

Gary Goeschel

From: Timothy Bleasdale <tdbleasdale@wallersmithpalmer.com>
Sent: Friday, January 31, 2025 1:35 PM
To: Gary Goeschel
Cc: Dan Cunningham; Tracy M. Collins
Subject: RE: Oswegatchie Hills Clearcutting
Attachments: Letter re Landmark IWA application (00309199xD3DC6).pdf

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Gary,

My suggestion for February 4th is to provide an update to the IWA that you have been performing the necessary due diligence and consultation with the Town Attorney's Office to ensure everything is in order and that a cease and desist order is appropriate and defensible. You may also want to contact the property owner to explain that the IWA has received some concerned calls about the ongoing cutting and request an opportunity to walk the site with them to confirm that the current work is the same as was granted an exemption in 2017. In suggesting this, I am recommending that it be Town staff and the property owner, not the entire IWA as a site walk. Also, in case you don't have it, I am attaching for your files a copy of an opinion letter that Mark Zamarka did in 2017 agreeing with you and the IWA that the proposed cutting and replanting was an exempt activity.

In the meantime, unless you discover additional information, I am inclined to agree with you that the current work appears to be well within the activities described in the 2017 exemption determination application. 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 you 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. I don't know whether they have actually built those barns yet, but the additional permitting efforts would have incurred some costs for the applicant, and they have additionally acted in reliance on the exemption determination by beginning the cutting. I agree with you that the IWA did not attempt to place an expiration date or limited time period on the exemption determination. It would not makes sense that it could do so because in making that determination the IWA is determining that it is a nonregulated activity or, put another way, outside its jurisdiction. Based on all of the above, it does not appear that you could 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 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.

As I noted above, if you discover additional information about the on-going activities at the property, it may change the situation and our analysis. But without a site inspection it will be difficult to see how you might obtain that information given the relative seclusion of the property. In particular, I am contemplating that you might learn that stumping is occurring and which the application expressly stated would not be. I reviewed the video footage you sent me on a relatively large screen. 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. This would be something to look for if you do conduct an inspection.

Best regards,
Tim

Timothy D. Bleasdale, Attorney at Law
tdbleasdale@wallersmithpalmer.com

Waller, Smith & Palmer, P.C.
Office: [860-442-0367](tel:860-442-0367) | Fax: [860-447-9915](tel:860-447-9915)
52 Eugene O'Neill Dr. New London, CT 06320
<http://wallersmithpalmer.com>



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Thank you.

From: Gary Goeschel <ggoeschel@eltownhall.com>
Sent: Thursday, January 30, 2025 4:05 PM
To: Timothy Bleasdale <tdbleasdale@wallersmithpalmer.com>
Cc: Dan Cunningham <dcunningham@eltownhall.com>
Subject: RE: Oswegatchie Hills Clearcutting

Hello Tim,

I left you a voicemail earlier today regarding this matter. As the IWA meeting is coming up on February 4th and I am unable to attend, I wanted touch base with you ahead of the meeting, should I need to provide them with written status update if they meet. Hopefully we can connect tomorrow or Monday, 860-235-6211 will most likely be the easiest way to reach me tomorrow.

Thanks,
Gary

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

Town of East Lyme
PO Box 519 | 108 Pennsylvania Avenue | Niantic, Connecticut 06357
Office 860-691-4105 | Fax 860-691-0351
ggoeschel@eltownhall.com

Book time to meet with me

From: Gary Goeschel
Sent: Tuesday, January 21, 2025 6:22 PM
To: Timothy Bleasdale <tdbleasdale@wallersmithpalmer.com>
Cc: Dan Cunningham <dcunningham@eltownhall.com>
Subject: Oswegatchie Hills Clearcutting

Hello Tim,

I spoke with Dan on Friday regarding this matter and he's authorized me speak to you. The Inland Wetlands Agency at their January 7th meeting directed me to issue Landmark Development Group a Cease & Desist Order (C&D), primarily based on the presentation of information by 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 the following You Tube video be played for the Agency: <https://youtu.be/cFN5vXEfdU8> which, it was. During a previous meeting, I believe we viewed the properties on the Town's GIS using the Google Satellite Areal imagery which also shows the cleared area.

As I typically conduct due diligence before issuing any C&D Order, Agency directed or not. In conducting my due diligence for this particular matter, I've reviewed the file, the Determination of Non Regulated Activity, the applicant's supporting documentation, and the meeting minutes (all attached). Upon my review of these documents, I do not believe Mr. Russo is 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, I would think the land owner will argue 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.

In consideration of the Town's history of litigation with the land owner, I would like to schedule a time with you to discuss how I may best to proceed with the land owner and the Agency to ensure compliance is maintained and I do not erroneously issue a C&D Order.

Thank you,
Gary

Gary A. Goeschel II
Director of Planning / Inland Wetlands Agent
Town of East Lyme
PO Box 519 | 108 Pennsylvania Avenue | Niantic, Connecticut 06357
Office 860-691-4105 | Fax 860-691-0351
ggoeschel@eltownhall.com

Book time to meet with me

From: abcfish@atlanticbb.net <abcfish@atlanticbb.net>
Sent: Friday, January 17, 2025 10:28 AM
To: Gary Goeschel <ggoeschel@eltownhall.com>; 'Kristen Chantrell' <kristenkeenan@hotmail.com>
Subject: More on Oswegatchie Hills Clearcutting

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Although I've yet to hear from you regarding issuing a C&D to Landmark, I have more information to share – please see the attached. These satellite images were taken at around 10:50 AM on January 16. The estimated total acreage cleared is over 52 acres (this figure is printed in lower right corner of each figure). The second photo includes Landmark's survey map, where you can see that the tree harvest is beginning to encroach on the southern wetlands area. Also, the clearing is within 200 feet of the northern border of the Oswegatchie property, which is the corner with a vague pile of rocks. This egregious clearcutting and wetlands destruction without any evidence for its initially stated purpose needs to be halted. Thanks for your attention to this matter.

Donald Danila

24 Pattagansett Drive
East Lyme, CT 06333

Home Phone: (860) 739-4196
Cell Phone: (860) 514-3601