

**Conservation/Inland Wetlands Commission  
Town of New Fairfield  
4 Brush Hill Road, New Fairfield, CT 06812  
Regular Meeting  
New Fairfield Senior Center  
March 17, 2009  
7:15pm**

**Call to Order**

Patricia Del Monaco called the meeting of the Inland Wetlands Commission to order at 7:15pm.

**Members in Attendance**

Patricia Del Monaco, Tom Quigley, Gerry Schwalbe, Mary Aragonés and Niev Duffy. EEO Tim Simpkins present. Minutes were taken by Lisa Zustovich.

**Notice of Violation**

**24 Sunset Drive, Building a wall in the lake bottom, Map 11, Block 2, Lot 9, Horowitz.** No owner present. EEO Tim Simpkins said he re-issued the violation. Brian Wood from First Light has been to the site with Tim. **Continued**

**41 Lake Dr N, Building a breaker wall in lake bed, Map 15, Block 1, Lots 29-31, Rome.**

Ralph Langham, mason for the owner present. An application has been submitted as per Tim Simpkins. Mr. Langham stated that he didn't know a permit was needed. He said he poured concrete and put the wall back together. Mr. Langham explained what work had already been done. He said the scope of the project is to dig out and stack the old stone wall, dig out footings, pour footings, and re-build the stone wall. The dirt removed went behind the stone wall and put 6" coarse sand and 3" cover sand on top of the soil. Footings are 30" hand dug. **Deferred to New Business.**

Tom Quigley made a motion to vote 41 Lake Drive North onto the Agenda under New Business, second by Gerry Schwalbe, all in favor.

**New Business**

**41 Lake Dr N, Building a breaker wall in lake bed, Map 15, Block 1, Lots 29-31, Rome.**

Ralph Langham, present for the owner. The wall is a 48 foot long breaker wall. Mr. Langham was informed that the Commission needs to see the following:

- A sequence of construction and he should explain the prior conditions.
- He should supply any pictures of the site prior to the start of construction and of current conditions.
- Cross section of the wall.

Mary Aragonés made a motion to accept the application for review, second by Tom Quigley, all in favor. **Accepted & Continued.**

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**35 Bogus Hill Rd, Rebuilding deck/dock, Map 7, Block 2, Lot 1.4, Rhodes.** No applicant present. Tom Quigley and Tim Simpkins were out at the lake and noticed this dock had been expanded and there were sonotubes. A Notice of Violation was issued and the owner has submitted an application. Tom said it is on a very steep slope of the lake bed. Tim said all the work is done. Gerry Schwalbe made a motion to accept the application for review, second by Tom Quigley, all in favor. **Accepted & Continued.**

### **Old Business**

**80 Lake Drive South, Replace/enlarge with 2<sup>nd</sup> story detached garage with new foundation, new driveway with car parking area and retaining walls, new terrace, Map 20, Block 1, Lots 12-14, Mead.** Attorney Ray Lubus and Architect Anita O'Brien present representing the owners. The application proposes demolition of the garage, dropping the finished elevation of the garage down 2 feet and will be expanding 4 feet. The existing retaining wall will be pushed back 4 feet to make room for a turn around. They will be expanding the garage 2 feet on either side (they will still be within the 20 foot side yard set-back). Existing foundation wall will remain in its current location but needs to be re-built. The distance of disturbance to the seawall is between 71'-84'. It was noted that it is very steep behind the garage. To re-build the foundation they will need to chip away at some ledge. They will have hay bales and a 6' high construction fence. Driveway drainage discussed. Ms. O'Brien said they will put in a trench drain to a dry well. They will contain the drainage on the property. Gerry Schwalbe asked them to show this on the drawings. Pat Del Monaco instructed them to come back next month with drawings showing the trench drain and dry well. Tim Simpkins suggested they dig a test pit. **Continued.**

**160 Ball Pond Road, remove stump, build wall, staircase, Map 34, Block 9, Lot 9+11.1, Miltenberger/Michele Holmes, LLC.** Deferred to Public Hearing.

Mary Aragonese made a motion to suspend the Regular Meeting and enter into the Public Hearing for 160 Ball Pond Road, second by Gerry Schwalbe, all in favor.

### **Public Hearing**

**160 Ball Pond Road, Remove stump, build wall, staircase, Map 34, Block 9, Lot 9+11.1, Miltenberger/Michele Holmes, LLC.** Mr. Miltenberger present with Michele Holmes and Adam Negri. Also present were Engineer Carl Ruspini and attorney Neil Marcus. Michele Holmes provided 3 different maps. She said the engineer prepared the drawings and that he would stamp which ever drawing the board approved. Michele explained that they used ideas from Jane Didona's plans to make Map #3. This proposal eliminates the stairs, staggering boulders from the grade coming down to the water; but the pitch is too steep, the slope did not work as per Ms. Holmes. Ms. Holmes stated that the DOT informed her that she needs to pull the wall (at the front of the property) closer to the house which eliminates walking in front of the house. She also stated that Fire & Rescue need 3 feet in front of the house. Discussed needing access to the lake from the front the house.

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Pat Del Monaco stated that she wants to maintain some natural-open shoreline; this has nothing to do with aesthetics. Pat said she felt you can create access to the lake without creating a staircase. Discussed the access from the south side of the property to the lake and continuing that access to the road. Pat said she takes issue with the fact that this entire application has come before the Commission in so many pieces. It is very hard to have a cohesive plan. If it would have come before the Commission as a whole they could have addressed all of these issues. The Commission wants to see some open shoreline. They want the applicant to find a way to do that without a retaining wall blocking up the one last access way down to the pond. Wall height would be 6'1". Footings discussed, they have to be 5 feet minimum from the septic (State health code). Pat Del Monaco said the Commission is looking for some remediation for all the retaining walls installed on this property. They would like to restore some natural shoreline to try to create a little bit of habitat on this property. The south side staircase discussed with regard to access to the street.

Neil Marcus said they need to have the staircase and asked what environmental damage would be done to the wetlands or watercourse.

Tom Quigley said plan 2 is too close to the septic system. Pat Del Monaco said she doesn't understand why they cannot give an alternative without a retaining wall. Neil Marcus requested a break in the Public Hearing to speak with his client and the rest of their team.

Mary Aragonese made a motion to suspend the Public Hearing for 10 minutes, second by Tom Quigley, all in favor.

Tom Quigley made a motion to re-enter the Public Hearing, second by Mary Aragonese, all in favor. Public Hearing re-convened.

Neil Marcus said they could eliminate the retaining wall closest to the septic system (plan 2 without the wall), use a sonotube to post the staircase, armor the slope and build a stone staircase. They would use the layout of the boulders as shown in plan 3. Supporting the footbridge discussed. Niev Duffy noted that the footbridge will block light needed for plants to grow. It was noted that Map1 is the original plan. The outside curve of the staircase height would be 6'1" at its highest point. The tree stump discussed with regard to whether it should be removed or not. It was noted that a stump grinder would be unable to get down to the stump site.

Niev Duffy submitted the following statement and questions which were then discussed.

### **Statement and Questions Regarding the Permit Application for 160 Ball Pond Road, Submitted by Niev Duffy to Fellow Members of the Inland Wetlands Commission of New Fairfield on March 17, 2009**

During recent meetings I have tried without success to obtain clarification on a number of issues related to proper procedures regarding 160 Ball Pond Road. In most cases, these questions have been dismissed or ignored. However, I feel that having adequate answers to these questions is critical to my ability to function effectively as a commission member. I also believe that the public has a right to this information.

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My questions are as follows:

- 1) Is it acceptable and appropriate for site plans to be altered and presented by someone with no licensing of any kind?
  - a) If not, then why have we accepted the plans prepared by Michele Holmes for review?
- 2) When an applicant submits an application to rebuild an "existing retaining wall" are they required to construct it on the same footing or can they move it elsewhere, and if so how far from the "existing" wall can it be moved before they are required to submit a separate permit?
- 3) When is a wall a "structure" and thus require design by a structural engineer? Can the commission approve a six foot wall when there are no drawings by a structural engineer?
  - a) If not, why have we been reviewing the drawings of Michele Holmes?
- 4) Is it a requirement that commissioners ignore an applicant's compliance with regulatory requirements on previous permits on a property, when considering a new permit on the same property?
  - a) If not, then why have the commissioners been asked to do so in this case?
  - b) Is it ever appropriate to consider evidence of "good faith", or lack thereof, in compliance with permits that affect the wetlands that we are commissioned to protect?

It was clarified that the engineer Mr. Ruspini did not actually prepare the drawings, he reviewed them. Ms. Holmes was informed that these are two entirely different things. Gerry Schwalbe noted that once an engineer stamps the drawings he takes responsibility for them. Mr. Ruspini will stamp the drawing that the Commission approves from the 3 plans provided.

### **Public Hearing**

Jane Didona, Landscape Architect retained by the Friends of Ball Pond, clarified (re: map 3), there is 15 feet from edge of pond to edge of chimney. She discussed stacking to create terraces but without a physical stairway. She suggested a fence instead of a wall at the front of the property which would then give them the required 3 feet. Ms. Didona noted that any wall over 4 feet needs to be designed by a structural engineer. Ms. Didona said stack boulder walls are done by gravity and the face should be battered backed @ 1½ to 1 as per a structural engineer she consulted. Ms. Didona voiced her frustration that the applicant still has not provided information on grading, drainage, mitigation or a planting list. She still has not seen existing or proposed topography.

Ms. Didona requested a grading plan showing drainage concerns which should be done by a Civil Engineer (stamped and sealed), mitigation for the removal of all plant material and a buffer to protect Mr. Pavarini's property. She stated that she feels the information provided is too incomplete to make a decision.

Gerry Schwalbe said Ms. Didona is correct, the Commission has asked for drainage information. He said the area is flat. Roof drainage discussed. Tom Quigley questioned the wall at the front of the property saying they have to stay 5' from the gullies. Pat Del Monaco wanted more information on drainage and noted that the finish grade is not shown. Michele Holmes said there are no more spot elevations. She said there would be zero run-off off site. Mr. Ruspini said the site should contain the run-off. Neil Marcus discussed the planting list that was left off the drawings. He gave the Commission a list of plants. Mr. Marcus said he doesn't feel there will be any negative impact to the water courses or wetlands. He acknowledged that the Commission needs a statement from the Engineer regarding drainage with final grades.

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Removal of the stump discussed. Tom Quigley felt it could be properly taken out by the excavator, the roots cut and the area planted. Gerry Schwalbe said he was okay with removal of the stump as long as it doesn't disturb the shoreline. Pat Del Monaco said she would rather the stump be cut to grade. She felt removal of the stump would definitely disturb the shoreline.

Tom Quigley made a motion to close the Public Hearing on 160 Ball Pond Road, second by Gerry Schwalbe, all in favor. **Public Hearing Closed**

Tom Quigley made a motion to re-enter the Regular Meeting, second by Mary Aragonés, all in favor.

### **Regular Meeting**

#### **160 Ball Pond Rd, Map 34, Block 9, Lot 9+11.1, Miltenberger/Michele Holmes, LLC.**

Pat Del Monaco stated that the plan has to be modified as discussed in the Public Hearing but there can be no new information submitted. The Commission discussed planning a date to workshop the application or workshop the application tonight at this meeting. Tom Quigley, Mary Aragonés and Gerry Schwalbe said they would like to discuss/decide tonight. Niev Duffy wanted to plan a workshop for another day. Pat Del Monaco said she would do either.

**Workshop-** Pat Del Monaco said she wanted to see the applicant preserve some natural shoreline and have some natural access way to the pond. She felt a compromise was reached-the retaining wall has been removed. She doesn't feel there are significant drainage issues though she noted that there has not been a complete drainage study done on the property.

Tom Quigley felt they have addressed the issues regarding the retaining wall and issues regarding distance to the septic. He feels the stone staircase will act as a sort of buffer. He said grades should be pitched towards the road and we can stipulate that. He doesn't feel the fence at the road is a wetlands issue. Gerry Schwalbe said he concurred with Tom's comments. He feels it is important that the drainage is not an issue (as discussed tonight) be properly documented.

Any deviation from this plan needs to come back before the Commission. Planting plan discussed. Pat Del Monaco said we can stipulate that a planting plan be submitted with the final drawing. Tim Simpkins said the Commission can require a planting plan be done by a licensed architect. Mary Aragonés said she was not comfortable with the drainage and has concerns for Mr. Pavarini's property. She would like to see a total mitigation plan for the entire property. Pat Del Monaco said the sand area is larger on this plan than what was originally planned and noted that the maps are inconsistent. The Commission needs to see 1 map with all information that has been approved and a planting plan done by a landscape architect. Niev Duffy said she felt that since the plans keep changing, we need to see a drawing of the overall project with the mitigation in place. Pat Del Monaco said the Commission needs to see the drawings consistent with what has been stamped and signed so we have a map that is consistent with everything that has been approved.

Neil Marcus felt it doesn't have to be a landscape architect but someone qualified in the field to tell the applicant which plants will survive.

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Tom Quigley made a motion to approve the application with the following stipulations:

1. The drawings are modified to reflect the changes that were detailed in the public hearing.
2. The retaining wall proposed on drawing 2 that runs parallel to the shoreline will be removed.
3. The slope will be further stabilized using large boulders as appropriate.
4. The proposed stairway will be anchored into the remaining part of the retaining wall that is perpendicular to the existing concrete retaining wall and 1 other post on the other side.
5. Planting plan around proposed stairs be devised by a licensed landscape architect or other professional that is approved by the EEO and 1 member of the Commission, and that approval extends to the south side planting area that was originally required.
6. Final drawings are stamped by a professional engineer.
7. The applicant will provide a professional engineers opinion that there is no negative impact from run-off from the site.
8. The 36" maple tree stump can be cut flush but not removed.
9. If there are any changes to the plan as a result of the conversations with the DOT the applicant must come back before the Wetlands Commission before any construction can begin on the fence. Leeway of 1 foot either way with the fence will be allowed.

Second by Gerry Schwalbe. Tom Quigley, Pat Del Monaco and Gerry Schwalbe approved as stipulated, Mary Aragonés abstained, Niev Duffy opposed. **Approved w/stipulations.**

### **Correspondence**

Transmittal from Anita O'Brien, re: new maps with distances. **Already discussed**

Letter from Richard Jackson, Town Sanitarian, Re: 160 Ball Pond Road. **Already discussed**

Memo from Jane McGowan re: Municipal Inland Wetland Commissioners Training Program. **Niev will attend the 1<sup>st</sup> session and Mary will attend the 2<sup>nd</sup> session.**

Memo from Susan Chapman, Chair Planning Commission re: 2003 Plan of Conservation & Development. **Brief discussion.**

Letter from Ct Audubon Society re: joining a "New Conservation Advocacy Program". **No discussion.**

### **Administrative**

Approve February 17, 2009 Meeting Minutes. Tom Quigley made a motion to approve minutes as amended, second by Niev Duffy, all in favor except Mary Aragonés who abstained. **Approved as amended.**

April Meeting-will be held in the library.

Conservation issues for the town of New Fairfield. Tom Quigley mentioned that the Matranga case was withdrawn by the plaintiff.

### **Adjournment**

Tom Quigley made a motion to adjourn the meeting, second by Mary Aragonés, all in favor. Meeting adjourned at 10:15pm.