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CITY OF SHELTON
INLAND WETLANDS COMMISSION
REGULAR MEETING MINUTES
Thursday, May 10, 2007
7:00 P.M., Room 303

I. PLEDGE OF ALLEGIANCE

All in attendance recited the Pledge of Allegiance.

II. ROLL CALL:

Alvaro DaSilva, Chairman
Gary Zahornasky, Vice-Chairman
Randy Szkola, Commissioner
Celeste Beattie, Commissioner
Norman Santa, Commissioner
Ken Nappi, Commissioner

Absent: Neil Hayes, Commissioner
Charles Wilson, Jr, Commissioner

Also Present: John Cook, WCEO
Sophia Belade, Inland Wetlands Clerk

Chairman DaSilva called the regular meeting of the Inland Wetlands Commission to order at 7:07 P.M.

III-A. PUBLIC COMMUNICATIONS and request to addressed the Commission with non-agenda items.

There was no one from the public that wished to address the Commission.

IV. MINUTES

Commissioner Norman Santa MOTIONED to approve the minutes of the March 8, 2007 minutes.
Commissioner Celeste Beattie seconded the motion.

There were no corrections to the minutes.

Commissioner Ken Nappi MOTIONED to accept the minutes of March 8, 2007.
Commissioner Gary Zahornasky seconded the motion.

A voice vote was taken; all were in favor. Motion passed unanimously.

III. OLD BUSINESS

1. VIOLATION/SHOW CAUSE HEARING DIMARCO PROPERTY – 11 HOLLY LANE. AFTER-THE-FACT PERMIT – APPLICATION #06-22. DIMARCO PROPERTY – 11 HOLLY LANE. Submittal of revised mitigation plan.

Per John Cook, there was a revised plan and a report was submitted. The report and plan are submitted to attempt satisfying and demonstrating compliance with the Commission committee that developed the restoration focus last July. Fundamentally, the question is whether this plan adequate responds to the committee focus and goals of this Commission. While 27 additional shrubs have been provided that was not requested. The committee accepted the original number of shrubs but wanted greater variety by deleting one specimen and adding in two other specimens of plants.

No trees were provided initially and 54-stumps were located on the survey. The committee believed doubling the stump count for 108-trees, was reasonable with half the amount of 3" caliper and half with 6" caliper. The committee recognized the mature trees 10-60" diameter could not be replaced. The current plan provides 5 trees 2.5"-3" caliper.

The tree value report did not estimate the tree values based on the guidelines provided but rather came up with value based on firewood and tree replacements of 2.5"-3" caliper. The report did not assess full value based upon the fact logs were removed by the time the analysis of the arborist that was retained. However, relative to the death or lack of vigor comment a routine observation of the growth rings spacing demonstrated vigor at least until the time the trees were sawed. Also observed shortly after the removal were the spring sap flows which would seem to demonstrate living specimens and not dead. Staff also refers back to the previous homeowner's photos and current GIS photos that demonstrated a predominantly healthy woodlot stand not inconsistent with other stands in the area. Lastly, the landscape architect photos demonstrate vigorous coppicing from the stumps. This also confirms the original woodlot overall health. The arborist's report refers to 27-Maples, 20-Oaks, 3-Ash, 1-Beech, and 9-Birch. The 5-trees proposed are of one variety and are listed in Connecticut Native Tree booklet. However, the one variety is neither one of the original nor one of the 8-varieties listed by Commissioner Szkola, the commission expert on such vegetation.

Mr. Cook continued that in the revised plan a large area of the apparent woodlot is still proposed as a 130'x30' lawn area. The extra shrubs and 5-trees would only very slightly soften this area.

Staff respects the efforts of the revised plan but submits it surely falls short on the tree planting aspects desired. Granted, given enough time the tree suckers spouted will eventually develop into mature trees if not re-cut, but many decades of high stem count and low specimen value will exist. The purpose of planting the trees is to accelerate the natural process, provide a demonstrable penalty and hopefully and more importantly establish a future stand of trees that enhance the riverscape, the functionality of the greenbelt along the Far Mill River and enhance the value for landowner and river use alike. In closing, the lack of trees proposed to be planted,

is the land owner prepared to develop or guarantee a long-term program to try and develop a single stem strand of trees?

Chairman Al DaSilva questioned regarding the 6" caliper trees, the applicant stated that he couldn't do that because of the machinery needed. He claims that he cannot bring in anything larger than a Bobcat into the area.

Mr. Cook responded that the stipulation was entered to limit the size of machinery when the violation was first cited. Mr. Cook continued that he agrees with some of the things. In the Committees' findings, the applicant agrees with a number of them. The primary one that has a distinction is the issue of planting trees versus shrubs. That's what it comes down to. The one specimen that was listed was not one of the ones that were in Commissioner Szkola's suggestion.

Commissioner Szkola stated that he believes there should be a variety rather than just one.

Regarding the number of trees that the committee had requested versus the number of trees proposed under this revision plan, Mr. Cook stated that on the original plan there were none. There were 54 stumps within the commission concerns, because they can't plant 10" and 16" diameter trees, they doubled it 108. Instead of 108, 5 are proposed.

Chairman DaSilva questioned that the committee came up with 108 trees? And what was their count?

Mr. Cook responded that yes the committee came up with 108 trees and they came back with proposing 5.

Commissioner Ken Nappi had a question regarding the timeframe on when the plan was submitted. Mr. Cook responded that it was in July of '06. The original plan was submitted March 6 and it was agreed on. It was given to the applicant in July of 06' and now they have come back to us with the revised plan.

At that time, the attorney representing the application took the floor.

RAYMOND RIZIO
QUATRELLA & RIZIO, LLC

He stated, that the first part of the issue was trying to get a licensed arborist. We were here one night and decided on a licensed arborist, we came up with a list, we went through it with John.

We agreed on this guy White from Milford. we sent him a check within a week, he said he would get back to us and he would start, it wasn't until we threatened to sue him. I provided all the correspondence and all the checks to the commission for review. To refresh your memory, it wasn't that we ignored it and showed in March with a plan. Once the arborist came up with his value we came back with a new plan on March 5. After that we received the comments from John as to what this committee didn't like about the plan and the Dennis turned it around and here we are this evening with the April 17 plan. We tried to work with the commission and we've been upfront from day 1 on this and we accept the responsibility of this problem. I'd like to have Dennis address the tree situation because I know it sounds like we're thumbing our nose at you when you say you want 108 trees and we give you 5. Dennis if you could explain how we get to where we get and how we're happy to go where you want us to go.

DENNIS LAFERRIERE
LANDSCAPE ARCHITECT

Mr. Laferriere presented photos that were taken at the site dated April 17 of this year. Just in terms of the sequence, we all know what type of Spring weather we've had. It was cold then it got warm, then snow, then rain. In terms of walking the site to make sure I understand exactly what plant material had regenerated, what was budding, what had survived, this brought us to the April timeframe. It wasn't appropriate until that date to see what was actually budding. The order that the pictures are in basically are going from the eastern part of the shoreline and are heading down in the direction towards the southwest area. As Mr. Rizio explained and John had reiterated also, there's quite an expansion of the growth of the area since the original cutting had taken place. I believe you all have seen the report from April 17. You can see in great detail the number of shutes and offspring that have sprouted during the past year and a half.

Mr. Laferriere, at this point, was referring to the drawings on the easel that he provided for the Commission's review. The medium colored green is the area where there is sprouting, the lighter green are is basically the shrub count that we're proposing to add to growth that has taken place and then the green area are the trees and tall shrubs that will be added in between. This is ledge, this is ledge, that's ledge and that's all ledge. Again to go back to the sizing and the location of the plants with the sensitivity of developing and bringing equipment to this area we're basically limiting our location to the areas in between the ledge. Where some of the original trees had grown years ago, they were probably ceilings that had grown naturally, found their way into the ledge, now we're not into a situation that we can bring in large equipment. We're trying to plant around the ledge and plant them in clusters to help re-group the condition that we have.

Mr. Laferriere also had a drawing that was presented last year in March which was the original drawing and he showed the recent drawing.

Some areas had shown no growth at all, during the last year and a half almost the entire shoreline has now developed some vegetation on its own. The other thing that has happened during the original walk through of the site there was little or no actual natural short growth. Now, almost this entire area is pretty well covered.

Regarding the quantity, because there is such an extend of growth happening naturally on the site, to put in a great extent of varieties of new trees, basically we're just going by what types of trees will grow in a high water table environment and also the type of soil. Based on the recommended tree list which Shelton has, not all the trees on the list are suitable to this location. The Sweekum is a tree which favors a high water table environment. Red Oaks would not be appropriate in this area because of the fluctuation. The last major storm about a month ago caused an extent of water come up onto the property.

Planting types of shrubs that will be able to survive that environment is the way to go. The original objective always was to develop a plan which would be natural in its makeup and allow itself to re-source naturally. By the variety of the Low Bush Blueberry, the Clethra, we switched out one of the other plants, we positioned them where they would survive. It will come to be a very dense habitat. Just to make everyone understand to develop large clusters of new trees at this point in certain areas just wasn't feasible.

Chairman DaSilva asked what the estimation of some of the larger trees that were cut, the stumps that still exist, how many of them had new growth?

Mr. Laferriere referred back to the photos, most of them have developed some subtle growth. A few haven't, the ones that have not are the ones that I believe we indicated last year, not all trees were in good condition. Some were diseased and dying, those certainly have not regenerated. You will see some die offs and they were already dying. Some of the, for that amount of growth in one year it wouldn't be that difficult to thin out, let some of those come back. They're healthy, they're trying to survive and certainly if your board would agree to that, allow those that are growing to be thinned out and let them come back.

Chairman DaSilva recommended that the board consider to look at the revised plan, allow it to be done, revisit it after it's done, see what the growth that takes place from the existing trunks by the end of the season. However, leave our options open until next Spring so that we can have the ability still to see if we're satisfied with the growths and rather than making a decision at this point of what's coming up.

Commissioner Celeste Beattie wanted to know how many years is it going to take for these pencil sized trees to grow in these clusters.

Commissioner Szkola responded to that. He stated that it would take a long time to achieve it.

Mr. Laferriere responded that with the sensitivity to the site, we were directed not to bring in any larger equipment. the only thing we were told that we could bring in was a Bobcat.

Commissioner Szkola stated that he could argue that. He deals with trees everyday at his Nursery. He routinely moves 5"-6" trees with a Bobcat everyday. The other option is a crane on site. I can't imagine that without digging test holes you could state that there's ledge surrounding the entire site.

Mr. Laferriere stated that where it's exposed is very obvious. This is not a representation in which is too far off where the ledge is visible.

Commissioner Szkola continued that we're talking about trunk count, not stem count. A stem count doesn't count for a trunk count. You were worried about wind storms knocking some trees over, if you plant them correctly and you stake them correctly, then you won't have a problem. What really bothers me about the whole thing is the sap flow on some of these. We were told, we were lied to when we were told that some of these trees were dead, and certainly they're coming back fairly healthy. You can't get sap flow from dead trees. Also I don't know how we're going to keep the timeline of this, it comes in effect where we're going to demonstrate the ability to re-vegetate this site, it's not a faster way than letting these stumps come up, how are they going to come up without planting trees. I'm not out to have these people pay through their noses.

Mr. Rizio interjected that we didn't instruct them for the cheapest way to get out of this. If you have ever worked with Dennis, he doesn't go the cheap route. We came up with the best thing that matched up and if you would like to see larger trees and we have the ability to do that, we can do that. The question becomes if we could use the machinery to get there.

Commissioner Szkola stated that you could move it with skids. He moves them everyday.

Commissioner Norman Santa stated to the Chairman that he would like to see a greater assortment of trees than just 5 of one kind.

Commissioner Zahornasky stated that the applicant says that they can plant 2 ½ to 3 ", we took 54 of the stump count, they were much larger, we said ok give us 6 but we doubled the amount to 108. At the very least we said 50% 3", 50% 6". You're saying that you could plant 3" with a Bobcat, then you could at least give me 54, not 5. You can't put 6" because of the machinery ok, I'll even let that go, we should at least have those 54 3".

Mr. Laferriere stated the reason he would argue that was to know the size of the existing tree that was there. We know the fact that there is ledge and the roots extend horizontally, usually to the drip line of the trees that were there. To look around and find voids in between those existing tree roots without digging them up, I do not think that we could find places for 54 trees.

Mr. Rizio asked if he could make a suggestion to the Commission, we'll put this proposal before you tonight, we could start on that we could have Mr. Cook walk with Mr. Laferriere and Mr. DiMarco and identify areas where he'd like to see 3 ½ - 4" caliper trees, identify them, mark them and that's what we have to do. We're looking gas much as you are to resolve this, we're not looking to mislead anybody. John if that's something that you feel comfortable with to go out and inspect them and I think that it's a lot easier to do it that way. Over this month we'll give you back a map to mark and we'll present that next month. If John says there's enough trees that will satisfy, we'll go with it. I think it's the only way short of the whole commission going there.

Chairman DaSilva though it was an excellent suggestion due to the fact that the architect is stating that there is ledge and he's concerned that there is not enough depth for the roots. Let's check. We'll mark the area where we want some of the 54 trees and see if there is ledge or not and see what can be done.

Mr. Laferriere stated that he was acting basically from conditions which occurred as you happened to see. He had not been to the site prior to the cutting. I was brought in after the fact

so that's why last year I was unable to verify or describe in any way the trees. they were gone by the time I was there. So we're all on the same page trying to make this happen.

Chairman DaSilva stated that was fair enough and that he wanted to make it clear that we want to get it done this month before the next meeting. At the next meeting we'll have a plan here where you and John went out there.

Commissioner Norman Santa MOTIONED to have John Cook have the authority to work with the applicant to locate areas where the trees can be planted and if they are acceptable to both parties, they be planted as soon as possible to not miss the planting season and have John Cook report back to this commission. Commissioner Ken Nappi seconded the motion.

Discussion:

Commissioner Szkola wanted to incorporate in that motion some items on their mitigation plan. #1: to mulch all trees within the replanting area with quality mulch, not the wood chips from the stockpile; #2: to have a 2 year guarantee on new plantings; #4: trees shall be from the approved I/W list; #6: our original plant lists was acceptable except for the Cornus Sericea, and also mix some variety of trees; and #7: no additional fine is to be imposed on the owner.

The motion now reads:

Commissioner Norman Santa MOTIONED to have John Cook have the authority to work with the applicant to locate areas where the trees can be planted and if they are acceptable to both parties, they be planted as soon as possible not to miss the planting season and have John Cook report back to this commission. Also to incorporate items from the mitigation plan of April 17, 2007 with the following items: #1: to mulch all trees within the replanting area with quality mulch, not the wood chips from the stockpile; #2: to have a 2 year guarantee on new plantings; #4: trees shall be from the approved I/W list; #6: our original plant list was acceptable except for the Cornus Sericea, and also mix a variety of trees; and #7: no additional fine is to be imposed on the owner. Commissioner Ken Nappi seconded the motion.

A voice vote was taken, all were in favor. Motion passed unanimously.

2. VIOLATION: LIPOVSKY PROPERTY – 10 FAR MILL STREET. Fill to wetland without a permit.

John Cook stated this was a violation from a few years ago on Far Mill Street. An area neighbor submitted photographs. There was a violation back in 1999, the commission voted to require an application to be submitted to sustain the violation after the fact. At that time, that was the common practice. Apparently they have had a falling out with their surveyor, nothing ever came back in, so it's still pending. The landowners just most recently started doing more work with more filling. There is already a Cease & Assist on this from 1999 and has yet to be resolved. the application never came in. According to the person that submitted the photographs, who if we need them to testify is willing to, indicated that the surveyor and the landowner had a falling out and that's the reason why this survey never came back to the board. What I'm looking from you is guidance as to do we want to start fresh? I have not been to the site as of those photographs that were recently submitted.

Chairman DaSilva suggested that John Cook go to the site and look at what the violations are and if there are violations taking place, then contact the homeowner and advise them that there will be a new Cease & Assist order. We don't want to rely solely on the neighbor. I'd like you to see what has been going on.

Commissioner Ken Nappi stated that if we already issued a Cease & Assist and the homeowners started filling in again, it seems that he is in violation of the first Cease & Assist order.

Chairman DaSilva stated that this is a neighbor, sometimes neighbors don't get along. I want to make sure that there are violations taking place. If there are violations then we take enforcement actions. If I ask John to go to the site and take a look to see if there are violations occurring, he'll call me and ask should I put a Cease & Assist order or how should we handle it. If he goes out and sees that there is a serious offense occurring, he'll put a Cease & Assist order on and we'll bring them in again and try to figure out what's happening and if not it goes to the legal department of the city.

Commissioner Zahornasky added that when you go out there remind him that there is already a Cease & Assist Order and he is in violation of that if he is indeed filling.

Chairman DaSilva advised John Cook to go to the site and advise him as to what is going on and then any action need to be taken will.

III-C. NEW BUSINESS

2. EXTENSION APPLICATION #07-18E02-06, GLOVER PROPERTY - 20 SCHOOL STREET.
Request to extend existing permit to dredge pond.

Chairman DaSilva stated that this permit is not up but the applicant is looking for an extension. Mr. Glover, you haven't started any work yet have you? Mr. Glover responded no. Chairman DaSilva continued that the applicant is looking to cut some trees.

Commissioner Gary Zahornasky MOTIONED to approve Application #07-18E02-06, Glover Property – 20 School Street. Request to extend existing permit to dredge pond with the same conditions of the original permit application of 2002. Commissioner Randy Szkola seconded the motion.

Discussion:

Commissioner Nappi stated that just so there is no question the permit is issued for five years.

A voice vote was taken; all were in favor. Motion passed unanimously.

1. PERMIT – APPLICATION #07-17, BEECHER PROPERTY – 125 INDIAN WELL ROAD.
Proposal to replace retaining wall along Housatonic River.

John Cook stated that this property is over one from the application the commission saw last month. It is the same text, the same design as the last applicant. Chairman DaSilva asked John Cook if he had any issues. John Cook responded no.

Commissioner Norman Santa MOTIONED to accept Permit Application #07-17, Beecher Property – 125 Indian Well Road. Proposal to replace retaining wall along Housatonic River. Commissioner Gary Zahornasky seconded the motion.

Discussion:

Commissioner Zahornasky wanted to make sure that the approval from the City Engineer was not needed. Per Mr. Cook, these are all same walls, same location.

A voice vote was taken; all were in favor. Motion passed unanimously.

III-D OTHER BUSINESS

1. APPLICATION #07-12, LANE STREET SEWER EXTENTION–LANE STREET. *Proposal to extend sewer service within the Means Brook buffer to (2) properties on Lane Street.*

Per John Cook, it is excavating down just off of Huntington Street and they're within the setbacks of Means Brook. they're below the surface but once they get to the embankment of the brook, they're going to be attaching this line to the side of the bridge, not excavating in the brook itself or next to the brook. Systems have failed on the two lots on Lane Street, #11 and #19, and the only thing I had them do was to extend the line further up to 19 Lane Street so when they exit out and provide that lateral they will not be excavating within the buffer.

2. APPLICATION #07-13, BEGLEY PROPERTY – 35 BALLARO DRIVE. *Proposal to construct home addition within regulated setback.*

Per Mr. Cook, this is a home addition. It will be an in-law setup. Mostly they're proposing to do this home addition to the side of the existing dwelling and while it is approximately 18' from the wetlands on this existing yard that was created in the early version of Copper Kettle Estates, the existing deck is only 9' from the property. The new addition is further from the regulated area. I have no issues.

3. APPLICATION #07-14, CHAMBERLAND PROPERTY –27 DARTMOUTH DRIVE. Proposal to construct home addition within regulated setback.

This house came before the full board in 1990 – 1991. It was an old lot. This is a sunroom and deck and they're also within the setback by approximately 6' further from the existing deck and should be the existing wetland line is below an area where there is a low boulder wall that was created in 1990-1991. I have no issues.

4. APPLICATION #07-15, GHASSEMZADEH/PARVARESH PROPERTY -34 LAUREL GLEN DRIVE. Proposal to fill within regulated setback to eliminate ponding caused by partially buried water line.

There is an existing 36" cast iron water transmission line that flows diagonally through the property installed back in 1910. The line itself is not completely below the surface. Because of that the sheet flow from the rear of the property pitches towards the wetland and then ponds on the uphill side of this pipe. Aquarion is the applicant for the landowner and they're bringing in a small amount of fill. They are proposing a little of stone, modified rip-rap and so that they're no problem. I have no issues.

5. APPLICATION #07-16, MILLER PROPERTY – 344 NAVAJO LOOP. Proposal to construct deck within regulated setback.

Existing condo building from phase 8 from Aspetuck Village. They want to replace their deck and make it slightly larger. The new deck is 10'x12'. It is close, roughly 20' from the wetland boundary line. Again, the lines that were established when the various sections of Aspetuck were completed were in fact pretty much cast in stone, unit C is what they get. What the owner is doing is sacrificing a little bit of patio area to enlarge his deck. I also do not have any problems with this.

6. APPLICATION #07-19, HOWARD PROPERTY-12 BROOKFIELD DRIVE. Proposal to install septic system repair within regulated setback.

This is a failing septic system, the only place that Valley Health has come up with is wetlands to the rear of the property. most of the rear of the property is all wetlands and in order to replace the system, they need to do some filling within the setback. Again I have no issues with it.

V. ADJOURNMENT

Commissioner Nappi MOVED to adjourn. SECONDED by Vice Chairman Zahornasky.

A voice vote was taken; all were in favor. Motion passed unanimously. MEETING ADJOURNED at 8:07 PM.

Respectfully submitted,

Sophia V. Belade

Sophia V. Belade
Clerk – Inland Wetlands

1 tape is on file with the Town Clerk's office

Attachments are on file for review in the Inland Wetlands Office located on the third floor in Room 303 of Shelton City Hall, 54 Hill Street.