



**City of Ansonia**  
**INLAND WETLANDS COMMISSION**

253 Main Street  
Ansonia, Connecticut 06401  
June 3, 2010

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*Madeline N. Battone*  
TOWN AND CITY CLERK  
ANSONIA, CONNECTICUT

Regular Meeting

Present: David Knapp, Chairman  
Tim Holman  
John Jones  
David Madar

Absent: Kevin Cegelka  
Ed Phipps

Others Present: Peter Crabtree, Zoning Enforcement Officer – arrived 7:15 p.m.  
Fred D'Amico, City Engineer  
Thomas Welch, IWC Attorney

The regular meeting of the Ansonia Inland Wetlands Commission was called to order at 7:00 p.m. by Chairman Knapp.

All present rose and Pledged Allegiance to the flag.

The secretary called the roll. There was a quorum present.

### Minutes

Mr. Jones made a motion to accept as written and place on file the minutes of the May 4, 2010 regular meeting. Mr. Madar seconded. All in favor, so carried.

Mr. Jones made a motion to accept as written and place on file the minutes of the May 15, 2010 Special Meeting. Mr. Madar seconded. All in favor, so carried.

### Bills

There are no bills.  
IWC060310

## **Correspondence**

Mr. Madar made a motion to accept all of the correspondence received, dispense with the reading, and place them on file. If a member requests one read or acted upon the correspondence will be brought up individually. Mr. Holman seconded. All in favor, so carried.

1. Fred D'Amico re: 17 Hodio Drive dtd. 6/3/10

## **Public Session**

There was no one from the public present.

Mr. Madar made a motion to close the public session. Mr. Holman seconded. All in favor, so carried.

## **Diane Lord, Attorney/A. Tkacs request for IWC Permit for 17 Hodio Drive (Court order)**

Diane Lord, Attorney, Jim Swift, Engineer and Mr. Tkacs were present.

The secretary read the letter received from Mr. D'Amico regarding the property located at 17 Hodio Drive. (copy attached)

Attorney Lord said that the wetlands were flagged. She said that Mr. Roy Shook flagged the wetlands and he stated that they were flagged. The boundaries were not flagged.

Chairman Knapp said nothing was flagged. He said the commission went to the site and nothing was flagged – not the wetlands and not the boundaries.

Attorney Lord said that it was stated that something was dumped on the bank by her client and nothing has been dumped by him. She is stating that her client did not dump anything down there.

She said that Mr. Shook said at the last meeting that if her client follows Mr. Swifts soil and erosion plan it will stop the erosion. Any removal of material will cause damage to the wetland. Following Mr. Swifts plan would be a best alternative and the shed is at least 60 feet away from the wetland. She said his testimony was: there is no loss of wetland. The wetlands were stabilized and there is no feasible improvement to warrant work in the wetland. The shed does not affect the wetlands.

Attorney Lord said based on the regulations and Ct General Statutes you can issue a permit based on her client fulfilling the plans submitted by Mr. Swift.

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Chairman Knapp said that Mr. Swift was going to give a copy of the colored map to the secretary for each member and we have not received this map. This was discussed at the site inspection.

Mr. Swift said he is puzzled that the commission doesn't have the maps because he put the packets together himself.

The secretary showed Mr. Swift what was received in the packet: an application, 11x17 map sheet map, a larger topo map and an 8x11 sheet map attached to the application. There is no map that is colored coded.

Mr. Swift said he did not present the colored map to the commission.

Mr. D'Amico said he understands what Mr. Swift would like to do – leave the material there. He said there is an encroachment there on the Nature Center property. The Nature Center staff will not be happy if we allow them to leave the fill there on their property. The bank can be cut back on the left side and a retaining wall can be put in. It should be taken off the neighboring property which is the City of Ansonia.

He said the slope is steeper than a 2 to 1. He said it is not recommended to keep the slope that steep at 1 to 1. Make the slope closer to 2 to 1 or protect it at 1 to 1. The left side goes in approximately 30 feet or so onto the City property.

Chairman Knapp said it is hard to tell where the property ended looking down from the top. There is a fence to the left on the property that is buried almost half high indicating a lot of fill was brought in.

Mr. D'Amico said the fence on the left side is half hidden and it is possible there is a wetland flagged further down the bank. The issue is the boundary and where it is. There is a zoning issue here also. Zoning only allows less than 1000 yards of fill without a Special Exception permit.

Chairman Knapp asked about the retaining wall suggestion.

Mr. D'Amico said there is eroding on the slope and the slope is too steep. It may be better to build a step up retaining wall.

Attorney Lord said she has seen the pool and the size of the pool is for less than what was required for a permit.

Chairman Knapp said there is more than 70 yards of fill there.

Attorney Lord said there is about that – 70 yards.

Mr. Madar said someone brought in more fill. He said he can't believe that the amount of fill is only 70 yards. He asked Attorney Lord if she saw the pool.

Attorney Lord said yes and no more than 70 yards was brought in.

Chairman Knapp said standing looking over at the fence and the other yards it appears that more than 70 yards was brought in onto that property.

Mr. Swift said Mr. D'Amico was going to look at the contours. The left side blended on that line and we will not know the amount of fill brought in. He said he doesn't know the amount, there is some amount but he doesn't know. He said to remove the fill is a project in itself. Someone will have to come and put in filter fabric, etc. and get machinery in there.

Attorney Lord said Mr. Shook's testimony said that disturbing the area would cause damage to the wetland.

Mr. Madar said the work can be done by going through the property owner's property. It can be done from his property on the top.

Mr. D'Amico said it could possibly be less than 1000 yards of fill but that is not the issue. The bigger problem is you have to make a decision – is it in the wetlands and will they be able to keep the fill on the Nature Center property. They encroached on the Nature Center property and put fill in there.

Mr. D'Amico continued stating Ms. Donna Lindgren, ANC Director is upset over this and she is very protective of the wetlands and the City property. The bank should be cut back slightly. It is now at 1 to 1 slope and 1 to 1 ½ slope. Pull the slope back a little and change the grade and do not disturb the wetland

Mr. Crabtree said the IWC should decide if they want to tolerate the encroachment in the wetlands or have the applicant go to the Board of Aldermen and ask if they can encroach on the Nature Center property and if they can implement the plan by Mr. Swift. Or the Board of Aldermen can say no you can't encroach on the ANC property or wetlands. Only they can say that.

Discussion continued on how to handle the encroachment on the Nature Center property. The members were also concerned with the amount of fill brought onto the property along with the erosion of the bank and the erosion under the shed sitting at the edge of the bank.

Mr. Jones said he doesn't see where the IWC can allow the encroachment of a wetland on City property.

Mr. Madar said if this was someone else's property and I was the neighbor and I dumped and encroached on your property what would you do.

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Attorney Lord said she sees his point. She discussed the points brought up by the Commission as to remedies for this situation – remove the fill, create steps in the slope and pull the slope back from above, build a retaining wall. She noted Mr. Swift's E&S plan and what he is proposing.

Mr. D'Amico said you can put the toe of slope where it was and cut back on the slope to a 2 to 1 slope. Grade it and move the shed back on the property and construct a retaining wall. He said you can do it and keep the top of the slope where it is now. There are ways to fix the problem here.

Mr. Holman said what if he does all of this and what is the probability of this happening again.

Mr. D'Amico said it is low – if it was me I wouldn't do this again. Whatever they say they will do. They will not encroach again.

Mr. Holman said if they do what you are talking about will it cause further damage to the wetland and the Nature Center property.

Mr. D'Amico said a machine can reach down from the top to work. He may not get all the material out but probably most of it and he can gradually slope it out.

Mr. Crabtree said what they have to do is provide to you a Remediation Plan on what they are proposing for remediation to the site. It is incumbent on them to submit a plan for you to see and decide on it. They have to provide an as built. Terracing, building a retaining wall, etc. is up to them to provide a plan and then they will have to follow their own plan whatever it may be.

Mr. Swift said to reach down about 38 feet horizontally on the flat will be difficult for them to do. He said picture a machine that will have to reach that far down to do the work.

Mr. D'Amico said that they can temporarily move the shed on the site because there is a lower area there and they will be able to reach from that level. They can make a staging area for the machine and then be able to reach to the bottom toe of slope. That would be the way to do it. They can take the top down slightly. There is no way they can get there from below.

Mr. Madar said Mr. Swift was there on the site inspection also. He saw the fill and the slopes. The shed is undermined and not supported in one corner and partly across the back.

Mr. Swift said that is true.

Mr. Madar said they need to change the slope or put in retaining walls. Mother Nature erodes the slope when there is no protection. They can build a retaining wall or a 3 to 1 slope that is gentler.

Mr. Swift said that Mr. D'Amico mentioned rip rap on the slope.

Mr. D'Amico said a slope steeper than 2 to 1 no. But you can rip rap that slope but it has to be cut back and so you end up with a 2 to 1 slope and not a 1 to 1 slope. You will not be taking that much material out to slope it back to 2 to 1.

Mr. Swift said what they have to do is make it stable. The encroachment is up to the owner to fix. They would like to investigate measures to be taken without bringing in machines to stabilize the area. He said can it be done?

Mr. Holman said that a machine can cause more problems.

Mr. Swift said that the owner will get down there and haul out that stuff himself. He asked that the door be left open for discussion with the City and the Nature Center on what to do about the encroachment.

Mr. D'Amico said that they would have to talk to the City of Ansonia and the Ansonia Nature Center Director and her group as to whether or not they will be agreeable to leave the material there on the Nature Center property encroaching in the wetland. He said the IWC can't make the decision on this.

Chairman Knapp asked if they have to go to the Board of Aldermen and Planning & Zoning also.

Mr. D'Amico said that they may have to go to both. P&Z can't make a decision on leaving the material there in the wetland encroaching on the Nature Center property.

Mr. D'Amico suggested that the Wetlands Commission send a letter to the Ansonia Nature Center and the Board of Aldermen asking for their input on it and see what their wishes are on this.

Mr. Swift said that they can present more alternative plans.

Mr. Crabtree said to meet with Donna Lindgren, ANC Director to see if they are in agreement with the plans they are proposing to the Wetlands Commission.

Mr. Swift said July and August are not good months to plant grass.

Attorney Lord said that what she is understanding is that she should go to the Ansonia Nature Center to discuss with them if it is OK to leave the material there on the Nature Center property where it is encroaching on the wetland.

Chairman Knapp said then go to the Board of Aldermen to see if they agree to leave the material there or if they want the material removed and the area restored to prior condition. Once you have those answers come back to us with a plan reflecting those decisions.

Attorney Lord said she will contact Ms.Lindgren.

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Mr. D'Amico said to try to cut the slope back to a 2 to 1 slope.

Chairman Knapp said after the meeting with the Nature Center they should go to the Board of Aldermen with their findings.

Mr. D'Amico said that if they receive a favorable response from Ms. Lindgren it would be better for them at the Board of Aldermen.

Attorney Lord said the Court Case is June 25<sup>th</sup> and it relates solely to the shed. She said she would need a permit for the shed. The shed is within the 100 foot buffer. The shed is 60 feet away from the wetland. She said what she needs is two permits – one for the shed and one for the wetland encroachment. She would like to resolve the shed issue and get out of court.

Mr. Crabtree said the shed is on a 4x4 sheet on the ground and can be moved. You can deal with that issue because it is not in the ground but sitting on top. The shed is movable, there is no foundation.

Mr. Madar asked how the shed got there in the first place.

Attorney Lord said it is a prefab shed already assembled.

There was discussion on moving the shed out of the buffer area.

Attorney Welch said that the case is a Zoning case but they couldn't deal with the zoning issue until the wetlands issue was resolved. The Court said there was lack of movement on this case and the Judge was adamant that something get done.

Attorney Welch said that the court might look favorably having the City of Ansonia and the applicant trying to resolve these issues and he may agree to allow it to continue and proceed.

Attorney Welch said that there is an application pending before the Commission and there is a time limit. The 65 days is up in May and you could deny the application because the plan is not complete and resolved.

There was discussion on the time frame for the application and what to do regarding the decision for this application.

Attorney Welch said that the commission can deny without prejudice and waive the application fee and the clock will then restart when the application is resubmitted.

Mr. Holman said if the Commission denies the application this would give them time to go to the Board of Aldermen and to the Nature Center and make up new plans.

Attorney Welch said that the Commission can grant them a 65 day extension that would get them to the August meeting and if they don't have the issues resolved IWC can deny them at that time.

There was discussion on granting the 65 day extension and denying the application in August if it is not complete. There were concerns with the summer vacations and the possibility of no quorum in August.

Mr. Holman suggested that Attorney Lord withdraw the application and resubmit it.

Attorney Lord said she did not want to withdraw the application she would rather deny without prejudice and come back.

Attorney Welch said the commission can deny without prejudice and Attorney Lord and himself can speak to the Judge.

Attorney Welch gave a brief background on why the application was presented to the Wetlands Commission before it went to the Board of Aldermen. He said that Mr. Crabtree suggested they go to Wetlands first so that they would have an idea of what the commission is looking for before they do any further work on the restoration and before they go and ask for something from the Board of Aldermen. If the Board of Aldermen say OK and the Wetlands Commission say NO then there is a conflict.

Mr. Holman made a motion to deny without prejudice because the application is not complete and waive the fee for resubmission. Mr. Madar seconded. All in favor, so carried.

Mr. Madar asked Attorney Welch if the City could put something in the land records preventing the homeowner from selling the house and property before the restoration work is done. He said he would not want to see a new homeowner get stuck with this restoration. The current homeowner should be responsible to fix this problem.

Attorney Welch said he would check on it.

### **3 Kiely's Lane**

Mr. D'Amico said that he is checking with Zoning on how this lot was approved as a building lot. There is a questions as to whether or not it was part of a subdivision or just an existing lot. He said there is an ongoing problem there.

### **July and August Meeting**

Mr. Madar made a motion to cancel the July meeting pending there is nothing on the agenda. Mr. Jones seconded. All in favor, so carried.

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Mr. Madar made a motion to cancel the August meeting pending there is nothing on the agenda. Mr. Holman seconded. All in favor, so carried.

The secretary will notify the Chairman should something come up or an application be presented for review and the Chairman can call a Special Meeting.

### **Adjourn**

Mr. Jones made a motion to adjourn the meeting at 8:05 p.m. Mr. Holman seconded. All in favor, so carried.

Respectfully submitted,

  
Jo-Lynn Flaherty  
Secretary



**FRED D'AMICO**  
City Engineer

**City of Ansonia**  
*Department of Public Works*  
North Division Street  
Ansonia, Connecticut 06401  
Telephone (203) 736-5945  
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10 JUN -4 AM 9:29

*Madeleine H. Bottone*

TOWN AND CITY CLERK  
ANSONIA, CONNECTICUT

June 2, 2010

**Attn: Mr. David Knapp**  
Chairman Inland Wetlands Commission

Ansonia City Hall  
North Division Street  
Ansonia, CT 06401

**Re: 17 Hodio Drive**  
**(Court Order)**  
**TKASCS**  
**Ansonia, CT**

Submitted plans include:

- A special meeting was held on May 15, 2010 at the site.
- The following items were noted at this inspection.
- The wetlands were not flagged and the boundary was not delineated in the field. (This was previously requested by the commission at the May 6<sup>th</sup> meeting.)
- It appears that the quantity of fill placed exceeds the amount allowed by Planning and Zoning without obtaining an excavation permit.
- The finished slopes are approximately 1:1. This is steeper than recommended by the Connecticut Erosion & Sediment Control manual. The slope should be regarded to obtain a maximum of 2:1.

- The fill at the left rear of the property encroaches onto the Ansonia Nature Center. This fill should be removed to eliminate any encroachment.
- The back property should be staked to determine the extent of the encroachment.

Sincerely,

A handwritten signature in cursive script, appearing to read "Fred D'Amico".

Fred D'Amico P.E., L.S.

If you have any questions please contact me.