

**CITY OF TORRINGTON
INLAND WETLANDS COMMISSION
MINUTES
August 19, 2014**

Present: Jay Bate, Jr., Chairman
Christine Altman, Vice Chair
Doris Murphy, Member and PZC Liaison
William Storti, Member

Also Present: Rista Malanca, Inland Wetlands Enforcement Officer
Raymond Rigat, Corporation Counsel

Not Present: Tom Telman, Member
Nicole Bastiannse-Fritch, Member

1. Call to Order:

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

3. Minutes for Approval:

a. 7/15/14

MOTION by Ms. Bakker to approve the 7/15/14 minutes, seconded by Ms. Murphy, motion carried.

4. Old Business:

a. 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)

Attorney Pat Renzullo appeared representing Michael Morgan. This matter was continued from last month, allowing Mr. Renzullo to conduct research, which revealed that he needs to conduct more research. Mr. Renzullo has read about 300 pages of the Flood and Erosion Control Board minutes, and has ordered plans from the Army Corps of Engineers. The Flood and Erosion Control Board adopted plans of the Army Corps of Engineers. Mr. Renzullo had copies of those minutes for this Commission's review, and reviewed parts of the minutes. Presentation continued, and Mr. Renzullo needs to see Army Corps Plans.

Mr. Renzullo will be commencing a suit against the City. Part of the complaint is regarding the City's installation of a manhole on his client's property, and CL&P's work on the property, despite the lack of recorded easements.

Mr. Morgan has taken steps to prevent erosion by placing plastic and straw on the banks. There seems to be conflicting information on the deeds regarding the actual property line. Mr. Morgan has not taken an active role in the collapse of this wall.

Ms. Malanca distributed information and history regarding this matter to Commission members. It is Ms. Malanca's belief that per information from the Engineering Department, the Flood and Erosion Control Board's area ends prior to this property, approximately fifty feet from Donahue Street. Ms. Malanca distributed photos of the wall before it fell down, and afterwards. A packet of photos and information was made available to Commission members and Mr. Renzullo.

It is Ms. Malanca's opinion that it is the Commission's decision to either uphold, modify or dismiss the Order, not necessarily who is at fault, but is this a regulated activity and if so, who owns it, and furthermore, what the Commission wants to be done. The Order that is in place is that they just come in with an application to repair this area, not that they replace the wall. The owner must consult with an engineer to come up with a plan. Corporation Counsel is present.

Mr. Bate noted there has been a couple months so far to come up with more information as to who owns the property, etc., and not much has been learned.

Mr. Rigat noted the Enforcement Officer has provided enough evidence to make a determination, more time is not necessary to make a decision. Both parties have presented evidence.

Questions were posed by Commission members, and discussion followed.

Ms. Malanca noted we cannot observe what is occurring behind the black plastic, but there is sediment and material in the area. Woody debris is backing up, and Ms. Malanca referred to photos in the packet and provided descriptions to the Commission.

Mr. Rigat invited the Commission's attention to the draft complaint provided by Mr. Renzullo, and in the second count, paragraph 8, page 3, "the defendants, including the

City of Torrington, are negligent in the following respects, the City of Torrington knew or should have known that the placement of the sewer underneath *the plaintiff's retaining wall* would undermine the wall.” Mr. Rigat noted this statement from the plaintiff (Michael Morgan) attorney may assist the Commission in getting to the answer as to who is responsible for the wall.

It is Mr. Bate’s opinion that giving the property owner more time will not necessarily come up with any more information, and he wants to stay with the Order originally issued. Mr. Bate asked for the rest of the Commission’s opinion. Mr. Bate feels the wall does belong to the owner of the property. There have been similar situations in the past, and the matter was taken care of the land owner. Going back to the 1955 flood, things were done in the hurry just to get things done, and we may never find what Attorney Renzullo is looking for, and if anything is ever found, it may not coincide with with the City believes, so we will end up in court anyways.

Mr. Rigat addressed for clarification and the record needs to be clear who the Commission believes owns the wall. Mr. Bate stated he believes the property owner owns the wall.

Discussion followed.

Ms. Altman noted during her ten years on this board, matters have come before this board where there has been erosion, damage, etc., that was not purposely done by someone, and the Commission has determined it is a regulated activity.

Ms. Malanca clarified that when she stated there was no erosion, she meant there is no erosion upland, coming over the bank. Not the river, and erosion from the river.

Ms. Altman notes concrete and stones in the river that were not there before, and she sees a dam building up and trapping debris, and that is pretty clear. There is white water flowing, which is going to affect the bank on the other side and create erosion. Ms. Altman agreed with Mr. Bate that the wall is not owned by the City, but is owned by the property owner. Ms. Altman has never seen the face of the wall to mean that is excluding the wall. That does not make sense to her.

It was the consensus of the Commission to uphold the Cease and Correct Order.

MOTION by Ms. Altman to UPHOLD the Cease and Correct Order issued on June 10, 2014 to 76 East Pearl LLC & Michael Morgan for property located at 76 E. Pearl Street.

Based on testimony heard and presented at the show cause hearing held on June 17, 2014 and July 15, 2014 and this Commission finds that:

- A. Rista Malanca, Inland Wetlands Enforcement Officer is the duly authorized agent for this agency and she has issued a Cease & Correct order in accordance with Section 14 of the City of Torrington’s Inland Wetlands and Watercourse Regulations [Regulations]; and
- B. A show Cause Hearing was held within 10 days from the issuance of the C&C order in accordance with Section 14 of the Regulations; and

- C. The Naugatuck River meets the definition of a Watercourse defined in the Regulations; therefore it is under the jurisdiction of this Agency; and
- D. The activity described in the C&C order, “a portion of the retaining wall... has collapsed into the Naugatuck River” which “created an unstable, easily erodible, condition along the bank of the Naugatuck River” did in fact take place; and
- E. The effects of activity described above are
 - a. “deposition of material” into the Watercourse from both the remains of the wall and continued erosion of the exposed bank; and
 - b. an “obstruction of the Watercourse” created from 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 LLC) are maintaining a regulated activity without prior authorization;

Therefore in accordance with Section 6 of the Regulations they are subject to enforcement proceedings and penalties prescribed in Section 14 of the Regulations;

Therefore this agency upholds the following orders:

1. Provide adequate Temporary stabilization of the disturbed area; and
2. Then you must submit an application to the City of Torrington’s Inland Wetlands and Watercourse Commission for permanent repairs to this area. Engineered plans will be required for this application.

MOTION seconded by Ms. Bakker, unanimously carried.

5. New Business:

- a. Applicant: Preservation of Affordable Housing, Inc.
Location: 380 Torrington West Street
Activity: Grading and trail within upland review area (for senior housing complex)

Todd Parsons with Lenard Engineering appeared before the Commission with a presentation of the proposed project.

MOTION by Ms. Altman to accept the subject application, and that it is not a significant activity. Motion seconded by Ms. Bakker, unanimously carried.

- b. Jurisdictional Ruling to Determine
“As Of Right use” under Section 4.1.f of the Wetlands Regulations
Applicant: Arbor Ridge Homeowner’s Association
Location: Arbor Ridge Road, Assessor Map 252-005-various lots
Activity: Maintenance on existing storm drainage outlet pipe and swale.

Nicole Downs of the Arbor Ridge Homeowner’s Association appeared before the Commission. The roads have recently been repaved, and catch basins cleaned out. Ms. Downs read excerpts of the work her association is proposing, according to their engineer. Photos of current conditions were submitted, as well as plans from the engineer where the work shall be completed.

Ms. Malanca explained she did an inspection of the site, and it is her opinion that this is maintenance to the site. It is Ms. Malanca’s opinion that this falls under 4.1.f of the regulations. We would need a motion from the Commission that this work is not within their jurisdiction. Ms. Malanca provided explanation of as-of-right uses. Ms. Malanca will still monitor the site.

MOTION by Ms. Altman to declare that this is an as-of-right use under Section 4.1.f of the Wetlands Regulations, seconded by Ms. Bakker, unanimously carried.

6. Staff Report:

Agent Determinations:

7. Adjournment:

MOTION by Ms. Altman to adjourn at 7:50 p.m., seconded by Ms. Bakker, unanimously carried.

Land Use Office
Inland Wetlands Commission