

East Hampton Inland Wetlands & Watercourses Agency
Regular Meeting
March 26, 2008

East Hampton Middle School Commons

Unapproved Minutes

1. Call to Order: Chairman Foran called the meeting to order at 6:30 p.m.

Present: Chairman Jeffrey Foran, Vice-Chairman Joshua Wilson, Members David Boule, Alannah Coshow, Dean Kavalkovich (6:45 p.m.), Marc Lorah (6:49 p.m.), Peter Wall, Alternate Members Maureen Heidtmann, and Scott Hill were present. The Town Attorney, Janet Brooks (6:55 p.m.); Building Administrator, James Carey; and the Town Planner, David Dodes, were also present.

Absent: All members were present.

2. Seating of Alternates: Chairman Foran seated Alternate Members Heidtmann and Hill at this time.

3. Approval of Minutes - February 26, 2008: *Vice-Chairman Wilson moved to table the approval of the February 26, 2008 minutes until the next regularly scheduled meeting. Ms. Coshow seconded the motion. The motion carried unanimously.*

4. Agent Approval: Application of John Sienko, 51 Bay Road, for activity in the buffer/setback area, a residential improvement by homeowner. Mr. Foran explained the project briefly to the Agency and reported that he approved this application in his capacity as the Duly Authorized Agent of the East Hampton Inland Wetlands and Watercourses Agency.

5. Communications, Enforcement, and Public Comments:

- **Communications:** Mr. Dodes reported that the Agency was in receipt of a request that the Application of James Marino, 9 Huckleberry Acres, be postponed until the next regularly scheduled meeting. Mr. Carey explained that the Surveyor for the applicant has requested that this application be postponed to allow the Town's engineer the opportunity to review the applicant's latest submission. The applicant is aware of this request. *Mr. Foran moved that Agenda Item 8.a. be continued to the next regularly scheduled meeting. Mr. Wilson seconded the motion. The motion carried unanimously.*

Mr. Dodes reported that the Agency has received in their packages a letter from Wendy Gendron and Matthew Kennedy of ENSR regarding the development of a nutrient budget for Lake Pocotopaug. Mr. Carey reported that he has discussed this project with Chuck Lee of the DEP, who has indicated that this contract will be granted either in late April or early May. It is anticipated that this work will be completed by September of this year.

- **Enforcement: James Haydu,** 15 Anderson Way, for activity within the upland review area (filling, excavation, and land clearing & drainage improvements), creating a wetland – M 5/B 2/L 7. Mr. Carey explained that Mr. Haydu has enlisted the services of

Rich Snarski, Certified Soil Scientist. Mr. Russo, CLA Engineers, has reported to the Agency that Mr. Snarski's plan for the wetland is the most appropriate plan submitted to date. Mr. Carey agreed with that assessment and suggested that in light of the petition which the neighbors have brought forward a public hearing should be scheduled with this remediation plan in mind. *Mr. Foran moved, and Mr. Wilson seconded, that Mr. Haydu submit an application and that a public hearing be scheduled for the next regularly scheduled meeting.* Ms. Coshow discussed her concern that any work on the remediation of this wetland be performed with the timing of the season in mind. Mr. Carey indicated that he has already discussed this with Mr. Snarski and that the project will not take place until any seasonally sensitive activities of the wetland inhabitants are considered. The Chairman unseated the Alternates and seated Messrs. Kavalkovich and Lorah. *The Chairman called for the vote. The motion carried 6-0-1. (Yes votes: Boule, Coshow, Foran, Lorah, Wall, and Wilson. No votes: None. Abstentions: Kavalkovich).*

- **Public Comments:** None.

6. Reading of the Legal Notice: None.

7. New Applications:

A. Application of Peter Marlowe Forest Products, 162 High Street, timber Harvest (agriculture & forestry), planned harvest and removal of timber products – M 32/B 85/L 6 & 6B. Peter Lesmerises, Forester with Peter Marlow Forest Products was present representing the application. He briefly explained the plan for the harvest. There will be no crossings and approximately 160,000 to 200,000 board feet will be harvested. *Mr. Wilson moved to schedule a public hearing for the next regularly scheduled meeting. Ms. Coshow seconded the motion. The motion carried unanimously.*

B. Application of Town of East Hampton, Department of Public Works, Main Street Bridge crossing Pocotopaug Creek, Main Street Bridge Replacement. Mr. Carey presented the plan on behalf of the Town's Public Works Department. He described the plan and explained that this is a major artery in the Town and that the road will be completely closed for approximately six to eight weeks and the work must be done during the summer recess of the schools to avoid interrupting the school bus routes. Mr. Carey read the letter from CLA Engineers regarding the bridge replacement to the Agency. *Mr. Wilson moved, and Ms. Coshow seconded, to schedule a public hearing for the next regularly scheduled meeting. The motion carried unanimously.*

8. Continued Applications:

A. Application of James Marino, 9 Huckleberry Acres, for activity in the buffer/setback area to construct a new residential single family unit – M 6A/B 57/L 6B-5. This application has been continued to the next regularly scheduled meeting.

9. Public Hearings:

A. Application of Pelletier Development Company, LLC, Belltown Place, 37 South Main Street, for activity in the buffer/setback area including filling, excavating, land

clearing/grubbing, roadway construction, and drainage improvements to construct a new residential development for multi-family/condo – M 20/B 51/L 27:

Mr. Hill recused himself from the meeting at this time.

Vice- Chairman Wilson and Ms. Coshow indicated for the record that although they were not present at the last meeting, they have listened to the recordings of the meeting in full.

Attorney Mark Branse was present to represent the applicant. He explained that in an effort to control the length of the meeting he has compiled the answers to the public's questions from the last meeting in one document and has submitted it for the record. Mr. Branse addressed the submissions received by the Agency through tonight's meeting.

Christopher Till, Precision Engineer, was present to discuss the application. He referred to his written submission which he summarized for the record. He discussed the impact of the water supply wells on the area wetlands, public health department requirements, average daily demand, and inability to demonstrate the need for a diversion permit. He referred to additional reports by GeoQuest and Dr. Steinen which each conclude that water will be available for this development on this site.

George Logan, REMA Ecological Services, was present and discussed the soil types and the strategic design of the system on this site.

James Dutton, Dutton Associates, was present and updated the Agency with the revised hydrology calculations for the site. The new calculations include field test data for the two- through the 100-year storm. They also include the design of the submerged gravel wetland. Mr. Dutton also discussed several other revisions made to the plans, including design of the level spreader, Detention Basin No. 1, well plan and erosion & sedimentation controls.

Mr. Carey discussed the inability of staff to review these new design plans prior to this meeting due to the time of receipt. Changes to this degree will require quite a bit of review.

Mr. Dutton reported that the revised calculations indicated a slightly greater reduction in peak flow than the original calculation. Attorney Branse clarified that the new calculations indicated slightly more retention than the previous calculations.

Attorney Janet Brooks, Town Council, discussed a submission dated March 24, 2008 from Pelletier Development Corporation addressed to the Chairman of the IWWA. Attorney Brooks explained that this submission specifically addresses the exemption that the applicant believes applies to this project. She explained that the applicant believes that nothing being proposed for this project is a regulated activity which would be within this Agency's jurisdiction. The applicant has proposed that "those activities pertaining to construction and operation of dams, reservoirs, and other facilities necessary for impounding, storage, and withdrawal of water in connection with public water supplies"

are not part of this Agency's jurisdiction. The definition of a water company is "every person owning, leasing, maintaining, operating, managing, or controlling any pond, lake, reservoir, stream, well, or distributing plant or system employed for the purpose of supplying water to 50 or more consumers." It is Attorney Brooks' opinion that this applicant is proposing and constructing a water supply system for more than 50 customers, which is being supplied by a well; therefore it is exempt from local wetlands control, jurisdiction, regulation, and permitting authority.

Attorney Brooks addressed the local wetlands regulations and quoted "The Agency may rule that any other activity located within such upland review area or in any other non-wetland or non-watercourse area is likely to impact or effect wetlands or watercourses and is a regulated activity." In order to establish that the Agency has jurisdiction over this application, a connection must be made indicating that the activities are impacting the wetlands and watercourses because the activities are not in the wetlands or watercourses and are not in the upland review area. Attorney Brooks also discussed several specific areas that the Agency should not address because they are outside the Agency's jurisdiction.

Attorney Brooks explained that the applicant must seek to obtain a diversion permit from the DEP. The WPCA and the Chatham Health District both plan, if they have not already, to request the applicant apply for a diversion permit. The requirement for a diversion permit kicks in when the daily peak flow reaches 50,000 gallons. There is no prohibition to filing an application for a diversion permit for daily peak flows under 50,000 gallons.

Attorney Brooks explained that the applicant has offered to submit to the IWWA's jurisdiction though they dispute that they have any regulated activities. She suggests that the offer of this type of oversight is beneficial to the parties involved and would allow the Agency to exercise jurisdiction in a pragmatic way.

Andy Shelto, 60 South Main Street, asked for clarification on some of these points.

Attorney Brooks explained that in order to continue this public hearing to the next regularly scheduled meeting of the IWWA the applicant would need to grant an extension. If the public hearing is closed tonight, all the material received today will not have been reviewed by the Agency or Staff and the applicant would not be able to respond to any additional questions.

The Agency requested Attorney Branse to discuss an extension with his clients. Attorney Branse reported that the applicant was not willing to grant an extension for the public hearing.

Attorney Brooks clarified for the Agency that if the public hearing is closed tonight, the applicant would not be able to respond to any further questions of the Agency. Attorney Branse agreed that that was acceptable to his clients.

Mr. Wilson discussed several questions with the applicant's professionals. He would like to see a water budget for the sight. Mr. Logan responded that he has provided a hydrologic analysis. They discussed the potential dangers to the wetlands. Mr. Dutton discussed the watershed area with Mr. Wilson.

Attorney Branse clarified that the project would be conducted in two phases. He indicated that this is covered in his response to Dr. Goodfriend. Mr. Wilson discussed his preference for a three-phase project. Dr. Logan discussed his concerns regarding multiple phases.

The Chairman recessed the meeting at this time. The meeting reconvened at 9:14 p.m.

Chairman Foran opened the meeting up to the public at this time.

Craig O'Dell, 59 Edgerton Street, questioned the E&S Control Plan and the monitor who would be overseeing it.

Jim Burg, 54 Ridgeview Drive, questioned the wetlands delineation of this site.

Andy Shelto, 60 South Main Street, questioned the development, use, and maintenance of the proposed submerged gravel wetlands. He believes this is an untested experiment and the outcome is unknown.

Katherine Van Blaricom, 50 South Main Street, discussed the density of the project and her concerns for the wetlands.

Pat Ciardillo, 76 Daniel Street, questioned the applicant's failure to present this project to the Conservation Commission.

Attorney Branse responded to the previous questions. The site monitor will be whomever the Agency selects. The site has been delineated by George Logan. The submerged gravel wetland is a feature being added to the commonly accepted storm basins and, if this Agency should prefer, it will not be included in the project. Attorney Branse explained why the applicant was not available for the Conservation Commission. Attorney Branse refused to answer the question concerning the density of the project and its effects on the wildlife as it is not a wetlands issue.

Bruce Shepard, 64 South Main Street, discussed his concerns about blasting and its effects on the wetlands.

Ellen Nosal, 152 Main Street, discussed the discrepancy regarding the acreage of the wetlands. She commented that the applicant's failure to properly notice the application is the reason that the Agency is out of time and must close the public hearing.

Gordon Binkhorst, ALTA Environmental Corporation, reiterated his concerns, which have been submitted in writing regarding this project.

Don Roberts, 91 Daniel Street, discussed the impaired watercourses in the area and their proximity to the Salmon River.

Jim Burg, 54 Ridgeview Drive, questioned whether a maintenance plan for the gravel wetland was available and when the REMA re-inspection for vernal pools on the project site was performed.

Mr. Logan stated that there is a maintenance plan for the gravel wetlands. The inspection for vernal pools was conducted on the day that they had a site walk with Dr. Goodfriend. He agreed that it is too early in the season to view vernal pool species so he went back to his records for the previous year.

Attorney Branse responded that there are 3.05 acres of wetlands. Mr. Dutton explained that the total wetlands, as delineated by Mr. Logan, are 3.05 acres or 12.5% of the total site. He also reported that on Sheet S3 the shading that Mr. Shepard indicated as slope has nothing to do with ledge. No significant amount of blasting is anticipated. If there is any it will be in the utility trenches. Almost all of the units are slab on grade. There are a few in the more sloped area that are walk-outs. Any blasting that is required would be done with the oversight of the Fire Marshal. There are provisions for water stops to prohibit water from following the utility trench.

Attorney Branse said the other questions all related to the water system and he will not respond.

Attorney Branse referred to Dr. Goodfriend's letter indicating that the submerged gravel wetland is the best opportunity available to protect the Salmon River from any runoff.

Bill Reardon, 55 South Main Street, invited the Agency to walk on his property.

John Hines, 38 South Main Street, handed out pictures of another project in town and discussed the impact runoff. His concern is that best management practices are not adhered to.

Andy Shelto, 60 South Main Street, discussed his concerns regarding the conflicting information on the submerged gravel wetland.

Jackie Reardon, 317 Maple Trail Coventry, showed the Agency where vernal pools were located on the site. She is concerned about the discharge of the wetlands.

Rob Lazor, 40 South Main Street, commented on Mr. Till's discussion of the hydrology and is concerned about putting water into the ground and cutting the wetlands off from each other.

Attorney Branse addressed the five previous issues. The maintenance plan has been submitted and reviewed. The photos that were distributed are not of a project that the applicant's are in anyway associated with.

Mr. Logan discussed the sensitivity a specific wetland has for nitrogen and explained that he convinced the developer to address that sensitivity with the submerged gravel wetland. He also discussed the use of a level spreader. Attorney Branse reiterated that it is up to the Agency whether there is a submerged gravel wetland. Mr. Logan clarified that if there is no submerge gravel wetland the methodology to protect the Salmon River would be to comply with the 2002 Water Quality Manual.

Paul Marsh, 65 South Main Street, discussed the existence of vernal pools on the property.

Jim Burg, 54 Ridgeview Drive, discussed the acceptance of the wetland delineation. He also discussed the submerged gravel wetland. He discussed the ability of the Agency to regulate the impact of the project on the offsite wetlands.

Beth Angel, Country Lane, discussed the Storm Water Quality Manual being used to plan this meeting. She is concerned about this project being sewerred and not recharging the wetlands.

Diana Marsh, 65 South Main Street, discussed her concern that the applicant's professionals are misleading the Town regarding vernal pools.

Lynn Hines, 38 South Main Street, discussed her concerns over the lack of open space on the site.

Attorney Branse discussed the proposal to use a standard conservation easement.

Mr. Logan discussed the vernal pools and the reality that the Agency does not regulate wildlife. He pointed out that Robert Russo, CLA Engineers, has reviewed his delineations. He clarified that there is no 2006 Storm Water Quality Manual.

Gordon Binkhorst, ALTA Environmental Corporation, discussed DPUC requirements.

Attorney Branse stated that the applicant will do whatever DPUC requires of them.

Mr. Dutton described the wetland areas, well areas, and open space area in the project.

Bill Reardon, 55 South Main Street, extended an open invitation to anyone who wants to walk his property. He would like the retention basins moved away from his property.

Dan Miller, 30 Young Street, discussed his concerns regarding the most recent drainage reports.

Rob Lazor, 40 South Main Street, discussed his concern about the water being drawn out of the ground and not being recharged as it would be with a septic system. He is concerned that putting the storm water detention basins in place will make the wetlands even bigger.

Diana Marsh, 65 South Main Street, questioned Attorney Brooks about her plans for the P&Z meeting next week.

Paul Marsh, 65 South Main Street, questioned Attorney Brooks about closing the public hearing tonight and the legal ramifications of doing so.

Attorney Brooks explained that if the hearing is closed the Agency may not receive comments from anyone other than staff, its technical consultants, and the town attorney. The Agency may not hear anything more from the applicant or the public. All communications will be stopped except from staff or consultants.

Sue Weintraub, 25 Knowles Road, stated although she is on the Town Council, she is not present to represent the Town Council. She questioned the new permitting required on the federal level for a permit from the Army Corps of Engineers.

Attorney Brooks responded that if this is a project that requires an Army Corps of Engineers permit, it is totally unrelated to the IWWA and will have no effect on the Agency.

Jackie Reardon, 317 Maple Trail Coventry, discussed her concern regarding the time constraints.

Dick Gosselin, 23 Hills Avenue, is a member of the P&Z but is not present to represent the P&Z, discussed his concern regarding the time constraints.

Rob Lazor, 40 South Main Street, posed a question regarding water on the property and then retracted it.

Mr. Kavalkovich addressed peak flow amounts actually being higher post-development than pre-development. He also explained that infiltration of the water into the ground is beneficial.

John Hines, 38 South Main Street, questioned stockpiling of excavated materials and erosion and sedimentation controls.

Attorney Branse responded that the report from Dr. Goodfriend covered stockpiling and the applicant will comply with her recommendations.

Mr. Carey clarified to Attorney Branse that if the public hearing closes tonight there will be no further submissions allowed so that if the plan needs to be changed there will not be the opportunity for give and take.

Sue Weintraub, 25 Knowles Road, referred to Jim Gibbons of the UCONN Environmental Studies, who stated that impervious surfaces of 20% can degrade water quality.

Mr. Logan discussed the published study to which Ms. Weintraub was referring.

Mr. Wall questioned the proximity of Buildings 17 & 18.

Mr. Dutton responded that there will be no decks and that there will be 3 feet between the building and the buffer zone.

Joe Pelletier, developer/applicant, responded that the builder will not need to go into the buffer to build. The grading will also be possible without breaching the buffer.

Ms. Heidtmann questioned the need for mosquito control and pesticides.

Attorney Branse responded that healthy wetlands produce fewer mosquitoes. There will be no need for pesticides and the grass types have been suggested by Dr. Goodfriend.

Attorney Brooks stated that a DEP action for mosquito control would be exempt from municipal wetlands control.

Mr. Wilson discussed his concern that the applicant's professionals have implied that it is not worthwhile to reduce the number of units because the reduction in impacts would be incalculable. He would like to see a water budget for the site showing pre- and post-development. Mr. Wilson would like the Town's wetland specialist, Robert Russo of CLA Engineering, to comment on the delineation submitted before it is accepted.

Chairman Foran requested the applicant grant an extension to allow the Agency to continue the public hearing to the next regularly scheduled meeting.

Attorney Branse responded that the applicant would not grant an extension.

The Chairman recessed the meeting for five minutes at this time. The meeting reconvened at 10:59 p.m.

Chairman Foran moved to close the public hearing at this time. Mr. Wilson seconded the motion.

Mr. Wilson requested that CLA provide the Agency with a water budget for the site since the public hearing has been closed and the applicant can no longer provide additional information to the Agency.

Ms. Coshow questioned the plan for the stockpiles on the site.

Mr. Carey explained that it would be a problem to provide additional information at this point. The Agency could require conditions of the applicant upon approval.

Mr. Dodes expressed concerns that the two different boards could end up looking at two different plans, which would end up a legal problem.

Mr. Carey explained that the P&Z will not act on an application until the IWWA has acted and they will ensure that they are acting on the same version of the plans.

The Chairman called for the vote. The motion carried unanimously.

Chairman Foran moved to continue the Application of Pelletier Development Company, LLC, Belltown Place, 37 South Main Street, for activity in the buffer/setback area including filling, excavating, land clearing/grubbing, roadway construction, and drainage improvements to construct a new residential development for multi-family/condo, M 20/B 51/L 27, to the next regularly scheduled meeting on April 30, 2008. Mr. Wilson seconded the motion. The motion carried unanimously.

10. New Business: Mr. Boule discussed his concern regarding information being received from the public in cases where there is no public hearing.

Mr. Carey discussed the legal advice the Agency has received regarding this issue. He explained that unless a public hearing is being held the public should not make contact with the Agency.

11. Old Business:

A. Lawn Fertilizer Containing Phosphorous: The Chairman reported that the Town Council has not yet approved the Ordinance and discussed the concerns that they had. The Council has requested that a workshop be held to address their concerns. Sue Weintraub, Town Council Liaison, was present and discussed the concerns that had been voiced.

12. Adjournment: *Ms. Coshow moved to adjourn the meeting. Mr. Wilson seconded the motion. The motion carried unanimously.*

The meeting adjourned at 11:19 p.m.

Respectfully submitted,

Daphne C. Schaub
Recording Secretary