

**CONSERVATION COMMISSION  
FAIRFIELD, CONNECTICUT  
MINUTES OF INLAND WETLANDS AGENCY MEETING  
AUGUST 5, 2010**

The Conservation Commission, acting as the Inland Wetlands Agency of the Town of Fairfield held a Meeting on August 5, 2010, at Osborn Hill School, 760 Stillson Road, Fairfield, CT.

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

**I. CALL TO ORDER**

The meeting was called to order at 7:32 p.m. by Chairman Lesser.

**II. APPOINTMENT OF ALTERNATES**

Philip DiGennaro, Jr. was appointed to sit as a full member.

**III. BILLS AND COMMUNICATIONS**

- A. Approval of Minutes of Meeting May 6, 2010 (Status review on-going). Annette Jacobson advised the Agency that the minutes are still being reviewed (per the Agency's direction).
- B. Approval of Minutes of Meeting July 1, 2010: Kathleen Maxham *moved* and Milan Bull *seconded* to approve the Meeting Minutes of July 1, 2010. *Motion passed unanimously.*
- C. Approval of Recording Secretary's Bill of July 1, 2010: Kathleen Maxham *moved* and Milan Bull *seconded* to approve the Recording Secretary's Bill of July 1, 2010. *Motion passed unanimously.*
- D. Approval of Minutes of Special Meeting July 15, 2010: Kathleen Maxham *moved* and Milan Bull *seconded* to approve the Special Meeting Minutes of July 15, 2010. Frank Rice indicated that he did not vote on the motion made by J. Paul DeMarrais and seconded by Landon Storrs to have Town Attorney make a recommendation to the First Selectman that the Conservation Director and Staff be reinstated and to charge them with full over-site, responsibility and authorization on the Black Rock project (page four of Draft July 15, 2010 minutes), and that the correct vote would be 3-3 (with one abstention). Chairman Lesser indicated that this would result in the motion failing because it did not garner a majority. Landon Storrs noted that in this instance, it will be necessary to record the fact that the motion had failed. Chairman Lesser confirmed that the minutes should be amended to reflect not only the fact that Frank Rice did not vote, but that the motion had failed due to lack of majority. Vote to approve minutes, as amended: *Motion passed unanimously.*

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- E. Approval of Minutes of Recording Secretary's Bill of July 15, 2010: Kathleen Maxham *moved* and Milan Bull *seconded* to approve the Secretary's Bill of July 15, 2010. *Motion passed unanimously.*

At 7:35 p.m., Chairman Lesser indicated that there was litigation pending and asked that the Agency go into closed session to discuss the pending litigation. Joan Neiley *moved* and Frank Rice *seconded* to go into executive session to discuss pending litigation. *Motion passed unanimously.* Chairman Lesser noted that he would like only the Agency members to attend closed session with Town Attorney, and that Conservation Staff would not attend. Conservation Staff remained in the All Purpose Room; the Agency members conducted the closed session in the teacher's lounge.

At 7:55 p.m. the Agency members returned to the All Purpose Room. Kathleen Maxham *moved* and Milan Bull *seconded* to go back into regular session. *Motion passed unanimously.* Chairman Lesser noted that no votes were taken during executive session.

Stanton Lesser indicated that unless there was an objection, he would like to place another matter on the agenda this evening – to discuss the pending litigation. Chairman Lesser advised the Agency that there is a hearing on Tuesday, August 10, 2010 to lift the automatic stay with regard to the Bateson vs. Weddle matter, in which he has been asked by Town Counsel to testify. Chairman Lesser noted that he is not sure exactly what he will be asked, or what he would be testifying to, but would like the consensus of the Commission on the matter. Kathleen Maxham indicated that she would like the judge to know that the Agency is pleased with the progress being made with regard to the train station and happy with the job being done by Redniss and Mead, and anyone else that has been involved. Commissioner Maxham indicated that the matter is moving ahead smoothly, and she likes the job that is getting done; Joan Neiley agreed. Following inquiry by Stanton Lesser, it was the consensus of the Inland Wetland Agency that the job is moving ahead smoothly, and the Agency likes the job that is being done.

- F. Regulations Committee – Frank Rice, Chairman: Frank Rice announced that the Regulations Committee will conduct its first meeting this evening following adjournment of the Inland Wetlands Agency meeting, and that it would be open to the public (that meeting did not go forward due to the duration of the Inland Wetland Agency meeting).

#### **IV. INLAND WETLANDS – LEGAL/ENFORCEMENT ACTION**

1. New Way Associates, LLC and Dudics (Plant Factory Site), 4185 and 4267 Black Rock Turnpike, Inland Wetlands and Watercourse Violation Procedural Question: Thomas Steinke advised the Agency that there has been a violation on this site for a long time, and that there has been a recent effort to resolve the violation issues. Mr. Steinke further indicated that due to the significant damage to one of the on-site wetlands areas, Staff and the owner were in agreement that it would be more beneficial to provide mitigation rather than restore that particular area. Thomas Steinke further indicated that there is currently an offer to sell and develop a portion of the site – which portion does not include the violation, or area proposed for mitigation. Conservation Staff is seeking the consent of the Agency to proceed with a “dual track” approach,

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which would allow Staff to simultaneously process the violation and an inland wetland permit application relative to the portion of the property being sold; the inland wetland application is on this evening's Supplemental Agenda. Joan Neiley *moved* and Kathleen Maxham *seconded* to approve the concept of having Conservation Staff take the dual track approach as presented to process the inland wetland permit application during the pending violation. *Motion passed unanimously.*

**V. INLAND WETLANDS – DELIBERATIVE SESSION**

**A. NEW BUSINESS**

1. IWP 2009-10-11, Pansy Road, Sperry and Mongenel, Request of William Fitzpatrick, Esq. for a fee waiver: Annette Jacobson advised the Agency that Mr. Fitzpatrick's request is based on his client purchasing only one lot, and since only one lot is being developed at this time, he is requesting a reduction of the annual site disturbance/Schedule B fee from \$4,983.00 to \$2,467.00. Milan Bull *moved* and Frank Rice *seconded* to approve the request of William Fitzpatrick, Esq., for a fee reduction. *Motion passed unanimously.*
2. Request for Release of Performance Bond:
  - (a) IWP 2006-07-19, Fairfield Country Day School, Bronson Road; ballfields and drainage. Request of Walter Stapleton for a final bond release of the east side bond in the amount of \$1,000.00, and the west side bond in the amount of \$1,000.00. Frank Rice *moved* and Kathleen Maxham *seconded* to approve the request of Walter Stapleton for a final bond release of the west side bond (\$1,000.00), and the east side bond (\$1,000.00), as recommended by Staff. *Motion passed unanimously.*
3. 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 5: Fill wetlands and modify drainage within a regulated area. Request of Gerald Lombardo for the maximum (5-year) extension (however, this was modified to a three-year extension – now modification to request elimination of condition). Milan Bull *moved* and Kathleen Maxham *seconded* to table this matter pending on-going discussions with Staff and the applicant. *Motion passed unanimously.*
  - (b) IWP 2005-06, Kardamis, 135-139 Grace Street, Assessor's Map 79, Parcels 540 and 541: House construction within a regulated area. Request of Stephanie Coleman for a five-year extension. Landon Storrs *moved* and Joan Neiley *seconded* to approve the request of Stephanie Coleman for a five-year extension, with updated conditions of approval. *Motion passed unanimously.*

4. Monthly Wetland Business Update For The Agency: Informational

SUPPLEMENTAL AGENDA:

**I. NEW APPLICATION:**

1. IWPA 2010-11-01, Fairfield Gateway, LLC, 4185 Black Rock Turnpike (Plant Factory Site); Assessor's Map 118, Parcel 41: Demolish Existing Structures And Construct Medical Office Buildings Within A Regulated Area: Kathleen Maxham moved and Joan Neiley seconded to find the matter significant and to schedule a public hearing for October 7, 2010. Motion passed unanimously.

REGULAR AGENDA:

OTHER:

1. Stanton Lesser indicated that he has received three letters with regard to the train station project and would like them entered into the record. Mr. Lesser noted that there was a July 21, 2010 letter from Gary S. Klein (counsel for Black Rock Realty, LLC), and a July 28, 2010 letter from Thomas Steinke to the Commission. Mr. Lesser further indicated that he received a letter dated July 28, 2010 from Richard Saxl - addressed to Stanton Lesser, which he would like put into the record. The letters were provided to Conservation Staff at this time.

**VI. PUBLIC HEARING**

1. MAP AMENDMENT 2009-10-01, Banks, 698 Merwin's Lane; Assessor's Map 221, Parcel 44: Request to revise the official Inland Wetlands and Watercourses Maps I-11. The public hearing was opened at 8:12 p.m. Frank Rice read the call of the hearing. Pamela Jones left the meeting at 9:27 p.m., during the public hearing. At 10:08 p.m., Milan Bull moved and Joan Neiley seconded to close the public hearing. Motion passed unanimously. Following the close of the hearing, the Agency deliberated on the Map Amendment as follows:

Kathleen Maxham moved and Joan Neiley seconded to approve the July 26, 2010 Staff Recommended Findings of Fact A through J, inclusive, with the following revisions:

Finding of Fact B is revised to read: "The Applicant indicates he is the owner of the property";

Finding of Fact C is revised to read: "The application and supporting documents do not demonstrate that inland wetland and/or watercourses regulated areas exist on the applicant's property."

Findings of Fact D, E, G, H, and I are omitted.

Finding of Fact F is revised to read: "There are no inland wetland soils on the property."

Milan Bull suggested that Finding of Fact F read "may not exist".

Vote on the motion: ***In Favor***: Stanton Lesser, Frank Rice, Kathleen Maxham, Landon Storrs, Joan Neiley, Philip DiGennaro, Jr. ***Opposed***: Milan Bull. *Motion carries 6-1.*

Joan Neiley *moved* and Frank Rice *seconded* to approve the subparagraph III Recommendation, with the following revision: Subparagraph III is revised to read: "This map amendment application may be approved to eliminate the inland wetland soil designation on the property known as Assessor's Map 221, Parcel 44." Vote on the motion: ***In Favor***: Stanton Lesser, Frank Rice, Kathleen Maxham, Landon Storrs, Joan Neiley, Philip DiGennaro, Jr. ***Abstention***: Milan Bull. *Motion carries 6-1.*

Joan Neiley *moved* and Frank Rice *seconded* to approve the July 26, 2010 Staff recommended Conditions of Approval, with the following revisions:

Specific Condition 1 (a) is revised to read: "eliminate the inland wetland soil designation on the property in the northwest area."

Specific Condition 1(b) is eliminated.

Specific Condition 2 is revised to include the words "in accordance with the decision of the Agency" in the first sentence after the word "Mylars".

Vote on the motion: ***In Favor***: Stanton Lesser, Frank Rice, Kathleen Maxham, Landon Storrs, Joan Neiley, Philip DiGennaro, Jr. ***Abstention***: Milan Bull. *Motion carries 6-1.*

Milan Bull *moved* and Landon Storrs *seconded* to approve the map amendment with the July 26, 2010 Staff Recommended Findings of Fact and Specific Conditions of Approval, as amended. *Motion passed unanimously.* The letter conveying the decision of the Agency is attached hereto as Exhibit A.

## **VII. ADJOURNMENT**

There being no further business to come before the Agency, Frank Rice *moved* and Landon Storrs *seconded* to adjourn the meeting at 10:19 p.m. *Motion passed unanimously*

Respectfully submitted,  
Betty Gabriel