



CONSERVATION COMMISSION/
INLAND WETLANDS AND
WATERCOURSES AGENCY

LYME TOWN HALL
480 HAMBURG ROAD
LYME, CT 06371

LYME CONSERVATION COMMISSION
INLAND WETLANDS & WATERCOURSES AGENCY
February 16, 2022 at 7:00 p.m.

The Lyme Conservation Commission, acting as Inland Wetlands and Watercourses Agency held a regular meeting on February 16, 2022 at 7:00 p.m. at the Lyme Town Hall, 480 Hamburg Road, Lyme CT 06371.

MEMBERS PRESENT: Roger Dill Chair, Patrick Crowley, Tom Reynolds, Sue Cope, Ben Kegley, Christine Darnell, seated alternate Jake Tiffany, Ross Byrne ZEO and Jennifer Thomas Secretary.
Absent Members: Sue Hessel
Attorney Michael Carey also present

Dill called the meeting to order at 7:00 p.m.

Seat Alternate Member

Alternate Tiffany was seated for absent regular member Hessel.

Regular Meeting

Stephen and Carol Huber, 156-1 Blood St., Tax Map 40 Lot 1; Installation of a new septic system within the 100 ft. Upland Review Area and abandon and fill existing septic within the 100 ft. Upland Review Area.

Present: Stephen Huber

Huber presented updated materials to the commission, including a letter from George Calkins of Ledge Light Health District (LLHD) dated February 15, 2022, a site plan showing measurements from water and location of the silt fence. He explained that the old system will be abandoned and filled.

Dill stated that the LLHD letter showed a preference for the line to be placed along the driveway and not take a more direct route up the hill because there is a concern of possible erosion.

Huber stated that the contractor does not believe taking an angled route up the hill will be a problem and requested that the commission leave the final placement decision to LLHD.

Byrne stated that Mr. Calkins expressed his concern of erosion to him and the possibility of the wash out entering the water.

Reynolds stated that he would favor going with Mr. Calkins' recommendation and Darnell agreed this would be less invasive.

Kegley expressed concern that digging along the driveway may create a greater erosion problem.

Dill made a motion to approve the plan as presented, including the recommendations in the letter from LLHD dated February 15, 2022. After discussion, Darnell seconded the motion and the motion carried with Kegley opposed.

Leigh and Nader Mherabi, 103 Blood St., Tax Map 33 Lot 47; replace existing washed-out double culvert with 3-sided single culvert over Mill Brook. Replace existing dock located in and on edge of existing pond.

Present: Roger Nemergut, Nemergut Consulting and Leigh Mherabi

Nemergut presented the commission with a revised plan which addressed the questions they had at the previous meeting. The dock materials were detailed, and the 3-sided culvert material will be either aluminum or concrete. If concrete is chosen, the sections will be placed by crane. Notes regarding the riprap and manufacturers were also on the plan.

The commission discussed and agreed that the concrete would be a suitable alternative to the aluminum.

Dill called for a motion to approve the plan as presented. Crowley made the motion, seconded by Reynolds and the motion carried.

Joan Bozek and Robert Linde II, 116-5 Blood St., Tax Map 34 Lot 6; expansion of existing house with additional stairs for egress located within the Upland Review area.

Present: Robert Linde II and Joan Bozek

Linde presented the commission with an updated building plan as well as the recently completed survey. A letter from Richard Snarski noted there will be no adverse effects to the wetlands and a letter from LLHD expressed approval of the presented plan.

Linde noted that the survey changed the measurements slightly, noting that the house is more parallel to the lake than originally depicted, and the addition will be 82 ft from the wetlands at its nearest point.

Linde also stated that one tree has been flagged for possible removal.

Dill called for a motion to approve the plan as presented. Darnell made the motion, seconded by Crowley, and the motion carried.

Tiffany recused himself from the next item on the agenda due to conflict of interest.

Continuation of Show Cause Hearing-Eightmile River Farm, LLC, 576 Hamburg Rd., Lyme CT, Tax Map 31 Lot 3; Cease and Desist Order for the cutting of trees and vegetation within the 100 ft Upland Review Area without obtaining a permit or receiving a jurisdictional ruling on as-of-right use.

Present: David Potts, member of Eightmile River Farm, LLC

Dill reminded the commission that the cease and desist order is what is before them tonight and at the close of the hearing the commission will vote to uphold, discontinue, or modify the order.

Potts presented the commission with an Affidavit, which was read into the record by Potts.

Potts stated that the Affidavit should be sufficient for the commission to make a determination.

Carey asked Byrne if he has knowledge of where Potts intends to engage in the stated activity and Byrne stated that Potts said it would be pretty much all over.

Carey asked if that is indicated on the Affidavit, as well as how many trees are going to be taken down, where they are located, other vegetation.

Potts told the commission to picture corn from the bank of the Eightmile River right to Route 156. He stated that he has been advised by counsel that this is not a debate about where the activity is taking place but solely whether the activity is agriculture. Can you prove I am not farming?

Dill said that it seems the commission cannot make a determination because they have not been given the information. The agency has the authority to determine the reach of the jurisdictional ruling on wetlands and the burden of proof of exemption is on the applicant. There has been no application for a jurisdictional ruling.

Reynolds expressed concern over the as-of-right.

Potts stated that counsel advised him that because it was an ongoing operation and it was agriculture, that a jurisdictional ruling was not needed. Farming is as-of-right in the wetlands. Potts told the commission to consider it that it will be in every bit of wetlands on the property. Carey reminded the commission that the question before them tonight relates to the cease and desist order and not to make a determination whether the use is as-of-right. Section 4.4 of the wetlands regulations states that an applicant must supply the commission with the information pertaining to the activity prior to commencement so that the commission can make an as-of-right determination.

Potts said he has not been supplied a form for the as-of-right determination and Byrne stated that the form is the regular Application for Inland Wetlands Activity.

Potts stated again that it is not a question of where the activity is taken place but whether the activity is farming. Potts asked the commission to issue a jurisdictional ruling tonight based on his statement that he can clearcut the entire parcel to plant corn.

Carey reminded him that the law also calls for him to supply the commission with the information in the form in which the regulation states.

Potts argued that it is not a new use and is instead an existing operation. Potts read a portion of the State definition of farming.

Potts referred Carey to the letter submitted at the February 10, 2022 Special Meeting and Carey stated that he read the letter but did not agree with the statements therein.

Carey asked whether there was a reason Potts is unwilling to tell the commission exactly what he plans to do.

Potts asked whether this was on the record or off and Carey responded on the record.

Potts stated he is going to do farming with the definition of Connecticut and Lyme's definition of farming and agriculture.

Dill said that is not stating the extent to what is being done and Potts stated that he was told he doesn't have to. Dill stated that he would like to see something in writing.

Potts stated that he plans to keep a 25 foot buffer, he values the stream, the fish.

Reynolds stated that he has been researching the topic and he found there are some broad farming exemptions or rights. Cutting back to keep fields open is as-of-right. The front of the property was corn last year and it is on the record that he plans to plant corn. Although the commission does not want to see people cutting down to the water, the regulations are clear it is as-of-right for farming.

Byrne stated that Potts called him before commencing any activity to inform him of his intent. At that point Byrne asked him to fill out a form and come before the commission for a jurisdictional ruling but Potts declined.

Kegley questioned metaphorically if a police officer notices a motorist whose vehicle appears to be unsafe, is it within the police officer's rights to investigate the matter? He will ask questions to evaluate the situation and make a determination based on what he finds. He expounded that instead of escalating the situation unnecessarily, the commission and owner may be able to come to an agreement with a simple discussion. He stated that the commission has a respect for farming and the commission is not antagonist towards agriculture.

Potts stated that he has spent time and money researching the issue and was advised by two firms that what he was doing was proper and he continues to believe what he is doing is lawful. Carey asked if Potts is willing to have his Affidavit and what he has stated to the commission tonight be considered a submission under section 4.4 for them to consider for a jurisdictional ruling.

Potts agreed to this if it is helpful to the commission.

Carey recommended to the commission that if they agree, the commission can vote to add the jurisdictional ruling to the agenda for tonight based on the Affidavit and verbal testimony as an application under section 4.4 of the regulations. The cease and desist becomes moot if the commission acts on the jurisdictional ruling.

Dill questioned whether there was anything that states the extent of the work to be done and Carey said that Potts wishes the commission to assume he is going to pursue these activities on the entire property, and in particular planting corn.

Darnell stated that she feels she does not have sufficient information and Cope agreed.

Reynolds stated that it is pretty cut and dry what is and is not as-of-right from the State.

Dill called for a motion to add to the agenda a jurisdictional ruling on the application of 576 Hamburg Rd, Tax Map 31 Lot 3, Eightmile River Farm, LLC.

Reynolds made the motion, seconded by Crowley and the motion carried.

Jurisdictional ruling on the application of 576 Hamburg Rd, Tax Map 31 Lot 3, Eightmile River Farm, LLC.

Dill called for a motion to accept the Affidavit and verbal testimony Mr. Potts submitted demonstrating the activities he proposes on the property are exempt agricultural as-of-right uses.

Crowley made the motion, seconded by Reynolds and the motion carried with Dill and Darnell opposed.

Tiffany re-entered the meeting as a seated alternate.

Old Business-None

New Business-None

Approval of minutes from the January 19, 2022 regular meeting

Dill called for a motion to approve the minutes of the January 19, 2022 meeting. Crowley made the motion, seconded by Reynolds, and the motion carried with one abstention by Tiffany.

Approval of minutes from the February 10, 2022 special meeting

Dill called for a motion to approve the minutes of the February 10, 2022 meeting. Darnell made the motion, seconded by Crowley, and the motion carried with one abstention by Tiffany.

Adjournment

The meeting was adjourned at 8:36 p.m.

Respectfully submitted,

Jennifer Thomas, Secretary