute the fine; he doesn't have to appear before the Agency. It's been a while since we did this, only done it once since ordinance enacted.

The fine is paid to town treasurer and put in the general fund. Fines shall be in accordance with schedule. However, if he pays it, he's still in violation.

Mr. Goeschel reviewed the procedure for the hearing and fines.

Ann Cicchiello moved to fine the owner of the property (Mr. Weiss) for regulated activity conducted in a regulated area without a permit \$500.00. Phyllis Berger second. Motion passed 3-2-0.

The agency reviewed the plan that was submitted by Mr. Weiss and discussed the fact that it wasn't stamped by a surveyor or engineer. Ms. Berger asked if the town had anything on record. Chairman Upton stated there is no application for wetland permitting. Mr. Goeschel stated the building application has not been approved by the wetlands, zoning or building officials.

D. Correspondence

X. **Adjournment**

Ann Cicchiello moved to adjourn the East Lyme Inland Wetlands Agency meeting at 10:25 p.m. Phyllis Berger second. Motion passed 5-0-0.

Respectfully Submitted

Jennifer Lindo Dashnaw
Recording Secretary

****These minutes are subject to approval at the next monthly meeting**