



ZONING BOARD
OF APPEALS

LYME TOWN HALL
480 HAMBURG ROAD
LYME, CT 06371

LYME ZONING BOARD OF APPEALS
PUBLIC HEARING

The Lyme Zoning Board of Appeals held a regular meeting/public hearing on June 16, 2022 at 7:30 p.m. at the Lyme Town Hall, 480 Hamburg Road, Lyme CT 06371.

MEMBERS PRESENT: David Lahm Chairman, Fred Harger, Jack Sulger, John Kiker (recused), seated alternate Anna James, seated alternate Toni Phillips, unseated alternate Judy Davies, Ross Byrne ZEO, and Jennifer Thomas Secretary
Absent Members: Winnifred Gencarella

Lahm called the meeting to order at 7:30 p.m. and stated that this was a continuation of a public hearing from April 21, 2022.

Lahm noted the same board members are seated from the April meeting, Lahm, Sulger, Harger, James, and Phillips, with Kiker recusing himself.

Lahm called for a motion to accept the minutes from the May 19, 2022 meeting. Sulger made the motion, seconded by Phillips and the minutes were approved.

2022-01 Eightmile River Farm, LLC, 576 Hamburg Road, Lyme CT, Tax Map 31 Lot 1; an appeal of the Cease and Desist Order listing the following violations; unauthorized change of use without obtaining a zoning permit in accordance with Chapter 315, Article 10.3, land-disturbing activity within the Eightmile Overlay District and within 100 ft. of the Eightmile River in accordance with Chapter 19.3A, and expansion of existing agricultural activity without a zoning permit in accordance with Chapter 315, Article 19.4.A(1)

**Present: Attorney David Sherwood and Owner David Potts
Attorney Mike Carey representing Ross Byrne ZEO
Attorney Eric Garofano representing the Zoning Board of Appeals**

Lahm noted that the materials submitted into record at the prior meeting have been made available to all board members and attorneys.

Sherwood submitted several additional mailing receipts and noted that he agrees with the assertion at the previous meeting that a vote of 4 out of 5 in favor is required to approve the appeal.

Sherwood submitted the following documents for the record:

1. Memo from David Sherwood to Lyme Zoning Board of Appeals dated June 14, 2022

2. Certified minutes of the June 29, 2001 meeting of the Lyme Planning and Zoning Commission
3. Map entitled Connecticut Inland Wetlands Soils Lyme, Connecticut dated October 2009
4. Map entitled Lyme Connecticut Wetlands Soils Map dated June 29, 2001
5. Map entitled Property Survey Map for Eightmile River Farms LLC dated May 9, 2022

Sherwood stated that at the previous meeting it was noted by an abutting neighbor, Gahagan, that the area in question is very wet and that this is supported by the documents submitted for the record. He stated that Section 315 Article 19.2 of the Lyme Zoning Regulations exempts wetlands as part of the Eightmile Overlay District. He reviewed that a soil scientist has confirmed the delineation of soils as referenced on a survey map dated May 9, 2022. Sherwood asserts that because the regulation states that "The district does not encompass wetlands or vernal pools, or Hamburg Cove....," this regulation does not apply to the area where the cutting has occurred, which is within the flagged wetlands area.

Lahm questioned whether the reading of the regulation was as intended, noting that if you remove wetlands from the district, it would leave out approximately 90-95% of the water's edge. Sherwood argued that the regulation is not ambiguous and it must mean what it says.

Lahm argued that writing regulations for an overlay district only to remove 90% of the area does not make sense. He stated that the writers' may have meant to clarify that the buffer would extend 50 or 100 feet from the river or stream, but not include any wetlands outside of that area.

Sherwood stated that he believes the Cease and Desist Order should be revoked and if the Planning and Zoning Commission would like to amend their regulations, they are free to do that in the future. Sherwood also argued that the Planning & Zoning Commission cannot circumvent the decision of the Inland Wetlands and Watercourses Agency, which made a jurisdictional ruling that the activity was agricultural and therefore did not require a permit.

Byrne stated that he interpreted the word "encompass" in the regulation to mean surround, as in the district area follows the streambank, and does not surround all of the wetlands outside of the 100-foot buffer.

Phillips asked Potts what he plans to do with the cleared land and Potts responded that he plans on utilizing the land for agricultural activities.

Carey stated that the appeal comes down to a statutory interpretation. While he agrees with Attorney Sherwood that the writing is not ambiguous, he does not agree with Sherwood's interpretation of the regulation. He believes a literal interpretation of the regulation would lead to absurd results.

Carey submitted the following documents for the record:

1. Letter from Attorney Michael Zizka to Patricia Young, Program Director of the Eightmile River Wild and Scenic Coordinating Committee and the Lyme Land Conservation Trust dated March 12, 2020
2. Eightmile River Watershed Management Plan dated December 8, 2005
3. Portion of the Salem Connecticut Zoning Regulations, revised July 15, 2021

Carey pointed out that Attorney Zizka, a CT Land Use Attorney, made several points in his letter, including that the federal legislature provides for a 50- or 100-foot setback and does not exempt wetlands. Zizka also outlines that overlapping authority with the Inland Wetlands Agency is necessary because the different commissions are focused on different elements of protecting the environment.

Carey also reviewed the regulations from Salem Connecticut, which clarify the wetlands issue further. In the Eightmile River Watershed Management Plan, Carey points to several pages that support the claim that while Inland Wetlands Agency oversees some of the concerns of the Overlay Regulations, the Overlay Regulations fill in some of the gaps in regulation. He believes the intention to provide a continuous buffer along the Eightmile River is clear within the regulations.

Garofano reminded the board that they should ask any questions of the ZEO during the public hearing portion of the meeting and declare any personal knowledge of the property.

Lahm stated that he has walked the property during a site visit and will use this personal knowledge of the property to form his opinion.

Lahm called for any public comment.

Anthony Irving, Eightmile River Wild & Scenic Coordinating Committee Chair, said that he would like to reinforce that the interpretation by Carey of the intent of the regulation is correct, stating that he was on the committee when the management plan was created. The intent of the regulation was to make it clear to the planning and zoning commission where the buffer began, not to exclude the wetlands from the district.

Sherwood questioned whether Irving has ever served on the planning and zoning commission and Irving stated that he has not.

Byrne stated that when he read the regulations, he used the overly maps to determine where the 50- and 100-foot buffers were.

Byrne introduced the following into the record:

1. Resubmitted the Eightmile River Lyme Watershed Overlay District Map dated February 11, 2008 (previous submission cut off the bottom portion of the map)

2. Lyme Connecticut Wetlands Soils Map dated June 29, 2001 with notations made by Byrne

Byrne stated that he was curious how much of the riverbank was considered wetlands, and presented the commission with a map marked to show the wetlands along the edge of the Eightmile River.

Sherwood pointed to Section 315-2.2 of the Lyme Zoning Regulations where “Fam and Agriculture” are defined, which lists a wide range of activities that are considered agriculture. He also reiterated his assertion that the Planning and Zoning Commission does not have jurisdiction over the matter because the statute expressly exempts agricultural activities. He also stated that the regulation itself clearly exempts wetlands from the district based on the language of the regulation.

Potts stated that as a taxpayer he believes it is important that the regulations are clear and is saddened that this may cost the taxpayers of the town money.

Potts submitted the following for the record:

1. Map entitled Farmland Soils Lyme Connecticut dated April 2011.

Potts stated that his land has some of the best soils for farming in Lyme, and that he is an environmental scientist and believes that the Town's reliance on protecting the riverbanks is flawed. He stated that the land needs to be managed, not just protected.

Lahm closed the public hearing at 8:49 p.m.

Sulger questioned what recourse the owner has besides court if the cease and desist is upheld and Lahm stated that going to court would be the next step in the process.

Lahm stated that there is a purpose for every regulation, and to apply the applicant's logic, the regulation would only be a 10% solution. Lahm is troubled, however, by the language in the regulation versus the language of the Salem Connecticut regulation.

James stated that she, too, is troubled.

Harger stated that he interpreted the information such that any wetlands outside of the 100-foot buffer zone would not be part of the district.

Lahm called for a motion to sustain the order and keep the cease and desist in place. Sulger made the motion, seconded by Harger. Harger, Sulger in favor and James, Phillips, and Lahm against. The motion failed to receive the necessary four votes.

Sulger made a motion to grant the appeal and overturn the cease and desist order. James seconded the motion. The motion failed, with Harger and Sulger opposed and Lahm, Phillips, and James in favor.

The meeting was adjourned at 9:04 p.m.

Respectfully submitted,

Jennifer Thomas Secretary