

Town of

P.O. Drawer 519

**Department of Planning &
Inland Wetlands**

*Gary A. Goeschel II, Director of Planning /
Inland Wetlands Agent*



East Lyme

108 Pennsylvania Ave
Niantic, Connecticut 06357

Phone: (860) 691-4114

Fax: (860) 860-691-0351

MEMORANDUM

To: East Lyme Inland Wetlands & Watercourses Agency

From: Gary A. Goeschel II, Director of Planning/ Inland Wetlands Agent

Date: February 26, 2025

Re: 23 Calkins Road, Boston Post Road, & Quarry Dock Road; Oswegatchie Hills, Landmark Development, LLC and Jarvis of Cheshire, LLC - Farming Operation

At the Agency's January 7, 2025 meeting, the Agency directed me to issue Landmark Development and Jarvis of Cheshire, LLC a Cease & Desist Order (C&D), primarily based on the presentation of information by Mr. Don Danilla during Public Delegations, for the clearing of vegetation of an area greater than 5-acres within 300-feet of an inland wetland or watercourse and thereby violating an issued Exemption. In addition, Mr. Danilla requested a You Tube video be played for the Agency which may be viewed by visiting: <https://youtu.be/cFN5vXEfdU8>. In addition, at a previous meeting in 2024, I believe the Agency also viewed the subject properties on the Town's GIS using Google Satellite Areal imagery which also shows the cleared area.

As part of standard operating procedures, I conduct due diligence before issuing any C&D Order, Agency directed or not. In performing my due diligence for this particular matter, I've reviewed the file, the Application for Determination of Permitted/Non Regulated Activity, the applicant's supporting documentation, and the meeting minutes (all attached). Upon my review of these documents, it is my opinion that Landmark Development, LLC and Jarvis of Cheshire, LLC are not in violation of the Inland Wetlands and Watercourses Regulations, or the Exemption issued by the Agency for the following reasons:

1. The minutes are clear the Attorney Dubicki, stated they "never intended to limit the acreage." He stated they would start with "5-acres and go from there depending on how it goes."
2. The plans submitted indicate that the proposed area of clearing was occurring over large swaths of land (virtually the length of the property).
3. The Agency does not have substantive proof stumping has or is occurring on the site.

4. In regards to evidence for the clearing cutting for its initially stated purpose, a tree farm, there was no discussion in the minutes or conditions placed on the exemption by the Agency that required the activity be conducted within a specified amount of time being agricultural is an "As-for-Right" use in the zone and the Agency found the proposed activities to be directly related to the proposed farming operation and thus, rendered an Exemption. I believe the very clear-cutting activity that is being conducted is the very evidence by the land owner they are conducting a farming operation as they have not applied to change the use and they have applied for and were issued building and zoning permits to construct two barns on the property for the farming operation. As such, it appears the clearcutting is the beginning of the farming operation they intend to undertake on the property. Therefore, without any time restrictions or limitations to the Exemption, it is my opinion the clearing could continue indefinitely or until there are no more trees to clear.
5. The applicant's narrative states that the tree farm is approximately 230-acres and they are proposing to "selectively harvest the native hardwoods on various sections of the property and plant in their place." As noted at the Sept. 11, 2017 IWA meeting, the minutes record the applicant addressing a possible phasing of the cutting operation "we are looking at about 5 acres and depending on how it goes they will expand to more areas. . . . never any intention of limiting it to a specific amount of acres." Together, it appears that the applicant proposed selective harvesting and replanting on the entire farm area, about 230 acres. The IWA determined that this was an as of right farming operation and exempt from wetlands permitting requirements. It also appears that the applicant then acted in reliance on this determination by seeking permits from other Town departments to build barns etc. to support the operation. While the barns may not have been constructed yet, the additional permitting efforts would have incurred some costs for the applicant which, they have additionally acted in reliance on the exemption determination by beginning the cutting.
6. The IWA did not attempt to place an expiration date or limited time period on the exemption determination. It would not make sense that the Agency could do so because in making that determination the IWA is determining that the activity is a nonregulated activity or, put another way, outside its jurisdiction.

Therefore, based on the above, I have no basis to issue a C&D as directed by the IWA for "clearing of vegetation of an area greater than 5-acres within 300-feet of an inland wetland or watercourse." If the Town did so, I would expect and anticipate the property owner to file an appeal and raise a municipal estoppel defense to the C&D. In brief, municipal estoppel prevents situations where a Town might tell a property owner they can do X, the property owner starts doing X or otherwise acts in reliance on that ruling, and then the Town turns around and claims that X is a violation.

If through inspection and additional investigation, I discover additional information about the ongoing activities at the property, it may change the situation. For example, it is very difficult to distinguish between rocks and stumps in the video but, there do not appear to be piles of stumps on the property in the same way that there are visible piles of logs. That said, without a site inspection it is difficult to obtain such information given the relative seclusion of the property. As

such, I have reached out to the land owner to request an inspection of the site to verify compliance with the issued determination. In the interim, I have been performing the necessary due diligence and consultation with the Town Attorney's Office to ensure everything is in order, review the facts, and determine whether the issuance of a Cease and Desist order is appropriate and defensible under these circumstance.



APPLICATION FOR DETERMINATION OF PERMITTED/NON-REGULATED ACTIVITY

1. SITE LOCATION (Street) and Description: 23 Calkins Rd Boston Post Rd and Quarry Rock Rd
Assessor's Map 32 0 31 0 and 27 0 Lot # 32 0 / 1 31 0 / 4 and 27 0 / 14

Note: It is the applicant's responsibility to provide the correct site address, map/lot number for the legal notice. Provide a description of the land in sufficient detail to allow identification of the inland wetlands and watercourses, the areas (in acres or square feet) of wetlands and watercourses to be disturbed, soil types, and wetland vegetation.

2. APPLICANT: Doug Dubitsky
Address: P O Box 70 North Windham, CT 06256
Business: Same as above
Phone: 860-808-8601
Fax: 866-477-1120
Cell:
Email: doug@lawyer.com
Applicant's interest in the land: Agent for the land owners

If the applicant is a Limited Liability Corporation or a Corporation provide the managing member's or responsible corporate officer's name, address, and telephone number.

3. OWNER: Landmark Development Group LLC and Jarvis of Cheshire LLC - Glenn Russo Executive Manager
Address: 100 Roscommon Drive - suite 312 Middletown, CT 06457
Phone: 860-613-0777
Fax:
Cell:

As the legal owner of the property listed on this application, I hereby consent to the proposed activities. And I hereby authorize the members and agents of the Agency to inspect the subject land, at reasonable times, during the pendency of the application and for the life of the permit, only with prior approval of the owner for each such inspection and only when accompanied by owner or owner's representative. No unscheduled or unaccompanied visits shall be permitted.

Owners Printed Name: Glenn Russo, Executive Manager for Landmark Development Group LLC and Jarvis of Cheshire LLC
Owners Signature: [Signature] Date: 8-7-17

4. Person Responsible for Compliance: Doug Dubitsky

Address: P O Box 70, North Windham, CT 06256

Phone Number: 860 808-8601 Email: doug@lawyer.com

5. Describe the Activity and Purpose: Maintaining and improving existing roads directly related to farming operation

6. Describe mitigation measures such as erosion controls, added wetlands plantings, infiltration and run off: Excavated material will not be stockpiled near or deposited in wetlands. All exposed ground will be stabilized with pasture grass mix tree saplings and/or other vegetative cover. Downgrade silt fence and/or hay bales as needed. There are no plans to remove stumps at this time

7. Is the property within 500 ft of an adjoining town? Yes No

8. Inland Wetland/Watercourse Information:

Area of wetland to be disturbed approx 9,000 sq. ft.

Area of watercourse to be disturbed approx 1,000 sq. ft.

Upland Review Area to be disturbed approx 50,000 sq. ft. (area within 100' of wetland)

Will fill be needed on site? Yes No

If Yes, how much fill is needed? Unknown cubic yards

Will material be removed from site? Yes No

If Yes, how much will be removed? N/A cubic yards

The property contains (circle one or more) WATERCOURSE WATERBODY WOODLID WETLAND SWAMP

Name of Soil Scientist and date of survey _____

9. Site Plan Title, Date, Engineer, Surveyor Name: _____

Sketch of woods roads and approximate tree planting areas on current East Lyme GIS map

only with prior approval of the owner for each such inspection and only when accompanied by owner or owner's representative. No unscheduled or unaccompanied visits shall be permitted.

The undersigned owner hereby consents to necessary and proper inspections of the above mentioned property by the Commission or agent of the Commission, at reasonable times both before and after a final decision has been issued by the Commission. The undersigned also swears that the information supplied is accurate to the best of his/ her knowledge and belief.

Stephen Eric Manger

8-7-17

Signature of Owner(s)

Date

**Narrative in Support of Application for Determination of
Permitted/Non-Regulated Activity**

River Valley Farm

23 Calkins Rd., Boston Post Rd., and Quarry Rock Rd.

August 8, 2017

This is an application for a determination that harvesting and planting of trees and the maintenance and improvement of roads directly related to the farming operation on the above-referenced properties (together, the "Calkins Road Tree Farm") are permitted as of right as non-regulated activities, pursuant to Conn. Gen. Stat. § 22a-40(a)(1) and Sec. 4.1.a of the East Lyme Inland Wetlands and Watercourses Regulations, and therefore exempt from the regulatory jurisdiction of the East Lyme Inland Wetland Agency.

This tree farming operation will be conducted by River Valley Farm, and will be an extension of its existing tree farming operation at the Newfield Street Tree Farm in Middletown, Connecticut. Attached to this narrative are some photographs of River Valley Farm's operation at the Newfield Street Tree Farm.

Together, the Calkins Road Tree Farm makes up approximately 230 acres. It is currently wooded with mostly a mix hardwood. We intend to selectively harvest the native hardwoods on various sections of the property and plant in their place, nursery stock and Christmas trees – mostly White Pine – for wholesale, on-site retail, and possibly "cut-your-own" sales. Part of this application is for a determination that harvesting standing trees and planting a new crop of tree saplings is exempt from municipal wetland regulation.

As shown on the attached drawing, the property currently has two existing woods roads running mostly parallel in a North/South direction terminating at the North end of the property at Calkins Road. These woods roads were built and historically maintained over the years for forestry operations, including access for firefighting apparatus. In the roads' current condition, safe and efficient access to the various parts of the farm is impossible. The woods roads need significant improvement. These roads are directly related to the farming operation. Part of this application is for a determination that the maintenance and improvement of these two existing woods roads, including the existing wetland crossings of each, is exempt from municipal wetland regulation.

Please feel free to get in touch with me if you have any questions. Thank you.

Doug Dubitsky
860-808-8601

UN POST ROAD

HILL # 1 ROAD



TREES

TREES

CROSSING

EXISTING WOODS ROADS

TREES

TREES

CROSSING

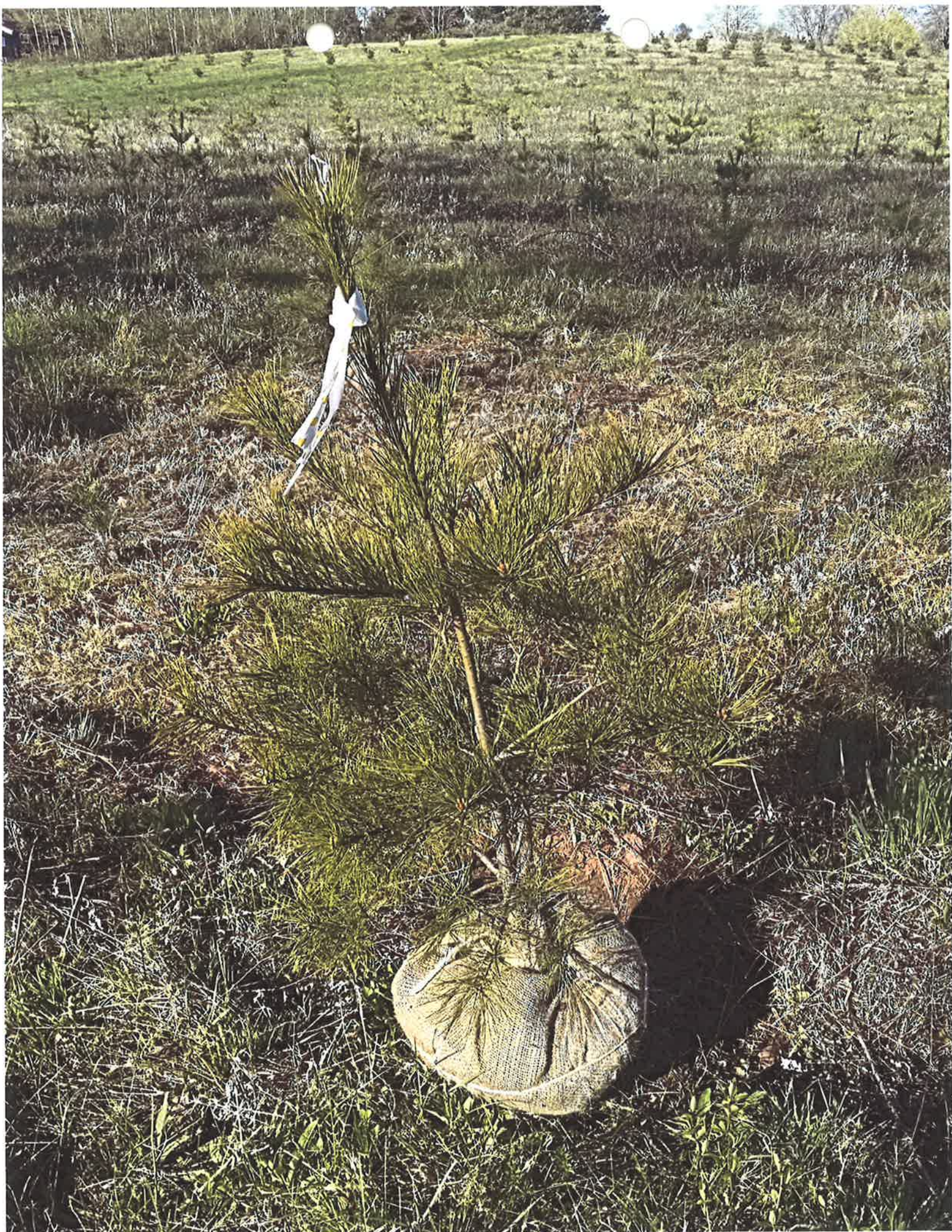
CROSSING

TREES









David and Cheryl Karg

20 HILL RD

EAST LYME, CT 06333

Dear David and Cheryl Karg:

As you know, Landmark Development owns the 236 +/- acres south of your property at 20 Hill Road. We are aware that you have conducted grading and placed landscaping within the 50-foot Town right of way that leads to Landmark's 236-acre parcel.

The purpose of this letter is to make a record of the fact that while Landmark continues to pursue its plans for multi-family and/or single family residential development of all or part of its acreage, we do not object to your current encroachments on the Town right of way or, wherever present, on Landmark's property.

However, by this letter we are reiterating the position communicated to you in the past, that your use in this area is by consent and permission. Thank you for your understanding, and please contact me if you have any questions.

Thank you,

A handwritten signature in black ink, appearing to read 'GR', with a long horizontal line extending to the right.

Glenn Russo, principal,

Landmark Development.”

September 11, 2017

Gary Goeschel
Wetland Agent
Town of East Lyme

Re: Request for Jurisdictional Ruling on Farming

Dear Gary,

In an effort to help give the Agency the information it needs to determine its jurisdiction to regulate farming operations, I have attached rough markups of the two drawings you sent me. Understand, however, that my request for a simple jurisdictional ruling on farming is certainly not proposing any of the uses or development represented on those underlying drawings.

Although our proposed planting locations would seem irrelevant to a request for a jurisdictional ruling, I have given the Agency a rough sketch as a courtesy. My markups on drawing SA-1 show generally the existing woods roads in orange and some of the areas we have been considering harvesting and planting in blue. We initially plan to plant in areas near the existing woods roads because there appear to be some nice, relatively flat areas that would be easily accessible once the roads are improved. That is where it looks most convenient and cost effective to begin. But until we actually start, there is no way to know for sure.

My markups on drawing SA-1 show generally where the existing woods roads touch wetlands and upland review areas. As you can see, there are only a few spots where the roads cross actual wetlands, but my sketch also shows where the roads even touch the upland review areas, for informational purposes.

From your email, it appears that you believe we are going to only harvest and plant a single 5-acre area on the 240-odd acre farm. That is not correct. We will probably start with one area, however there will be more areas. Each area will consist of approximately five acres in size. We simply don't yet know and won't know until we begin. As I also explained at the meeting, we plan to try planting with minimal post-harvest stumping, but may end up stumping if planting among the stumps proves too difficult.

To be clear, the current owner has farmed trees on this property for well over a decade. Before that, the property was farmed and harvested for many years by prior owners. We are now simply changing the crop from hardwood to softwood in some areas as an extension of the Middletown farming operation and improving the woods roads to access the trees.

Farming is a very dynamic activity where we need to change things based on such variables as weather, growing conditions, available light, access, etc. The specific locations, sizes, species, and farming practices will almost certainly change over time. That is the

nature of farming, especially in Connecticut. As such, this is not a site plan to which we would be bound. It is simply a couple of sketches to give the Agency information to determine if it has jurisdiction to regulate farming activities.

I hope this helps the Agency make its decision. Please let me know if you need anything else from me.

Finally, please note that time is running short for us to get our fall planting in this season. Before we can begin planting, we need to order our saplings, start repairing the access roads, conduct our initial harvest and prepare for planting. Each of these steps takes time and planning. I understand that the Agency wanted to see some drawings, but now that they have them, I would ask that the Agency kindly make a decision and not continue the hearing for another month.

Thank you.

Doug Dubitsky

**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
(Caren Yalms, 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



2017.09.19
16:58:01 -04'00'

Town of

P.O. Drawer 519

**Department of Planning &
Inland Wetlands Agency**

*Gary A. Goeschel II, Director of Planning /
Inland Wetlands Agent*



East Lyme

108 Pennsylvania Ave
Niantic, Connecticut 06357

Phone: (860) 691-4114

Fax: (860) 860-691-0351

September 14, 2017

Certified Mail: 7016 0910 0002 1755 1904

Doug Dubitsky
PO Box 70
North Windham, CT 06256

RE: Application of Douglas Dubicki, Esq., Applicant/Landmark Development, Owner; 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.

Dear Mr. Dubitsky,

The East Lyme Inland Wetlands Agency at its Regular Meeting of Monday, September 11, 2017, held at the East Lyme Town Hall, 108 Pennsylvania Avenue, Niantic, Connecticut, found the above referenced tree farming operation is a permitted use by right, and therefore **EXEMPT** from a Wetlands permit, at property identified in the application as Oswegatchie Hills, Boston Post Road and Quarry Dock Road, to be known as River Valley Farm, is a non-regulated activity. As such, no permit is required for the proposed activity referenced above.

If you have any further questions regarding this letter or any of the Inland Wetland Regulations, please do not hesitate to contact me at (860) 691-4105 or visit our office.

Sincerely,



Gary A. Goeschel II
Director of Planning/
Wetlands Enforcement Officer

cc: Mark C. Nickerson, First Selectman
William Mulholland, Zoning Official
file

Town of East Lyme
Inland Wetlands Agency
P.O. Box 519
Niantic, Connecticut 06357

September 14, 2017

ACCOUNT # 20603
INLAND WETLANDS

FILED

Sept 14 20 17 AT 11:50 AM/PM
Cheryl Lozanov, ATC
EAST LYME TOWN CLERK

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The Day Publishing Co.
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New London, CT 06320

Please publish the following notice on Monday, September 18, 2017.

TOWN OF EAST LYME
INLAND WETLANDS AGENCY
Notice of Decision

The East Lyme Inland Wetlands Agency at a Meeting on September 11, 2017, at 7:00 p.m., at the East Lyme Town Hall, 108 Pennsylvania Avenue, Niantic, CT, took the following action:

- A. **APPROVED:** Application of Thomas and Nancy Kalal, Applicants/Owners; to remove fill material from a wetlands crossing at 80 Grassy Hill Road, Assessor's Map#50.0, Lot# 9, East Lyme, CT
- B. **EXEMPT:** Application of Douglas Dubicki, Esq., Applicant/Landmark Development, Owner; 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.

A copy of the Decision is available in the Land Use Office.

Cheryl Lozanov, Chairman



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TOWN OF EAST LYME
INLAND WETLANDS AGENCY
Notice of Decision

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A copy of the Decision is available in the Land Use Office.

Cheryl Lozanov, Chairman

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Town of

P.O. Drawer 519

**Department of Planning &
Inland Wetlands Agency**

*Gary A. Goeschel II, Director of Planning /
Inland Wetlands Agent*



East Lyme

**108 Pennsylvania Ave
Niantic, Connecticut 06357**

Phone: (860) 691-4114

Fax: (860) 860-691-0351

Memorandum

To: East Lyme Inland Wetlands Agency

From: Gary A. Goeschel II, Director of Planning/ Inland Wetlands Agent

Date: September 11, 2017

Re: **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.

Based upon my review of the above referenced application and the record before the Agency with respect to this application, I offer the Agency the following for discussion:

1. The Agency has regulatory authority over the construction and maintenance of roads directly related to a farming operations if such roads require the filling or reclamation of wetlands or watercourses with continual flow.
2. The proposed application for determination of a permitted/non-regulated activity indicates approximately 9,000-square feet of wetlands and 1,000-square feet of watercourse will be disturbed as a result of the proposed activities. As such, does the maintenance and improvement of the existing stream crossings associated with the roads directly related to the farming operation require any fill, reclamation, or relocation of the wetlands and watercourses on site?
3. The proposed application indicates the tree farm will make up approximately 230-acres. It is the applicant's intent to selectively harvest the native hardwoods on various sections of the property and replace with nurse stock Christmas trees, primarily of the White Pine variety. According to the applicant's testimony at the Agency's August 14, 2017 meeting indicated they would start with approximately 5-acres. However, the submitted drawing does not identify where these 5-acres area but, rather indicates the 5-acres may be anywhere on the 230-acres. As such, does the applicant need to improve all four existing stream crossings to access the 5-acres being utilized for the tree farm?
4. In regards to the silvicultural operation, has the applicant retained a licensed forester?
5. In order to determine whether the proposed road improvements are directly related to an agricultural farming operation, information regarding the nature of the road improvements and how the roads are proposed to be utilized should be provided.
6. The drawing plan submitted does not provide the location of inland wetlands and watercourses nor the location of tidal wetlands. It does not provide any information on best management practices, or whether the crossings are bridged, culverted, or corduroyed.
7. The proposal doesn't provided a silvicultural plan or harvest plan prepared by a certified Forester or Supervising Forest Products Harvester.

HY Rd file

WALLER, SMITH & PALMER, P. C.

COUNSELORS AT LAW
52 EUGENE O'NEILL DRIVE
P. O. BOX 88

NEW LONDON, CONNECTICUT 06320

TELEPHONE (203) 442-0367

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September 19, 1986

Larry P. Levesque, Esq.
73 Humphrey Street
Hartford, Connecticut 06106

Dear Mr. Levesque:

Re: Town of East Lyme - Gary Vogel

This is in reply to your letter of September 12, 1986.

Hill Road is a Town road, but as with many old roads, the Town has never gotten a deed to the road, so that ownership of the fee in the road is in the abutting property owners to the center of the road, subject to the right of the public to travel over it. The Town cannot therefore grant a license or easement because the Town does not own it.

At a Selectmen's meeting on June 19, 1985, the matter was discussed and I have enclosed a copy of the discussion. As you can see, the Selectmen voted that they had no objection to the installation of a dry well under the paved portion of Hill Road, adjacent to the Vogel property. I therefore believe that all that is necessary, so long as the installation is going to be adjacent to the Vogel property, is a permit from the sanitarian and approval from the Town Engineer of the time and manner of the excavation in the highway. I suggest that you or your client contact those officials directly.

Very truly yours,

Robert W. Marrion for
Waller, Smith & Palmer, P.C.

ncf

Enclosure

cc: Frederick C. Thumm, Town Engineer
George P. Calkins, Sanitarian

RECEIVED
Health

SEP 22 1986



**WALLER
SMITH &
PALMER^{PC}**
Attorneys at Law

August 23, 2017

Gary A. Goeschel II
Director of Planning / Inland Wetlands Agent
Town of East Lyme
P.O. Box 519
Niantic, CT 06357

EDWARD B. O'CONNELL
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OF COUNSEL:
ROBERT W. MARRION
ROBERT P. ANDERSON, JR.
FREDERICK B. GAHAGAN

+ ALSO ADMITTED IN RI
*ALSO ADMITTED IN MA

Re: Landmark Development IWA application

Dear Mr. Goeschel:

You have asked for our advice regarding the Inland Wetlands application filed on behalf of Landmark Development regarding its property in the Oswegatchie Hills. According to the narrative, the applicant seeks a determination that (1) the harvesting of standing trees and planting of tree saplings and (2) the improvement and maintenance of two existing woods roads are both exempt from wetlands regulation. For the reasons stated herein, it is our advice that both activities are permitted as of right.

Section 4.1 of the East Lyme Inland Wetlands and Watercourses Regulations ("Regulations") sets forth operations and uses that are permitted as of right. Section 4.1.a. states that "farming" is a use permitted as of right in inland wetlands and watercourses. Section 2 of the Regulations defines farming as "consistent with the definition as noted in section 1-1(q) of the Connecticut General Statutes." In turn, General Statutes 1-1(q) (which is included as Appendix A to the Regulations) defines farming to "... include ... forestry, raising or harvesting any agricultural or horticultural commodity ..." Based on the definitions in the Regulations and the Connecticut General Statutes, the harvesting of standing trees and planting of new trees are farming activities which are permitted as of right.

Section 4.1.a of the Regulations also addresses the applicant's second request regarding the existing woods roads. That section states in relevant part that "[T]he provisions of this subdivision shall not be construed to include road construction ... not directly related to the farming operation ..." This section mirrors General Statutes 22a-40(a)(1). The Connecticut Supreme Court recently interpreted this language. While holding that road construction not directly related to farming operations is not exempt from wetlands regulation, the Court goes on to state that "... **road construction directly related to a farming operation is excluded from the regulatory oversight of municipal wetlands agencies**, unless the manner of that construction implicates some other matter within the scope of that oversight ..." Indian Spring Land Company v. Greenwich Inland Wetlands Agency, 322 Conn. 1 (2016)(Emphasis added). Here, it is our understanding that there are two existing woods roads located on Landmark's



WALLER
SMITH &
PALMER^{PC}
Attorneys at Law

property. The narrative states that the woods roads are necessary for and directly related to the proposed farming operation. If you find that construction of the roads is directly related to a farming operation, it is our advice that, pursuant to Indian Spring Land Company, improvement and maintenance of those roads is exempt from municipal wetlands regulation.

If you have any additional comments or questions, we would be pleased to respond.

Very truly yours,

A handwritten signature in blue ink, appearing to read "M. Zamarka", is written over the closing text. The signature is stylized and fluid.

Mark S. Zamarka, of
Waller, Smith & Palmer, P.C.