

**EAST LYME INLAND WETLANDS AGENCY
REGULAR MEETING MINUTES
June 8, 2020
Remote Participation by ZOOM due to Covid 19
7:00 p.m.**

Present: Gary Upton, Phyllis Berger, Rosemary Ostfeld, Theodore Koch, Kristin Chantrell, David Schmitt, Doreen Rhein, Alt., Jason Deeble, Alt

Absent: Don Phimister, Sandy Gignac alt.

Also Present: Gary Goeschel, Director of Planning/Inland Wetlands Agent, Jennifer Lindo, Administrative Assistant, Mark S. Zamarka, Town Attorney

Call to Order:

G. Upton called the meeting to order at 7:07. He explained the rules for participation in the remote ZOOM meeting. The materials for the applications are on the town's website.

I. ADDITIONS TO THE AGENDA-none

Attorney Paul Gerahty, representing Nottingham Hills Re-subdivision stated that Town Attorney Zamarka and any attorneys from the law firm Waller Smith and Palmer cannot partake in any conversations or deliberations involving his client or anyone he represents due to a federal consent decree. Attorney Zamarka stated he was not aware of the specifics, but is aware of the existence of an agreement, although it was before his time. He stated that he is not attending the meeting to participate in discussion of issues that are represented by Attorney Gerahty; he will be muted and video turned off during the Nottingham Hills application.

FILED

II. PUBLIC HEARINGS-none

III. PUBLIC DELEGATIONS-none

June 15, 2020 AT 3:55 AM/PM
Brooke Strom ATC
EAST LYME TOWN CLERK

IV. ACCEPTANCE OF MINUTES:

Meeting Minutes of May 18, 2020 Special Meeting

MOTION (Schmitt/Ostfeld) To approve the minutes of May 18, 2020 Special Meeting as presented. Vote: Approved Unanimously.

(D. Rhein is seated for D. Phimister)

V. EX-OFFICIO REPORT-none

VI. PENDING APPLICATIONS:

A. Inland Wetlands Regulations: Changes to regulations and updates

G. Goeschel stated that the Public Hearing for the regulation changes cannot be held on June 8 due to the timing of notifications.

MOTION: (Upton/Ostfeld) to rescind the previous date of June 8, 2020 that was previously set for the Public Hearing to change regulations. Vote: Approved Unanimously.

MOTION: (Upton/Berger) to reschedule the Public Hearing on July 13, 2020. Vote: Approved Unanimously.

B. Nottingham Hills Re-subdivision; Request of Kristen T. Clarke, P.E. Agent for Owner English Harbor Asset Management, LLC for a Determination of Permitted/Non-Regulated Activity at Upper Kensington Drive, as part of a 4-lot re-subdivision. East Lyme Assessor's Map 40.0, Lot 23 and 22.

(Attorney Zamarka recused himself from the application discussion)

Attorney Gerahty stated there was a memo submitted from K. Clarke, P.E., who is a member of English Harbor Asset Management LLC, addressing some of the questions the members had at the last meeting. He reminded the agency that they are looking for a determination of no jurisdiction of the agency.

Gerahty explained the reserve septic system which is the closest activity to the wetlands is not to be built, but is reserved. The design is an advanced technology system (GST) which allows for a smaller design. It will be much smaller and farther away from the regulated area. He stated it is a more sophisticated system and is pitched away from the wetlands. In response to a comment made on the site walk, he stated the rain garden will not be a mosquito breeding ground as the rain garden is not at the lowest point of the slope and will not puddle, therefore creating a breeding ground for mosquitos.

Gerahty stated that due to new regulations the sub-division can now have one driveway as opposed to the two that were originally proposed, therefore reducing the amount of impervious surfaces. He also stated that in addition to the usual E & S controls there will also be staked hay bales as an additional wetlands buffer.

The GST septic system design reduces the leaching fields on all lots by 50% and a note will be added to the final site plans that all the lots in the application will utilize the GST septic system. There is no activity proposed in a protected or endangered species areas according to the NDDDB and the tree canopy has not changed or been altered by the proposed application.

Attorney Gerahty stated the applicant has demonstrated the agency has no jurisdiction as there is no proposed activity in a regulated area. In order to call a public hearing, the agency would have to have expert testimony proving there is, "significant activity." He stated that the Planning Commission will have a public hearing as the application is a re-subdivision.

G. Goeschel stated that according to the plan submitted there is no activity proposed in the regulated area and all activity is outside the 100' upland review area. He stated the town engineer and Ledge Light Health District will be reviewing the application.

Attorney Gerahty stated previously there was a wetlands public hearing for the original lots.

The agency asked who would be maintaining the rain garden and how are the wetlands going to be protected during construction. Attorney Gerahty stated there should not be any maintenance for the rain garden and any rights and obligations of the property owners will be clearly drafted and put into the deeds. He stated the wetlands would be marked off during construction and the access for construction purposes will be the proposed driveway.

MOTION: (Schmitt /Koch) there is no need for the agency to require a permit because it is not in its jurisdiction given all the information provided in the application. Vote: Approved Unanimously.

- C. **21 Marshfield Rd, Your Brothers Keeper LLC, Agent for Owner Brandy and Derek Moore, for Determination of a Permitted/Non-Regulated Activity at 21 Marshfield Road, for the clean out of a culvert entrance and exit to maintain the natural flow of water. East Lyme Assessor's Map 04.7, Lot 19.**
- D. **Creek Road, Giants Neck Heights Club House, your Brothers Keeper LLC, Agent for Owner Giants Neck Heights Association, for Determination of a Permitted/Non-Regulated Activity at 21 Marshfield Road, for the clean out of a culvert entrance and exit to maintain the natural flow of water. East Lyme Assessor's Map 04.7, Lot 18.**

(Items C & D were combined for discussion purposes.)

G. Upton provide photos and gave the history provided at the previous meeting.

G. Goeschel stated the applicants may need a DEEP permit and zoning may require a CAM (Coastal Area Management) review/permit. The question of when the pipe was installed could not be definitely determined.

MOTION: (Upton/Ostfeld) The applicants from 21 Marshfield Rd. and Creek Road need to make an application for a permit to the East Lyme Inland Wetlands Agency for the proposed activity. The applicant only needs to submit one application with the two properties listed. Vote: Approved Unanimously.

VII. NEW BUSINESS-none

VIII. OLD BUSINESS-none

IX. REPORTS

A. Chairman's Report

G. Upton shared photos of property along a boat ramp taken during the site walk for 21 Marshfield Rd. He stated there was significant amount of fill. It was determined the property was owned by the railroad. G. Goeschel stated that he had also noticed the fill and has forwarded the issue to B. Mulholland for investigation.

G. Upton had photos of a building (285 Boston Post Rd) which was taken as part of a site walk on 297 Boston Post Rd. He does not remember the agency approving a building that large. G. Goeschel will investigate the as built submitted.

MOTION: (Upton/Ostfeld) to take a 2-5-minute break. The agency went into the break at 9:05 and came back at 9:13. Vote: Approved Unanimously

B. Inland Wetlands Agent Report-

G. Goeschel approved a deck extension in the URA at 21 Fairhaven Rd. and a shed at 16 Egret Rd in the URA.

C. Enforcement

Notice of Violation; 297 Boston Post Road; Al Smith Owner, Jason Pazzaglia, Other; Outside storage of equipment, construction materials, and the stockpiling of earthen materials including but not limited to yard debris within 100 feet of a watercourse without or in violation of an Inland Wetlands Permit.

The members were surprised there were still so many vehicles and equipment on the site. They stated the issue has been before the agency for over a year and wanted to know what other steps can be taken to force the owner to clean up the site. The question of how many vehicles are registered came up.

MOTION: (Upton/Schmitt) to issue a Cease and Desist for the violation at 297 Boston Post Rd and ceasing and desisting any activity that is not permitted. Vote: Approved Unanimously.

D. Correspondence

G. Upton read the letter from the First Selectman which is posted on the town's website as well as his response. K. Chantel's letter is also posted on the website. G. Upton informed the members that he and the First Selectman had a phone conversation in the morning.

X. ADJOURNMENT

MOTION: (Schmitt/Ostfeld) to adjourn at 9:45. Vote: Approved Unanimously.

Respectfully Submitted

**Sue Spang
Recording Secretary**