

**EAST LYME INLAND WETLANDS AGENCY
REGULAR MEETING MINUTES
September 13, 2021
7:00 p.m.
East Lyme Town Hall, Main Meeting Room**

Members Present:

Kristen Chantrell, Vice Chairman
Phyllis Berger
Jason Deeble
Doreen Rhein
Don Phimister

FILED

Sept 20, 20 21 AT 11:05 AM/PM
Brooke Stewart ATC
EAST LYME TOWN CLERK

Absent:

David Schmitt
Gary Upton, Chairman
Paul Daigle, Ex-Officio

Also Present:

Gary Goeschel, Director of Planning/Inland Wetlands Agent
Howard Hale for Habitat for Humanity
Paul Geraghty, Esq., Cold Spring Lot Management

Call to Order:

Vice Chairman Kristen Chantrell called the Inland Wetlands Agency meeting of September 13, 2021, to order at 7:00 p.m.

I. **Pledge of Allegiance:** Observed

II. **Additions to the Agenda:**

Motion to add to New Business Discussion with Art Carlson, by Kristen Chantrell, second by Doreen Rhein. Motion passed 5-0-0.

III. **Public Delegations -**

Evan Cooper, of 2 Gurley Road stated that he had moved to town in 2008, and that he has 3 houses in town. He provided photographs and said that during the most recent storm his property at 2 Gurley Road suffered damage from the stream behind his house. The stream runs between East Lyme and Waterford. He stated the flooding blew out the pond at the back of his property and caused significant erosion, exposing some pipes. He has put together a sort of band aid for the moment, however, is looking for a more permanent solution to keep the water in the stream. Mr. Goeschel did visit the site and observed some erosion of the bank where the stream was previously fortified by the prior owner. He expressed concern about performing the work at the lowest flow, which would be ending soon. He indicated that Mr. Cooper should go through the permit process which could take several months and would

allow work to be completed in the spring. Several options were discussed, with the recommendation from Mr. Goeschel to make application and get the work scheduled.

Lindsay Rush, 15 Grassy Hill Road, stated that she is concerned about some backhoe activity on a stream that is adjacent to her property. That parcel is 52.0 lot 3 on the town maps. As she understands it, the Inland Wetlands Agency review covers 300' from wetlands or streams and this activity was less, more like 150'. She understands the backhoe was grubbing to clear plant material for a road to be used for perk testing prior to selling the property. She noted that she did not see that perk testing is exempt from Inland Wetland regulations. Vice Chairman Chantrell explained that the regulated area is 300', and that while that is being contested, that is our current regulation.

Mr. Goeschel indicated that the landowner did apply for a permit for the grubbing and the perk testing, subsequent to the work being completed. The application did result in a permit being issued. These are exploratory test pits. Ms. Rush stated she is a biologist by training, and asked which activities were allowed in a waterway. Mr. Goeschel explained the regulations and the jurisdiction of the agency and the agent, as well as which applications are reviewed by himself as the Agent or by the Agency. He further stated that a public hearing would require a sign posted on the property and legal ads be run, and information can be found on Agenda's which are posted on the town website. Ms. Rush thanked the agency for the explanation and will keep an eye on the minutes.

- IV. **Public Hearings:** Application of the East Lyme Inland Wetlands Agency to amend the East Lyme Inland Wetlands and Watercourses Regulations to add Section 9.3 Requiring the posting of a sign for applications requiring a public hearing.

Vice Chairman Chantrell explained the purpose of the regulation, to erect a sign notifying passersby of any proposed activity and the public hearing date for any hearings to occur on applications before this Agency. Mr. Goeschel read the proposed regulation. Vice Chairman Chantrell asked for discussion or comment, there was none.

Motion to accept the amendment to the East Lyme Inland Wetlands Agency to amend the East Lyme Inland Wetlands and Watercourses Regulations to add Section 9.3 Requiring the posting of a sign for applications requiring a public hearing, by Doreen Rhein, Second by Don Phimister. Motion passed 5-0-0.

Motion for the recently approved text amendment to the East Lyme Inland Wetlands and Watercourses Regulation to add Section 9.3 go into effect October 1, 2021, by Doreen Rhein, Second by Jason Deeble. Motion passed 5-0-0.

V. Acceptance of Minutes –

The site walk minutes of August 7, 2021 were presented.

Motion to accept the minutes of the East Lyme Inland Wetlands Agency Site Walk Minutes of August 7, 2021 as presented by Phyllis Berger, Second by Doreen Rhein. Motion passed 5-0-0.

The regular minutes of August 9 2021 were presented.

Motion to accept the minutes of the East Lyme Inland Wetlands Agency Regular Meeting of August 9, 2021, as presented by Jason Deeble, Second by Phyllis Berger. Motion passed 5-0-0.

VI. Ex-Officio Report –None.

VII. New Business –

- A. Application of Kristen Clarke, PE, for Cold Spring Lot Management, LLC/John Drabik, Owner for Nottingham Hills Subdivision Phase 5, Prepared for Kristen T. Clarke, P.E., English Harbor Asset Management, LLC for an 8-lot subdivision of property at 121 Upper Pattagansett Road, East Lyme Assessor's Map 35.0 Lot 44.

Attorney Paul Geraghty is here representing the applicant. He handed out an overview of what is occurring, then JP Mereen, P.E., will go over what is being proposed. This property is the girl scout camp, Attorney Geraghty stated he represents English Harbor Asset Management, LLC who is the contract purchaser. Their original proposal was 11 lots under Mr. Drabik, they have reduced the number to 9 and changed the location of some lots and other items under their proposal. Specifically, the biofilter was moved to above the wetlands rather than in the wetlands. There are two wetlands on the property, there is activity proposed within the 300' upland review area but not in the wetlands themselves.

The outline that JP Mereen, P.E., is going to go through is in the packet. From their perspective they are Improving the site, because the water sheet flows off, travels down the old road and into the culvert and then into the lake, now it will be trapped and mitigated, they are reducing the flow by 25%. The town did address some of the water runoff from Upper Pattagansett Rd.

Attorney Geraghty stated under the review standard because there is no activity in wetlands and will improve site and reduce runoff into the lake and filter runoff before going into the lake, they are hoping to avoid a public hearing.

JP Mereen, P.E., presented the site plan to the Agency members. He identified the existing conditions, noting that the wetlands are higher than the areas being disturbed. The proposed lot layout was demonstrated. There are four curb cuts, in addition to the existing one. The area is broken down into two drainage areas, Area B

– which is where the engineer determined was the best place for the biofilter, which would detain and clean runoff before letting it out toward the wetlands, and before the lake. The biofilter was identified by location on the map, indicating also where the rain gardens will go for the roof runoff. Attorney Geraghty stated the purpose behind the shared drive is to reduce runoff and using the rain gardens to direct runoff from the roofs. From their perspective they don't need public hearing, as there is no significant activity in the wetlands, the other wetlands are on the opposite side of the ridge.

There is no activity in the beach area, that area will remain as is, and the properties will have rights to the lake but there is no development on the lake.

Vice Chairman Chantrell asked if this was Phase 5, which phase was after this, regarding location. Attorney Geraghty identified other phases on the map, but he doubts there is any other land, so this probably is the last phase. In response to a question from Vice Chairman Chantrell, Attorney Geraghty stated the large piece would not be likely to be subdivided again, as there is a lot of ledge on the parcel and it is very steep, so they want to leave it open. They have discussed with Zoning Official William Mulholland keeping it as a camp at this time, but any further subdivision is cost prohibitive due to blasting the ledge, but any additional subdivision would come back before this agency.

Phyllis Berger stated there are 9 lots but only 8 houses proposed, 60 acres remains undeveloped. Will the lots be stripped of trees, is the plan to eliminate the trees, so the houses will pay for views of the lake? JP Mereen, P.E., indicated the plan shows the proposed limits of clearing. The areas shown, houses and driveways are proposed, the limits of clearing are usually staked by the developer or contractor. Jason Deeble noted that it may be beyond the purview of what we are doing here as to the limits of clearing. Attorney Geraghty noted they are not the builder. We have approvals and plans but whatever happens with the builder is after us. He is not sure what limits will be placed on the lots after approval. The town would enforce that.

Phyllis Berger asked about the biofilter. Unfortunately, Tim May, the Engineer, wasn't available this evening, and he should explain how it works. The rain gardens will handle some of the water. The bulk of water is going into the wetlands, the idea is it will be channeled to the biofilter to slow water down and gives water chance to settle, leaving the water coming down to be cleaned a little before discharged to wetlands and then the lake. There will be some vegetation there as well, which should be in the report.

Vice Chairman Chantrell stated that with the rocks there, there is an issue with stormwater flow, off the site and if they are adding impervious surface, so we want to make sure additional stormwater controls in place. Attorney Geraghty noted that the Town constructed a swale, their stormwater control is designed to trap water on site, so the silt settles then water flows out to wetlands. All ends up in the same pipe under Upper Pattagansett, but what the developer propose is cleaner than what is happening now. JP Mereen, P.E. stated this this will slow down the water, so it has time to settle. In response to Phyllis Berger, JP Mereen, P.E., noted that these lots are

based on a 300' upland review area, and if decreased to 100' it is marked on the map, would only be the driveway in the upland review area. The lot layout would remain the same with the same number of lots. JP Mereen, P.E., stated that the topography prevents the development where the ledge is located. Phyllis Berger noted that the houses are based on 4 bedrooms, Attorney Geraghty stated yes, they are based on the maximum of 4 bedrooms, maximum allowed. The properties are served by septic, there is no sewer available.

Attorney Geraghty noted that the maintenance of the biofilter is the responsibility of the developer who is retaining title to that lot. Jason Deeble noted that if this goes forward, the developer can provide a guide on how to maintain the rain gardens and suggestions on maintaining the biofilter. Attorney Geraghty did not see this as a problem and mentioned it was discussed on the site walk.

Mr. Goeschel reviewed the timeline for going forward with a public hearing or no public hearing, noting that a special meeting will be required due to the statutory time limits. It was noted that the Town Engineer had not yet reviewed the plan and provided staff review. The agency members expressed concern about the clearing along the road, and potential runoff into the lake since we haven't seen the engineering review.

Motion to forward the application of Kristen Clarke, PE, for Cold Spring Lot Management, LLC/John Drabik, Owner for Nottingham Hills Subdivision Phase 5, Prepared for Kristen T. Clarke, P.E., English Harbor Asset Management, LLC for an 8-lot subdivision of property at 121 Upper Pattagansett Road, East Lyme Assessor's Map 35.0 Lot 44 to a public hearing by Jason Deeble, Second by Phyllis Berger. Motion passed 4-0-1, Don Phimister abstention.

The agency members discussed holding a special meeting on Monday, October 4, 2021, however the engineer is also town counsel in Montville, so Attorney Geraghty noted that Mr. May may not be available. He will check his availability and let Gary know and provide an extension if necessary.

Motion for a Special Meeting to hold a Public Hearing on October 4, 2021, for the application of Kristen Clarke, PE, for Cold Spring Lot Management, LLC/John Drabik, Owner for Nottingham Hills Subdivision Phase 5, Prepared for Kristen T. Clarke, P.E., English Harbor Asset Management, LLC for an 8-lot subdivision of property at 121 Upper Pattagansett Road, East Lyme Assessor's Map 35.0 Lot 44 by Doreen Rhein, Second Phyllis Berger. Motion passed 5-0-0.

B. Art Carlson presentation as the Chairman of the East Lyme Conservation of Natural Resources Commission and as a member of the East Lyme Land Trust.

He stated he would like to advise the Agency about the Hathaway Farm Project, as they are hopeful that the Town is going to fund part of the project. He mentioned the POCD and the Open Space Plan. They developed a list of 65 parcels that were worthy of preservation. To see if these parcels were worthy of Open Space preservation they developed criteria for the attributes of Open Space, which has been adopted by the

authors of the POCD. Drinking water quality and quantity is the most important attribute to preservation as well as public access to water. There are no parcels left around the ocean or lakes. The third is soil type – there are 90 soil types in East Lyme, active and passive recreation, forest blocks and greenways, unique geological features, cultural and historical (preserve the land and buildings – Samuel Smith House), biodiversity.

The Hathaway Farm project became the number one priority using this criterion. He demonstrated the four main watersheds in Town. We get our public water from the Pattagansett and the Bride Lake. People along Latimer's get their water from Latimer and Cranberry and Darrow Pond. A future water source could be the Four Mile River. He then showed a large map of the area, to demonstrate what the property looked like.

Unique features:

- directly over major aquifer that feeds the wells in Pattagansett watershed
- over 3000' of direct shoreline
- a ten-acre freshwater marsh – necessary for migration birds (DEEP)
- 2:1 POCD people want more Open Space

For years DEEP has provided 60-65% of book value for open space, it's not a guess, we paid \$11,000.00 for two yellow book surveys -they beat down the price to make sure its true, asking price was \$1.6 million roughly, 60% is about \$1.1 million of the 42 proposals submitted for the grant we were ranked close to the top. Then 3 weeks before the funds were awarded, they got a letter that they changed the rules, the maximum we could get was \$400,000.00, which is about 22% of what we asked. That's a crisis because we must close on it quick. That is where the town comes in, as there is a small budget but will be asking for more. For the grant, we must prove to DEEP that town can close on this property.

If we bond \$at 1 million at 2% for 20 years each taxpayer would pay about \$5 a year for 20 years. One of the comments heard is about taking money off the tax rolls. Economic study done, called the Cost of community services study. In towns our size in Connecticut on average for every \$1 taxpayer pays in taxes, they get bac k \$1.15 in services. It is not true that if you put land in open space its going to increase taxes.

This parcel is vital to our town water supply. In the watershed we have 1800 acres of Yale so far, that is open. The East Lyme Land Trust has 35 acres we hold papers on, which becomes a 250-acre block if we get this block. We are essentially building a reservoir system. We are doing this now because we are playing catch up. The forest is very mature, only 10% of forests in CT have this age of tress, the parcel hasn't been logged in over 100 years, this is educational as well.

If we don't get it, DEEP takes back the funds, we lose our place in rank and the parcel won't sit there very long. We don't need more structures, buildings, impervious surfaces in our public water supply. What he is asking from Wetlands, Park & Rec, and Finance, is to write to the selectman to call out that the property be preserved.

Gary Goeschel assisted in answering questions from the agency, showing the property on the map, and identifying the location of the Aquifer. The parcel is 120 acres, which would create a forest block of 250 acres. The watershed would be pretty much virgin because there are not many houses.

Art Carlson explained this would have to go to a referendum for the Town to purchase the property. He is just looking for letter of support.

Motion for Gary Goeschel, Inland Wetland Agent, to draft letter to the Board of Selectman in support of the purchase of the Hathaway Parcel, by Jason Deeble, Second by Phyllis Berger. Motion passed 5-0-0.

VIII. Pending Applications –

Application of Howard W Hale, Applicant/Habitat for Humanity, owner, to conduct regulated activities, including but not limited to construction of two new proposed single-family dwellings and associated appurtenances at property identified in the application as 99, 101 and 103 S Beechwood Road, East Lyme Assessor's Map 07.14 Lots 43, 42 and 41.

Vice Chairman Chantrell noted that the public hearing was closed, and they had requested Mr. Goeschel draft a motion for approval or denial. A listing of the findings is included in his memo.

Doreen Rhein asked what happened in this wetland in this last storm. Mr. Goeschel stated he did not visit the site and would have to defer to applicant. Jason Deeble stated he had canvassed town and ran into some homeowners who were very upset because their home had taken over 5' of water and were disposing of personal items in dumpsters. They blamed the pipe, he looked at it, pipe was huge. If make this pipe any larger, would be a mound for people to drive over. He asked what our task is as a commission and noted that the person said the house should not have been permitted to be built here. He has been thinking of this all along.

Phyllis Berger said that it is in the minutes, that one the neighbors said the water does pool after a rain, so where does water go with driveways, two houses, etc. Vice Chairman Chantrell noted that the stormwater design is for a 10-year storm event, that will cause downstream flooding. Would the town be liable for flooding downstream? Gary Goeschel stated he doesn't believe the town is responsible. The runoff would increase by close to 50%. Jason Deeble felt to build on this would be to destroy part of the wetland, it may be better, to create an environment where there is no standing water, mosquitos, etc. If we say yes and give permission for builder to damage waterway, it is a low-quality wetland, changing it may be improved. Anything beyond that, downstream, we can't always go that direction with our thinking, 10-year, 40 year, 50 storms are going to happen. We must think of quality there now and what will be if construction goes forward.

In response to Phyllis Berger, Gary Goeschel noted the last two findings of his memo – include an E&S bond \$10,000.00 and that there are no other prudent and feasible alternatives yielding in 2 single family dwellings; could say one single family dwelling.

Gary Goeschel also reminded the agency that right now there are 3-lots of record, and they could come in with 3 permits now, without any changes. He reviewed the public hearing timeline should the commission choose to go that route. Phyllis Berger stated the E&S bond is only good while under construction, that a year later could have all this water and could flood basements, etc. The agency discussed lower functioning wetlands and what is the actual function. It may not be the wetland environment but the filtration. May be less than nearby wetlands but it still has a function.

The Agency then discussed prudent and feasible alternatives, the option to deny the application and the applicant return with something else. Gary Goeschel reminded the agency of the 16 Brightwater application that was denied 3 times and was appealed, it was turned over in court and remanded back to the agency and a permit had to be issued. Section 10 of the regulations was reviewed. Induced growth was also discussed.

Motion to continue discussion at the October 4, 2021, special meeting, by Phyllis Berger, second by Kristen Chantrell. Motion passed 4-0-1, Doreen Rhein abstained.

IX. Old Business - None

X. Reports

- a. Chairman's Report – no report.
- b. Inland Wetlands Agent Report
 - i. Administrative Permits Issued – Gary Goeschel stated he had no report as there were no permits issued since last meeting but has 3 on his desk; has a budget of \$16,000 for help, and he is trying to determine how to best utilize that funding.
 - ii. Commission Issued Permits - none
- c. Enforcement – Doreen Rhein asked if there were fines for permits after the fact. Gary Goeschel stated we can fine offenders. Discussion followed about the Grassy Hill Road property. Gary Goeschel stated that the Town doesn't normally require a permit for perc testing, some neighboring communities do, so he felt it was appropriate to ask them to, and they applied. Discussion followed about the Holmes Road/Grassy Hill property. The application is before zoning for a zone change, that is where the soil testing is occurring. Vice Chairman Chantrell stated we didn't fine them because they were asked to apply for a permit, and they did. Robert Barbero is the only one we have fined, because he was doing work differently than permit allowed.
Phyllis Berger mentioned the Weiss property on Roxbury we issued a permit for a 5-lot subdivision, it is going before Planning tomorrow night; the stockpile he was asked to identify on the site plan is not in the 100' upland review area. The back side of the pile has vegetation making it stable.

Whitegate Farm was briefly discussed and the taking of water from Pattagansett Lake. Gary Goeschel mentioned that it is a significant amount, and it is in DEEP's hands as it is an exempt activity requiring a permit from the state
- d. Correspondence – None

Adjournment

Motion to adjourn at 9:12 p.m. by Phyllis Berger, Second by Vice Chairman Chantrell, Motion passed 5-0-0.

Respectfully Submitted

Jennifer Lindo
Acting Recording Secretary

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