

# TOWN OF KENT INLAND WETLANDS COMMISSION

41 Kent Green Boulevard  
P.O. Box 678  
Kent, CT 06757  
Phone (860) 927-4625

**RECEIVED**

*By Darlene Brady at 9:31 am, Jan 25, 2023*

## REGULAR MEETING MINUTES

The Inland Wetlands Commission held a regular meeting on Monday, January 23, 2023, beginning at 7:00 p.m. via zoom.

### **1. CALL TO ORDER**

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

### **2. ROLL CALL AND APPOINTMENT OF ALTERNATES, IF REQUIRED**

Commissioners Present: Lynn Werner, Chairman, Ken Deitz, Ken Johnson, Anthony Palumbo, Marge Smith, Paul Yagid

Staff Present: Tai Kern, LUA  
Donna Hayes, ALUA

### **3. READING OF MINUTES OF PREVIOUS MEETINGS**

#### **3.A. Regular Meeting Minutes, December 19, 2022.**

*Ms. Smith moved to approve the Regular Meeting Minutes of December 19, 2022, as presented. Mr. Johnson seconded and the motion carried unanimously.*

### **4. NEW BUSINESS**

#### **4.A. Application # 1301-23, Cheryl Gould, 147 Treasure Hill Rd, Map 17, Block 32, Lot 23, improve drainage from upper pond to lower pond, improve existing gravel driveway to back field and construct a guest house with a septic system.**

Mr. Jason Dismukes was present on behalf of Ms. Gould. He explained that the northerly side of the property is very hilly and carries stormwater runoff from the roadway into the small pond. This section of the property was cleared in the hopes of restoring it back to a meadow, but proper permits were not sought. The pond has no control for an overflow, which runs across the driveway and into the lower-level pond. Mr. Dismukes said that the proposal is to add a pipe to the pond, which would connect to a drainage system with a headwall. This runoff would empty into a swale along side the driveway where another pipe will direct the overflow down to the lower-level pond. He is hoping this will eliminate any erosion along the hillside. In addition to the drainage proposal, driveway work and a driveway extension will be created ending at a proposed guest house.

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Ms. Werner asked if the wetlands would dry up with the drainage systems installed. Mr. Dismukes said that he did not think so.

Mr. Dismukes said that the lower-level pond is being infiltrated by the upside hillside due to the water running from the upper pond. He said that the water coming out of the lower hillside is coming from underground springs.

Pictures supplied by Mr. Dismukes showed the erosion which is being caused by the overflow from the small pond. The lower-level pond does have a spillway, which takes the overflow to a culvert under the neighboring driveway.

Mr. Dismukes is also proposing that the hillside above the lower-level pond be planted with no mow grasses, which will help with some of the erosion. Mr. Deitz asked if rip rap could be added to the outlet of the pipe to slow the water flow down.

Ms. Werner said that moving the existing flow could negatively affect the existing wetland soils and create more erosion in a different area. She believes that adding more vegetation might be a better way to go. Mr. Dismukes said that the area is very steep with an elevation change of almost 30' from the driveway to the lower pond.

Ms. Werner said that the Commission does not allow the draining of a wetland soil and asked Mr. Dismukes how he will be diverting the water.

Mr. Dismukes said that there is ground water and surface water. He wants to collect the surface water in a swale directed to the pipe, which would empty into the lower-level pond. Mr. Deitz suggested going under the driveway and coming up with a natural way to divert the water. Mr. Dismukes said that it is very steep. Ms. Werner said that a rain garden might be a good solution that could be added at the end of the daylight pipe. Ms. Smith asked if low shrubs might diffuse the water coming out of the pipe. Spreading the water coming out of the pipe might be a better solution. Mr. Dismukes said that the swale and pipe uphill of the driveway is mostly a surface water issue and will not dry any water coming out of the hillside. Mr. Deitz said that he felt that the work that is being proposed is excessive disturbance.

Mr. Dismukes said the upper pond does need some sort of release point to release the stormwater overflow. Mr. Deitz said that he would feel better if the discharge pipe was placed under the driveway.

Mr. Yagid asked if there are curtain drains under the swale and Mr. Dismukes said that there were. This will protect the driveway from ground water. Ms. Werner said that it seems that Mr. Dismukes is proposing that surface and ground water be rerouted.

Mr. Dismukes said that in addition to the work just discussed, the property owner is proposing the construction of a guest house. Ms. Werner asked how far away from the regulated area this building will be located and Mr. Dismukes said about 90'. Ms. Werner asked if the structure will have a basement and Mr. Dismukes said that it will be a walk out. Ms. Werner asked about the new driveway and Mr. Dismukes said that it will be gravel based and provide parking for 2 vehicles.

Ms. Kern asked that Mr. Dismukes indicate on the plan where the unpermitted clearing had taken place. Mr. Dismukes indicated that that it was the area to the northwest of the upper pond. Ms. Werner asked what is planned on being planted. Mr. Dismukes referred the Commission to the site plan that addresses the proposed planting plan. Turf reinforcing will be placed within the swale should the upper pond overflow it sides.

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It was noted that minimizing the diversion of water and considering a more substantial natural landscape might provide better wetland water absorption. Ms. Hayes asked for further explanation of the excavation of the guest house. Mr. Dismukes said that some soils will have to be brought in and that the area for the guest house was relatively flat. Erosion controls and the area of disturbance was noted on a separate site plan but it was noted that all erosion controls be placed on one plan.

Mr. Deitz asked if the water at the end of the driveway will be dissipated or captured. Mr. Dismukes said that the water would be dissipated.

Mr. Yagid said that he was still unclear about the need to capture water on the hillside toward the lower pond with all the work being done at the top of the property. Mr. Dismukes said that there is a natural spring on the hillside and Ms. Smith said that the proposed plantings might help with any erosion. Ms. Werner is not surprised about the amount of water coming from under the hillside.

Ms. Werner asked for any more concerns of the Commission. Mr. Deitz said that he was satisfied with the work being done on the upper hill side but was still concerned with the proposed work by the lower pond. Ms. Werner would like to see more information on plantings. She would like to know how much water is being taken away from this area and why Mr. Dismukes was so convinced that removing the upper surface water will not affect the lower wetland area. Ms. Werner would like to look at this in comparison to the wetland mapping as well as where the other systems are located in the neighboring area.

Ms. Werner asked Ms. Kern to schedule a site walk with Mr. Dismukes and members.

*Mr. Yagid moved to continue Application # 1301-23, Cheryl Gould, 147 Treasure Hill Rd, Map 17, Block 32, Lot 23, improve drainage from upper pond to lower pond, improve existing gravel driveway to back field and construct a guest house with a septic system to the next regular meeting. Mr. Deitz seconded and the motion carried unanimously.*

**4. B.** Application # 1302-23, Alicia Wilson, 4 South Rd., Map 10, Block 40, Lot 37, removal of stump and deposit of materials within regulated area (after-the-fact application)

Ms. Kern explained that she had received a complaint about work being done within a regulated area without proper permitting. She continued that a Notice of Violation had been sent and the property owner came forward with an after-the-fact application.

Ms. Wilson, property owner, explained that she did not know that the property had a regulated area. She explained that there is a sloping area in the back of the house that was starting to erode. In addition, a tree had fallen. She had the tree and stump removed and then had 6 yards of topsoil added to the area. To keep it from further eroding, she had 3 tons of stone added to the slope. She also found out that at one point in time there was a swimming pool in that area that was broken up and buried.

Ms. Kern explained that even the house is within the regulated area. A site plan was presented which showed where the work was done. Ms. Werner asked if the Commission felt that this would have been something they would have allowed if the property owner came before them. Mr. Johnson said he had no problem with the work that was done.

Ms. Smith asked for further explanation about the rocks that were added. Ms. Wilson said that they are actually large boulders that have been placed along the bank. Ms. Werner asked if vegetation will grow in between the

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rocks. Ms. Wilson said that she thought it would. There is a slight elevation change but nothing that should threaten the movement of the rocks. Ms. Werner asked that the placement of the boulders be added to the site plan after it was determined that the wall is approximately 30' long.

Ms. Kern asked Ms. Wilson if she had planned to do anything further. She replied that she would like to do some planting. Ms. Werner said that Ms. Wilson should add any plantings to the site plan for discussion at the next meeting.

It was also noted that the removal of phragmites around the pound would require a permit.

*Mr. Yagid moved to continue Application # 1302-23, Alicia Wilson, 4 South Rd., Map 10, Block 40, Lot 37, removal of stump and deposit of materials within regulated area (after-the-fact application) to the next regular meeting. Mr. Deitz seconded and the motion carried unanimously.*

- 4.C.** Extension Request - Application # 1278-22F, Jamie Lintner for Kent School Corporation, Macedonia Road, Map 2 Block 5 Lot 8, forestry operation.

Mr. Lintner asked that his permit be extended. He continued that he has a small amount of work that still needs to be done but he could not guarantee that he could get it done before his permit runs out. Ms. Werner asked when the work would be done. Mr. Lintner said that he hopes to be done in February, but will wait until the area is drier before he continues.

*Ms. Smith moved to approve the Extension Request - Application # 1278-22F, Jamie Lintner for Kent School Corporation, Macedonia Road, Map 2 Block 5 Lot 8, forestry operation for another 1 year. Mr. Johnson seconded and the motion carried unanimously.*

- 4.D.** Modification Request – Application # 1255-21, Brian Neff, P.E. for Akai Associates, LLC, 99A Cobble Road, Map 10, Block 22, Lot 1, addition of basketball court within regulated area (after-the-fact application).

Mr. Neff was present to address the Commission. Ms. Kern said that during the review of an as built site plan for the issuance of a Certificate of Zoning Compliance, it was noted that a basketball court was placed within the regulated area without Commission approval.

Mr. Neff said that the plan was to keep it out of the regulated area, but after it was all said and done, ½ of it was created in the regulated area. The site was graded so that any runoff would go directly to the grassy area by the house. The court is built and the slab is in and grading is done which is stabilized. The court is 176' from the watercourse and 170' from the wetland area. There is still silt fencing around the area and Mr. Neff believes that there will be no runoff into the regulated areas.

Mr. Yagid said that he was a little disturbed that the person who was looking at the plans did not pick up the fact that it was located within the regulated area. Mr. Neff said that he can understand how it happened since the topography shows a slight incline so that the wetlands could not be viewed. He believes that they tried hard to keep the court out of the regulated area and felt that removing it from the regulated area would cause more disturbance.

Ms. Werner asked the Commission if they would have approved this modification if it had come before them prior to construction. Mr. Johnson said that he would have had no problem. Mr. Deitz said that he would have liked to see more information, but felt fine with it. Ms. Smith said that she would have had no problem.

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*Mr. Johnson moved to approve the Modification Request – Application # 1255-21, Brian Neff, P.E. for Akai Associates, LLC, 99A Cobble Road, Map 10, Block 22, Lot 1, addition of basketball court within regulated area (after-the-fact application). Ms. Smith seconded and the motion carried unanimously.*

- 4.E.** Application # 1303-23, Dean Gregory for Allen & Ann Perl, 7 Gorham Rd., Map 15, Block 22, Lot 17, crossing for single family home.

Mr. Joseph Green was present to address the Commission. The site plan was shared showing the construction of a house and septic system. It was noted that there is a narrow piece of wetlands that needs to be crossed in order to reach the building site. As a result, they are proposing the placement of a culvert in the proposed driveway by stripping the topsoil and putting in rip rap. The culvert will be 15” and will be large enough to carry any water. Ms. Werner asked if it was a moving stream and Mr. Green said that it was not a moving stream but a conveyance area from the adjoining property.

Mr. Yagid said that they really have no other alternative. Mr. Green said that they were entering at the narrowest point of the property. Mr. Deitz said that there were wetlands to the west/northwest area and asked if they were more than 200’. Mr. Green said that they were.

*Ms. Smith moved to continue Application # 1303-23, Dean Gregory for Allen & Ann Perl, 7 Gorham Rd., Map 15, Block 22, Lot 17, crossing for single family home to the next regular meeting. Mr. Yagid seconded and the motion carried unanimously.*

## **5. OLD BUSINESS**

- 5.A.** Application 1300-22. Carrie Trowbridge & Fernando Cela Diaz, 445 Segar Mountain Rd., Map 15, Block 22, Lot 70, tree removal and extension of boardwalk within wetland area.

Ms. Kern said that she visited the site with the property owner and said that the area where they are planning to do the work is flat and where there already is a small path. The stockpiles were placed on the plan as well as the existing boardwalk. There is a map with the topography. There was a question about the trees being cut, but Ms. Trowbridge spoke to that.

Ms. Trowbridge said that she spoke with Emmons Landscaping and Tree. It is not their procedure to take the whole tree out. They cut the tree into 8’ – 10’ chunks which will be removed to the driveway area where the chipping will be done. Emmons said that February or March will be optimal time to cut the trees. Ms. Trowbridge said that since the last meeting, two other ash trees had fallen, gotten tangled up in other trees and should be included in the proposal. Emmons said they will follow the same procedure to get them untangled, cut down and removed from the area.

*Mr. Yagid moved to approve Application 1300-22. Carrie Trowbridge & Fernando Cela Diaz, 445 Segar Mountain Rd., Map 15, Block 22, Lot 70, tree removal and extension of boardwalk within wetland area. Mr. Johnson seconded and the motion carried unanimously.*

## **6. COMMUNICATIONS TO THE COMMISSION**

### **A. WRITTEN**

- 6.A.1.** Budget July- November 2022

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The Commission accepted the information; no action taken.

#### **6.A.2. Bylaws Review per Section VI**

Ms. Kern said that she made the changes that were discussed at the previous meeting.

After the discussion of agenda item 5.A., the applicant asked the Commission why new business was heard prior to old business. Ms. Kern noted that she checked the by-laws and it indicates the order of the agenda to be old business first, then new business. No one could remember why the change was made. Ms. Werner said that she will do some research to see if there had been a change to the statutes to warrant the change and will report back to the Commission. Ms. Kern said that she will check back 15 – 20 years to see if there was any indication why the change happened. The Commission said that they had no preference so it was decided to keep it on the agenda until next regular meeting at which time both Ms. Werner and Ms. Kern will report back on their research.

#### **6.A.3. Solitude DEEP Pesticide Applications:**

- North Spectacle Lake
- South Spectacle Pond

Ms. Werner asked if the Commission had any questions or comments. Mr. Yagid said that they look pretty standard and did not see anything that stands out.

### **B. VERBAL**

Ms. Kern said that she had provided the Commission with a sample citation ordinance and asked if they were interested in going any further. Ms. Werner said that she was interested in proceeding. Mr. Deitz asked if there was some way to adjust the fine amount over the years. Ms. Kern referred them to the Roxbury sample and suggested that she use their format personalizing it to the Town of Kent. That will be shared with the Commission prior to being reviewed by Attorney Zizka.

Mr. Yagid noted that since there was no Town Acquisition Fund, he did not know where any fines collected would go. Ms. Kern said that she would research what other towns were doing, but funds collected could go to the General Fund. Ms. Kern also noted that a hearing officer would need to be appointed as part of this process. Mr. Deitz said that he would look into how funds are created/used.

### **7. ADJOURNMENT**

*Mr. Yagid moved to adjourn at 8:49 p.m. Mr. Johnson seconded and the motion carried unanimously.*

Respectfully submitted,

*Donna M. Hayes*

Donna M. Hayes, CZEO  
Assistant Land Use Administrator

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