

**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

Roger Birtwell

April 8, 2009  
(Meeting Taped)

Minutes of Derby Inland Wetlands Agency special meeting of Monday, April 8, 2009 at 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, Paul Dinice, David Barboza Phil Marcucio, Paul Padilla and Roger Birtwell. Michael Joyce and Ryan McEvoy Milone & MacBroom were also present.

Additions, Deletions, Corrections to the Agenda

Mr. Dinice moved to add as Item 10d, Mike Tracz, Water Street (rear left of Suburban Propane). The motion was seconded by Mr. Marcucio and carried unanimously.

Approval of Minutes

Mr. Padilla moved to approve the minutes of the February 11, 2009 meeting. The motion was seconded by Mr. Dinice and carried unanimously with Mr. Marcucio abstaining.

Public Portion

There was no one from the public wishing to speak.

7. Luis Labarda, 74 Academy Hill Road, Discussion of letter dated February 20, 2009 addressed to this Agency.

Mr. Columbo read a letter from Luis Labarda dated 2/20/09 into the record (copy attached). Mr. Labarda stated that the problem was explained in his letter and he wanted to know what

the City is going to do about it. Mr. Dinice stated that he did not feel it was clear in the letter. Mr. Columbo stated that Dana Talbot filed an application which was approved with stipulated conditions. She will be putting in two posts in the rear corners of her property which will be visible non-encroachment markers with tags notifying that it is a City of Derby Inland Wetlands non-encroachment line area. He stated that beyond that toward the water it is owned by the City and no one can do work in the area without permission from the City. Mr. Columbo stated that this was decided by the Board of Aldermen. Mrs. Talbot can work up to the marker posts and this was discussed at meetings. He stated that whatever took place

on their property and the City property was after they received the permission from the Board of Aldermen. They sought permission to have the clear out the non-invasive plants, which the City did immediately after the Board of Aldermen meeting and cut whatever plants they found necessary to do. This was all done under the approval of this Agency and the Board of Aldermen. Mr. Columbo stated that he along with Mike Joyce and Ken Hughes, Third Ward Alderman will go up when the planting season is in and recommend what plants can be planted on City property provided that the Talbots' will pay for them, which was discussed with them.

Mr. Joyce stated that discussions were held with the Talbots' several years ago and at that time their property line was delineated. Mr. Joyce stated that it is his understanding that the application was work only on the Talbot property and only what they can do.

Maria Wainman, Academy Hill stated that they questioned Dave Kopjanski about this and asked why they were not notified of the meetings. Mr. Columbo stated that the agenda for the meeting is posted on line and they are public meetings. Mr. Joyce stated that when an application is received the applicant lists abutting property owners. The Agency then determines whether it is a significant activity or not and if it is determined to be significant a public hearing is held and abutting property owners notified. Mr. Labarda stated that he felt this would have been a significant activity. Mr. Labarda stated that he was told by the Building Inspector that he would have been notified. Mr. Columbo stated that they deemed it to be a non-significant activity. Mr. Labarda stated that it has now turned out to be significant as the wetlands have been cleared right to the water. He stated that the City did clearing work and then the Talbots also did work. Mr. Columbo stated that a cease and desist was issued to them. He also stated that they were clearing their property which they had permission to do. Mr. Labarda stated that the backhoe was in the wetlands area and Mr. Kopjanski stated that it was a violation. Mr. Columbo stated that he could not speak for Mr. Kopjanski and could not verify what the City workers did.

Mr. Joyce stated there is a situation where there has been an activity next to the reservoir and Mr. Labarda's concern is what can and cannot be done in that area. Mr. Labarda stated that he is well aware of what cannot be done there and has been living there for a number of years. He stated that the wetlands area owned by the City has been violated and cleaned straight back. He stated that he knows what the laws are. Mr. Joyce stated that it was identified that there was some activity there and there will be restoration efforts on the City property. Mr. Columbo stated that positive wetlands vegetation will be replacing what was taken out of there.

Mr. Joyce stated that nothing could be done during the winter months but something will be done. He stated that the Agency approved an application and how they want to handle the restoration efforts is up to them.

Mr. Columbo stated that the Talbots followed procedures correctly and inquired on how they could proceed and filed the necessary applications. He stated that they were here numerous times and the Agency acted on what was presented. Mr. Labarda stated according to city officials that he spoke with he was informed that there were violations done.

Mr. Columbo stated that a lot of the data in the letter seems to be more of a civil issue than a wetlands issue. Mr. Labarda stated that what he is stating in the letter is that because of the decision that Derby made about the wetlands the driveway is impacted on a daily basis. Mr. Labarda stated that he has to live with the decision that Derby made 12 years ago. He stated that the original contractor was going to build a house there and he never did and sold the property. Mr. Labarda stated that as far as the City doing the work that needed to be done, but the owner is hiring a contractor on their own and the equipment is clearly on the City property. He stated that they cleared too much and brought fill in.

Mr. Labarda stated that the City did some work and then approximately a month later another backhoe was back there and it was not the City. He stated that Mr. Kopjanski went up there and said that they were doing work on their own.

Dana Talbot, 76A Academy Hill stated that there was a lot of miscommunication from the beginning. She stated that she followed all the rules and when she was told to stop the work with the backhoe she did. She stated that she did not bring in fill and just cleaned up the area. She stated that she will continue to follow the rules. Mr. Labarda stated that he is positive that they bought in their own equipment after the City work was done.

Mr. Columbo stated that they have the right to bring in vehicles on their property. He stated that the Agency followed the rules and regulations and made a decision. Mr. Labarda stated that the wetlands should be planted back. Mr. Dinice asked if a written cease and desist was issued. Mr. Labarda stated that he did not know but that Mr. Kopjanski stated that the work needed to stop and in his opinion it was a violation. Mr. Columbo stated that it appears that he is looking to make it right. Mr. Columbo stated that the area will be restored with positive plantings. He also stated that if Mr. Labarda had a problem with the way the City went about it he may want to address it with the Board of Aldermen. Mr. Labarda stated that he is looking for someone to acknowledge that work was done there and it was not on the up and up. Mr. Columbo stated that any work done was on the up and up. The City knew about it and the Agency knew about it and gave permission. Mr. Marcucio asked if any equipment was brought into the City property. Mrs. Talbot stated that it was on her property. Mr. Marcucio asked if anything was touched on the City property and Mrs. Talbot stated that nothing was done there. Mr. Labarda stated that Mr. Kopjanski told him it was a violation. Mr. Columbo stated that Mr. Kopjanski is the enforcement officer and he could put a cease and desist order on and if he did not then perhaps he thought it was not necessary.

Mr. Joyce stated that this Agency's actions occurred in December, 2008 and at that time the Agency looked to rectify any activity that had occurred there. He stated that whatever happened before December is out of the control of this Agency because there was no application. If a cease and desist is officially issued to a property owner they have a certain amount of time to come to the Agency and respond to it. The December application started their ability to regulate what had happened in the past and rectify the situation. Mr. Labarda stated that there was three types of work done there. There was one before the application; then the application when they acted which was appropriate and then after the City was done they brought in a vehicle of their own. The City had already acted and had not approved them to bring in another vehicle of their own. Mr. Joyce asked if since December 2008 has there been any additional activity and Mrs. Talbot stated that there was not. Mr. Joyce stated that the Agency got involved in December, 2008. Mr. Columbo stated that they were told to file an application which they did and the Agency acted on it in December, 2008. They have a right to be on their property.

8. City of Derby, Sheila O'Malley - applicant. APPLICATION #09040801 - seeking permission to conduct a regulated activity: proposing to collect trash and remove garbage in a clean-up project along the rear properties on Derby Avenue. Bordering the U.I. Co. Properties above the Naugatuck River under the supervision of Derby Blight Commissioners.

Sheila O'Malley, Andrew Cota and Joseph Moore were present. Mr. Cota stated that complaints were received about trash and debris in the area along the rear of properties on Derby Avenue. The United Illuminating Company owns the property that separates the Naugatuck River and the properties on Derby Avenue. They contacted the U.I. Co. who agreed to cut a path because the area could not be accessed. They also agreed to cut trees to get in there and remove things. Mrs. O'Malley stated that after the area was cleared they were approached the Housatonic Valley Association who was looking for a project to do. Mr. Moore stated that they had a group of 65 volunteers to do the clean up work.

Mr. Cota stated that they are still working on this and have already taken away a lot of debris from the sides of the hill and along the trail that was cut. He stated that they are very cautious about the removal so that nothing goes into the River. Mr. Moore stated that several contractors have also donated time and there has been a minimal cost to the City.

Mr. Columbo commended Mr. Cota and Mr. Moore on this project. He stated that he was informed about the work that has been done and he gave permission on an emergency basis for them to do this work. He suggested that they file an application with this Agency for approval of future work. Mr. Cota stated that there does not appear to be anything toxic in the area. Mr. Marcucio asked who will maintain this after it is cleared out. Mr. Cota stated that the path will be closed off and U.I. will have to be contacted to get access. Mr. Columbo stated that the application is to continue work that is necessary. Mr. Joyce asked about restoration work. Mr. Cota stated that has not been worked out yet. Mr. Moore stated that he thought that U.I. would be interested in creating a trail there. Mr. Columbo stated that the Agency be notified

of the future days when the clean up will be held. Mr. Columbo stated that there are areas that are environmentally sensitive.

Mr. Marcucio moved that the application be approved as a plenary ruling with the following stipulations - (a) Milone and MacBroom will provide soil and erosion controls where required; and (b) Agency receives written notification of when clean up days are scheduled. The motion was seconded by Mr. Dinice and carried unanimously.

9. Philip Marcucio-applicant. APPLICATION #09040802-seekign permission to conduct a regulated activity. Proposing riparian restoration and bank stabilization on the Marcucio Garden/Lowe's property line on property at 487 New Haven Avenue, Lot #37, Tax Map #4-

Mr. Marcucio recused himself from hearing this item and left the meeting at this time.

Philip Marcucio, Jr. and Michael Marcucio were present. Mr. Michael Marcucio stated that a lot of silt and sediment has been coming into the area. Lowe's installed a stil fence and have installed a well. The area is unsafe for their customers and also unattractive. There is a lot of erosion beneath the roots of the trees. He stated that no water has been flowing down the stream since Lowe's was built. He stated that they are planning on planting some materials in this area and stabilizing the bank.

Mr. Columbo stated that this is a sensitive area. Mr. Marcucio stated that they have contacted Kimco and will get permission in writing from them. Mr. Columbo stated that the Agency will need that letter. He also stated that they are asking to kill a wetlands area and the Agency normally likes to have wetlands going on and he asked what they planned on doing in the area.

Mr. Marcucio stated that they are planning to do plantings only; there will be no building. Mr. Columbo asked if it was possible to restore the area. Mr. Marcucio stated that there has not been any water flowing in that area and he cannot see any more water flowing there in the future. He stated that they will be adding wetlands plantings and make it a safer area.

Mr. Columbo stated that the Agency will need to see the letter from Kimco and also a proposal of the plan for the work anticipated and also the restoration. Mr. Marcucio stated that the area was diminished when Lowe's blasted and they want to improve the area. Mr. Columbo stated that he understands what they want to do. Mr. Joyce stated that there is a lot of history regarding this property and the only way to determine if it is still a wetlands is to have a soil scientist look at it and report. Mr. Joyce recommended that they get the area identified by a soil scientist; show the restoration plan and get a letter from Kimco granting permission. Mr. Columbo suggested that the members do an on-site visit and at the next meeting the Agency will determine if it is a significant activity. The item will be continued to the May meeting.

10d. Mike Tracz, 151 Water Street.

Mike Tracz and Alan Shepard were present. Mr. Shepard stated that Mr. Tracz is purchasing the old Francini parcel on Water Street which is to the rear of Suburban Propane. He was able to get some clean fill which he brought onto the site. He was notified by the City that there are wetlands on that property and he needed to file an application with this Agency. Mr. Tracz has a letter from the current owner giving permission to go on the property. The current owner is also doing some environmental clean up work on the property and a Phase II environmental report was done.

Mr. Tracz stated that the current owner removed some things and needed materials to bring it back up to grade. Mr. Joyce asked the total amount of fill. Mr. Shepard stated that it is 2,000 yards but there is only a small amount there now. Mr. Columbo asked if he was going to be spreading the fill or just stockpiling. Mr. Shepard stated that right now it is stockpiled. Mr. Tracz is hoping to put a building back there. As soon as he found out that permits were involved no more fill was brought in. He was informed that silt fence and anti-tracking pads will be needed around the piles. The fill is located in the center of the property away from the wetlands.

Mr. Columbo stated that the Agency will need a soil scientist report as well as the source of the fill. Mr. Tracz should also identify what the intent is and if it will be stockpiled or spread. He also will need to provide copies of the environmental report to the Agency. Mr. Columbo suggested that the members do an on-site visit. The amount of fill that is there can stay but no more can be brought in until the application is approved. A motion to accept the application was made by Mr. Birtwell, seconded by Mr. Dinice and carried unanimously. The item will be on the May agenda.

10a. Engineering fees: Milone and MacBroom, Inc. for the City of Derby, statements dated 2/12/09 and 3/12/09.

Mr. Padilla moved that the bills dated 2/12/09 be paid. The motion was seconded by Mr. Dinice and carried unanimously. Mr. Barboza moved that the bills dated 3/12/09 be paid. The motion was seconded by Mr. Padilla and carried unanimously.

10b. Post/Tags for non-encroachment line.

Mr. Dinices tated that he will have information at the next meeting.

10c. DEP letter dated Febraury 11, 2009.

Mr. Columbo read a letter dated 2/11/09 from DEP regarding Level A mapping. The Board of Aldermen will hold a public hearing on this matter. Mr. Joyce stated that Planning & Zoning Commission has been identified as the Aquifer Protection Agency for the City.

A motion to adjourn was made by Mr. Padilla, seconded by Mr. Birtwell and carried unanimously. The meeting was adjourned at 9:40 p.m.

ATTEST:

Maryanne DeTullio

*These minutes are subject to the Agency's approval at their next scheduled meeting.*