

**CITY OF TORRINGTON
INLAND WETLANDS COMMISSION
MINUTES
June 17, 2014**

Present: Jay Bate, Jr., Chairman
Jane Bakker, Member
Doris Murphy, Member
William Storti, Member

Also Present: Rista Malanca, Inland Wetlands Enforcement Officer

Not Present: Christine Altman, Vice Chair
Tom Telman, Member
Nicole Bastiannse Fritch, Member

1. Call to Order:

Chairman Jay Bate, Jr. called the meeting to order at 7:00 p.m., Torrington City Hall Council Chambers, Room 218, 140 Main Street, Torrington, CT

2. Roll Call and Announcement:

Chairman Jay Bate announced present and serving on the Commission this evening will be members Jane Bakker, Doris Murphy, William Storti, and Jay Bate. Also present is Inland Wetlands Enforcement Officer Rista Malanca and Corporation Counsel Raymond Rigat.

3. Minutes for Approval:

a. 3/18/14

MOTION by Ms. Bakker to approve the 3/18/14 minutes, seconded by Mr. Bate, seconded, unanimously carried.

4. Old Business:

none

5. New Business:

a. Water Pollution Control Authority – Facility upgrade

Mr. Ray Drew, WPCA Administrator appeared before the Commission and gave a presentation on the major upgrades and details of the proposal. Much of the equipment dates back to 1968 and needs updating. Current code requirements and energy efficiency upgrades will be accomplished.

The facility is located in the Town of Harwinton, but is owned by the City of Torrington. Mr. Drew is here for this update as it is a city facility project (located in Harwinton). This is an important project and Mr. Drew is looking for the Commission's support of this project. A referendum will occur later this year.

No motion necessary. The Commission thanked Mr. Drew for the presentation.

b. Cease and Correct Order

Property Owner: Michael Morgan c/o 76-80 East Pearl LLC

Location: 76 East Pearl Street

Violation: Maintaining a regulated activity without permits, deposition of material into the Naugatuck River (collapse of retaining wall)

Ms. Malanca explained the procedure of the Cease and Correct Order, Show/Cause Hearing.

Attorney Patsy Renzullo (representing property owner Michael Morgan) appeared before the Commission. Mr. Renzullo questioned whether this Commission has the authority to act upon this matter, and referred to other State and Federal regulations. It appears there was a repair done after the flood of 1955, and it is not apparent who made the repair. The City has indicated that this wall is owned by Mr. Morgan. The wall has collapsed, due to no fault of Mr. Morgan. Apparently CL&P has guide wires placed into this wall, and Mr. Renzullo has requested information from CL&P regarding the history of the installation of these guide wires.

Mr. Renzullo noted that there is a City manhole cover within four or five feet of the wall. He asked for evidence that his client owns or built this wall. Mr. Renzullo stated this may be Torrington's wall, or constructed by the Army Corps of Engineers.

Mr. Bate noted Mr. Morgan bought the property, and if the wall is on his property, it is the property owner's responsibility.

Mr. Renzullo stated it does not seem logical that a homeowner would do this, it's too large a project.

Ms. Malanca spoke with the Engineering Department, and read an email from the Engineering Department regarding this matter. It is the opinion of the Engineering Department that the retaining wall in question is not on City property. It is imperative that the area receive stabilization by properly licensed engineers. If the situation is not

addressed, it is probable that further erosion will occur and remnants of the wall will continue to collapse into the river.

Ms. Malanca noted that deeds show descriptions of the property that vary. Ms. Malanca read three different descriptions on deeds. When Mr. Morgan purchased the property, the deed states “the East Branch stream”. There is a map dated 1955 that shows where the taking line is and shows the property line, which includes the wall and the whole river is actually on the property.

Ms. Malanca stated the erosion and failure of the wall is deposition of material into the river, and that’s what she based her Cease and Desist on. Ms. Malanca has an email from WPCA Administrator Ray Drew that there are active sewer lines in this vicinity. That’s not necessary something for this Commission to handle, but the information is noted. Temporary stabilization must be done quickly, and then that will give time to acquire a permanent fix.

Mr. Bate stated that since the City is saying it is not their property, that it belongs to Mr. Morgan, this Commission now wants this area stabilized. If it was the City’s property, they would do the work.

Mr. Renzullo wants more identification with mapping and deeds and noted the map was prepared before the flood of 1955.

Ms. Malanca noted that without other maps, the City has to use what we currently have to base their decision on.

Mr. Renzullo said it will probably cost \$50,000 to \$100,000 to fix this wall, and that is not an easy burden for his client to absorb, especially if he is not responsible for it.

Further discussion followed on mapping, etc.

Mr. Renzullo submitted an email from the Army Corps of Engineers that stated some of these projects are turned over the municipality after they are constructed.

Ms. Malanca reviewed several documents in the file. Mr. Renzullo claimed he did not get one of Attorney Rigat’s emails.

Mr. Renzullo stated Mr. Morgan is being put into a position where he may need to appeal this, enter litigation, and it will cost him and the City much money. We may be able to resolve this, but we need some time.

Mr. Bate stated he understands the need for some time to resolve this matter, and suggested Mr. Morgan/Mr. Renzullo meet with the City Engineering Department to discuss this matter, and review the property ownership situation.

Mr. Bate stated something must be done quickly to stabilize the site to prevent further erosion. Ms. Malanca stated Mr. Morgan needs to come up with a temporary plan and run it by the Engineering Department. The river is low now.

Mr. Bate stated hopefully at the next Commission meeting, ownership of the wall will be established.

Ms. Malanca stated one way to do this is for the Commission to uphold the order but to add that at next month's meeting, Mr. Morgan will appear with an update as to the progress made with the ownership of the wall. The temporary stabilization should be done before the next meeting.

Mr. Renzullo stated they are anxious to cooperate with the City.

Mr. Morgan asked if he could use hay bales to stabilize the bank and does he need engineering for that? Mr. Bate noted hay bales may not be strong enough.

Mr. Morgan feels he does not own the wall, and does not want to get heavy equipment in there for rip rap. Ms. Malanca recommended whatever plan Mr. Morgan comes up with, either with a fully engineered plan or a plan that Mr. Morgan prepares. Mr. Bate stated Mr. Morgan can draw the plan for temporary stabilization.

Ms. Malanca noted it is important to put down time frames, as she noted these discussion began on April 8, 2014 with Mr. Morgan. Ms. Malanca had told Mr. Morgan that he needs to get a surveyor to disprove the maps the City has that shows Mr. Morgan as the owner. It is now June 17 and nothing has been done, they are still making the same argument that they do not own the wall, which may be legitimate, but the City has to go with the evidence they have as Mr. Morgan property owner.

Mr. Morgan reviewed some of the work he did on the property, and he has been working with an engineer and an excavator he knows, and they do not want to touch the property if it belongs to the City.

Mr. Morgan noted just to get it surveyed is \$6,000.00 and then engineering would cost more, and he believes the City owns this wall.

Mr. Bate stated hopefully Mr. Renzullo and the City's representatives/Engineering Department can get together soon and resolve the ownership question. In the meantime, Mr. Morgan's property is eroding further back into his property.

Mr. Morgan reiterated his conversations with the Army Corps of Engineers that they said there was no way a private property owner would have responsibility for that large wall, between two city bridges. It's a good thing he does not live next to the Hoover Dam, or he would be asked to fix that also.

Mr. Bate stated it makes sense that if the Army Corps did the work, and turned it over to the City, there should be a record of that transaction.

The Commission emphasized a temporary stabilization approved by the Engineering Department must be accomplished. Mr. Morgan stated he does not mind doing that, but it does not mean he takes responsibility for that wall.

Ms. Malanca read a motion into the record:

“Motion to modify the Cease and Desist Order issued on June 10, 2014 to 76 East Pearl Street LLC and Michael Morgan for property located at 76 East Pearl Street, based on the testimony heard and presented at the Show Cause Hearing held on June 17, 2014, this Commission finds that:

- a. Rista Malanca, Inland Wetlands Enforcement Officer is the duly authorized agent for the this agency and she has issued a Cease and Correct Order in accordance with Section 14 of the City’s Torrington Inland Wetlands and Watercourse Regulations and
- b. A Show Cause hearing was held within ten days of the Cease and Correct Order in accordance with Section 14 of the Regulations and that the Naugatuck River meets the definition of a watercourse defined in the regulations, therefore is under the jurisdiction of this agency and the activity described in the Cease and Correct Order a portion of the retaining wall has collapsed into the Naugatuck River which created an unstable, easily erodable condition along the bank of the Naugatuck River did in fact take place. The effects of the activity described above are: deposition of material into a watercourse from both the remains of the wall and continued erosion of the exposed bank, and an obstruction of the watercourse created by the remains of the wall. Both deposition of material and any obstruction of a watercourse are considered to be regulated activities as defined in the regulations.

Therefore, this agency finds that 76 East Pearl Street LLC property owner, and Michael Morgan, managing member of the LLC are maintaining a regulated activity without prior authorization. Therefore in accordance with Section 6 of the regulations and subject to enforcement proceedings and penalties described in Section 14 of the regulations, therefore this Agency modifies the order to read: temporary stabilization must be installed prior to the July 15, 2014 Commission meeting to prevent any future erosion of the disturbed area. You must submit temporary stabilization plan preapproved by the City’s Engineering Department and must appear before the City of Torrington’s Inland Wetlands and Watercourse Commission to report findings and what steps are being made to correct this problem at the next meeting.

Mr. Renzullo stated he has the obligation to preserve his clients rights, and if this order is issued, his client has ten days to appeal this order. At this stage, Mr. Renzullo says he client must appeal such a motion, even though his client wants to do everything that has been suggested.

Ms. Bakker stated that may be the case, but this Commission is required to make a motion on this matter.

Ms. Malanca stated this hearing can be continued to the next meeting with the understanding that temporary stabilizations be put into place. Ms. Bate stated he doesnot have a problem with that, as long as it truly happens. People sometimes come in and say

they are going to do something, and six months later nothing happened. Mr. Renzullo said that won't happen here.

Ms. Malanca requested evidence at the next meeting to show that the wall does not belong to Mr. Morgan, Mr. Renzullo agreed.

MOTION by Ms. Bakker to continue the hearing to next month and that Mr. Morgan will temporary stabilize the wall before then, seconded by Ms. Murphy, unanimously carried.

6. Staff Report:

Agent Determinations:

- . 96 Heritage Way, Jamie Herrick, inground pool within upland regulated area
- . 9 Twining Farm Lane, Robert Sparks, shed within upland regulated area
- . 169 Pierce Street, Richard Rougeot, concrete pad within upland regulated area

Ms. Malanca reviewed the agent determinations for minor activities.

Ms. Malanca reviewed her meeting with the McDonalds restaurant on Main Street for their plans to install a second window/que at their facility. In order to keep the que the way it needs to be, an island needs to be moved, and it is within the 75 feet regulated area, and she would like to handle this as an agent determination, recommended proper stabilization/hay bales. It was the consensus of the Commission that Ms. Malance should proceed in this manner.

Trails along the Naugatuck River are a possibility, along with trails to the UCONN facility. National Park Services has been out, no plans are available yet, but they are discussing and working on this possibility.

Ms. Bakker stated Ms. Malanca was very thorough with the wording of the motion, and she appreciated it.

Mr. Ray Rigat, Corporation Counsel, introduced himself to the Commission.

7. Adjournment:

MOTION by Ms. Bakker to adjourn, seconded by Ms. Murphy, unanimously carried.