

DRAFT

**INLAND WETLANDS COMMISSION**

**Regular Meeting Minutes**

**April 10, 2013 ~ 7:00 p.m.**

**Litchfield Firehouse**

**258 West Street, Litchfield, CT 06759**

**Call to Order:** Chairman Robert Blazek called the regular meeting to order at 7:02 p.m.

**Members Present:** Chairman Robert Blazek, Jack Hamill, Carol Williams, Barbara Brower, Frederick Minck, Abby Conroy, Dr. Frank Schildgen

**Members Absent:** None

Also present were Recording Secretary Ann Combs and Inland Wetlands Agent Dennis Tobin, Ph.D. There were applicants and professional consultants present, as well as about 25 members of the public.

**1. Public Comment:** Ron Glander, resident, presented a jar of stones from the curtain drain at the High School tennis courts that had blue acrylic paint chips that have been washed from the courts into the wetlands. He warned the Commission to make sure an after-the-fact permit is obtained for this job. He said there was no regard for the wetlands with this work blatantly done without a permit.

**2. Appointment of Alternates:** None

**3. Approval of Minutes**

**Motion:** Dr. Frank Shildgen moved to approve the minutes of March 13, 2013.

**Second:** Barbara Brower seconded.

**Vote:** All voted aye and the motion carried.

**4. Correspondence**

**Motion:** Barbara Brower moved to place Correspondence back in the agenda to 10d).

**Second:** Abby Conroy

**Vote:** All voted aye and the motion carried.

**APPLICATION CONSIDERATIONS**

**5. Main – 338 Prospect Mt. Road**

**4/10/13**

*Construction of 30' x 48' barn in regulated area*

Kevin Main, owner of the residence, said he would like to store seasonal cars and a tractor so that they are under cover. One-third of the barn will be built on the existing driveway and the rest on the existing lawn. It is 45 ft. to flagged wetlands. He will have to shorten a septic field and has approval by Torrington Area Health District. David R. Wilson did his plans. They will be using hay bales and silt fencing for the project.

**Motion:** Barbara Brower moved to approve the application by Kevin Main to construct a barn 30 ft. by 48 ft. in a regulated area, as shown on map entitled “Subsurface Sewage Disposal System” dated 7/93.

**Second:** Carol Williams

**Vote:** All voted aye and the motion carried.

**5. Scotland Hardwoods (Evans) – 380 Beach Street**

**4/10/13**

*Logging and logging road with stream crossings*

Rod Burgess, Scotland Hardwoods, submitted an application for a timber harvest on the Evans property. He presented maps showing the skid road with drainage at the back of the property. They are using portable bridges to skid material across (only about three loads of logs). Total truck loads are estimated at 8-10 with all access off Brooks Road. They are planning to take 152 trees down. Dr. Tobin will inspect to make sure they are removing stream crossings when backing out of the trails and asked Mr. Burgess to keep him informed. Dr. Frank Schildgen asked him to wait for drier weather and for baby birds to fledge. There was discussion as to when it would be dry enough. Fred Minck said it is hard to pin a project down as the weather is hard to predict.

**Motion:** Dr. Frank Schildgen moved to approve the application of Scotland Hardwoods for logging and logging road with stream crossings per map describing the Evans property dated 3/1/13. This operation may begin as of June 15<sup>th</sup>.

**Second:** Carol Williams

**Vote:** All voted aye and the motion carried.

**APPLICATION RECEPTIONS**

**7. Livingston Ripley Waterfowl Conservancy – 55 Duck Pond Road**

**4/10/13**

*Construct 12’X18’ wild life hide and visual barrier fence for public use*

Ian Ghereg, Executive Director, said he would like to build a blind and visual barrier fence to increase public access to view the wildlife without disturbing them. He presented a drawing of the plan. The Commissioners were given permission to go out and see the site.

**8. Benzoni – 481 Bantam Road**

**4/10/13**

*Clear underbrush to create picnic area*

Lucia Benzoni was present to explain that she wants to clear the area between her property and Rick Evangelisti’s property to add a picnic area for employees. She will come back next time with a map and more detail.

**9. Joseph – 125 East Chestnut Hill Road**

**4/10/13**

*Repair existing 24-inch drop inlet in existing farm pond*

Theresa Joseph said they have an existing pond on the property with a drop inlet pipe that has rusted and needs to be replaced. They will replace it with a 24” plastic pipe and are working with the original plans. George Carrillo, construction, has repaired ponds and will be doing the work. Mr. Blazek asked her to have him write up the plan for repair. The Commissioners will visit the site.

## PUBLIC HEARINGS

### **10. Stop & Shop Supermarket Company, LLC – Village Green Drive**

**4/10/13**

*Redevelopment of portion of shopping center to remove three existing buildings and construct one new building and parking lot*

Chairman Blazek opened the public hearing at 7:39 p.m. and said there would be no decision made tonight. This will be the last public hearing. The public hearing was originally opened on 1/9/13, with subsequent hearing dates of 2/13/13, 3/13/13 and 4/10/13.

### **Applicant**

Thomas Cody, Attorney for Robinson & Cole, LLC, said they would respond to questions from the last hearing with final rebuttal.

**1) Inspection and Monitoring:** Mr. Cody offered a proposal for site inspections, patterned after the DEEP's. He suggested that the Northwest Conservation District could also monitor the Erosion Control Plan for the Town. He prepared a cost estimate of \$93,360 for erosion control materials with a 20% contingency. Land Use added a \$15,000 cash bond for the site inspection and monitoring during the project. Dr. Tobin confirmed the performance cash bond total of \$108,360, with Mr. Cody agreeing to it, and asked about the difference between that amount and Mr. Mathis' \$5 million suggested at the last meeting. Nicolle Burnham, Milone & MacBroom, said they may want to add an additional reasonable contingency and would talk about it later.

**2) Torrington Stop & Shop:** Mr. Cody gave the history of that project. They had several permits, one of which required them to hire a consultant to monitor progress into the future. Michael Klein is the consultant and says this project is an unqualified success with healthy wetlands. He said it is a great example of Stop & Shop's ability to maintain a sensitive property going forward. Their wall is performing well and is in great condition.

**3) White Memorial Foundation letter dated 4/9/13:** Mr. Cody said White Memorial used Lenard Engineering for its review and has no objections to the plan as long as two conditions are made part of the approval. The first shows they are satisfied with Stop & Shop's alternate grading and drainage and alternate landscape plans. Mr. Cody said they can also satisfy the second condition to modify Basin No. 2 to accommodate a 24-hour residence time for rain in the basin. Dr. Schildgen had concerns about too much water with more impervious surface and too little wiggle room. John Hession, Professional Consultant with EBI, explained analysis methods and removal of total suspended solids, including the Schueler Simple Method of determining pollutant loads. Barbara Brower questioned whether salt was addressed in the data, and Mr. Cody said there would be no impact to wetlands from limited usage of chemicals. The snow will be stockpiled in the lot and removed as needed. Matt Sanford, Milone & MacBroom, said DEEP is looking at this, trying to determine the future impacts of salts in watercourses and wetlands. It is an evolving study. Mr. Cody said there is a proposal to replace the complete outlet structure if necessary under an alternate plan.

**4) Drainage Easements from WMCC and Litchfield Commons:** Mr. Cody said they have provided a drainage easement onto the White Memorial property. Litchfield Commons has an easement for access sharing with Village Green. He said there was no easement for drainage, but he did not think one was necessary. Litchfield Commons has not objected to this wetlands application.

**5) Design of Retaining Wall:** Mr. Cody brought Tom Nolan, PE and Vice President with Haley & Aldrich. Ray Gradwell, PE, BL Companies, submitted "Potential Modification to Retaining Wall

Location”, Exhibit 1, and Site Plan (previously submitted as Exhibit 3-11). He said the wall height varies from 1ft. to 21.5 ft. They are pulling it back 4ft. which gives more room between the wall and the edge of the wetlands. Dr. Schildgen asked how good the soil is at the base of the wall. Mr. Nolan advised of many borings sufficient for information needed. Unsuitable soils are removed and replaced with fill. He explained the method of building the wall and backfilling. The result is an appropriate wall for the area. Mr. Nolan’s resume was submitted.

**5) Impact of Wetlands Review:** Damon Oscarson, BL Companies, submitted his resume and explained their opinion of no adverse impacts to wetlands or watercourses at the site. Improvements have been proposed to the water quality basins. The landscaping plan with riparian zone and stormwater management plan are all significant improvements to this shopping center that are not there today. Mr. Cody has prepared and submitted 14 Potential Conditions of Approval. Mr. Cody is comfortable with the three reasonable and prudent alternative plans. He does not think temperature is an issue, as there is no standard with regard to temperature. Plantings in basins and other areas help mitigate the temperature. The applicant’s presentation concluded at 8:50 p.m.

### **Questions by Commissioners**

Abby Conroy noted that Mr. Trinkaus said the plan does not meet the requirements of the 2004 Stormwater Quality Manual. John Hession said working within the confines of the basins they are within 50 percent retention, and the manual does not require 100 percent.

### **Intervenors**

**Franklin Pilacy, Attorney for PLAN Litchfield, Michelle Crowe, and Joan Spear:** Mr. Pilacy said if both White Memorial’s criteria cannot be met, the plan should not be approved. He then said the Town’s consulting engineer, Milone & MacBroom, has a conflict of interest as it works for Stop & Shop and Aquarion. He submitted a client list of Milone & MacBroom. He also said the plan has too much development on too little property. Michelle Crowe said water quality concerns are not being remedied 100%. It’s a highly sensitive area and it must be determined if this can be built within the regulations. The applicant has the burden of proof. The Town must preserve its land and there is no place for big box stores. She said that the bosses of Stop & Shop want to live away from this in a more rural setting. Chairman Blazek warned her to confine her remarks to wetland and watercourse issues. Joan Spear said remediation of underground storage tanks has not been completed. Work stopped in 2005 when the property owner paved over the monitoring wells and they have not been monitored since. Also according to the CCA report, ground water quality at the site has not been reviewed since 2005. The DEEP has requested compliance. She then commented that perhaps the silence from the Commons may indicate they do not know what has been presented and might object if they knew. She thought having one day to review 110 pages of documents was unfair.

**Steve Trinkaus, Licensed Professional Engineer, Trinkaus Engineering:** In his letter dated 4/10/13, Mr. Trinkaus commented on the submitted Haley & Aldrich letter. He said the bottom line is that the plan is not in compliance with the DEEP general permit guidelines. The forebay in the basin is not in compliance without a 3:1 ratio flow path. The basins are not in compliance with the DEEP manual. They are not coming close to 50% retention. The data in the Schueler method is 13 years out of date, and they have no calculations to support their claims of 89% removal of total suspended solids. Hydrodynamic separators are not efficient. The force of the stream drainage on the western side going into White Memorial is causing a sediment delta that will cause adverse impacts on the wetlands. Pollutant loads on roofs is the same wherever it is located, and the water is not clean. Regarding salt, nothing removes chlorides and they just move along the line. The best remedy is to reduce the usage of salt. Thermal

runoff going into a coldwater stream and raising the ambient temperature can harm the aquatic life. Running it through the ground is one way to mitigate it.

### **Public**

Barbara Putnam, Clark Road, offered a prudent and feasible alternative to this project. She said they could buy out Rite Aid's lease and expand. This is less expensive by far. Her remarks were submitted.

Barbara Dent, 106 Clark Road, is in full support of Mr. Trinkaus.

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Barbara Gugnoni, Clark Road, said the project does not address the problems, and she asked the Commission to please deny the application.

Denise Butwill, resident, submitted a letter from Angeline Goreau, dated 4/10/10 citing toxic material in the landfill.

Arthur Allen, resident, said he takes pride in resources and protects the environment. He asked why we have protected land if we're not going to protect it.

Marcia Fowler, showed photos of the Watertown Stop & Shop that shows garbage in a culvert. She had ongoing concerns of future upkeep of the site and asked how it would impact the future of our Stop & Shop.

Lee Wolfe asked what would be done about the existing plaza if Stop & Shop doesn't go in. If Stop & Shop has met the regulations, and White Memorial is on board, why should we be against it?

Sean Mathis, retired lawyer, said the failure of the Town's engineering firm to disclose that Stop & Shop is a client could result in the case being overturned. There is a perceived conflict of interest that is a disgrace, and they should not be paid a penny of our tax dollars. He asked the Commission to consider the damage done by ignoring this.

Ron Glander chided PLAN's comments and said Mr. Greenberg has a right to build if he meets the Commission's guidelines. He questioned Mr. Trinkaus' statement because they can easily mitigate unsuitable material in the field. He asked the Commission to take its duties seriously and base its decision on the facts and allow Mr. Greenberg his legal right to build his project.

Max McIntyre, 125 South Lake Street: Mr. McIntyre said the oil on the north side of the boardwalk is coming from somewhere, as oil runs downhill. He implied that the same could happen with this project.

Nicolle Burnham, Milone & MacBroom: She spoke to the conflict of interest allegation saying neither she nor Matt Sanford ever worked for Stop & Shop. They have a firm of 130 people, and that work was done by a firm purchased in 1977.

Sean Mathis responded that this is a serious problem when a conflict of interest occurs and pointed out there was no waiver given by Commission.

Mr. Cody & Mr. Hession offered a rebuttal and summary for the Commission. They said they have tried to address all comments and questions and make this a collaborative process. They now have an application that complies with the Inland Wetlands regulations. Reusing existing properties is the preferred method of development rather than disturbing a greenfield site. The intervenors have not made the case that "it is reasonably likely that the applicant would cause unreasonable harm" according to State

Statute. They said Mr. Trinkaus' comments on the general permit and the 2004 Stormwater Quality Manual and this application not complying are simply not true. DEEP has approved a general program permit. A sediment forebay is recommended but not required. Providing total water quality management for the entire property is far superior to the present condition.

**Motion:** Barbara Brower moved to close the public hearing at 10:10 p.m.

**Second:** Abby Conroy

**Vote:** All voted aye and the motion carried.

The following is a list of documents received and entered into the record since the 3/13/13 meeting:

- Letter to I/W from Robinson & Cole dated 4/9/13 with supplemental information responding to questions raised at the hearing re water quality issues. Includes attachments of:
  - 1) 4/5/13 memo from BL Companies re Schueler Simple Method
  - 2) Revised HydroCad results by BL Companies
  - 3) Revised Grading & Drainage Plan Alternate, sheet GD-1 ALT (revised to 4/9/10)
  - 4) Revised Details, sheet DN-4 (revised to 4-9-13)
- Letter to I/W from Robinson & Cole dated 4/9/13 re supplemental information responding to questions raised at the hearing re retaining wall design. Includes attachment of:
  - 1) Letter to I/W from Haley & Aldrich, Inc. re geotechnical engineering summary
- Letter to Dennis Tobin, PhD from Robinson & Cole dated 4/9/13 re Bond Estimate for Erosion and Sediment Controls
- Letter to I/W from Byrne & Byrne dated 4/10/13 – response to Land Use questions
- Letter to Dr. Dennis Tobin from White Memorial Foundation, Inc. dated 4/9/13 – results of its review
- Memo to I/W from Land Use Administrator dated 4/9/13 re performance bond proposal
- Memo to Dennis Tobin, PhD from BL Companies dated 4/4/13 re site inspection program
- Letter to Dennis Tobin, PhD from Northwest Conservation District dated 4/9/13 re site inspection program
- Letter to PLAN Litchfield from Trinkaus Engineering, LLC dated 4/10/13 re responses to applicant's letters of 4/9/13
- Drawing from BL Companies dated 4/10/13 entitled "Potential Modification to Retaining Wall Location", Exhibit 1
- Resume of Thomas W. Nolan, PE of Haley & Aldrich
- Stop & Shop I/W Permit Application – Potential Conditions of Approval, dated 4/10/13
- Resume of Damon B. Oscarson, of BL Companies
- Milone & MacBroom client list taken from internet and submitted 4/10/13
- Opinion re Milone & MacBroom conflict of interest, received 4/10/13
- Memo to Michele Crowe from Angeline Goreau dated 4/10/13 re use of landfill
- Photos of garbage at Watertown Stop & Shop, received 4/10/13
- Note to I/W from Barbara Gugnoni, Clark Road, urging denial
- Note from Barbara Dente, Clark Road, supporting PLAN Litchfield
- Note from Barbara Putnam, dated 4/10/13 suggesting reasonable and prudent alternative
- Letter to Dr. Tobin from Michele Crowe, PLAN Litchfield, re intervenor concerns
- Email to Dr. Tobin from Steven Byrne dated 3/20/13 re intervenor ruling on previous concerns
- Receipts for copies from PLAN Litchfield: \$55 from Joan Spear 4/10/13 and \$43.50 from Joan Spear 3/13/13

**10d) Correspondence:** not addressed

**11. Adjournment**

**Motion:** Fred Minck moved to adjourn the meeting at 10:12 p.m.

**Second:** Abby Conroy

**Vote:** All voted aye and the motion carried.

Respectfully submitted,

Ann D. Combs, Recording Secretary