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Cc:

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CONSERVATION COMMISSION/INLAND WETLANDS & WATERCOURSES AGENCY
MINUTES – REGULAR MEETING
September 15, 2009

I. CALL TO ORDER

Chairman Miller called the Regular Meeting of the Conservation Commission/ Inland Wetlands and Watercourses Agency to order at 7:35 PM in the Main Meeting Room of the Simsbury Town Offices. The following members were present: Commissioners Margaret Sexton, Patrick Kottas, Nick Zackeo, Darren Cunningham, Andrew Bucknam and Donald Rieger. Also in attendance was Howard Beach, Conservation Officer.

II. APPOINTMENT OF ALTERNATES

Chairman Miller appointed Commissioner Rieger to serve in the absence of Commissioner Mihalic and Commissioner Kottas to serve in the absence of Commissioner Winters.

III. APPROVAL OF MINUTES – April 7, 2009 regular meeting, May 5, 2009 regular meeting, May 19, 2009 regular meeting and September 1, 2009 regular meeting.

The minutes were tabled until the next regularly scheduled meeting.

IV. PUBLIC HEARING(s), DISCUSSION AND POSSIBLE VOTE

a. Application of Brian J. Foley, Owner, Jeremy Vearil, Applicant, for an Inland Wetlands Permit for the dredging of a pond and associated grading within the 100-foot regulated area of a wetland on property located at 51 Highwood Road (lot #5). (continued from meeting held on September 1, 2009)

Mr. Beach stated that this application has been withdrawn. The applicant has filed a new application to dig a new pond as opposed to dredging the vernal pool. He stated that this activity will be done in the 100' upland review area. He questioned if the Commission will require a public hearing

for this new application.

Chairman Miller stated that the Commission can discuss and consider if this new application needs to be a public hearing during Item VI. Receipt of New Applications.

b. Application of Ensign-Bickford Realty, Owner, Gus Jasminski, Ensign-Bickford Realty, Manager of Design, Applicant, for a Map Amendment for property located on the west side of Grist Mill Road (Site 19 – Powder Forest). (Map F-11, Block 103, Lot 5)

Mr. Jasminski stated that, in 1982, a Soil Scientist mapped the wetlands on this site. In 1983, part of Grist Mill Road was constructed. As part of that construction, a drainage structure was installed and wetland soils were moved around. He stated that this is why, he believes, the wetland lines were moved.

Mr. Jasminski stated that this wetland currently functions as a settling basin. He stated that he is here before the Commission tonight to submit a new map based on this updated information.

The Commission looked at a map that delineated the wetlands. Mr. Jasminski stated that there is a slight change in the amount of wetlands; the wetlands are now a little bit smaller than before.

Chairman Miller questioned if this is based on soil tests or based on simply a high water line. Mr. Jasminski stated that the topography has changed. This is now a pond. There is disturbed soil next to this; the topography rises sharply in this area. The pond is well defined. Due to the high wetland table, it is a very wet area. He stated that back in 1982, because this was not a wetland soil, it was not flagged as a wetland. Commissioner Bucknam made a motion to approve the map amendment for Application of Ensign-Bickford Realty, Owner, Gus Jasminski, Ensign-Bickford Realty, Manager of Design, Applicant, for a Map Amendment for property located on the west side of Grist Mill Road as submitted. Commissioner Cunningham seconded the motion, which was unanimously approved.

V. PRESENTATION(s), DISCUSSION AND POSSIBLE VOTE

a. Application of Gus Jasminski, Ensign-Bickford Realty, Applicant, for an Inland Wetlands Permit to remove railroad tracks, ties and contaminated soil within the 100-foot regulated area of a wetland on property located on the west side of Grist Mill Road (site 19 in the Powder Forest).

Mr. Jasminski stated that there is a railroad track on this site, which is

an environmental concern. He stated that after soil testing was done, it was determined that the railroad ties contained arsenic. He stated that there is not a high level of contamination, although they are requesting to remove the tracks.

Mr. Jasminski showed that Commission the mapped wetlands on the site. He stated that he believes that some of the wetlands on the property were filled in when the railroads were constructed because they needed to be constructed on flat land.

Mr. Jasminski stated that their intent would be to remove the railroad ties. Only a limited amount of clearing would need to be done. He stated that silt fences would be installed and a limited amount of clearing would be done. The railroad ties will be properly disposed of. When the ties are removed, they can then dig out the soil between the ties with a small backhoe. This soil will also be disposed of properly. Testing of the soils will be done. The good soil will be distributed back on the property, graded and replanted. He stated that the intent is to do this work in the fall.

Commissioner Sexton questioned who would be doing this work. Mr. Jasminski stated that Ensign Bickford has hired someone to come in to do the work and test the soils. Depending on how contaminated the soil is, it will go to a landfill if it is clean enough or the soil may be burned.

Commissioner Bucknam questioned what the grade was from the railroad ties to the adjoining wetlands. Mr. Jasminski stated that there is an area above the wetlands, approximately 18" above, although the grade is 2'-3' above the railroad ties in another location.

Chairman Miller stated that Town staff, in their report, sees this as an improvement since it is in a regulated area to a wetland. The applicant will be removing the source of any contamination on the site.

Commissioner Bucknam made a motion that this is a regulated activity due to excavation and the depositing of material in a wetland. Commissioner Cunningham seconded the motion, which was unanimously approved.

Commissioner Bucknam made a motion that this is not a significant activity because of the relatively small risk of any erosion or contamination of the adjacent wetlands with the proper use of silt fence and the net improvement of getting the hazardous material out of the area, which gives a net gain. Commissioner Sexton seconded the motion, which was unanimously approved.

Commissioner Bucknam made a motion to grant this permit with the stipulations outlined in the Town staff report. Commissioner Kottas

seconded the motion, which was unanimously approved.

b. Application of Town of Simsbury, Owner, Gerard Toner, Director of Culture, Parks and Recreation, Applicant, for an Inland Wetlands Permit for activities associated with the construction of the Simsbury Dog Park within the 100-foot regulated area of a wetland on property located on Iron Horse Boulevard.

Mr. Garlic, Vice Chairman of the Dog Park Committee, stated that they have been pursuing this park for quite a while. This location has been brought before the Parks and Recreation Commission and the Board of Selectmen. Mr. Garlic distributed a map of the property for the Commission's review. He stated that Mr. Sawitzke has suggested shifting the access road approximately 10' to the east. This would allow the dog park to be a bit bigger. He stated that the map shows a berm, although this may not be needed if grading could be done in such a way that any water on the property would run to the east toward the access road.

Mr. Garlic stated that the size and configuration of the dog park is still unclear. Mr. Sawitzke will be having the Town go into this area to do a small amount of clearing. This will allow them to get in and see what is in this location. They can then map the park to see if this is a suitable location. He stated that fundraising cannot be done until then. The dog park will not be funded by the Town; funds will be raised to develop and maintain the dog park.

Chairman Miller questioned if they wanted to move the access road an additional 10 feet. Mr. Garlic stated that the access road is shown on the map already moved over. They are not seeking to move the road any further. Commissioner Sexton questioned if the road could be moved without a permit. Mr. Beach stated that this would depend on the final location. The Dog Park Committee will be getting all required permits.

Mr. Beach stated that the ground is slightly higher at the edge of the wetland than it is near the road. It was thought that a berm might be needed, although Mr. Sawitzke agreed that when they are grading the site, they will put a subtle grade toward the road so there is no runoff directly into the wetland.

Mr. Garlic stated that it is their intent, if they can raise the funds, to run a waterline underground from the bandshell to the dog park. It would be great to have water available for the dogs. He stated that the dog park will be a fenced in area with a double gated entrance with woodchips covering the ground. There will be several benches in the dog park as well for dog owners. Mr. Garlic stated that the Committee has already written rules and regulations for the dog park. Many surrounding Towns have

successful dog parks.

Mr. Beach stated that silt fences will be installed when the clearing and grading is done. Quality playground mulch will be used. There will also be a fence around the dog park with batter board around the bottom of the fence. This will help keep the mulch inside the park.

Commissioner Bucknam questioned who would be maintaining the dog park. Mr. Garlic stated that the Committee will be maintaining the park. They will be reporting on a yearly basis to the Parks and Recreation Commission.

Commissioner Bucknam questioned if there would be any maintenance done in the wetlands areas. Mr. Garlic stated that all maintenance would be done in the dog park area. There is a utility gate along the access road. This is what they will be using to get the mulch in or if, for any reason, a vehicle needs to get in the park.

Commissioner Sexton stated her concerns regarding people walking their dogs through the area to the west, where there is a wetland and stream. Mr. Garlic stated that a sign could be put up to deter people from this area.

Commissioner Rieger stated his concerns regarding getting more invasive plants; Helen's Way is very invasive now. He stated that there is the potential to make this area worse.

Chairman Miller questioned if the wetlands needed to be delineated in this area. Mr. Beach stated that when the parking lot and road was constructed, the wetlands were delineated at that time.

Commissioner Sexton made a motion that this is a regulated activity because it is within the 100' upland review area. Commissioner Bucknam seconded the motion, which was unanimously approved.

Commissioner Sexton made a motion that this is not a significant activity because the proposed activity occurs outside of the wetland and will be managed in such a way that should have minimal or no impact to the wetland itself. Commissioner Bucknam seconded the motion, which was unanimously approved.

Commissioner Sexton made a motion to approve the permit with the stipulations of Town staff recommendations, including silt fence. A berm is not required at this time because, it is the Commission's understanding that there is a slope toward the east, however, if it is determined that a berm is necessary, it be put in. Commissioner Bucknam seconded the motion, which was unanimously approved.

c. Application of GPF – Drake Hill, LLC, Owner, Phil Doyle, LADA, P.C.

Land Planners, Applicant, for an Inland Wetlands Permit for activities associated with the renovation of Drake Hill Mall within the 100-foot regulated area of a wetland on property located at 700, 710-720 Hopmeadow Street.

Mr. Doyle stated that the owner of the Drake Hill Mall would like to make improvements, particularly to the circulation of the driving patterns within the mall. The driveway causes a lot of congestions in and out of the mall. They would like to move the driveway. He stated that they are also proposing to construct a building at the corner of their property.

Mr. Doyle stated that there is a remnant to a brook that runs through the property. The Soil Scientist has written a report regarding this property. He stated that they are proposing to take approximately 280' of the brook and pipe it. He stated that the remnant section of the brook on this property is in great disrepair. The banks are very steep and eroded. There are several pipes that discharge in this area. The banks will be hard to stabilize. Mr. Doyle stated that they are looking into how to remedy this. He showed the Commission members photographs of this area.

Mr. Doyle stated that they are planning on leaving the Caldwell Bank building and constructing a new retail building on the property. He stated that they are proposing to add approximately 6,000 s.f. of retail space. He stated that they are looking for methods to mitigate the disturbance that this will cause.

Mr. Doyle showed the Commission members the drainage plan. He stated that there is an existing drainage system on the property. The property is entirely paved except for a small section of the site. He stated that there is no storm water mitigation, other than a few catch basins. He stated that runoff from Route 10 runs through this site and into the brook. The runoff from Mall Way does the same thing. Mr. Doyle stated that they are proposing to install Vortechnic chambers. This system will remove 80% of the suspended solids.

Mr. Doyle stated that they are also proposing porous pavement. They would like to take two of the rebuilt parking lots and experiment with the porous pavement in order to get recharge into the soils. These pavements can absorb well over the 100-year storm. Mr. Doyle stated that this site is a sandy gravel soil; the water will be easily absorbed.

Regarding mitigation, Mr. Doyle stated that there is a discharge point near the Library that has caused some erosion. This area needs to be stabilized. There are also invasive species near a discharge of one of the pipes. He stated that they are proposing to remove these invasives. Mr. Doyle stated that the Town's drainage system discharges into the stream.

He stated that this is untreated. They are proposing to install another Vortech unit at this point.

Commissioner Bucknam questioned if the applicant would be constructing more parking than what is currently there. Mr. Doyle stated that this is not a reason for why they are looking into the porous pavement. He stated that they are proposing to add 16 spaces. He feels that this additional parking is inconsequential.

Commissioner Bucknam questioned what the piping would do to the velocity of the runoff to the brook. Mr. Clark, Clark Engineering, stated that the velocity would increase. There is a pair of culverts underneath the road. He stated that they are proposing to come out into an open area into rip rap. It then goes back into a twin culvert and gets discharged on the other side. He stated that inside the pipe, the velocity is higher. It then slows down when it gets outside of the pipe and speeds up again inside the next pipe.

Commissioner Bucknam questioned if the Vortech units would be used for slowing down the velocity of the water. Mr. Clark stated that the Vortech units are used to take out the pollutants from the water. This is done by removing as much of the sediment as possible. Commissioner Rieger questioned what kind of maintenance the Vortech units needed. Mr. Clark stated that the manufacturer recommends a maintenance schedule; this would be part of the overall plan.

Regarding erosion control measures, Mr. Doyle stated that they will be installing erosion controls along the edges of the brook. He stated that they will be diverting the brook in order to install the pipe. They will then be putting the brook back on its normal course. He stated that they have written an erosion control plan.

In response to a question by Commissioner Bucknam, Mr. Doyle stated that they would like to start this work in the spring or summer.

Mr. Doyle stated that they are proposing to construct a building on the corner of the site. The building will be in the middle of what is currently a parking lot. He stated that there will be no net change in this area. He stated that the entrance to the mall would be moved; the entrance will be opposite of the Caldwell Bank.

Chairman Miller questioned if there would be any stockpiling of soils on the site. Mr. Doyle stated that there will not be much soil removal on the site. The fill that will be brought on to the site will be trucked in. There will be hundreds of yards of fill brought in.

Commissioner Bucknam made a motion that this is a regulated activity because the activities are in the upland review area and in the watercourse. Commissioner Cunningham seconded the motion, which was unanimously approved.

Commissioner Bucknam made a motion that this is not a significant activity because of the need to do work in a significant watercourse in the center of Town which would involve moving the watercourse during construction, piping the watercourse and eventually filling on top of the pipe, in addition to the other activities. Commissioner Sexton seconded the motion.

Chairman Miller questioned if a public hearing was needed for this application. Mr. Beach stated that if the Commission declares this a significant activity, they need to find that there are no reasonable or prudent alternatives to this proposal. A public hearing is not needed if it is deemed significant, although the Commission will need to state on the record that there are no reasonable or prudent alternatives.

Commissioner Bucknam read the section of the Regulations relating to significant activities. He stated that he believes a public hearing would be needed for this application. Mr. Doyle stated that, although they will be working in a watercourse, this is not a high quality section of the stream. He asked that this be taken into consideration.

Commissioner Bucknam stated that what this Commission has always considered to be a significant activity, diverting a watercourse, would qualify. He stated that, as a point of order, a vote can be taken on whether it is significant or not and then have a discussion on whether it should be a public hearing.

After a short discussion, the Commission members agreed this was a significant activity.

The motion was unanimously approved.

Commissioner Bucknam stated that the Commission has the ability to call for a public hearing because it is a significant activity. There is also the question of public interest. He stated that this site is in the middle of Town and the public should have an opportunity to comment. He feels that there would be a lot of public interest for this application.

Commissioner Rieger agreed. He also stated that some of the mitigation would be occurring on Town owned land, which would be the Library. He feels that the public should be allowed to comment on that aspect of the application also.

Mr. Beach stated that if the Commission votes to declare this a significant activity, then they need to determine that there are no reasonable or prudent alternatives.

Commissioner Bucknam stated that he is not challenging the applicant's methods, although he feels that because of the location of the property and the activity of diverting the watercourse that goes into the Farmington River, this would require a public hearing. He feels that the public needs the opportunity to hear the application.

Mr. Beach stated that there would be time to get notification of a legal notice in order to schedule a public hearing for the next meeting, which will be held on October 6th.

Commissioner Bucknam made a motion, pursuant to Regulation 9.1, to schedule a public hearing for the application of GPF – Drake Hill, LLC, Owner, Phil Doyle, LADA, P.C. Land Planners, Applicant, for an Inland Wetlands Permit for activities associated with the renovation of Drake Hill Mall within the 100-foot regulated area of a wetland on property located at 700, 710-720 Hopmeadow Street. Commissioner Sexton seconded the motion, which was unanimously approved.

VI. RECEIPT OF NEW APPLICATION(s)

Mr. Beach stated that the application of Mr. Foley was withdrawn. A new application has been submitted to create a new pond in order to not disturb the vernal pool. The pond is being proposed on the north side of the existing pond, although they do not know the size of the proposed pond. The existing vernal pool was a man-made pond. This was determined to be a vernal pool when there was a biodiversity study done on this site.

Commissioner Bucknam stated that although he was not at the last meeting or site walk, he did read the minutes. He stated that he feels that the applicant wanted to dredge the pond to put in water for the animals. He stated that he would rather see agricultural uses in Town than have people constantly frustrated with the process. He also stated his concerns regarding getting the Town Attorney involved to tell the Commission if they are reading the Regulations the right way.

Mr. Beach stated that the vernal pool on this property is one of the highest quality vernal pools in Simsbury.

Mr. Beach stated that if the Commission would like this application to go through the public hearing process, they should decide that tonight. The applicant would like to start construction of the new pond this fall so it is stabilized prior to the migration in the spring.

Commissioner Rieger stated that a big question for this applicant would be related to the hydrology of the new pond and if the outcome would be that it drains the vernal pool. He stated that he feels this should be studied by an expert. Mr. Beach stated that the vernal pool is higher in elevation than all of the surrounding land.

There was some discussion regarding as of right uses between the Commission members. Commissioner Bucknam stated that because the applicant is filing an application, the Commission needs to act on it, although he would like to see Town staff take the position that an application is not needed to dredge a farm pond. Dredging a pond should be a conservation minded endeavor that the Commission should be supporting.

Mr. Beach stated that the land owner has already been in front of this Commission and declared that this land is a legal building lot. Chairman Miller stated that he believes that the applicant does not want to stretch the interpretation of what is considered to the farming operation. He stated that they have been concerned with the impacts on the environment in the past. He suggested scheduling a public hearing for the next regularly scheduled meeting. This may set some parameters for the landowner as to when something can be done as of right.

Mr. Beach stated that the public hearing for this application will be held on October 6th.

Commissioner Sexton made a motion to schedule a public hearing for the application of Brian J. Foley on October 6, 2009. Commissioner Cunningham seconded the motion, which was unanimously approved.

Mr. Beach stated that the Town of Simsbury will be coming in with an application for paving the access dirt road at Simsbury Farms.

VII. STAFF REPORTS

There were none.

VIII. DISCUSSION

Chairman Miller stated that the Charrette consultants will be holding a big presentation tomorrow night. He encouraged the Commission members to attend. The presentation will be held at the Simsbury Public Library at 6:00 p.m.

Chairman Miller stated that the Chairs of the Boards and Commissions met with the consultant prior to the start of the Charrette process. He stated

his concerns that not enough comments have been provided to the consultant from the Wetland/Conservation Commission.

Mr. Beach stated that there was a great turnout for the first presentation.

IX. CORRESPONDENCE/ANNOUNCEMENTS

There were none.

X. ADJOURNMENT

Commissioner Bucknam motioned to adjourn the meeting at 10:15 PM.
Commissioner Kottas seconded the motion, which was unanimously approved.

Respectfully Submitted,

Commissioner Ryan Mihalic, Secretary