TOWN OF NEW MILFORD
Town Hall
10 Main Street
New Milford, Connecticut 06776
Telephone (860) 355-6083 · Fax (860) 210-2664

Office of the Inland Wetlands Commission

New Milford Inland Wetlands Commission
Regular Meeting Minutes
April 14, 2022

2022 APR 18 P 2:47
NEW MILFORD, CT

Present: Cathy Setterlin, Chairperson
Scott Leddy, Vice Chairperson
Adrienne Aurichio, Secretary
Kathleen Nelson, Member
Irene Skrybailo, Alternate (seated)
Angela Dimmitt, Alternate (seated)
James Ferlow, Wetlands Enforcement Officer

Absent: James Anderson, Member
Thomas Lappala, Alternate
Jeffrey McBreairty, Member

Chairperson Ms. Setterlin opened the April 14, 2022 Inland Wetlands Regular meeting at 7:00PM and seated Ms. Dimmitt for Mr. Anderson and Ms. Skrybailo for Mr. McBreairty.

PUBLIC PARTICIPATION:

Norbert Lillis, 171 Aspetuck Road, addressed the Tall Oaks development violation. He stated that a major rain storm occurred last week and was concerned about the river flooding. He said were the development was located the vernal pool did not have any water, but the river was up a few feet. He said the development had filled in the flood plain so the water had traveled downstream about a third of a mile and flooded around the home located there. He submitted pictures of the flooding to the Commission.

MINUTES:

Minutes of the Special Meeting of March 17, 2022

> *Ms. Aurichio moved to **accept** the minutes for the Special Meeting of March 17, 2022 as written. The motion was seconded by Mr. Leddy and carried unanimously.*

PUBLIC HEARINGS:

1) Artel Engineering Group, LLC, IWA-22-4, 233 Merryall Road, Tax Map 71, Lot 10, construction of a single family residence with septic, well and inground swimming pool.

Dainius Virbickas was present to speak on behalf of Artel Engineering Group. Mr. Virbickas submitted the greed cards and updated drawings to Mr. Ferlow. He stated that the only change on the drawings was the relocation of the rain garden. Mr. Virbickas summarized the parcel as approximately 4 acres of land separated into a 1-acre section to the east that was primarily lawn and a 3-acre section in the west. He said the topography of the land was 7-9% sloping east to west and a rock wall demarcates part of the western property line. He said they have sited the home at the southeast portion of the property and are proposing a pool in the backyard. He said a soil test was performed in July 2021 and the soil scientist delineated the upland review area and the wetlands soil for which the boundaries are shown on the plans. He said the soil scientist has since returned to the site and determined that there was an intermittent watercourse that has now been added to the regulated area. He said the regulated area was everything on the property except the southeast portion where the home was located.

Mr. Virbickas said they are proposing to line the ditches with geofabric consisting of coconut mesh. He said there was currently little erosion in these areas are the flow was not strong enough to undermine the channels. He said regarding the question on the rain garden, they have sized it for water quality volume and moved it to the central portion of the property for the roof liter and footing drains. He said they are proposing erosion and sedimentation controls in the form of silt fence against the existing fencing. He said the area of disturbance would be approximately 0.75-acres and the septic would be in the northern portion of the property with no direct impact to wetlands or watercourses.

Mr. Virbickas said last weeks rain was about 3-inches and water was flowing through both pipes on the property. He addressed the comments from Northwest Connecticut Land Conservancy's soil scientist who stated that there were additional areas of concern. He said they concentrated on the rear area and the brushy area, but wetlands were not noted in these areas. He said there were also engineering comments regarding the septic, but these would be addressed by the Health Department's review. He stated that there were flow calculation discrepancies between that of the Northwest Connecticut Land Conservancy and their drainage shed was 6-acres less than his calculations. He said they would be checking these discrepancies.

Mr. Virbickas asked if Mr. Ferlow had received the updated soil scientist report. Mr. Ferlow answered yes, as well as the letter from Cohen and Wolf. Mr. Ferlow asked if they were stated no impacts to wetlands and watercourses. Mr. Virbickas answered yes. He stated the septic piping would be installed by excavating on either side of the existing channel and pushing the pipe underneath. Mr. Ferlow said there appeared to be excavation within the outlet area of the mesh lined channel. Mr. Virbickas said the soil would be set down and the mesh would be stapled to the ground within that area. He said it comes pre-seeded and would help stabilize the channel. Mr. Ferlow asked if they planned on excavating the channel wider. Mr. Virbickas answered no. Mr. Ferlow said the water flowing through both of these areas becomes undefined to the channel and pans out across the development area. He said you could see this from the debris pattern after the rain storm last week and was concerned about the water spreading out. He stated the Northwest Connecticut Land Conservancy had also issued another letter and photos into the record. He said one photo shows the dissipation of the channel.

Mr. Leddy asked if the mesh lined channels were rated for a 100-year storm. Mr. Virbickas said he was not sure what would occur in the channels during that kind of rain event. Mr. Leddy asked what would occur when the mesh disintegrates. Mr. Virbickas said the plantings would be established at that point. Ms. Aurichio asked if the property would flood if there were a rain event greater than 3-inches. Mr. Virbickas said the property was not within a flood plain and the river was far enough away and has its own flood plain. Ms. Dimmitt commented that the neighboring property had water flowing every time she had been there and questioned where that water was coming from. Mr. Virbickas said he was not sure where the water was coming from, but surface conditions were not always indicative of what was going on beneath and vice versa. Ms. Nelson

asked if grading for the pool would interfere with the water spreading from the channel. Mr. Virbickas said they could look into that further and adjust the pool if necessary. Ms. Setterlin asked why the coconut mesh as necessary if the channels were already lined with grass. Mr. Virbickas said he agreed with that point, but the mesh would help with any additional erosion. Ms. Setterlin asked if the land would still be used for agriculture and grazing. Mr. Virbickas answered yes, as far as he was aware. Ms. Nelson stated that the southern channel was approximately 30-feet from the home and asked why it needed to be outleted farther away. Mr. Virbickas said he would speak to his client about that.

Ms. Setterlin opened the floor for public participation.

Alex Sann, 59 Bear Hill Road, said it appeared the home would exist on one dry patch of land with wetlands surrounding it. He said it appeared that they would not be able to utilize their yard and questioned if all of the wetlands were being addressed. He said the culverts have a continuous flow in both wet and dry weather and has seen scouring of the topsoil. He said if there was a pool, the only place to drain it would be in the wetlands and would have to be free of chemicals and salt. He said he believed this project has significant impacts to wetlands.

Jim Stasiak, 139 Bucks Rock Road, distributed an article from USA Today to the Commission members outlining the effects of disturbing wetlands and rising water levels. He said he was concerned about the peripheral water discharge into surrounding lands, the construction waste, and the septic system. He said the construction equipment used would require regular maintenance and leaking of fuel. He said he was also concerned about construction materials and agreed that the pool would have to be discharged outside the wetlands. He said he was also concerned about water usage in the home and any pollution coming from everyday living activities.

Sandra Avalone, 57 Bear Hill Road, said she was concerned about fertilizers used on the property once the home was built and the damage that could cause to the wetlands.

Dwight Marriam, Attorney with Northwest Connecticut Land Conservancy, said they were concerned about the pipe for the septic and the rain garden and would have to review those changes. He said wetlands immediately abut the property and asked how this project would affect them. He explained that under the regulations, the two channels should be defined as intermittent watercourses and should be field staked and mapped. He said there are also three areas of likely wetlands on the property that are not identified. He stated that 650 people signed a petition against this project, which was significant and should be recognized. Mr. Marriam distributed an outline of his presentation and a complete packet of concerns from the Northwest Connecticut Land Conservancy that can be found as part of the record. Mr. Marriam's major points were to keep the Public Hearing open until the concerns were fully addressed, the need for an outside wetlands consultant to review the property, the two culverts should be identified as intermittent watercourses, and to submit alternative proposals including moving the home farther north.

Nick Pouder, 228 Merryall Road, said he is a landscape architect and a tenant of Smyrski Farm. He said at the beginning of the Public Hearing the sign was posted at the wrong property and then submitted later photos of the sign falling over on two separate occasions. He added that this Public Hearing was also on a religious holiday in which many people could not attend. He said he agreed the channels are intermittent watercourses and submitted photos of flooding within the grazing area. He said he agreed an outside consultant should review the wetlands and the home should be farther north.

Julie Bailey, 144 Merryall Road, said she has worked with Smyrski Farm and commended the technical information that has been provided in the Public Hearing. She said the current regulations are not in line with the intense weather events that have been occurring.

Keri Wheeler, 5 Marwick Manor, said the sign issue was a disregard to public concern. She said she has a long history with the property and has never seen that 4-acre parcel dry. She said the topography of the property explains why that area was always wet because the water table follows the slope and run-off pools at the bottom. She said this project would interrupt farming activities and the property owners would most likely end up complaining and the farm would suffer. She said this preserve has been the same for many years and it was unfortunate that this parcel was in the middle of it.

Mr. Virbickas reiterated that they are not planning to disturb the wetlands. Ms. Nelson said they would need to see some feasible alternatives and asked that they stake the corners of the house. She said they should think about moving the home north and ask what pool chemicals would be used. Mr. Virbickas agreed.

> *Ms. Nelson moved to **continue the Public Hearing** for application IWA-22-4 to May 12, 2022 at 7:00PM. The motion was seconded by Ms. Dimmitt and carried unanimously.*

APPLICATIONS FOR REVIEW:

2) Eric Kucharczyk, IWA-21-49, Mist Hill Rd, Tax Map 3.2, Lot 17.80, construction of a single family dwelling, septic, well, driveway, utilities, stormwater management system and the relocation of a swale/intermittent watercourse.

   Mr. Ferlow said he did not have any additional comments. He reviewed the staff report dated April 13, 2022 for the Commission and went over the conditions of approval.

   > *Ms. Nelson moved to **approve** application IWA-21-49 based on the conditions of the staff report dated April 13, 2022. The motion was seconded by Ms. Dimmitt and carried unanimously.*

3) Artel Engineering Group, LLC, IWA-22-4, 233 Merryall Road, Tax Map 71, Lot 10, construction of a single family residence with septic, well and inground swimming pool.

   The Public Hearing has been continued to May 12, 2022 at 7:00PM.

4) WMC Consulting Engineers, IWA-22-8, 100 Still River Drive, Harrybrooke Park, bridge repair.

   Mr. Ferlow stated this was a temporary repair outside of the wetland but within the upland review area. He said they would use the existing driveway for access and the plan has been updated.

   > *Ms. Aurichio moved to **approve** application IWA-22-8 based on the conditions of the staff report dated April 12, 2022. The motion was seconded by Ms. Dimmitt and carried unanimously.*

5) 48 Kent Road, LLC, IWA-22-10, 48 Kent Road, restore disturbed floodplains and wetlands.

   Russ Posthauer was present to speak on behalf of the applicant. Mr. Posthauer stated he reviewed the staff report and had no further questions. Mr. Ferlow said the disturbed area was

relatively narrow and suggested the work be done during the summer to prevent further disturbance. He said they should remove all vegetation, debris, and materials.

> *Ms. Nelson moved to **approve** application IWA-22-10 based on the conditions of the staff report dated April 12, 2022. The motion was seconded by Ms. Aurichio and carried unanimously.*

6) Nejame and Sons, IWA-22-11, 17 Old Stone Road, construction of a 16' x 32' inground pool with a filter, heat pump, fence & patio.

James Kelly was present to speak on behalf of the application. Mr. Kelly said they were proposing an inground pool greater than 200-feet from the wetland. Mr. Ferlow asked if he had any questions on the conditions of the staff report. Mr. Kelly answered no. Mr. Ferlow corrected that the pool was actually 45-feet from the wetland because a portion of the lawn area was flagged wetlands.

> *Mr. Leddy moved to **approve** application IWA-22-11 based on the conditions of the staff report dated April 12, 2022. The motion was seconded by Ms. Dimmitt and carried unanimously.*

NEW APPLICATIONS:

7) Joe Quaranta, IWA-22-13, 43 Washington Ridge Road, clearing of understory to install fruit trees.

Mr. Ferlow said they are planning on cutting within the upland review area at the old farm associated with the Washington Ridge Conservancy. He said they also plan to plant fruit trees and bushes. Mr. Ferlow explained that this could be approved as a jurisdictional ruling and read the staff report dated April 13, 2022.

> *Ms. Aurichio moved to **approve** application IWA-22-13 as a jurisdictional ruling based on the conditions of the staff report dated April 13, 2022. The motion was seconded by Ms. Dimmitt and carried unanimously.*

8) Artel Engineering Group, LLC, IWA-22-15, 14 Greenwood Road, construction of a 70' x 40' athletic court with a retaining wall.

Dainius Virbickas was present to speak on behalf of the applicant. Mr. Virbickas stated the property was currently developed and there are stone lined water channels going through the property. He said the property has a dry area outside of the wetlands where they want to construct a sport court. He said they are proposing to cut into the slop and put in retaining walls. Ms. Setterlin asked if it was staked. Mr. Virbickas answered no, but it was easy to depict off the plans. Ms. Setterlin asked what the wetland concerns were. Mr. Virbickas said the stone line channels within the property. Mr. Ferlow said the Commission members would go take a look.

9) Michael Mitchell, IWA-22-17, 63 Walker Brook Road N, install driveway, prep land for a vineyard with dwelling/barn, septic, well and utilities.

Mr. Ferlow explained that the application contains some as-of-right activities such as the vineyard, but also construction of a driveway. He said they have already begun grading and clearing outside of the upland review area.

10) Howland & Associates PC, IWA-22-18, 823 Candlewood Lake Road S, septic system replacement.

Chris Francis was present to speak on behalf of the applicant. Mr. Francis said they are proposing a new septic system within the upland review area of Candlewood Lake, but most of the work would be outside of this area. He said they plan to redirect the swale around the infiltrators and discharge into the rain garden. He said they would be importing 100 cubic yards of fill and the total disturbance in the upland review area would be 0.09-acres. He said the existing septic was not depicted on the plans, but he could stake the tank and the gallies. Mr. Ferlow informed Mr. Francis that he would need a letter of permission because they are proposing access form a private road which is not its address. Mr. Francis said he understood.

11) Michael Halpern, IWA-22-19, 217 Sawyer Hill Road, construction of a house and portion of a driveway.

Steve Pelletier, general contractor for the applicant, was present to speak. Mr. Pelletier said they need approval to grade for the foundation within the restricted area. Ms. Setterlin asked if they could stake the foundation boundaries. Mr. Pelletier answered yes. Mr. Ferlow stated there was a watercourse and a swamp behind the property. He said they need to think about the stormwater management and submit a plan for it. He said they need to consider the roof drains, driveway drainage, and the flows. He said they also need the fence line of the pool and equipment being used for that because the swale alongside the pool needs to be clear of equipment or electrical.

ENFORCEMENT:

12) Notice of Violation, Nelson Dasilva Jr., Unique Development, LLC, 9, 11 and 12 Tall Oaks Drive, tree removal and placement of fill within a designated wetlands area

Rich Rosiello, landscape designer, was present to speak on behalf of the applicants. The applicants were also present at the meeting. Mr. Rosiello asked what boundaries were depicted on the plan. Mr. Ferlow showed the conservation easement, 100-year floodplain, and the wetland boundaries. He explained that the wetland boundary and the 100-year floodplain follow each other. Mr. Rosiello submitted the mitigation planting plan and said he based it on the 8" of fill that still needs to be removed. He said they are proposing to cut the existing maple tree and make sure the ground plane was covered with a conservation seed mix. He said they would use sycamore trees to provide shade and lots of shrubs and small trees. He said they want to buffer against invasive plants and stabilize the bank. Ms. Setterlin said there was a lot of work outside that are as well. Mr. Rosiello said he agreed, but he wanted to concentrate on this critical area first. Mr. Leddy asked when they planned to begin planting. Mr. Rosiello said they still need to do some additional removal and then he would be working with Mr. Ferlow moving forward.

Mr. Ferlow summarized the status memo and explained that there was a second encroachment within the conservation easement and they need to grade that back and remove the pile of trees. Mr. Ferlow showed the original subdivision planting plan and explained that the site restoration should mimic that. Ms. Nelson stated that the mugwort was a problem in that area and that a condition should be added to address it. She called for consistency with implementing the plan onsite.

*Ms. Nelson moved to **authorize** Mr. Ferlow to issue a corrective order for the violation. The motion was seconded by Ms. Dimmitt and carried unanimously.*

BOND RELEASES:

13) Edward Lent, C20-007, 65 Mist Hill Rd, $1,000.00

*Ms. Dimmitt moved to **approve** application C20-007. The motion was seconded by Mr. Leddy and carried unanimously.*

DULY AUTHORIZED AGENT APPROVALS

14) Nelson Dasilva, IWA-22-7, 85 Weathervane Drive, construction of a single family dwelling.

*Ms. Dimmitt moved to **approve** application IWA-22-7. The motion was seconded by Ms. Nelson and carried unanimously.*

15) Jessica Ferris, IWA-22-14, 9 Heacock Lane, 22' x 25' deck.

*Ms. Dimmitt moved to **approve** application IWA-22-14. The motion was seconded by Ms. Nelson and carried unanimously.*

16) William Gilbert, IWA-22-20, 24 New Bridge Rd, 14' x 27' deck expansion.

*Ms. Nelson moved to **approve** application IWA-22-20. The motion was seconded by Ms. Dimmitt and carried unanimously.*

BUILDING & ZONING:

*Ms. Nelson moved to **approve** Building & Zoning agenda items #17 through #28. The motion was seconded by Ms. Dimmitt and carried unanimously.*

BILLS:

29) Bill: Hearst Media Group, dated 3/31/22, regarding legal notices, $32.21

*Ms. Nelson moved to **pay** the bill for Hearst Media Group, dated 3/31/22, regarding legal notices for $32.21. The motion was seconded by Ms. Dimmitt and carried unanimously.*

Mr. Posthauer was present to speak about 176 Sunny Valley Road. He said in order to survey the site they would need to clear the dense brush within the site and was seeking approval from the Commission to do so. The Commission members agreed to allow the brush clearing.

Mr. Ferlow also brought up the issue of a temporary bridge being proposed at Cherniske Road for emergency vehicle access and public traffic. Ms. Aurichio said she was concerned

about the loading on the bridge from large tractor trailers. Mr. Ferlow explained that the application would be coming before the Commission shortly, but wanted to make the members aware of it.

> *Ms. Nelson moved to **adjourn** the April 14, 2022 Special Meeting at 10:06pm. The motion was seconded by Ms. Dimmitt and carried unanimously.*

Respectfully Submitted,

Joelle Westervelt

Joelle Westervelt
Recording Secretary