

**CONSERVATION COMMISSION  
FAIRFIELD, CONNECTICUT  
INLAND WETLANDS MEETING MINUTES  
September 12, 2013**

The Conservation Commission, acting as the Inland Wetland Agency of the Town of Fairfield, held a Meeting on September 12, 2013 in MEETING ROOM II of Independence Hall, 725 Old Post Road, Fairfield, CT.

**MEMBERS PRESENT:** Kevin Gumpper, Chairman; Kathleen Maxham, Vice Chair; Catherine O'Donnell, Secretary; Elizabeth Jones; Richard Santalesa; Sam Boyarsky. **ALTERNATES:** Felicia Watson; Richard D'Amico. **ABSENT:** Frank Rice. Also Present: Annette Jacobson, Conservation Administrator; Edward Jones, Wetlands Compliance Officer/Open Space Manager; and members of the public and press.

**I. CALL TO ORDER:** The meeting was called to order at 7:32 p.m. by Chairman Gumpper.

**II. APPOINTMENT OF ALTERNATES:** Richard D'Amico was appointed to sit as full member.

**III. BILLS AND COMMUNICATIONS**

A. Approval of Minutes of Meeting August 1, 2013: Elizabeth Jones *moved*, and Kate Maxham *seconded* to approve the August 1, 2013 meeting minutes. *Motion passed unanimously.*

B. Approval of recording secretary's bill of August 1, 2013: Catherine O'Donnell *moved*, and Kate Maxham *seconded* to approve the recording secretary's bill of August 1, 2013. *Motion passed unanimously.*

C. REGULATIONS REVISIONS - Under review by Staff.

**V. INLAND WETLANDS DELIBERATIVE SESSION:**

A. OLD BUSINESS

1. IWPA 2012-13-9, Rice, Hickory Lane  
Assessor's Map 152 Parcel 24A  
Construct new dwelling within a regulated area .  
Application received May 2, 2013  
65-day extension provided.  
Sam Boyarsky *moved* to allow withdrawal and submittal of a new application with no fees on the fee except the late fee. Motion *seconded* by Richard D'Amico and passed *unanimously.*

Felicia Watson arrived at 7:35.

2. IWPA 2013-14-01, Vinograd, 4800 Congress Street

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Assessor's Map 167 Parcel 1  
Subdivision Construction within a regulated area.  
Application received August 1, 2013  
Last day for public hearing or decision is October 5, 2013.  
Last regulation meeting prior is October 3, 2013.

Ms. Jacobson stated a similar subdivision had been reviewed and approved by Staff in 1988 at Staff level. Since then the regulations have changed so this could not be reviewed by Staff again. The only change is the Open Space is a little bit altered because of revising the TPZ regulations. Staff recommends approval with standard and specific conditions.

Kate Maxham *moved* to approve the findings of facts and Sam Boyarsky *seconded*. *Motion passed unanimously*.  
Kate Maxham *moved* approval of the application subject to the standard and specific conditions as set forth in Staff recommendation. Sam Boyarsky *seconded*. *Motion passed unanimously*. The letter conveying the decision of the Agency is attached. (A). At this time Richard D'Amico recused himself from the following matter. Felicia Watson was appointed to sit.

#### IV. INLAND WETLANDS-LEGAL/ENFORCEMENT ACTION

1. Cease and Desist Show Cause Violation Hearing, Ganjikunta & Kancharla, 44 Rosemere Avenue, Assessor's Map 5 Parcel 045  
Filling wetland soil and Piping watercourse without benefit of a Wetland Permit and within a Conservation Easement.

This hearing began at 7:38 p.m.

Ed Jones stated an anonymous telephone complaint was called in for Staff to investigate the site. He also stated that there was a lengthy history on the site and there is a very contentious permit. The case went to Superior Court and the Agency was upheld. It went through ZBA, there were lot line changes. It was three lots from the original subdivision. The Agency restricted the lots to one house with no filling of wetlands on the properties. Since then, all three lots were combined into one with a right of way for Rosemere from Jackman over to Brooklawn. In 1990 the site design that is there now was approved with no appreciable yard. There is no doubt owners have excavated wetland soil and piped the watercourse. Mr. Jones indicated he spoke to one of the owners of the Real Estate Broker at the Conservation Department office about the property restrictions before this disturbance was conducted. The owners do not want to restore the violation. Therefore, the owners were advised to go through the formal enforcement proceedings with their proposal and to ask to come in for a wetland permit. Ed Jones recommends maintaining the cease and correct order in effect, notice of violation to go on the land records. That goes with the title and even if it's rescinded later, so people will be alerted as to the seriousness of the issue for Conservation and Wetlands. This is a complicated area that receives

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runoff from neighboring properties. There should be plans, survey, engineer, review of hydraulics and do an IWPA proposal. There's a sanitary and storm water easement there. Recommended that would be the limit to which any activities take place to.

Ms. Jacobson stated the only action tonight would be keeping the Violation to Show Cause open, asking the Commission to look at it and consider putting a notice violation on the land records.

Mr. and Mrs. Ganjikunta explain the problems they have encountered and why they want to place piping in the backyard. Mr. Gumper explains the seriousness of the violation and why professional help is required to work with Staff. There was a request for waiver of the future Inland Wetland Permit Application.(IWPA) fee. That may be considered in the future with a formal request.

Several neighbors spoke on behalf of the Gunijkuntas commenting on what what good neighbors they are and what a good job they have done in making a nice neighborhood.

Sam Boyarsky *moved* and Elizabeth Jones *seconded* a motion to continue the matter and to file a notice of violation on the land record. *Motion passed unanimously* at 8:00 p.m.

## **B. NEW BUSINESS**

1. Declaratory Ruling Request by John Fallon, Esq. regarding 464 Pine Creek Avenue, Loper, Assessor's Map 234 Parcel 247D. Request to make a finding of no inland wetland and watercourse jurisdiction over activity due to no inland wetland regulated areas.

Mr. Fallon stated that this matter is one of process. There is no dispute that there are no inland wetlands on the property, but there are tidal wetlands and they are not under the jurisdiction of this Commission. According to Mr. Steinke, because there was a 1987 wetlands map filed, the only way to deal with the situation is through a map amendment rather than a declaratory ruling. Mr. Fallon argues, if there is no real conflict is it reasonable, necessary, practical or proper to put the applicant and the property owner and the Commission to the added time and expense of a formal map amendment proceeding? After comparing a prior decision on a separate property at 54 Sasco Hill Road to this Pine Creek property a request was made to take note of Mr. Kenny's status and pursuant to Section 4.4 make a determination that there are no inland wetlands on the property and a single family residence could be constructed on the property.

Ms. Jacobson points out that this is not a public hearing and a declaratory ruling is not a a public hearing procedure.

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Mr. Gumper overrules this comment and allows the presentation to continue. Mr. Kenny gives an overview of his findings on procedures for mapping and identifying soil types and found that the wetlands and watercourses that border the property are tidal wetlands. He points out that Mr. Shook's map is consistent with his findings as defined by the 1986 tidal wetland regulations.

Ms. Jacobson states that procedurally this should not be a formal public hearing. The declaratory ruling assumes that a property is under inland wetland and watercourse jurisdiction. Under Section 4.4 it is assumed that the property is already regulated and we are exempting an activity not deregulating a property. Ms. Jacobson further states, tidal wetlands are determined by vegetation and elevation. Mr. Shook's soil scientist map shows inland wetlands a high elevation of 4.10. Tidal wetlands would be considered at elevation levels 3, 4, 5. Elevations 9 and 10 are significantly above any kind of tidal action in this area. Procedurally this should be reviewed as a map amendment public hearing or to go forward with an inland wetland permit application. After further discussion on the matter no motions were made and no decision was reached. This matter will be placed on future agendas for consideration.

2. Request for release of performance bond.

- a. IWP 2001-12, M & M Land Development, Southport Ridge Road & King Highway West, Subdivision construction within a regulated area. Request of Thomas E. DellaBitta of MTM Classic Home Builders Ltd. for In-common partial release and final individual lot bond releases for lots 1,2,3,4,5,8 and 9. Staff recommends final release for Lot 1, 3, 4 and 5 and recommends denial of In-common and lots 2, 8 and 9.

Ms. Jacobson states that the final releases of the individual lots can be done and take no action on the other lots.

Sam Boyarsky *moves* to approve final release on lots 1,2,4 and 5 and *seconded* by Richard Santalessa. *Motion passes unanimously.* Kate Maxham *moved* and Elizabeth Jones *seconded* to table lots 2, 8 and 9 In-common. *Motion passed unanimously.*

- b. IWP 2003-08, IWP 2003-08, Black Rock Realty, LLC and Town of Fairfield, formerly 21 Black Rock Turnpike, Kenard Street to Ash Creek, Assessor's Map 80 Parcel 4A. Request of First Selectman Tetreau for Partial Release of \$816,024 of total \$843,564 bond leaving a balance of \$27,540. Staff Recommends more data before a Public Hearing is scheduled.

Kate Maxham *moved* to table the matter, *seconded* by Sam Boyarsky. *Motion passed unanimously.*

- c. IWP 2006-07-11, Speer (Pensiero), 115 Spruce Street, Construct a new house within a regulated area. Request of Frank Pensiero for final lease of \$9110

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for Lot A.

Kate Maxham *moved* and Elizabeth Jones *seconded* motion for final release of \$9110 for Lot A. *Motion passed unanimously.*

3. Monthly wetland business update for the Agency.  
Mr. Gumpfer inquired about the Staff's work on the performance bond backlog.  
Ms. Jacobson indicated Staff is working diligently.

**VI. NEW APPLICATIONS** - Formal acceptance and start of 65 day legal time frame, Determination of application significance, fee, and scheduling of public hearing, if necessary, And/or decision on the application.

1. IWPA 2013-14-02, Rice, 3 Hickory Lane  
Assessor's Map 152 Parcel 24A  
Construct new Dwelling and septic system within regulated area.  
Staff recommends tabling pending legal notice and departmental review.

Elizabeth Jones *moved* and Felicia Watson *seconded* a motion to find the application non-significant and to table the matter pending legal notice and departmental review. *Motion passed unanimously.*

Elizabeth Jones recuses herself with regard to the following matter. Richard D'Amico was appointed to sit on this item.

2. IWPA 2013-14-03, Gorelick, 3250 North Street  
Assessor's Map 215 Parcel 11a  
Construct new Dwelling and septic system within a regulated area.

Elizabeth Jones recuses herself with regard to this matter.

Mr. Gorelick inquires of the Commission as to whether or not he should withdraw the application or proceed to a public hearing.

Ms. Jacobson suggested she speak with the Commission about this matter so there would be no ex-parte communication in case of a public hearing. Ms. Jacobson gives a brief overview of the matter to the Commission regarding project significance and the need to schedule a public hearing.

Kate Maxham *moved* and Catherine O'Donnell *seconded* a motion to find the application significant and to schedule a public hearing for November 7, 2013. *Motion passed unanimously.*

3. IWPA 2013-14-04, Love Where You Live Homes, 310 Penfield Road.  
Assessor's Map 139 Parcel 98  
Demolish existing House and Rebuild Elevated House within a regulated area.  
Staff recommends tabling pending legal notice and departmental review.

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Catherine O'Donnell moved and Sam Boyarsky seconded a motion to find the application non-significant and to table the matter pending legal notice and departmental review. Motion passed unanimously.

At 10:02 p.m. the Public Hearing was opened. Catherine O'Donnell read the Call.

## **VII. PUBLIC HEARING**

1. IWP 2003-08, Black Rock Realty, LLC and Town of Fairfield Formerly 21 Black Rock Turnpike, Kenard Street to Ash Creek Assessor's May 80 Parcel 4A. Public Hearing to determine whether proposed plan revisions to change a Retail Pavillion to a 197-unit Apartment Building is consistent with the existing wetland permit, or whether such change requires a permit modification and/or a new permit. Please note that the hearing will be held immediately prior to Public Hearing by the Conservation Commission on the Conservation Public Access Map.

At 10:02 p.m. the Inland Wetland and Public Hearing and meeting were recessed to open the Conservation Commission meeting and Public Hearing on the same property.

At some point during the Conservation Public Hearing, the inland wetland matters were also discussed and the Conservation Commission/ Inland Wetland Agency determined the hearing was a joint hearing from that point forward.

The hearing was not concluded. It was stopped at 11:03 and Kate Maxham moved and Catherine O'Donnell seconded to continue the hearing to October 2, 2013. It was the consensus to try to obtain engineering/sewer comments on the Newly submitted data before the continued hearing.

**VIII. ADJOURNMENT:** There being no further business to come before the Wetlands Commission, Kate Maxham moved and Catherine O'Donnell seconded the motion to adjourn at 11:03 p.m.

Respectfully,

Jacqueline Brown  
Recording Secretary

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