

**Brooklyn Inland Wetlands Commission
Regular Meeting Minutes
June 14, 2016**

The Brooklyn Inland Wetlands Commission held a regular meeting on Tuesday, June 14, 2016, 6:00 p.m. at the Clifford B. Green Memorial Center, 69 South Main Street on the following:

Call to Order: Chairman Real Gallant called the meeting to order at 6:05 p.m.

Members Present: Real Gallant, Jeff Arends, Demian Sorrentino, Melissa Labossiere and Richard Oliverson.

Absent: George Sipila and Erik Costa with notice.

Staff Present: Martha Fraenkel, Wetlands Agent, Audrey Cross-Lussier, Recording Secretary.

Also Present: David Held, Attorney Harry Heller, Matt Schwab, Paul Archer, Aaron Kerouac, Pam Lukin, Linda Trahan, public in attendance.

Roll Call: All members present stated their name for the record.

Seating of Alternates: None.

Additions to Agenda:

1. Jeff Arends moves to add under New Applications 061416A Kausch and Sons, South Street, Map 46, Lot 37, R-30 Zone, 5 Lot Subdivision, Residential Homes, Grading and Driveways. Melissa Labossiere seconds this motion. No discussion held. All in favor. The motion passes unanimously.
2. Jeff Arends moves to add under New Applications 061416B David R. Laprise, 449 Hartford Road, Map 9, Lot 4A, RA Zone; proposed detached garage 30 ft. x 40 ft. Melissa Labossiere seconds this motion. No discussion held. All in favor. The motion passes unanimously.

Approval of Meeting Minutes May 10, 2016:

Jeff Arends moves to approve the regular meeting minutes of May 10, 2016. Melissa Labossiere seconds this motion. Richard Oliverson states that he has reviewed the minutes and the audio recording of May 10, 2016 meeting. All in favor. The motion passes. Demian Sorrentino abstains as he was not present.

Public Commentary: None.

New Application Receipt:

1. Jeff Arends moves to receive application 061416A Kausch and Sons, South Street, Map 46, Lot 37, R-30 Zone, 5 Lot Subdivision, Residential Homes, Grading and Driveways. Melissa Labossiere seconds this motion. No discussion held. All in favor. The motion passes unanimously.
2. Jeff Arends moves to receive application 061416B David R. Laprise, 449 Hartford Road, Map 9, Lot 4A, RA Zone; proposed detached garage 30 ft. x 40 ft. Melissa Labossiere seconds this motion.

Paul Archer, Archer Surveying explains that a plan that was approved in 2003 for a garage that was never built and asks if this could be an agent approval. It was determined that the permit has expired. The application will come back next month.

All in favor. The motion passes unanimously.

Reading of Legal Notice: Chairman Gallant reads the legal notice into the record.

Public Hearings:

a. Continued Public Hearings:

1. **041216A Brooklyn Sand and Gravel, LLC; 574 Wauregan Road, Map 30, Lot 97, RA Zone, Continuation of gravel excavation and processing operations.**

Attorney Harry Heller represents application 041216A Brooklyn Sand and Gravel, LLC. This is an application for activities in an upland review area adjacent to the Quinebaug River, the flood plain, alluvial soils, and wetlands adjacent to the Quinebaug River. There are no activities proposed in the wetlands or the watercourse. This is an evaluation of activities in an upland review area in order to determine whether or not they will have any impact on resources within the Wetland Commission's jurisdiction. Attorney Heller reviews the site plan that delineates three areas of activity; the area under the power lines which is outside the 175 feet upland review area; the central portion of excavation adjacent to wetlands flags 19-30, where substantially all of the excavation is within the upland review area; and lastly the southerly end of the site where the area is for the reconstruction and expansion of the de-watering basin which is outside the upland review area. The area of primary concern is the central area. Attorney Heller reviews the embankment that comes up out of the active excavation area, crests and then slopes back down towards the wetlands associated with the Quinebaug River. The applicant is not proposing to excavate to the top of the berm. Sheet 5 of the plans provides an excavation detail. There is never any equipment operating from the top of the slope that descends down towards the Quinebaug River. Mr. Heller went on to say in evaluating whether there is any impact to wetlands and watercourses with this activity, there are three things to look at; first, whether or not there is any sedimentation or erosion potential to impact the wetlands; secondly evaluation of whether or not this activity will affect the hydrology which will have an adverse impact on the wetlands; thirdly an evaluation has been done as to whether or not the dust caused by this operation will have any

adverse impact on the wetlands and watercourse. Attorney Heller reviews Joseph R. Theroux, Certified Forester/Soil Scientist narrative report dated 6/3/16, pages 1-5 with Commission Members. Attorney Heller went on to discuss case law with Commission Members as well as renewal of a wetlands permit.

Chairman Gallant comments that this is not the first time that the applicant has been before the Wetlands Commission requesting a permit. Ms. Fraenkel discusses the permit chronology.

David Held, Professional Engineer/Land Surveyor discusses the changes made to site plan with Commission Members. The applicant has ordered and will place aluminum signs "limit of operation" at the site. (The signs are not depicted on the revised site plan). The applicant is requesting an 18 to 24-month plan for restoration of the active excavation area.

Mr. Held discusses past approvals granted by the former Wetlands Agent who visited the site and approved renewals for permits many times, with the same limits in existence for the past 10+ years. The applicant is not under any particular requirement to extend the vegetative buffer but he has voluntarily agreed to do it in this area. Mr. Arends asks if those limits have been approved by the former ZEO. Mr. Held states that their stance is that they have been approved by the former zoning and wetlands staff in the past. Mr. Arends asks if there is any documentation. Mr. Held states that he visited the site on many occasions in the past, he approved permit renewals in the past which would have required either determination from the Commission or determination from staff that no wetlands permit was required to issue the zoning permit. Since zoning permits were issued, the applicant believes the operation was approved re wetlands. Mr. Arends asks again if there is any documentation of a wetlands approval, is there any piece of paper with his signature saying this is approved. Mr. Held states no.

Attorney Heller states that this operation has been ongoing for 30 years. It has been renewed on an annual basis, the wetlands officer was the zoning enforcement officer who inspected the site. He says that it would be difficult to take the position that if no notices of violations or cease and desist orders were issued, that there was not at least an implied approval by the Town of Brooklyn. Attorney Heller says the more important issue is the upland review area. The upland review area is an area in which activities are occurring close enough to a regulated resource, that it is prudent for them to be evaluated and determine whether or not those activities are going to have an adverse impact on the resource. The appropriate separating distance must be based on the nature of the activity, the nature of the topography and vegetation in the area and how the interplay of those things have a potential to impact the resource.

Martha Fraenkel, Wetlands Agent/Zoning Enforcement Officer, BS Resources Management and MS Plant Science, takes issue with Attorney Heller's evaluation of the upland review area. She says that the upland review area performs at least two valuable functions: it is a buffer between the resource and the operation that protects against operator error while mining occurs, and it provides an ecological buffer to the wetlands vegetation (a woodland) and Quinebaug River. Without a buffer, the woodland is subject to drying out, excess sun, and excess wind. These conditions change the nature of the flora and encourage invasives species to replace the existing native woods. The river bank is precious. Currently, there is only 25 feet between the operation and the edge of the river bank. Ms. Fraenkel says that 25 feet is insufficient to assure that we

have sufficiently protected the bank. It is Ms. Fraenkel's opinion that this distance from the edge of the activity to the edge of top of bank down to river should be bigger. Ms. Fraenkel feels the area should be extended north so that the whole excavation area is protected with a wider buffer. She notes that past plans have provided a much larger undisturbed area. This has been whittled down over years. Ms. Fraenkel says she finds no impact to the site hydrology and concludes that the dust does not impact the wetlands or watercourse. In conclusion, Ms. Fraenkel reiterates she takes issue with the separating distance from the activity and river bank.

Attorney Heller comments as far as operator error is concerned, it is an issue that has come up in many towns. What has been recommended and successfully adopted in many towns is to require them to place the orange construction fencing along the area of the permitted operation as long as that operation is ongoing. This is much more effective than placing placards. In the cases this has been done, there have not been any issues with operator error.

Richard Oliverson states he visited the site today and they are currently working right at the wood line, with a gigantic hole. Mr. Oliverson feels that 2 years to replace this section is too long. Discussion ensued.

Ms. Fraenkel comments that she has been on the site three times and observed no damage to the subject wetlands or watercourse.

Attorney Heller states they could accept a separating distance of 75 feet from the resource to the operation without materially impacting the operation.

Mr. Held states approximately that 90 to 95% of the new excavation area lying just west of the river has been completed. Ms. Fraenkel states that this fact will help to determine a time frame for restoration of this area. Chairman Gallant recommends doing this in phases and placing timelines on the phases. Discussion ensued.

Lengthy discussion ensues as to whether or not the processing pond is a regulated area. The soils scientist has determined it is not but in the past the IWWC has concluded that it IS regulated.

Linda Trahan, 26 Maynard Road. Ms. Trahan has been involved with Town of Brooklyn Sand and Gravel applications for 25+ years. Ms. Trahan filed the Intervenor's Petition because she has environmental concerns about this operation. She states that using google maps, she can see that the operation has inched closer and closer to the river. She says that there has been very little oversight by the Town, which has been a historical problem. As far as restoration/reclamation, Ms. Trahan's concerns are how we are protecting the river and environment. The 18 to 24 month's period of time to move stockpiles is not well understood, because as it stands right now under the current permit there is not that much native material left for this to continue to be an operation. Ms. Trahan would like to know what the 18 to 24 months of time is about and if this can be accomplished much quicker. Ms. Trahan's understanding is that the renewal of the zoning permit will be requested again in March 2017.

Attorney Heller states they are not proposing (final) restoration at this point. This is a 70-acre site and they are actively operating in 28 acres of it right now, so there is still a substantial amount of material on site left to excavate.

Mr. Held states the 18 to 24-month time period Ms. Trahan references is the time it will take to generate the silt material needed to backfill the area of the current excavation just west of the river. There is no issue in beginning that restoration work on the area that is basically up to grade now.

Aaron Kerouac, Windham Road. Mr. Kerouac asks about the extent of the open area and the legal, regulatory limits. Attorney Heller responds that this is an excavation and a processing operation. The 5-acre limit is for the working excavation. The locations of the stockpiles are fluid, they change in size and location. She explains the history and chronology of the last excavation area in the southeast corner of the site. The idea was to relocate stockpiles that are in the active excavation and move them south in the site so they could work that area. Ms. Fraenkel says that the current excavation occurs in the areas designated on the plan, specifically in the area by the river, as approved. Ms. Frankel's concern is that it stays in the location it was approved and it does not encroach further east. Mr. Held states that the only other excavation that has taken place is the expansion of the settling basins as per the approved plans. Mr. Held states they do not sell topsoil off of the site. There will be occasions where they may have topsoil brought into the site for eventual restoration, but from his knowledge this has not taken place for years.

Mr. Sorrentino asks if the applicant is amenable to establishing the 75-foot buffer from the resource and to establish that as permanently vegetative and potentially demarcated with the do not disturb type of signs. Mr. Held and Attorney Heller states yes.

Mr. Arends states that 75 feet is not enough, it is too small. Mr. Arends comments that DEEP wetlands training would like to see a minimum of 100 feet. The watercourse rises in the spring into the flood plain area and the riparian corridor virtually disappears. Mr. Held clarifies the limits of wetlands. They are basically floodplain wetlands in the historic high watermark with the Quinebaug River. Not too far down from this site there used to be a dam which inundated part of the area. This helps to establish where the wetlands line is now. Mr. Sorrentino asks what the base flood elevations are in this area. Mr. Held does not know.

Mr. Arends states there was prior testimony given about a dust problem and does not see it has been addressed. Attorney Heller refers to the report from Joseph R. Theroux. Mr. Arends states staff recommended that an Industrial Hygienist would be more suited to the task. Attorney Heller again refers to Mr. Theroux's testimony and a biologist who both found there is no impact to the wetlands and watercourse. Mr. Arends states, again not their field. Attorney Heller states it is not a quantitative analysis it is a qualitative analysis as to whether or not sufficient dust is being generated either to result in sedimentation on the ground which is impacting the vegetation on the ground cover or as noticed on the leaves in order to affect the vegetation within the flood plain.

Ms. Fraenkel asks Mr. Held for further explanation as to why there will be a significant impact on the operation if a larger buffer were imposed. Mr. Held states that anything that impacts the available stockpile area will impact the operation causing loss of revenue. If you decrease the stockpile area horizontally you decrease it vertically as well. Attorney Heller states that there is a variety of different materials of stockpiles that are kept on site – stone, sand, process material and movement of equipment will be less efficient.

Discussion follows on the extent of the buffer needed to protect the wetlands and watercourse. Ms. Fraenkel states an extension could be provided. Mr. Sorrentino comments that the applicant is amendable to 75 feet. If the applicant is not amenable to 100 feet and a condition on the approval is at 100 feet, there has to be a rational determination supported by evidence by the Board as to why they are making this requirement.

Aaron Kerouac, Windham Road, asks if there is a legal opinion provided by the Town Attorney with regards to the application process. Attorney Peter Alter rendered an opinion that the Board would proceed as it would with any permit application.

Mr. Sorrentino asks Syl Pauley, PE, NECCOG, if he has any comment. Mr. Pauley agrees with Attorney Heller and Mr. Held with regards to the grading of the pit and the flow of the drainage. Mr. Pauley is satisfied with the grading plan and the way the operation has been presented on the plan that any run off would be directed back into the site, not into the wetlands.

Ms. Labossiere asks Ms. Fraenkel about her opinion regarding the 75 feet, is this because of the current topography. Ms. Fraenkel states she has observed this site for one year and there is no evidence that the operation has breached the top of the bank or damaged the vegetation on the riverbank.

Syl Pauley comments that he met separately with David Held to review the initial plans. Mr. Pauley found several things lacking on the plans – grading of sedimentation ponds; type of material filling excavation adjacent on the middle of site; need to contact utility company to be sure grading would be allowed under the utility lines. The most recent set of plans has had a thorough review and Mr. Pauley's previous comments have been addressed satisfactorily.

Mr. Sorrentino asks Ms. Fraenkel about a letter received from DEEP, Donna M. Seresin, Sanitary Engineer. Ms. Fraenkel stated she received the letter this week. Mr. Held stated Ms. Seresin inspected the site following a complaint that the facility was discharging water into wetlands. Ms. Seresin found the claim to be unsubstantiated. Ms. Sorensen's main concern was that the Stormwater Pollution Control Plan was up to date which is being worked on. Ms. Fraenkel asked why a permit is needed on this site. Mr. Held stated that sand and gravel operations are regulated under the stormwater discharge permit for industrial activities.

Further discussion is held regarding the 100-foot buffer versus the 75-foot buffer; phasing plan; steps in restoration. Mr. Arends would like to see 100-foot buffer; Mr. Oliverson is okay with the 75-foot buffer, Ms. Labossiere is okay with the 75-foot buffer. Mr. Sorrentino is okay with the 75-foot buffer and has no object to the 100-foot buffer if the applicant is willing to do so.

Ms. Fraenkel recommends that the final plans show the grading and restoration plan for the recent excavation area and any buffer that is required.

A motion is made by Demian Sorrentino to close the public hearing at 7:50 p.m. Richard Oliverson seconds this motion. The motion passes unanimously.

Old Business:

1. 020916A request for minor modification of permit regarding the construction of addition to existing single family dwelling (previously approved March 8, 2016) Matt Schwab/applicant, Thomas Roome/Owner, 161 Laurel Hill Rd, Map 17/Lot 3

Matt Schwab represents the application modification. The previous approved application was for an addition on piers. Upon reviewing construction plans, a few issues arose with regards to plumbing and mechanicals being protected. Mr. Schwab is proposing to box in the kitchen, bath utility/storage area with concrete cinder blocks as a crawl space with a bulkhead. This will provide easy access to the plumbing/mechanicals if repairs are necessary. A new well has been put in and goes into the crawl space. There will be two separate crawl spaces.

Chairman Gallant states the original addition was to be placed on piers; will there be a foundation now or just using the block in the area? Mr. Schwab will place the piers and block the area off for frost protection with the cinder block. Mr. Arends asked if there will be a gravel base. Mr. Schwab would use a gravel base. Chairman Gallant asks Ms. Fraenkel for her opinion. Ms. Fraenkel feels this is minor adjustment to the plan. Mr. Schwab states approximately 350 sq. ft. will be surrounded by block and the rest will remain on piers. Mr. Schwab states he is getting direction from the Town building official.

Jeff Arends moves to approve the modified plan 020916A Matt Schwab/applicant, Thomas Roome/Owner, 161 Laurel Hill Road, Map 17, Lot 3, request for minor modification of permit regarding the construction of addition to existing single family dwelling. Richard Oliverson seconds this motion. The motion passes unanimously.

2. 041216A Brooklyn Sand and Gravel, LLC; 574 Wauregan Road, Map 30, Lot 97, RA Zone, Continuation of gravel excavation and processing operations.

Demian Sorrentino moves to approve application of Brooklyn Sand and Gravel, LLC for continued operation of a gravel excavation and processing operation at 574 Wauregan Road, Map 30, Lot 97 on 64-acre parcel between Wauregan Road and the Quinebaug River, based on the submitted application and plans prepared Provost & Rovero, Inc. titled Compilation Plan and Topographic Survey Overall Site Plan Prepared for Brooklyn Sand and Gravel Special Permit Renewal, Wauregan Road/Route 205, Brooklyn, Connecticut, dated 12/30/15 and revised 3/13/16 and 6/14/16 5 sheets. Jeff Arends seconds this motion.

Discussion follows. Ms. Fraenkel reviews the draft conditions with the Commission members.

Mr. Sorrentino withdraws the above motion for approval. Mr. Arends reiterates his concerns about the dust complaint.

Demian Sorrentino moves to table the application to next month's meeting July 12, 2016. Richard Oliverson seconds this motion. No discussion held. All in favor. The motion passes unanimously.

New Business:

None.

Communications:

1. Wetlands Agent Monthly Report:

- Hoyt Driveway – the disturbance has been reported to be stabilized.
- Working with two pre-applicants for garage construction.
- Discussion held regarding the use of old wetlands maps/flagging.

2. 2016 Municipal Inland Wetlands Agency Comprehensive Training Program.

Application for the Training was handed out to Commission Members. They are to let staff know if they are willing to take the course and the Town will pay the fee.

3. Apex Companies, LLC, Stormwater Report for Walmart dated 5/13/16.

Letter reviewed and discussion held by Commission.

Adjourn: A motion was made by Jeff Arends to adjourn the meeting at 8:19 p.m. Demian Sorrentino seconds this motion. The motion passes unanimously.

Audrey Cross-Lussier
Recording Secretary