



Chairman
Justin DeBrodtt

TOWN OF LEDYARD

Inland Wetland and Water Courses Commission Meeting Minutes

741 Colonel Ledyard Highway
Ledyard, Connecticut 06339

Regular Meeting

Tuesday, December 6, 2022

7:00 PM

Council Chambers -Hybrid Format

I. CALL TO ORDER

Chairman Debrodt called the Regular meeting of the IWWC to order at 7:00 PM. The meeting was hybrid with some attending in person and others via Zoom.

II. ROLL CALL

Staff present: Juliet Hodge, Director of Planning & Development, Len Johnson, WEO, Makenna Perry, Land Use Administrative Asst. and Attorney Carl Landolina.

Present Chair Justin DeBrodtt
Vice Chair Paul Maugle
Commissioner Dan Pealer
Commissioner Beth E. Ribe
Alternate Member Gary St. Vil

Excused Commissioner Lynmarie Thompson

III. CITIZENS COMMENTS

No public comment

IV. OLD BUSINESS

- A. Application #IWWC22-18URA of Avery Brook Homes, LLC, 1641 Rte. 12, Gales Ferry, CT 06335 for URA activities associated with the siting of new single-family homes with associated grading and utilities on 9 of 36 lots in a proposed 8-30g Re-Subdivision located on 94,96,98 and 100 Stoddards Wharf Rd, Ledyard CT.

Chairman Debrodt opened the Public hearing for Application #IWWC22-18URA of Avery Brook Homes, LLC for a now 26-lot resubdivision. Attorney Harry Heller and his Associate Andrew McCoy as well as Peter Gardner, LS of Dieter & Gardner were present for the application.

Atty. Heller reviewed Commission action to date and stated that there would be no direct impact to any wetlands or watercourses. He discussed the concerns raised since the last meeting which lead to the revisions of the proposal which he feels is a feasible and prudent alternative. He reviewed the modifications made to the project which included the reduction in the number of proposed lots from 36 to 26; relocation of septic systems that were within the 100ft buffer to a location outside of the buffer area; change in road layout and width (20ft to 22ft) - and now there will be only one main entrance from Stoddards Wharf Rd; change in status of the proposed road

from private to a proposed Town-owned road; addition of curbing and catch basins; addition of a water quality basin designed by LBM Engineering; addition of driveways for individual lots. Atty. Heller described all the drainage systems proposed. The activity occurring within the 100ft buffer area will result in 13,000sf of disturbance.

Attorney Heller introduced the following documents into the record: a revised soil scientist report by Ian Cole, LSS; portion of the CT Public health Code relating to on-site sewage disposal systems; a separating distance chart depicting distance of septic systems and upland review area; an excerpt from *Waterbury v. Washington* case; and revised plan sheets pages 3 & 6.

Atty. Heller reviewed the relevant part of the public health code regarding required separating distances between a potable water well and a septic leaching system; discussed the percolation rates for each lot; the existing hydraulic gradient; and the concerns raised about the clustering of septic systems and their cumulative effect they would have on wetlands or watercourses. He stated that only 15 of the 26 lots have a hydraulic gradient toward any wetlands on site.

He read a portion of the *Waterbury v Washington* case regarding compliance with environmental and regulatory schemes into the record and discussed at length. He reviewed the 2 Regulatory Standards that he feels applies to the project (2004 Stormwater Quality manual and CT Public health Code) and stated that he feels the application applies with both.

Heller discussed section 1.1 of the IWWC Regulations re: balancing economic development needs and protection of wetlands and watercourses. He discussed the CGS 8-30g - Affordable Appeals Act which he feels enters into the "balancing act." He discussed the Substantial Evidence Rule and permitting criteria in Section 10.2 of the IWWC Regulations as they relate to this project and the Commissions' jurisdiction. Heller discussed the flow of water across the site pre and post development and the SE&SC measures proposed and the findings of the LBM Engineering Report with respect to flooding concerns.

A revised project narrative, LBM Engineering Report, review Comments from Steve Masalin, DPW were also incorporated into the record as well as the review from CLA Engineering that was prepared for the PZC.

The Chairman welcomed public comment.

The following people spoke:

Attorney Steven Struder, Berchem & Moses, 75 Broad St. Milford, CT, spoke on behalf of Karl Acimovic from Groton Utilities and his experience with public water supplies. Struder requested that the application be continued to the next meeting and spoke against the application for the following reasons.

Struder explained that the project- specifically the density of houses with individual septic systems, will pose significant threat to the public drinking water supply. Struder requested that the applicant conduct a renovation analysis to determine the cumulative impact of the 26 Septic Systems on GU's water system. He disagreed with Heller that the 8-30G is applicable to this agency. He believed that there will be adverse impacts to this watershed. He also disagrees with Heller on his *Washington v Waterbury* conclusion that there is no regulatory standard sited. Struder defined that they're two separate statutory schemes.

Karl Acimovic, PE representing the Water Division of Groton Utilities agreed with Struder and doubted the feasibility of the project. Acimovic expressed concern about percolation rates. He identified that the water supply study completed by the applicant only addressed water

quantity, not quality. Mr. Acomovic expressed concerns about increased Sodium in the drinking water caused by the Town's practice of using pure salt on the roads in the winter. The project originally showed a private road, but will now be a Town road. He was also expressed concerns about the stormwater going into the water quality basin and eventually making its way to the Wetlands to the east of it. He mentioned the 2014 report by CER McGuire where the town of Ledyard conducted a study 2 miles west of Stoddards Wharf which found that the wells on the .25 acre and 1 acre lots became contaminated by the septic systems and a public water line had to be brought in. The proposed development has even smaller lots.

Commissioners asked questions about the hydraulic gradient and any standards that govern the sub-surface flow of water.

Commissioner St Vil generalized that if the cumulative impact is to be understood, then a special study should be conducted.

Acimovic agreed. Commissioner Pealer asked about soil quality and how the soils in this project compare with those in the development referenced in the McGuire 2014 Report.

Arlene Allard, 106 Stoddards Wharf Rd spoke against the application for the following reasons. She stated that the land was taken from her family in the 1950's by Groton Utilities. She is concerned about the pollution from the density of the subdivision. She explained that the property is wet and often has flooded areas. She stated that water from the property runs directly into the reservoir.

Mauricio Duarte, Groton Utilities commented on the regional significance of the reservoir. He explained that GU is a regional water provider to several surrounding towns. He reiterated the importance of protecting the public drinking water supply.

Attorney Struder, Berchem & Moses, 75 Broad St, Milford, CT, spoke again about the importance of the reservoir and protecting the region's drinking water.

Commissioner St Vil asked about the notice of intervention. Struder explained its importance.

Attorney Carl Landolina, Fehey & Landolina, Windsor Locks (representing the Town of Ledyard IWWC), spoke on his analysis of the legal issues within the application. He disagreed with Heller's argument about regulatory standards and explained that the referenced court case was dated. He referenced Aaron v. The Conservation Commission of the Town of Redding, 1981 supreme court case. He cited the definition of a regulated activity from the Ledyard IWWC Regulations. He spoke about the Connecticut cases related to the application which were Avalon Bay, Simsbury, and Purnell. He spoke in disagreement on Heller's position on Waterbury v. Washington case. He explained that CEPA and IWWC are two separate statutory schemes. He explained that the Waterbury v. Washington case is a CEPA case not an IWWC case. He mentioned that Heller left out a paragraph from the case he quoted. He advised the commission to continue the public hearing.

Juliet Hodge, Planning Director of Ledyard, asked Landolina about notices and continuing the public hearing.

Landolina responded that the 35 days starts on the day the public hearing was opened.

Chairman DeBrodt asked Studer and Acimovic to re-explain the renovation analysis.

Acimovic explained its importance and relevancy.

Juliet Hodge asked if the renovation analysis would fulfill all items requested by the commission in the October 4, 2022 meeting.

Acimovic answered yes.

Peter Gardner, LLS Avery Brooks, LLC, explained that the comments by Acimovic were incorrect. He disagreed with the statement that there will be adverse impact with over lapping wells. He also disagreed with the statements about water quality and probable pollution. He explained that Groton Utilities has done more damage to the watershed lands than any builder could.

James McCarthy, 95 Stoddards Wharf Rd, spoke against the application. He expressed concern about potential pollution to the aquifer. He mentioned his concern about over development of land and the potential impact on drinking water.

Attorney Harry Heller, for the Applicant, spoke again. He believed Mr. Studer misunderstood his comment on the public health code. He disagreed with Landolina about his statement on the Waterbury Vs Washington case. Heller mentioned that Groton tried to shift the blame to Ledyard for impact of Sandy Hollow Road on the resevoir. He mentioned relevancy of section 10.2. He also spoke about the parallels of CEPA and IWWC. He explained relevancy of 8-30G. He mentioned the pricing of homes and development. He spoke about minimum density. Commissioner St Vil asked about the applicability of the renovation analysis. Heller answered that the DEEP study that was referenced was not applicable.

Attorney Landolina commented about the intervention petition. He explained that the notice of intervention has not been filed, it needs to be filed on a verified basis.

Attorney Studer, spoke about CEPA.

Commissioner Ribe asked Heller what the subdivision would look like if it were not an affordable housing development.

Heller answered that the affordable housing act eliminates the zoning requirements regarding density and setbacks etc..

Ribe asked how many houses would be there then. Pete Gardner explained it comes down to lot width and size.

Ribe and staff pointed out that there would be four lots if there were no 8-30g application.

Peter Gardner spoke about the hoops he is being asked to jump through now in comparison to other projects.

Commissioner Maugle requested the applicant complete a renovation analysis to collect more data.

Commissioner Ribe expressed concern for lack of information.

Chairman DeBrodth read a statement of request from Karl Acimovic.
Heller exclaimed that what the commission is asking is not applicable for 26 lots.
Chairman DeBrodth questioned how all of the systems within the lot will function together, and that they need to be looked at cumulatively.
Heller disputed by saying that the criteria from the DEEP publication applies to individual systems only.
Chairman DeBrodth explained that the commission is looking for the cumulative effect. He also asked Acimovic how the cumulative analysis relate to the DEEP standards Heller referenced. Acimovic explained that he is looking for a cumulative impact of all the septic systems in the subdivision.
Chairman DeBrodth asked how long this analysis would take. Acimovic assumed that the analysis could be done in 30 days. Juliet Hodge asked Acimovic how the analysis is to be conducted. Acimovic explained they need to look at the direction of flow for each lot and evaluate the percolation rates and soil permeability etc. under average conditions.
Chairman DeBrodth asked if this analysis would be sufficient enough to draw a conclusion on the application.
Chairman Maugle asked about the bacterial analysis and percolation test.
Acimovic answered that it does not impact the analysis significantly.
Heller explained that what Acimovic is asking for is different than the facts they have, but he confirmed that he understood what the commission was asking for.
Peter Gardner asked whether the Commission would deny the application of the analyses requested confirm that some effluent flows into the wetlands. The Commission stated they would look at the information provided and determine the impact to wetlands.
Heller identifies that the impact must be there and be significant.
Landolina explained that the data would be taken into consideration and that's how a decision will be made.
Peter Gardner and Attorney Heller again confirmed that they understood what the commission was asking for.
Struder explained that the engineer they hire will know how to complete the analysis.

Motion made by Commissioner Pealer and seconded by Paul Maugle to continue the Public Hearing to January 3, 2023. Motion passed unanimously.

RESULT: CONTINUE
MOVER: Dan Pealer
SECONDER: Paul Maugle

- B.** Application IWWC#22-19 of Steve Masalin, DPW, Town of Ledyard, 741 Colonel Ledyard Hwy. Ledyard CT 06339 to replace the existing Lantern Hill Road Bridge No. 137-001 over Whitford Brook with a 33ft. clear span, precast concrete, 3-sided culvert.

Steve Masalin, 24 Maple Terrace, Director of Public Works and Mike Fanning, PE presented the Application. Masalin stated that the project to replace the bridge on Lantern Hill Rd. over Whitford Brook was fully reviewed and permitted several years ago. That permit expired in August of 2021, thus prompting the resubmission to IWWC. This is a shared bridge between Ledyard and Stonington. It is a narrow bridge which does not allow 2 commercial vehicles to pass. A grant was secured to repair the bridge years ago, but Stonington never provided their

share of the matching funds, and the project was abandoned at the time. The problem still exists despite some repair efforts and an imposed load limit. The DOT has prioritized this project, but a MOU with Stonington is still needed. Stonington's IWWC permit is still active. WMC Engineering have been retained to handle the project. Mike Fanning, PE presented the plans to the Commission. he stated that the plans have not changed with respect to the design except for 2 minor changes to the grade of the road to improve the hydraulics and improve the width of the opening.

He discussed the 800sf of impact to the wetlands and 10,000sf of impact to the Upland Review Area. The project area is entirely within the FEMA Flood Zone A. Storage areas and treatment basins will be provided.

The plan will be revised to reflect the correct property owners.

The Commission members asked questions. Commission members felt that since it was fully permitted by all relevant State Agencies and the IWWC before, that they did not see why it could not be approved now. asked questions. Len Johnson, WEO did not have any concerns.

A Motion was made to classify Application 22-19URA as a non-significant impact activity per Section 6.2 of the Regulations for the following reason: 1. there will be little if any reduction of the natural capacity of the wetlands and 2. the public benefit justifies the anticipated degradation of the regulated area. Motion Passed Unanimously.

MOVER: Pealer

SECONDER: Ribe

RESULT: APPROVED AND SO DECLARED

After considering all of the relevant factors, Commissioner Maugle made a Motion to Approve Application 22-19URA for the following reasons:

There will be no significant impact on the Wetlands

It increases potential flow of water to downstream water bodies

It increases the public safety in the area

Commissioner Ribe Seconded the Motion. Motion Passed unanimously.

RESULT: APPROVED AND SO DECLARED

MOVER: Paul Maugle

SECONDER: Beth E. Ribe

V. NEW BUSINESS

A. Approval of the 2023-24 IWWC Meeting Schedule

Commission members reviewed the 2023 Meeting Schedule.

Motion was made to approve the 2023 Meeting Schedule. Motion Passed unanimously.

RESULT: APPROVED AND SO DECLARED

MOVER: Dan Pealer

SECONDER: Paul Maugle

VI. REPORTS

A. Staff Report

WEO Len Johnson reviewed his submitted report.

VII. APPROVAL OF MINUTES

A. Approval of October 4, 2022 Minutes

Motion was made and seconded to approve the October 4, 2022 minutes with one minor typo correction. Motion passed unanimously.

RESULT: APPROVED AND SO DECLARED

MOVER: Dan Pealer

SECONDER: Paul Maugle

VIII. MEETING REVIEW

Chairman Debrodtt provided Commission members with the Meeting Review Checklist and discussed the issues with getting so much information last minute and trying to get it posted or to the Commission members in time to review and digest it.

IX. ADJOURNMENT

Motion was made by Commissioner Pealer and seconded by Commissioner Maugle to adjourn at 10:30PM Motion passed unanimously.

This was Approved and so declared.

RESULT: APPROVED AND SO DECLARED

MOVER: Dan Pealer

SECONDER: Paul Maugle

DISCLAIMER: Although we try to be timely and accurate these are not official records of the Town.

