

**CONSERVATION COMMISSION
FAIRFIELD, CONNECTICUT
MINUTES OF INLAND WETLAND AGENCY MEETING
APRIL 5, 2012**

The Conservation Commission, acting as the Inland Wetland Agency of the Town of Fairfield held a Meeting on April 5, 2012 in Meeting Room II of the Honorable John J. Sullivan Independence Hall, 725 Old Post Road, Fairfield, CT.

MEMBERS PRESENT: Milan Bull, Vice Chairman; Kevin Gumpper, Secretary; Frank Rice; and Kathleen Maxham. **ALTERNATES:** Elizabeth Jones. **ABSENT:** Catherine O'Donnell and Joan Neiley. *Note – three vacancies, one Full Member, and two Alternates.* Also Present: Thomas J. Steinke, Conservation Director; Annette Jacobson, Conservation Administrator; Edward Jones, Wetlands Compliance Officer/Open Space Manager; Attorney Austin Wolf, and members of the public and press.

I. **CALL TO ORDER:** The meeting was called to order at 7:34 p.m. by Acting Chairman Milan Bull.

II. **APPOINTMENT OF ALTERNATES:** Elizabeth Jones was appointed to sit as a full member.

III. **BILLS AND COMMUNICATIONS**

A. Approval of Minutes of Meeting March 1, 2012: Kathleen Maxham *moved*, and Kevin Gumpper *seconded* to approve the March 1, 2012 meeting minutes. *Motion passed unanimously.*

B. Approval of Recording Secretary's Bill of March 1, 2012: Kathleen Maxham *moved*, and Kevin Gumpper *seconded* to approve the recording secretary's bill of March 1, 2012. *Motion passed unanimously.*

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

1. IWP 2010-11-06, Piekarski & Cocco, Tuller Road and Little Brook Road Subdivision Construction within a regulated area: Civitano v. Town of Fairfield – review with counsel: Attorney Austin Wolf, counsel for the Town of Fairfield in this matter, was present this evening to advise that counsel for the applicants had submitted an alternative conceptual plan for the Agency's consideration – specifically, to make a determination as to whether or not the plan, as now presented, was consistent with the approved decision and would only require an application for an amended inland wetland permit, or whether the plan details are inconsistent and would therefore require an entirely new inland wetland permit application.

At 7:36 p.m. Kevin Gumpper *moved*, and Kathleen Maxham *seconded* to go into executive session, and invited Conservation Staff and Attorney Austin Wolf, as there is pending litigation in this matter. *Motion passed unanimously.*

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

At 7:45 p.m. Elizabeth Jones moved, and Kathleen Maxham seconded to go out of executive session. Motion passed unanimously.

Milan Bull reported that no motions had been made or votes taken during executive session.

The Agency acknowledged receipt of an April 5, 2012 letter from Attorney William Fitzpatrick on behalf of the applicants requesting that the “Agency make a finding that the alternative proposal, as presented, is consistent with the earlier Inland Wetland Permit No. 2010-11-06 by virtue of the virtually unchanged impact on the regulated wetland resources on site.”. The Agency also acknowledged a letter from Attorney Joel Green, counsel for the appellants, Susan Civitano, Dean O’Donnell and the Little Brook and Marion Road Neighborhood Association, noting that the proposed revisions should be considered under a new inland wetland permit application. Additionally, the letter noted that a public hearing should be conducted relative to the submittal and Agency’s review of the proposal, as revised. Generally speaking, Attorney Austin Wolf confirmed that procedurally, there is a provision that would allow for an amendment to an inland wetland permit. Annette Jacobson advised the Agency that the applicant has not provided any details with this alternative proposal, such as drainage calculations, etc. Kathleen Maxham noted the Agency has not had an opportunity to review the plans against the approved inland wetland permit. Following discussion, Kathleen Maxham moved, and Elizabeth Jones seconded to table this matter and to schedule review of this matter at a Special Inland Wetland meeting to be held April 19, 2012. Motion passed unanimously. Attorney Austin Wolf left the meeting at this time (7:55 p.m.).

V. INLAND WETLANDS DELIBERATIVE SESSION

A. OLD BUSINESS

1. IWPA 2011-12-06, Brookside Acres, LLC, 145 Brookside Drive, Assessor’s Map 123, Parcel 86; Subdivision construction within a regulated area: Annette Jacobson indicated that the Applicant is in agreement with the Staff recommendation. In response to Kevin Gumpfer noting his concern for putting the water back into the wetland, as well as possible impact to neighboring properties, Annette Jacobson advised the Agency that the amount of water being returned to the marsh was very minimal, and that this was a fourteen acre wooded swamp. Ms. Jacobson also advised the Agency that the State of Connecticut had diverted water from the wetland back in the 1970’s, and the day-in and day-out water should go back into the swamp where it is supposed to go; storm flows will continue to be diverted. Milan Bull indicated that this would have an overall positive impact and not a negative impact. Following discussion, Kathleen Maxham moved, and Elizabeth Jones seconded to approve the March 27, 2012 Staff recommended Findings of Fact A through I, inclusive, together with all Standard and Specific Conditions of Approval, and to approve the entire inland wetland permit application 2011-12-06. **In Favor:** Milan Bull, Frank Rice, Elizabeth Jones, Kathleen Maxham. **Opposed:** Kevin Gumpfer. Motion carries 4-1. A copy of the decision of the Agency is attached hereto as Exhibit A.

2. IWPA 2011-12-08, Town of Fairfield Parks and Recreation, 2425 Morehouse Highway (H. Smith Richardson Golf Course); Assessor's map 67, Parcel 5: Construct drainage modifications on the 2nd Fairway and 11th Green within a regulated area: Annette Jacobson provided the Agency with a description of the proposed activities, noting that the details have been worked out between Conservation Staff, Parks and Recreation Director Gerald Lombardo, Peter Grace (H.S.R. Superintendant), and Walter Stapleton (site monitor). Following discussion, Kathleen Maxham *moved*, and Kevin Gumpper *seconded* to approve the March 26, 2012 Staff recommended Findings of Fact A through I, inclusive, together with all Standard and Specific Conditions of Approval, and to approve the entire Inland Wetland Permit Application 2011-12-08. *Motion passed unanimously.* A copy of the decision of the Agency is attached hereto as Exhibit B.

At 8:02 p.m., it was the consensus of the Agency to temporarily suspend the Inland Wetland Agency meeting in order to conduct the Conservation Commission Special Meeting. At 9:00 p.m. the Inland Wetland Agency meeting was reconvened.

Note: an election of officers was conducted during the Special Conservation Commission meeting in which Kevin Gumpper was elected as Chairman. In accordance with that election, Mr. Gumpper chaired the remainder of the Inland Wetland Agency meeting.

B. NEW BUSINESS

1. 2012 Municipal Inland Wetland Commissioner's Training Program, Segments I and II: Informational. Kevin Gumpper noted that he has not attended this training and is not certified; Mr. Gumpper will need to register for this training.

2. New Rule For Filing Records in Administrative Appeals: The Agency discussed the new Court rules regarding filing returns of records in administrative appeals. The new procedures involve submitting most, if not all, of the documents contained in the record electronically. Kevin Gumpper suggested requiring applicants to submit their documents electronically, in addition to a paper copy. Mr. Gumpper noted that he will contact Town counsel to determine whether implementation of this procedure would require a revision to the Inland Wetland Regulations.

4. IWP 2003-08, Black Rock Realty, LLC – Status Report/Update by Redniss and Mead, Consultant on 3rd Train Station: No representatives from Redniss and Mead were available this evening to provide a status report in this matter. In response to an inquiry by Kevin Gumpper, it was noted that some Commissioners are continuing to receive copies of site monitor reports while others are no longer receiving them regularly. Kevin Gumpper indicated that there have been significant changes to the plans which may require the input of Conservation Staff in the future. The changes may require review by Conservation Department Staff in terms of making a determination as to whether a new inland wetland permit will be required for the proposed activities, or whether they are consistent with the current approved permit.

3. Referral of proposal within 500' of Fairfield as required by statute. Applicant – Jewish Home For The Elderly to the City of Bridgeport, 4128 Park Avenue – Proposal to demolish infrastructure and construct new combination JCC and JHE Convalescent facility, etc.: The Agency reviewed the Staff memo of March 30, 2012; Annette Jacobson provided a brief description of the proposed activities noting that no drainage design or calculations were provided. Following discussion, Kathleen Maxham *moved*, and Elizabeth Jones *seconded* to send the March 30, 2012 Staff recommendations to the City of Bridgeport Inland Wetland Agency. Motion passed unanimously.

5. Monthly wetland business update for the Agency: Informational.

VI. STATUS OF APPLICATIONS PREVIOUSLY FILED

1. IWPA 2011-12-09, Benevolent Protective Order of Elks No. 2220, Inc. (BPOE), 452 Brookside Drive; Assessor's Map 123, Parcel 221 – Subdivision construction within a regulated area: Awaiting public hearing May 3, 2012.

IV. INLAND WETLANDS – LEGAL/ENFORCEMENT ACTION

Elizabeth Jones noted that she would need to recuse herself on the following item, and left the meeting at this time (9:13 p.m.).

2. New Way Associates, Inc. and Dudics (Plant Factory Site), 4185 and 4267 Black Rock Turnpike, Fill wetland and watercourse within a regulated area. Modified cease and correct order – update: Edward Jones advised the Agency that this violation matter has been on-going for some time, and that he has conducted a review of the department file. Mr. Jones noted that the Agency had previously voted to allow the property owner to follow a “dual track” in resolving the wetland violation matter while proceeding with an inland wetland permit. Mr. Jones noted that the property owner has not yet conducted the mitigation required as part of the resolution, although the wood chips have been cleared out of the wetland soil. The mitigation included the restoration/creation of a vernal pool due to the owner's past elimination of a vernal pool on site. The Agency reviewed the cease and correct items recommended in Mr. Jones' memo of March 30, 2012. Following discussion, and suggestion that Staff review the matter with Town Attorney, Kathleen Maxham *moved*, and Frank Rice *seconded* to have Staff meet with Town Attorney to review the Agency's alternatives for pursuing the violation/resolution, and to report back to the Inland Wetland Agency. Motion passed unanimously.

VII. OTHER:

1. Sasco Brook Watershed Plan: Milan Bull advised the Agency that he has been asked to participate in a ceremony being conducted on April 20, 2012 and to endorse, on behalf of CT Audubon, a plan for watershed stewardship. Thomas Steinke noted that this ceremony relates to the Sasco Brook Watershed Committee's efforts to protect the watershed; it is anticipated that Rooster River will be reviewed next.

VIII. ADJOURNMENT: There being no further business to come before the Commission, Kathleen Maxham moved and Frank Rice seconded to adjourn at 9:22 p.m. Motion passed unanimously.

Respectfully submitted,
Betty Gabriel