

MINUTES
ENFIELD INLAND WETLANDS AND WATERCOURSES AGENCY
TUESDAY, July 20, 2023, 6:00PM
SPECIAL MEETING
Council Chambers; 820 Enfield Street, Enfield, CT 06082

RECEIVED
ENFIELD TOWN CLERK
2023 JUL 27 PM 3:44
Sharon Bailey

1. Call to Order

Commissioner Hendrickson called the meeting to order at 6:04 P.M.

3. Roll Call

Members present: Commissioners, Robert Hendrickson, Nancy Martin, Phil Kober and Christopher Renaud. (Commissioners Corbin-Sobinski (6:10), Higley (6:44), and Zorda (6:50) arrived later in the meeting.)

Members absent: Commissioner Anne Collins

Also, present: Director of Planning, Lauren Whitten and Georgienna Driver, Assistant Town Planner and Sandie Barone, recording secretary.

4. Public Communication: None

5. Agent Correspondence: Commissioner Martin said she spoke with members of the Town Council and the Town Manager in reference to the delay in members being appointed to the Commission in a timely fashion. Commissioner Martin wanted to find out why there was a delay. She had great conversations with all and she felt confident that this would not be an issue in the future.

Commissioner Kober thanked the council for the reappointments and welcomed the new alternate member, Christopher Renaud.

6. Approval of Minutes:

a. June 20, 2023

Commissioner Kober made a motion to approve the minutes as amended from June 20, 2023, seconded by Commissioner Martin.

Discussion: Commissioner Kober said on page 3, first paragraph, missing the header "Enforcement Reports"

Motion passed unanimously.

Commissioner Kober made a motion to move item 7. Town Attorney Report to after item 11. New Business and before item 12. Enforcement Report (s), seconded by Commissioner Martin

Motion passed unanimously.

8. **Continued Public Hearings:** None

9. **New Public Hearings:** None

10. **Old Business:**

a. **IW# 684- 210 Moody Road-** Application for a subdivision; Top-Knot, LLC, Applicant/Owner; Map 100/Lot 11; I-1 Zone.

Bryan Balicki, project engineer presented the application for Top-Knot. They were present at the last meeting with a proposal on a subdivision of existing industrial land on Moody Road. The staff comments report stated that a few items needed to be addressed such as clarifying the new proposed utilities, a sidewalk was added on Taylor Road, and expansion of the storm water management.

Chair Corbin-Sobinski entered the meeting at 6:10pm

An additional comment came in late afternoon from engineering on the upland review area of the property. The town engineer has requested that they continue the storm water swale off the two new lots and closer to the detention basin.

Ms. Driver said that the Planning Department had another comment about the 90-degree angles on the topography with the drainage easement going toward the wetlands. They should be rounded out a little more to prevent angles. The PR separator surrounded by the five-inch trapped rock energy dissipater should be more defined to show exactly how it will help storm water drain. Lastly, the topography lines for the proposed grading on the west side of lot 2, the topography is flowing west towards lot 1. Ms. Drivers staff report recommended (depending on the Commissions vote) if this is continued until September 2, 2023, the applicant would need to request an extension.

Director Whitten asked if the drainage calculations show the pre and post development has decreased. Balicki said the revised report shows a reduction in flow for all storm events.

Ms. Driver made a recommendation for the applicant and future landowners, if you can have all water directed towards the detention basin and toward the wetland drainage easement instead of flowing onto Lot 1.

Bryan Balicki, project engineer, submitted a written request to Ms. Driver for an extension.

Commissioner Kober made a motion to continue a. **IW# 684- 210 Moody Road-** Application for a subdivision; Top-Knot, until the next meeting on September 5, 2023, seconded by Commissioner Hendrickson.

Motion passed unanimously.

Determination of Permit Needed-

b. **DPN#2023-03-24D-147 Abbe Road**- Request for a Jurisdictional Ruling for the expansion of the existing pond; Jarmoc Tobacco, LLC, Applicant; Jarmoc Real Estate, LLC, Owner; Map 85/Lot 16; R-44, Zone. **TABELED**

Commissioner Kober made a motion to remove **DPN#2023-03-24D-147 Abbe Road** from the table, seconded by Commissioner Hendrickson.

Motion passed unanimously, 5-0-0.

Chair Corbin-Sobinski stated for the record that this is **DPN#2023-03-24D-147 Abbe Road** - for the expansion of the existing pond; Jarmoc Tobacco, LLC, Applicant; Jarmoc Real Estate, LLC, Owner; Map 85/Lot 16; R-44, Zone, not a jurisdictional ruling.

Ms. Driver asked Chair Corbin-Sobinski for clarification as to why this is not a jurisdictional ruling. Chair Corbin-Sobinski said that it is not because they did not ask for one. Ms. Driver said the application is for a jurisdictional ruling, as are all DPN's. Chair Corbin-Sobinski replied it is a normal DPN, the public cannot request a public hearing, they cannot appeal the decision in court and is decided by staff.

Attorney Donnelly said this is unique because they are trying to resolve the notice of violation that was sent on March 8, 2023. Attorney Donnelly recapped the notice violation. Last fall, the applicant was looking to do maintenance on the farm ponds. He reached out to staff and going back and forth on email, staff granted permission, there was some confusion on how much maintenance was being done. The result of the work ended with a larger pond. After the work was completed a notice of violation was issued as well as a cease-and-desist order to stop excavation. A soil scientist determined that no wetlands were disturbed during excavation. Attorney Donnelly gave the Commissioners copies of the documents that were submitted to staff on Friday but did not make it into their packets.

Ms. Driver read an email that she sent Mr. Jarmoc back in March advising him he has to provide the agency with reasons as to why the farm pond expansion is essential for the farming operation as stated in the statutes for agricultural exemptions.

Commissioner Hendrickson made a motion that a permit is **not** required for **DPN#2023-03-24D-147 Abbe Road** - for the expansion of the existing pond; Jarmoc Tobacco, LLC, Applicant; Jarmoc Real Estate, LLC, Owner; Map 85/Lot 16; R-44, Zone, seconded by Commissioner Martin.

Motion passed, 3-2-0 vote to not require a permit. (Note: Staff had originally thought it failed, but after further research with the Bylaws, the motion passed.)

Commissioner Higley entered the meeting at 6:44 PM.

Commissioner Kober made a motion to move item **7. Town Attorney Report** under item **10. Old Business**, seconded by Commissioner Hendrickson.

Motion passed unanimously.

7. Town Attorney Report: As requested by the Wetlands Agency the town attorneys are present to review some legal opinions that were received in the past.

Attorney James Tallberg and Attorney Maria Elsdén said that this is a continuation of the land use training from June 1, 2023, they ran out of time and did not get to some of the issues pertaining to the wetlands. The Wetlands Commission is a limited authority constrained by State Statutes and pursuant to the town charter, section 1, chapter 1, the legal attorney is the legal advisor for all boards and commissions. When requested they will give those commissions written opinions involving legal issues. The goal of the town attorneys is to ensure that there is compliance with the law.

Ms. Driver went over the staff list of items to review.

1. DPN's - a legal opinion was received in the past that did not make sense and after extensive research it was determined that it was a misapplication of terminology in the regulations.

Chair Corbin-Sobinski asked the attorneys about the previous DPN that the motion failed, does that mean he needs a permit? Attorney Elsdén stated since there is a pending case on this, that she feels a little uncomfortable making a comment.

Ms. Driver said the same thing happened with 92 Post Office Road and their DPN was denied and they were required to get a permit. DPN's are not subject to public petition periods nor jurisdictional rulings. Attorney Elsdén said that is true.

Commissioner Kober said right now our wetlands regulations and the application form reflects that a DPN is an application, which causes issues to arise. He said that they are in the process of updating wetland regulations and asked for guidance from the attorneys.

Attorney Elsdén said it should be more like the model regulations and not to use confusing terminology. DPN is used in Enfield and should really be a request not an application.

Commissioner Zorda entered the meeting at 6:50 PM.

2. The checklist on the application needs to be modified. They cannot require wetlands to be delineated on adjacent properties.

Chair Corbin-Sobinski microphone was not on at the time that she made comments on #2. According to the captions on the video, she said, they do have a right. Ms. Driver said not on private property and to find the statute that grants that authority. Chair Corbin-Sobinski read a section 22a-30 that says, "The commissioner or his authorized representative shall have the right to enter upon any public or private property at reasonable times to carry out the provisions of sections 22a-28 to 35." Ms. Driver mentioned that applies to the Commissioner of DEEP, not local wetland boards.

Attorney Elsdén said when the Act is inconsistent with the regulations, the Act is going to prevail.

Director Whitten said that they need to update the wetlands regulations.

3. Site Walk rules- no public discussion or participation. Only allowed to take notes and discuss orientation among yourselves. There should be no discussion about the application and all observations are brought to the next meeting.

4. Predetermination and ex-parte communication- Can not predetermine on the record. For example, "if this is not/is done, then I will vote no or yes". You cannot talk about items on the agenda with the public residents, they need to come and speak at a meeting under public communication or during a public hearing.

5. The scope of jurisdiction- a reminder that jurisdiction with this agency lies with the Wetlands not other boards or commissions.

Director Whitten concluded by saying that the staff are there to assist the agency, they are hired because they have experience and training. She said we want to be a team to work with you and help you. They are hired to help the commissions and serve the public interest.

11. New Business

a. **IW#685-157 South Road**-Application for wetland permit for the development of three self-storage units; Eric Hewitt, Applicant, National Fleet Leasing LLC, Owner; Map 55/Lot 82; I-1 Zone.

Martin Brogie, soil scientist for the applicant gave a brief presentation on the project and went over his wetland report.

Ms. Driver went over the 3 site-specific recommendations from her report. This has not yet been reviewed by the engineering department. This is the only thing holding back a complete review from the engineering to move forward. She asked that proposed topography versus the existing topography be added the plan and sediment and erosion controls.

Chair Corbin-Sobinski asked about the in-ground infiltration system for the roof runoff. The water will flow from the roof into the concrete galleys and filter the water a bit and then the water dumps into the detention basin.

Commissioner Kober said he is for continuing this application until they receive feedback from the engineering department.

Commissioner Zorda made a motion to approve **IW# 685-157 South Road**, seconded by Commissioner Hendrickson with site specific conditions.

1. Final plans will include a cover sheet and all sheets will include a legend.

2. Details for the underground detention system to accommodate roof run off will be added to the plans.

3. Sediment and erosion controls will be included along the 128 contours in addition to the proposed ENS control location to protect the well location from the nearby temporary soil stockpile that is to be in its proximity.

4. Proposed versus existing topography will be on the same page.

5. Details will be provided on the source and type of fill that will be brought into the site.

Motion passed 6-0-1 vote; Commissioner Kober abstained.

b. **IW#686-Rear of 38 Post Office Road-** Application for wetlands permit to allow outdoor storage and processing of construction materials; Spazzarini Construction Company, LLC, Applicant; St. Thomas Realty Associates, LLC, Owners; Map 47/Lot 12; I-1 Zone.

Commissioner Kober asked the commissioners if they would like to put this up for a public hearing as there is significant activity.

Chair Corbin-Sobinski microphone was not on, according to the captions on the video, if a petition was signed, they must receive it within 14 days of the application. Chair Corbin-Sobinski read the requirements for a public hearing.

Ms. Driver said for significant activities you can still have a public hearing on the application.

Jay Ussery, from JR Russo and associates gave a brief overview of the application. The staff have been waiting for the wetland report from George Logan. The report is complete and will be submitted. Mr. Logan went over the delineation report with the commissioners.

A written request for an extension was submitted by JR Russo & Associates for the record.

Commissioner Kober made a motion to continue **IW#686-Rear of 38 Post Office Road** until the September 5, 2023, meeting, seconded by Commissioner Hendrickson.

Motion passed unanimously.

12. Enforcement Report (s): Nothing to report

Chair Corbin-Sobinski said she would like to see enforcement reports, the last one she saw was the March meeting. Ms. Driver said she can also give an updated list of permits.

13. Report of Planning Staff- None

14. New Applications to be Received: None

15. Miscellaneous: Nothing

16. **Adjournment:** Commissioner Kober made a motion to adjourn, seconded by Commissioner Higley.

Motion passed unanimously.

Meeting adjourned at 7:50 pm

Prepared by: Sandie Barone

Respectfully Submitted,

Virginia Higley, Secretary