

**INLAND WETLANDS AND WATERCOURSES
COMMISSION**

Town of Trumbull

CONNECTICUT

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INLAND WETLANDS AND
WATERCOURSES
COMMISSION



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**MINUTES
July 5, 2011**

MEMBERS PRESENT: Richard Girouard, Chairman
Arlyne Fox, Vice Chairman
John Lauria, Secretary
Carmine DeFeo
Frank Marcus
Lars Jorgensen
Kevin Chamberlain, Alternate (voting)

MEMBERS ABSENT: David Lucas

ALSO PRESENT: Stephen Savarese, PE, LS Town Engineer
Mario Coppola, Town Attorney
Attorney Raymond Rizzio

The Chair convened the meeting at 7:07 p.m.

EXECUTIVE SESSION

Motion made (Lauria) seconded (DeFeo) to enter into Executive Session for the purpose of discussing pending legal action, Hidden Pond Development, LLC v. Inland Wetlands and Watercourses Commission of the Town of Trumbull, Docket No. FBT-CV-09-4027808-S with Inland Wetland and Watercourses Commissioners Chairman Richard Girouard, Vice Chairman Arlyne Fox, John Lauria, Secretary, Carmine DeFeo, Frank Marcus, Stephen Savarese, PE, LS Town Engineer and Town Attorney Mario Coppola present.

No Discussion. All in favor.

VOTE: MOTION CARRIED UNANIMOUSLY

The Inland Wetland and Watercourses Commission ENTERED into Executive Session at 7:08 p.m.

(Kevin Chamberlain, Alternate arrived at the meeting and entered the Executive Session at 7:26 p.m.)
(Lars Jorgensen arrived at the meeting and entered the Executive Session at 7:34 p.m.)

Motion made (Fox) seconded (DeFeo) to END Executive Session. All in favor.

VOTE: MOTION CARRIED UNANIMOUSLY.

The Inland Wetland and Watercourses Commission ended Executive Session at 7:53 p.m.

All present joined in the Pledge of Allegiance led by Commissioner Fox.

NEW BUSINESS

The Chairman opened New Business at 7:54 p.m.

Application 11-12 Michael Sparano - Permit approval to remove wood chips in a regulated area (Modified Application) at 60 Jackson Drive.

The applicant, Mr. Sparano was present and indicated for the record that he had modified his application to allow for removal of the woodchips.

The Town Engineer Stephen Savarese confirmed for the Chair that he was aware of the modification and was satisfied.

The Commission confirmed for Mr. Sparano that the trees are within 100' to the watercourse.

Motion made (Fox) seconded (Marcus) to RECEIVE Application 11-12 (Modified Application) (Michael Sparano). All in favor.

VOTE: MOTION CARRIED UNANIMOUSLY.

Application 11-19 Matthew Long & Jereme Anglin - Permit approval to extend existing deck at rear of property in a regulated area at 565 Tashua Road.

The applicant, Mr. Jereme Anglin was present and indicated for the record that he was seeking permission to extend the back deck at his residence; currently the deck is 12' x 12'. The flagstone patio below the existing deck will be removed. There is 50' of lawn to the fence; beyond the fence is 3' of shrubs before meeting the 4' high rock wall. Beyond the rock wall is the creek. The proposed activity is 75' to the creek. After a heavy rain the creek is approximately 6" deep otherwise it is only a trickle. The creek runs along Tashua Road. The size of proposed deck is 16" x 28'. The fence is indicated on the map. The back yard has a gradual incline down towards the creek area, at the retaining wall the landscape changes to a steep inline down to the creek area. The creek area is approximately 20-25' lower than the house. The driveway crosses over the creek; the driveway touches the house and the garage. The broken line on the map indicates the rock retaining wall. The deck will be one step down to the lawn to avoid railings, which would block the view.

Motion made (Fox) seconded (Marcus) to RECEIVE Application 11-19 (Matthew Long & Jereme Anglin) All in favor. VOTE: MOTION CARRIED UNANIMOUSLY.

Motion made (Fox) seconded (Lauria) to CLOSE New Business at 8:07 p.m.

No Discussion. All in favor.

VOTE: MOTION CARRIED UNANIMOUSLY.

REGULAR MEETING:

The Chairman opened the REGULAR MEETING at 8:08 p.m.

The Chair read the proposed settlement agreement agenda item into the record as, "The Town of Trumbull Inland Wetlands and Watercourses Commission will consider and vote to approve or deny the proposed settlement agreement for the pending legal action, Hidden Pond Development, LLC v. Inland Wetlands and Watercourses Commission of the Town of Trumbull, Docket No. FBT-CV-09-4027808-S".

Town Attorney Mario Coppola stated that the proposed stipulation to settle the pending legal action before the Inland Wetland and Watercourses Commission is entitled Hidden Pond Development, LLC v. Inland Wetlands and Watercourses Commission of the Town of Trumbull, Docket No. FBT-CV-09-4027808-S. The proposed stipulation for judgment provides a plan, which would adhere to all of the 28

conditions as set forth in the original approval of 6 lots; the only exception would be the plan for construction of a seven (7) lots. The applicant had proposed 9 lots, with the alternative of 8 lots. The Commission's decision will balance the risk of the court making a decision, which could allow the applicant to construct 8 or 9 lots v. approving this agreement, which stipulates the construction of 7 lots pursuant to all of the original conditions set forth in the original approval.

Attorney Coppola suggested the first amendment to the stipulation would be to delete paragraph 3. Paragraph 3 of the proposed stipulation reads as, "The property may be developed in any order except that all debris will be removed prior to construction of any houses and the roads, drainage, and utilities will be constructed prior to construction". The Commission agreed this was an unacceptable condition, the original condition of phases of construction is important.

The second amendment to the proposed stipulation as suggested by Town Attorney Coppola is to delete and revise a portion of paragraph 2. Paragraph 2 currently reads as, "Except as modified by the above referenced map, and as set forth herein, all conditions of approval as delineated in the Commission's decision of February 3, 2009 are hereby incorporated into the stipulated approval and made a part of the stipulated approval as if fully set forth herein." The Commission will require that the proposed map does not in fact conflict with any of the conditions of the original approval and that it does not override any of those conditions. Paragraph 2 would be modified to read as, " With the exception of the condition requiring the elimination of lot #3, all conditions of the approval as delineated in the Commission's decision of February 3, 2009 are hereby incorporated into the stipulated approval and made a part of the stipulated approval as if fully set forth herein." This will change the approval to 7 lots as delineated on the map instead of 6 which was originally approved. Attorney Coppola noted for the record that it had been discussed and agreed upon that the Commission would require before the stipulation is approved by the court a map would be provided by the applicant delineating all of the conditions as set forth in the original approval and the Inland Wetland and Watercourses Commission's Agent, Stephen Savarese, Town Engineer will confirm that the map is in accordance with all of the conditions and until the map and the Town Engineer's confirmation is received by the Commission the stipulation will not be signed.

With regard to lot # 2-3 the Chair explained, that in the past the Commission has allowed culverts to cross. That may be one issue that the court may find in the applicants favor. The Chair spoke in favor of the proposed stipulation as amended.

Town Attorney Coppola requested that the map reviewed by the Commission be made available for the public's viewing at this meeting; the map was turned to the public's view. The original proposal was for 9 lots, this map represents the alternative plan of 8 lots (one lot had been eliminated and combined with another lot as shown on the map as lots #2 -3 combined). The proposed stipulation plan is similar to if not exact as approved by the Commission with the 28 original conditions incorporated. The trial brief has been provided to the Commission by the Town Attorney to allow the Commission to see the argument the plaintiff has made to the court and has used to support the request to the court to overturn the Commission's decision which could result in allowing 8-9 lots developed. The Town Attorney stated that this meeting is not a public hearing, but the Commission's vote on this shall be taken during a public meeting and suggested that the Chair allow the public to speak at this meeting.

Attorney Raymond Rizzio spoke to fact that this has been a difficult negotiation process. Neighbors' concerns, with regard to the lake, are unfounded. The Commission has certainly done their job well. The construction, development and site work with regard to the roadway will not change. All of the other conditions will work and are favorable. Atty. Rizzio stated that in his 25 years of working with the commission, crossings of culverts have been approved approximately 50 times. This is a situation where everyone hurts a little bit; the client is not happy but believes this is a reasonable settlement.

The Chair called for the public to speak.
There were five (5) people present to speak.

John Girard of 57 Old Saw Mill Road, past president of the Association thanked the Commission for all of their work on this matter; the plan that they had been originally approved was more than fair and very well thought out. Mr. Girard hopes that the execution of this plan will be as good as the legal work that has gone into this proposal. To that effect, it his hope that safeguards will be built into this execution of this plan, such as if there is damage done downstream, that there will be a way to assign the responsibility and the liability in the future. The environmental treatments can fail due to lack of maintenance reiterating that the execution of this plan includes assigning responsibility, not only to the homeowners to maintain setbacks and other aspects but that there is someone who actually inspects that this is being done.

The Chair stated that there is a condition that the Homeowners Association will certify to the Town annually that the maintenance and/or repair of the basins. If they fail to do so the Town May perform an enforcement action.

Town Attorney Coppola stated that there has been a significant bond required for this project.

Mr. Savarese, Town Engineer stated that all of the conditions of the wetlands, roadway clearing, and detention systems will be bonded; it is a sizable project and will require a bond on the wetlands aspect, as well as the planning and zoning aspect.

Town Attorney Coppola noted that if an issue were to arise, (i.e. if more trees were cut down that were supposed to be), this issue could be addressed by the bond; funds would be held back until the situation was remedied.

Mr. Savarese stated that the bond would go with the permit, if the work is not completed a Certificate of Occupancy would not be issued. The process would be that the applicant would claim they are finished with a portion of the project, they would then request a release of the bonded amount based on the completed portion of the project, this would come before the Commission for approval as a "Request for Bond Release" or as a "Bond Reduction", the Commission has control over the Bond Release and/or Bond Reduction.

Dan Latizzio of 42 Old Saw Mill Road stated that he performs lake preservation services on a volunteer basis at Pinewood Lake. Mr. Latizzio thanked the Commission for all of their hard work. There are a couple of concerns as follows:

- There has been a problem with wetlands having been excavated at the Booth Hill Cross Hill from Booth Hill to Huntington Turnpike, which is very close to their lake.
- There have been very heavy rain storms this year, and has monitored the streams, it seems every year they are getting more and more intense. This is one of their biggest concerns.

Mr. Latizzio would like to work with the Association to go over the pesticides and offered to give Mr. Rizzio his contact information, noting that this is the last buffer zone from the stream area down to their lake. The heavy rains of recent years are concerns for the lake, as well as the future dredging of the lake and the cost associated therewith. Mr. Latizzio whether the applicant would be willing to bond for the dredging of the lake as this is a serious concern? If they will have to dredge the lake every two (2) years as

opposed to every ten (10) years it will be a major expense, there has been more sediment in recent years. Based upon a study done last year this lake has one of the highest phosphorous nitrates counts of the 15 lakes in the area. He would like to see the least amount of houses possible on that lot and thanked the commission for all of their hard work.

Roberts Sisson of 98 Old Dyke Road was president of Pinewood Lake at the time this application was originally heard but is now speaking as a resident. His primary concerns are maintenance and construction, noting that if he had to vote on this settlement he would for the settlement as it is, 7 houses is better than 9. His concern is the construction process, the soil stock piles and the effect of heavy rains. The lake has turned brown as a result of other developments. Mr. Sisson spoke to the bonding and the possibility of defraying dredging costs, there are concerns of the fertilizers from lawns, the maintenance of the swales, the rain gardens and how the Town of Trumbull is prepared to monitor the Homeowner Association. He spoke in favor of the sensitivity that the development company has and how they have gone out their way to protect the environment. His main concerns are monitoring and maintenance.

Karen Baker of East Lake Road thanked the Commission for all of their hard work and for protecting the wetlands and water systems. Ms. Baker spoke on behalf of many residents who are concerned about overflow and sediment into the lake. If it were up to her she would ask for no houses and that not one tree be cut down, but knows that is not possible. She had only just heard about the lawsuit today and feels as a citizen that they are being bullied into a decision. She had reviewed one of her neighbor's notes taken at a meeting with the Hidden Pond Group. The group has worked to protect the area, but this is still not acceptable to the residents. The group has planned certain elements to impact the area as little as possible, but spoke to how it will be hard for the developer to prove that this project will not increase water flow. The amount of rainfall has increased and there has been substantial rainfall this year. The notes refer to a state of the art system to stabilize sediment flow and that the Homeowner's Association will be responsible for maintaining the system, questioning whether the Homeowner's Association will know about it or whether they will care? The notes also include information indicating it will be in the best interest of the Homeowner's Association to maintain the system because they will be the first ones to know that the system has not been maintained because they will have flooding in their yards. Ms. Baker stated that this was admission that there will be increased water flow. There is a bio-basin filtration system indicated in the notes, some people have referred to this as shrubs and herbs, and questioned if that would be enough to prevent flooding. Ms. Baker asked that the Commission do what they have to do to protect our beautiful town and thanked them for their hard work.

Anthony Cusello of 2 West Mischa Road agreed with most of what has been said by the residents at this meeting and is concerned with further erosion due to the approximately 43,000 sq. ft. of water that would be on site from roof and driveway runoff. Mr. Casella asked that the Commission do their homework.

The Chair noted that when the Commission had conducted their field inspection of the property it was not a pristine piece of property, there was a substantial amount of debris, such as old trailers, barrels, and tires. It had been in that condition for years. It is the Commission's hope that this proposal will be an improvement to the property.

Attorney Rizzio stated that the Town Attorney has been very stringent in his negotiations no one is being bullied into a decision. This project will now divert the rainfall and runoff properly; this will provide a much better situation than has been in the last fifty years. The water will be captured and treated; it is a well designed system in terms of cleansing the water that comes off of this property. In Mr. Rizzio's 25 years before this commission he has never seen so many safeguards put into place on any one subdivision, the commission and his client recognize the sensitivity of this site.

Attorney Coppola asked based upon the concerns of the residents heard at this meeting whether there shall be any further conditions to be added to this?

Mr. Savarese stated no there are no further conditions necessary, the 28 conditions put into place address the residents concerns. There was a comprehensive review which resulted in these conditions.

Attorney Coppola stated that there is a potential for the court to overturn the Commission's decision and additional lots developed than previously approved.

Motion made (Fox) seconded (Marcus) to CLOSE the REGULAR MEETING at 8:35 p.m.

No Discussion. All in favor.

VOTE: MOTION CARRIED UNANIMOUSLY.

MINUTES

By unanimous consent the meeting minutes of June 7, 2011 were approved as submitted. No Discussion.

The Chair called a recess at 8:37 p.m.

The Chair called the meeting back to order at 8:52 p.m.

WORK SESSION

After discussion and review the Inland Wetlands and Watercourses Commission took the following action these items of business:

Application 11-12

Motion made (Lauria) seconded (Marcus) to APPROVE Application 11-12 (modified) Michael Sparano as submitted, subject to the General Conditions as established by the Commission.

Discussion. All in favor.

VOTE: MOTION CARRIED UNANIMOUSLY

Commissioner Lauria amended his motion as follows:

Motion made (Lauria) seconded (Marcus) to amend the approval of Application 11-12 (modified) to read as, APPROVE Application 11-12 (modified) Michael Sparano as submitted, subject to the General Conditions as established by the Commission and the following specific condition:

- The woodchips shall be removed by November 1, 2011.

No Discussion. All in favor.

VOTE: MOTION AS AMENDED CARRIED UNANIMOUSLY.

Application 11-19

Motion made (Lauria) seconded (Jorgensen) to APPROVE Application 11-19 Matthew Long & Jereme Anglin as submitted, subject to the General Conditions as established by the Commission.

No Discussion. All in favor.

VOTE: MOTION CARRIED UNANIMOUSLY.

Hidden Pond Development, LLC v. Inland Wetlands and Watercourses Commission of the Town of Trumbull., Docket No. FBT-CV-09-4027808-S

Motion made (Chamberlain) seconded (Fox) to APPROVE the proposed stipulation for judgment in the matter of Hidden Pond Development, LLC v. Inland Wetlands and Watercourses Commission of the Town of Trumbull with the following changes discussed at this meeting:

1. Editorial revisions to page one (1), paragraph four (4), which will be reviewed by the Town Attorney.

2. Changes to paragraphs one (1) and two (2), which will clarify the map date and that all of the Inland Wetland and Watercourses Commission's original conditions of approval will be maintained with the exception of lot #3 being eliminated and the elimination of numbered paragraph three (3).
3. Any other minor editorial revisions that the Town Attorney may see fit.

No further discussion.

VOTE: MOTION CARRIED 6-1(Against: Jorgensen).

Commissioner Fox requested that the Inland Wetlands and Watercourses Commissioners walk the Highland-Tashua area to assess the conditions. Commissioner Chamberlain and Chairman Girouard agreed to volunteer to inspect the area.

Mr. Savarese stated that there is a file with photographs and a written report at the office. The Town Engineer and staff have been on site. It has been determined that it is a passive use of wetlands and that there has been no violation.

There being no further business to discuss the Inland Wetland and Watercourses Commission adjourned at 9:12 p.m. by unanimous consent.

Submitted by,

Margaret Mastroni
Clerk of the Commission