

**DERBY INLAND WETLANDS AGENCY
DERBY, CONNECTICUT 06418**

**Frederick J. Columbo, Jr. Chairman
68 Seymour Avenue
Derby, Connecticut 06418**

**Philip Marcucio
Paul Dinice, Jr.
Paul Padilla
David Barboza II
David Rogers
Roger Birtwell**

August 9, 2006
(Meeting Taped)

Minutes of Derby Inland Wetlands Agency meeting of Wednesday, August 9, 2006.
Chairman Fred Columbo at conference room, New City Hall, 1 Elizabeth Street, Derby.
This meeting was called to order at 7:00 p.m. by Chairman Fred Columbo.

By roll call members present were Chairman Fred Columbo, Philip Marcucio, David Rogers, Paul Dinice, Jr., Paul Padilla and Roger Birtwell. Michael Joyce from Milone & MacBroom was also present.

Additions, Deletions, Corrections to the Agenda:

Mr. Columbo stated that he would like to add as Item 10e Notice from DEP regarding public hearing on proposed general permits for various water diversion activities. He also stated that Item 8 is listed as an application and no application has been filed; it will be a discussion regarding cease and desist order issued. Mr. Columbo stated that Item 9 is actually three separate applications for proposed drainage work on John Street, Grandview Boulevard and Cullens Hill Road.

Public Portion:

Drew Perry, 27 John Street stated that he would like to speak on the application filed for John Street drainage work.

Carol Funari, 6 Lanzieri Court stated that she was concerned with the tree removal and the work at the detention basin on Lanzieri Court and asked to address the item when it is discussed.

Karen Kemmesies, 25 John Street stated that she would like to speak on the John Street application. She also stated that at last month's meeting she asked if the Agency members had viewed the property of Mr. Hine and if they found the work satisfactory. The reply was that they had viewed the work and were satisfied. She asked that the minutes be amended to reflect her comments.

Acceptance of Minutes

A motion to accept the minutes of the July 12, 2006 meeting with the noted changes as proposed by Mrs. Kemmesies in the public portion was made by Mr. Birtwell and seconded by Mr. Marcucio. The motion was carried by a 3-1-1 vote with Mr. Columbo opposed and Mr. Padilla abstaining.

7. Conduct a Public Hearing for Jalowiec Realty Associates, LP, Joseph C. Jalowiec - Applicant, APPLICATION #06071203 Seeking permission to conduct a "Regulated Activity" proposing an expansion of two (2) existing office buildings on Lots #29 and #30, Tax Map #3-2 at 90 and 114 Sodom Lane.

Mr. Columbo read a letter from Rotondo Engineering requesting that the public hearing be rescheduled for the September meeting. Mr. Columbo stated that the public hearing was advertised twice in the newspaper. A motion to table the opening of the public hearing to the September meeting was made by Mr. Marcucio, seconded by Mr. Birtwell and carried unanimously.

8. Kathy Norwood - Lanzieri Court

Mr. Columbo stated that an on-site inspection was conducted on Wednesday August 9, 2006 at the detention basin and present were John Norwood, Kathy Norwood, Fred Columbo, Michael Joyce, Atty. Bologna, Jim Schriber and David Rogers. He stated that other members of the Agency had walked the site and conducted their own inspections.

Atty. Michael Bologna, representing Detention Basin LLC was present and stated that it was his understanding and his advice to his client that she is maintaining the detention basin. He understood that it was not a regulated activity and did not feel that they were conducting a regulated activity. He stated that a cease and desist order was issued and after the site visit they are here tonight to try and resolve this matter. It is a detention basin under an existing approval that requires annual maintenance and has not had its annual maintenance for years and years. He stated that his client acquired the basin in June of last year. He stated that they thought they were doing a maintenance activity under an existing approval. Mr. Joyce explained to them that because it had not been done for so long and the work that they were doing is so significant they should have come to the Agency first and explained what they were going to do. He stated that they are here tonight to explain what they propose to do.

He stated that there are neighbors here that have concerns but the only issue that they are here to discuss is the work that they are doing for maintenance. He stated that they will take care of the property line disputes and fence disputes outside of this meeting. They only want to talk about wetlands issues.

Atty. Bologna stated that this basin is used for stormwater discharge from several subdivisions in the area and it was designed to do that. The previous owner created an entity which owned the property on which the basin is located. He indicated that there is a small strip of land that led to the basin which was never conveyed until June of last year. The previous owner had lien rights against approximately 72 properties to collect up to \$100.00 per year to maintain that detention basin. The City of Derby owns an easement over the strip of land. There was a lawsuit filed against the previous owner because of lack of maintenance which was resolved but the maintenance was not done.

Atty. Bologna stated that his client, Kathy Norwood, formed a LLC and purchased the strip of land, the entire property that the basin is located on and the rights to lien the properties. The property has been staked and she has contacted fencing companies and also started the maintenance to get it back the way it is suppose to be.

The City of Derby owns an easement over this strip of property for stormwater discharge. There is a catchbasin at the foot of Lanzieri Court and that's where the pipe goes and discharges its stormwater there. He stated that there is a berm around approximately one-half of the basin; around the rest of the basin is a slope. There is a waterline in the bottom and a discharge pipe where the water goes out. He stated that what is suppose to be is that the slope and berm should have no woody growth and should be mowed several times a year. At the bottom of the basin you don't want to have large trees or woody growth. He stated that 6' white pines were put in which are now much much larger and it is overgrown. He stated that their proposal is to remove the white pines, get a fence up and then work in the perimeter of the basin. He stated that they are proposing to remove the woody growth from the top of the berm and the two slopes of the berm, both into the basin and out the backside of the basin. For the larger trees they are cut in place, boxed and skidded out, chipped on site - outside the detention basin and the wetlands. The detention basin itself is not all wetlands; just the bottom of the basin.

Mr. Columbo stated that he felt that they should put in writing their proposal so that all the members could have a copy of what they plan to do. He felt that they have had over a year to get this proposal in writing and it should have been done.

Mr. Birtwell asked what Mr. Kopjanski's complaint was. Atty. Bologna stated that he felt that they were doing a regulated activity in a wetlands. A stop order was issued for clear cutting in regulated wetlands area. Mr. Birtwell stated that clear cutting means that everything is being taken down and Atty. Bologna stated that they will be taking the big trees down and as they go put in soil and erosion controls in the form of haybales behind it so that no sediment will go down. Mr. Columbo asked if any soil and erosion control in place at this time. He stated that work was done and he did not see any haybales or silt fences. Atty. Bologna stated that they started cutting down pine trees and the brush around the pine trees. Mr. Columbo asked if they thought that it was important to have a plan in place with a step by step procedure. Atty. Bologna stated that he thought they were doing maintenance. Mr. Columbo stated that he felt that the first step should be to have a

soil and erosion plan in place. Atty. Bologna stated that they were told that what they were doing was wrong and they would like to explain what they would like to do.

Mr. Dinice stated that Section 2 - Definitions indicates that regulated activity means any operation within or use of a watercourse or wetlands involving removal or disposition of materials or any obstruction construction alteration or pollution of such wetlands or watercourses and any earth moving, filling, construction or clear cutting of trees within 50 feet of a wetlands or watercourse. Atty. Bologna stated that he is aware of that, but thought that if they were doing maintenance and it fell into that category. Mr. Joyce stated that because there had been no maintenance in so long the measures needed to get the basin to a point where it could be maintained were fairly extreme and that's what triggered the involvement of the Commission. Once this issue is ironed out and it is at a point where the basin can be maintained on an annual basis.

Atty. Bologna stated that they want to get the trees out on both sides of the berm and do soil and erosion controls as work is being done. They want to get down to the dirt and they hydroseed it. Mr. Marcucio stated that clear cutting needs to be done in order to get back to square one. Mr. Dinice stated that the regulations stipulate that any tree beyond a 2" caliber is a regulated activity and if the pond had been previously maintained we would not be facing this conflict. Although we are maintaining the pond we are in conflict with the regulations because there is the cutting of a number of trees beyond the 2" caliber.

Mr. Columbo stated that he feels that an application is necessary with a plan of what the proposed work is. He stated that he spoke with Mrs. Norwood and wanted to see in writing on the application or attached to the application a site map, a plan or proposal of activity and a schedule of when and how it will be done. He stated that the Commission wants to see it done right and the only way that can be done is by having it on a plan or map. He stated that the members do not have copies of anything at this time.

Atty. Bologna stated that they want to cut down the woody growth and seed it so that next year it will just have to be mowed and the annual maintenance report filed. They will put in soil and erosion controls and it will be done by a professional. They will have to use a skidder to remove these large trees but it will be done in a way that it makes sense to the staff. He stated that it did not make sense to them to undergo the additional expenses involved with the filing of an application. They would like to move forward with the work so that the basin will be cleaned up and then can be properly maintained.

Mr. Dinice stated that this is a very unfortunate situation and the problem began when this subdivision was approved and there was inadequate mechanism to maintain the pond and inadequate mechanism to make sure that it was properly maintained. He stated that he understood what the Attorney is saying but does not see the latitude as a Commissioner to say that an application is not necessary. It is a difficult situation but it needs a formal application and in reading the regulations it is definitely a regulated activity.

Mr. Padilla stated that his sentiments were the same as Mr. Dinice. He was on the site and it needs to be maintained and to look the way it is suppose to be. He stated that it is a major project and if there is some way to do it without the survey or have it supervised by staff, but an application would be necessary.

Mr. Marcucio stated that he has an understanding of maintenance of ponds and knows that they are trying to get back to square one but should have been a courtesy visit to this board and have something in writing of what they are proposing to do. He did not believe that an application was necessary but a map showing what will be done and time schedule and how it will be done. He also felt that these should be approved by the city engineer and the Commission. If the Commission feels uncomfortable then discussions could continue regarding the need for an application.

Mr. Rogers stated that he pretty much agrees with what Mr. Marcucio said. He stated that he would like to see a lot more detail of what is going to occur there and when it will be occurring.

Mr. Birtwell stated that it is his understanding that the clearing is to bring the pond back to the way it is suppose to be. He felt that it was in the best interest of everyone to get it back to that way. He also felt that there should be plans submitted showing how the work will be done so that the city engineer could review it.

Atty. Bologna stated that his client went to Mr. Kopjanski and asked if an application was necessary and was told that one was not needed. He stated that he understands what the members are saying and after speaking with Mr. Joyce knows what they are looking for. Mr. Columbo stated that he spoke with Mrs. Norwood and explained what was needed and he put it on the agenda as an application but since none was filed that was removed from the agenda. He also stated that this is a major undertaking and feels that an application is necessary. He stated that if work is done in a regulated area this Agency is going to assume the responsibility of whatever is presented to us. An application is necessary and we will be glad to address what is put on the application when it is presented. He stated that no work should be done there and he feels that it is a violation if any work is done after this evening.

Mr. Birtwell asked if there is any kind of fine for not maintaining the basin. Mr. Marcucio stated that she cannot just go forward without getting certain approvals from the Agency. Atty. Bologna stated that no more work will be done. Mr. Columbo stated that they indicated that they had a year to plan this and there is no way for the Agency to judge if it is being done properly without a map or plan. Atty Bologna stated that they can come back with an engineering plan but he is not sure about the application.

Mr. Marcucio stated that she now has the responsibility of maintaining that basin and if something happens because the pond is not maintained there is a liability involved.

Mr. Rogers stated that last month the Commission considered an application that was a less severe activity than this and it was appropriate for him to fill out an application so the Commission should be consistent.

Mr. Joyce stated that the regulations indicate that an application contain all information to make a fair and informed determination of the issues. He stated that he would be happy to look into what allowances or what things can be waived as part of the application process.

Mr. Columbo stated that the application asks for a general description of the proposal and a sketch of the proposed activity as well as other information. He stated that once we receive an application we can look at the other requirements and decide what is necessary but at this time the members do not have anything in writing to look at.

Mr. Joyce stated that the Commission has the ability to decide which requirements can be waived. Mr. Marcucio stated that in any case we need the information. Atty. Bologna asked if anyone knew where they can find information on the original plans for the detention basin. Mr. Dinice stated that there should be information on the record subdivision map. Mr. Joyce stated that there were modifications made to the basin over the years and there might be some reference in other subdivisions that were developed in the area.

Carol Furnari, Lanzieri Court stated that the trees that were taken down were close to the wetlands and she does not see any reasonable explanation as to why they were removed. She felt that general maintenance was not clear cutting the trees.

Tom Furnari, 6 Lanzieri Court asked if the trees that were cut down will be cleaned up and Mr. Joyce stated that a cease and desist order was issued and no work can be done until it is lifted.

9a. City of Derby, Michael Joyce, P.E., Applicant, APPLICATION #06080902, John Street.

Mr. Joyce stated that as part of the road bond referendum drainage improvements are planned for John Street. He stated that these are preliminary plans and they are trying to better convey the flow of water through this area. They will have to get easements from property owners for the work to be done. He stated that the Commission needs to determine if it is a significant activity. This will have no impact to the wetlands it is the repair of the drainage system. The members felt that no public hearing was necessary.

9b. City of Derby, Michael Joyce, P.E., Applicant, APPLICATION #06080903, Grandview Boulevard/Turner Avenue.

Mr. Joyce stated that this is a drainage project for this area. There are no catchbasins in the lower point of Grandview Boulevard and they are proposing to install catchbasins and tie into other catchbasins in the area. He stated that it is drainage repair and maintenance

and asked for approval as presented.

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A motion was made by Mr. Dinice to approve this application as a declaratory ruling. The motion was seconded by Mr. Birtwell and passed by a 5-0-1 vote with Mr. Padilla abstaining. It was also noted that the fees will be waived.

9c. City of Derby, Michael Joyce, P.E., Applicant, APPLICATION #06080904, Cullens Hill Road.

Mr. Joyce stated that they are proposing drainage work and stabilization of sections of the road. They will be in contact with DOT regarding this application. The Commission determined that it was not a significant activity.

Mr. Joyce also stated that they will be doing work on Mohawk Avenue with drainage and all proposed work will be in the roadway pavement. He did not feel that an application was necessary for this work. Mr. Dinice moved that this work could be done without an application. The motion was seconded by Mr. Birtwell and carried unanimously. The motion was seconded by Mr. Marcucio and carried unanimously.

10a. Engineering Fees - Milone & MacBroom, Inc. For the City of Derby; Statement of Account, August 9, 2006.

Mr. Marcucio moved to approve the payment of the Milone & MacBrom, Inc. statement of account dated 8/09/06. The motion was seconded by Mr. Padilla and carried unanimously.

10b. Witek Park Report.

Mr. Joyce stated that they met with the contractor and there are still some items that needs to be resolved.

10c. Town of Orange

Mr. Columbo stated that the Hine Property in Orange was approved for single family homes and no new plans have been submitted but there might be a change to senior housing.

10d. Office Supplies

Mr. Columbo stated that he has received the computer, printer and software and would like to be reimbursed \$722.87 from the City. A motion to recommend that Mr. Columbo be reimbursed \$722.87 was made by Mr. Dinice, seconded by Mr. Marcucio and carried unanimously with Mr. Columbo abstaining.

10e. State of Connecticut, Department of Environmental Protection

Mr. Columbo stated that he received a letter regarding public hearing on proposed general permits for various water diversion activities which will be held on Wednesday, September

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13, 2006 in Hartford.

A motion to adjourn was made by Mr. Marcucio, seconded by Mr. Rogers and carried unanimously. The meeting was adjourned at 9:15 p.m.

ATTEST:

Maryanne DeTullio