

**CONSERVATION COMMISSION
FAIRFIELD, CONNECTICUT
MINUTES OF INLAND WETLANDS AGENCY MEETING
MAY 6, 2010**

The Conservation Commission, acting as the Inland Wetlands Agency of the Town of Fairfield held a meeting on May 6, 2010, in Meeting Room II of the Honorable John J. Sullivan Independence Hall, 725 Old Post Road, Fairfield, CT.

MEMBERS PRESENT: Stanton Lesser, Chairman; Milan Bull, Vice Chairman; Frank Rice, Secretary; J. Paul DeMarrais and Kathleen Maxham. **ALTERNATES:** Elizabeth Jones; Philip DiGennaro, Jr., and Douglas Jones. **ABSENT:** Joan Neiley; and Landon Storrs. Also Present: Thomas Steinke, Conservation Director; Annette Jacobson, Conservation Administrator; Edward Jones, Open Space Manager; Kenneth Flatto, First Selectman, and members of the public.

I. CALL TO ORDER

The meeting was called to order at 7:30 p.m. by Chairman Lesser.

II. APPOINTMENT OF ALTERNATES

Elizabeth Jones and Douglas Jones were appointed to sit as full members.

Milan Bull arrived at 7:31 p.m.

III. BILLS AND COMMUNICATIONS

- A. Approval of Minutes of Meeting April 1, 2010: Kathleen Maxham *moved* and Elizabeth Jones *seconded* to approve the Minutes of Meeting April 1, 2010. *Motion passed unanimously.*
- B. Approval of Recording Secretary's Bill of April 1, 2010: Kathleen Maxham *moved* and Frank Rice *seconded* to approve the Recording Secretary's Bill of April 1, 2010. *Motion passed unanimously.*

First Selectman Kenneth Flatto arrived at 7:32 p.m.

Mr. Lesser indicated that the Agency would proceed to the Supplemental Agenda at this time.

Philip DiGennaro, Jr. arrived at 7:37 p.m. during discussion on the following matter:

SUPPLEMENTAL AGENDA

I. INLAND WETLANDS DELIBERATIVE SESSION

A. OLD BUSINESS

- 1. IWP 2003-08, Black Rock Realty, LLC –Status Report on 3rd Train Station: Kenneth Flatto was present this evening to provide the Inland Wetland Agency with a status report of the recent developments on this matter. Mr. Flatto addressed the Agency, indicating that he thought it was a good time to summarize and clarify the matters recently noted in the newspapers.

**DRAFT MINUTES SUBJECT TO REVIEW, CORRECTION AND APPROVAL BY
THE INLAND WETLANDS AGENCY OF THE TOWN OF FAIRFIELD**

Mr. Flatto noted the following:

There have been recent changes to the March 2003 three-party agreement between the State of CT DOT, Black Rock Realty, LLC, and the Town of Fairfield.

The State of Connecticut has allocated funding in the amount of \$19.4 million to be used towards the project; Black Rock Realty, LLC has given the Town \$5.2 million – the money is actually in the town’s escrow agent – Dick Saxl’s - bank account; and the Town has approximately \$5 million remaining from the initial bonding that the Town bodies had approved in 2003.

Another significant change is that a project plan was finalized, in which the Town of Fairfield will now act as the project manager for the public portion of the project. The Town will now conduct a public bidding process for a coordinator/inspector as well as the construction contractor. Once they are selected, then permits will be applied for and work will commence. The design plan and project requirements are consistent and actually the same as the plan that everybody had been looking at over the last several years. Redniss and Mead will continue to act as Site Monitor for the Inland Wetlands Agency.

Mr. Flatto indicated that the private owner [Black Rock Realty, LLC] will not have any responsibility or veto over or really any say in the management of the process; although he is sure that they will be “looking over the Town’s shoulders” considering the funds provided to the Town for the project.

Mr. Flatto indicated that he anticipates that the project, once it commences, will take approximately 15 months. Mr. Flatto noted that the Town managers that will also be involved in the project include William Hurley, Mark Barnhart, Richard Saxl, and whoever is hired through the Town Purchasing authority; all permit conditions will be complied with; the contractor will be supervised day-to-day and report to the project managers.

Following inquiry by Douglas Jones, Kenneth Flatto described the areas included in the public portion of the project, which include: the road through the center of the property, the commuter parking lot, and train station, and the “handicapped up and over” bridge, and noted that the State is currently proceeding on its part of the project (the up and over bridge, roadway, the kiss-and-ride drop-off on the north side, and the train platforms). Mr. Flatto explained that the public portion of the project will include all of the site remediation that is required by the permits, including conservation area, entire shoreline remediation required by the DEP, all capping of the fill, all grading and re-distribution of fill around the site. No private building foundations, or activities related to the private development are included in this process.

J. Paul DeMarrais noted that he and the Commission had spent a considerable amount of time on this application, and questioned Mr. Flatto's indication that Black Rock Realty, LLC would have no responsibility – and inquired who was going to pay for the remediation of the site. Mr. DeMarrais noted that during the application process it was the understanding that Black Rock Realty, LLC was going to be responsible for the remediation.

Kenneth Flatto advised Mr. DeMarrais that the Town was a Co-Applicant along with Black Rock Realty, LLC, and that the three-party contract did not have any dollar amounts associated with those chores, nor were those chores defined. Mr. Flatto indicated that the three party agreement did say that Black Rock Realty, LLC has some responsibility for some of the remediation. Mr. Flatto estimated the shoreline remediation to be in the amount of \$2 million; the conservation area to be approximately \$1 million; and the capping to be approximately \$2-3 million. The theory is that the funds that Black Rock Realty, LLC is paying would be equivalent to the remediation portion of the project. Mr. Flatto noted that the project costs are higher due to the total excavation and re-grading of the site, not necessarily the remediation. Mr. Flatto explained that one side is 20' higher than the other, and that this is actually expedient or helpful because moving the dirt around from the higher areas will fill in the lower areas, therefore making the remediation easier. Clean fill will go into the conservation area. The agreement never had a structured cost estimate for this. Mr. Flatto indicated that in the past, Black Rock Realty, LLC had stated that they would voluntarily move the dirt, but this was never codified; there was never anything they could, in terms of a legal agreement, say it was codified. Mr. Flatto further indicated that payment of these costs is up to the parties involved; the Town is an Applicant that applied for a permit which was granted by the Inland Wetland Agency and it is not within the Agency's jurisdiction or business as to who pays for it, merely that the conditions are complied with. The State has committed to their portion, and the Town will work with what it has – see how it plays out. Mr. Flatto noted that the project will be managed like any other town project, although it is more complicated; the town wants to do right by the town, and that his focus right now is the public – open space – wetland area – getting all that done.

J. Paul DeMarrais indicated that this was not just contaminated soil; it is industrial waste - casting sand that had been piled out at the site for years, and that his concern is that there will not be sufficient funds to finalize the project.

Mr. Flatto indicated that it is up to the town to manage the project well within the funds available. Upon inquiry by Chairman Lesser, Mr. Flatto advised the Agency that once the train station opens to the public, the parking land is going to be deeded to the State. Mr. Lesser further indicated that he was on the Economic Development Commission when the train station project was first talked about; and that we are winding up with a buildable piece of land and a train station. Mr. Lesser further indicated that he recently saw Kurt Wittek who noted that although he would like to begin construction on the private development, he needs a tenant for approximately 80k square feet of space first.

REGULAR AGENDA

- III. C. REGULATIONS COMMITTEE: Frank Rice indicated that he would like to have the Committee meet on the second Thursday of the month, and suggested that the first meeting be held on May 13th, at 7:30 p.m. Frank Rice will attempt to coordinate the scheduling of this meeting with Staff and Committee members.

IV. INLAND WETLANDS – LEGAL/ENFORCEMENT ACTION

1. Red 11, LLC vs. Conservation Commission of the Town of Fairfield – 1159 Redding Road, Wetland and Watercourse Fill and Alteration. CT Supreme Court denied petition to appeal (Termination of appeals): Informational.
2. Civil Summons to Superior Court, Sweeney, IWP 2006-07-05, South Pine Creek Road: Informational.

V. INLAND WETLANDS DELIBERATIVE SESSION

A. OLD BUSINESS

1. IWPA 2009-10-11, Sperry and Mongenel, Pansy Road, east side just south of #220; Assessor's Map 123, Parcels 79 and 80: Construct two new houses within a regulated area: Annette Jacobson provided the Agency with a brief description of proposed activities, noting that Staff recommended approval. Chairman Lesser inquired of the Applicant's counsel, William Fitzpatrick, whether the conservation easement had been offered. Mr. Fitzpatrick responded affirmatively, and advised the Agency that his client agrees to that condition. Milan Bull *moved* and Kathleen Maxham *seconded* to approve the April 23, 2010 Staff Recommended Findings of Fact A through G, inclusive. *Motion passed unanimously*. Milan Bull *moved* and Kathleen Maxham *seconded* to approve the application, together with the April 23, 2010 Staff recommended Standard and Specific Conditions of Approval. *Motion passed unanimously*. A copy of the letter conveying the decision of the Agency is attached hereto as Exhibit A.

B. NEW BUSINESS

1. Southwest Conservation District Correspondence Regarding NRCS Emergency Watershed Protection (EWP) Program: Informational.
2. Status Report of Bond Consultant: Informational.
3. Request For Release of Performance Bond:

Douglas Jones *moved*, and Elizabeth Jones *seconded* to approve the following requests for a release of performance bond as recommended by Staff:

- (a) IWP 2003-01, Steiner, Inc., Duck Farm Road Subdivision, Lot 14 (1801 Mill Plain road), new house. Request of Walter Stapleton for final release of performance bond in the amount of \$2,500.00.
- (b) IWP 2000-05, (Hillman), Wellner, Senate Lane Subdivision, In-Common Work and Lot 4 (#115), new house. Request of Walter Stapleton for final release of performance bond in the amount of \$18,600.00 – in-common, and \$3,850.00. ***Staff Recommends Partial Releases – 16,000.00 of the in-common bond and \$2,850 for Lot 4.***

Motion passed unanimously.

4. Requests For Permit Time Extension:
 - (a) IWP 2004-11, Town of Fairfield, H. Smith Richardson Golf Course, 2425 Morehouse Highway and Hoyden's Lane, Assessor's Map 67, Parcel; Fill wetlands and modify drainage within a regulate area. Request of Gerald Lombardo for the maximum (5 yr) extension (however this was modified to a 3-yr extension – now modification to request elimination of condition). Annette Jacobson advised the Agency that Staff was continuing to review alternative mitigation. It was the consensus of the Agency that this matter would continue to be tabled pending on-going discussions between Staff and the Applicant.
5. Monthly Wetland Business Update For The Agency: Informational.

VI. MAP AMENDMENT APPLICATION

1. MAP AMENDMENT 2009-10-01, Banks, 698 Merwins Lane, Assessor's Map 221, Parcel 44; Request to Revise The Official Inland Wetland and Watercourses Maps: I-11: Kathleen Maxham *moved*, and Elizabeth Jones *seconded* to schedule a public hearing on this matter for July 1, 2010. *Motion passed unanimously.*

There being no further business to come before the Agency, Kathleen Maxham *moved* and Elizabeth Jones *seconded* to adjourn the meeting at 8:13 p.m. *Motion passed unanimously.*

Respectfully submitted,
Betty Gabriel