

**GLASTONBURY CONSERVATION COMMISSION
(INLAND WETLANDS & WATERCOURSES AGENCY)
MEETING MINUTES OF THURSDAY, AUGUST 17, 2023**

The Glastonbury Conservation Commission (Inlands Wetlands & Watercourses Agency), along with Ms. Suzanne Simone, Environmental Planner, in attendance, held a Meeting via ZOOM video conferencing.

ROLL CALL

Commission Members-Present

Frank Kaputa, Chairman
Mark Temple, Vice-Chairman
Kim McClain, Secretary
Anna Gault Galjan
Jim Thompson

Commission Members – Excused

Brian Davis
James Parry

Chairman Kaputa called the meeting to order at 6:30 P.M. and explained the public meeting process to the applicants and members of the public.

I. INLAND WETLANDS & WATERCOURSES AGENCY

Pre-application discussion with James Dutton, Dutton Associates, for conceptual plan and watercourse crossing for septic system installation at 390 Ash Swamp Road – Jim Dutton, Dutton Associates, LLC – ZK Builders, owner

Mr. Jim Dutton of Dutton Associates, LLC presented a site plan with proposed lot line adjustment. The pre-adjustment area measures approximately 0.92 acres. The post-adjustment area measures approximately 1.6 acres. Mr. Dutton explained that the land was used as an open area for horses to graze and added that the applicant owns the parcel and the 25 acres behind it. The intermittent watercourse and existing culvert crossing were pointed out. Mr. Dutton explained that the applicant will take land from the 25-acre piece to allow for the construction of a code-compliant septic system with sanitary-force main. He suggested that a water softener might have to be put in. Mr. Dutton stated that they have done the test pits. He explained that they will pipe underneath the existing culvert during dry conditions and explained that the intermittent watercourse is usually dry during this time of the year. Mr. Dutton said that the force pipe measures about an inch-and-a-half in thickness and added that it is an easy operation that will not require sophisticated dewatering. He reiterated that work will be conducted during dry conditions.

Mr. Dutton noted that the proposal is for a single-family home and explained that the owner proposes to sell the rest of the land, which measures about 25 acres, to the State of Connecticut.

He explained that the State is in the process of getting an appraisal. Mr. Dutton said that they have not heard back from Department of Energy and Environmental Protection Natural Diversity database (DEEP NDDDB) regarding the State-listed species. Mr. Dutton said that Mr. Ian Cole, Professional Registered Soil Scientist/Wetland Scientist flagged the watercourse. He stated that a detailed report will be submitted. Mr. Dutton noted that the land proposed to be sold to the State is home to rattlesnakes and reiterated that the State is interested in moving forward with the purchase.

Mr. Dutton said that a well and gravity foundation drain will be put in. He explained that the applicant was considering a front porch similar to the house next door, which will soften the grade. Mr. Dutton noted that they are still working on the drainage plans and explained that they are investigating different options for the roof water collection. He stated that they found good soils in the area of the proposed driveway. Mr. Dutton is concerned with putting in roof drains on the northwestern portion of the house because it might create problems with water pooling. He explained that the neighbors have roof drains, which might have contributed to the dampness of their basement. Mr. Dutton stated that the groundwater is a little high due to the fill in the front yard and northeast and northwest area of the site. He said that they will be able to access the area of the culvert crossing. Mr. Dutton explained that some of the easements will go away if the land is purchased by the State. He added that the land is worth protecting and added that the area is pretty rugged. Mr. Dutton said that the proposed plans to install a piece of the pipe for the foundation drain will impact about 30-40 or so square feet of the wetlands. Mr. Dutton stated that the soil scientist did not flag the culvert as wetlands. He explained that the proposed house is pushed to the northwest to allow a driveway with a turnaround. Mr. Dutton stated that the septic system will not be installed in the upland review area. He estimated approximately 20,000 square feet of disturbance to the upland review area. Mr. Dutton stated that the well will be about 25-30 feet away from the neighbors - far enough away from the neighboring property.

Vice-Chairman Temple said that one concern is a power outage which will impact pumped septic systems and asked about the size of the holding tank. Mr. Dutton stated that they will put in a 1,000-gallon pump storage tank which allows the system to work for several days in the event of a power outage. He added that wells will not work during power outages. Mr. Temple asked how many bedrooms the proposed house will have. Mr. Dutton replied four. Mr. Temple stated that he does not have a problem with the work conducted underneath the culvert crossing and said for the record that the work has to be done in the dry season. He explained that Town staff will visit and monitor the site and added that it is a minor disturbance. Commissioner Gault Galjan asked if any vernal pools or seasonal pools were observed on-site. Mr. Dutton explained that the area is a field that was mowed and the area was used for horses to graze. He added that during wet conditions the field is mushy because the water cannot move. Mr. Dutton stated that the grass is about an inch tall and added that he is not aware of any vernal pools. He explained that the neighbor put in a second-floor addition and added that the truck got stuck during wet conditions. Mr. Dutton noted that there were no problems during the summer. He reiterated that the area is mowed.

Mr. Dutton explained that a gravity foundation drain will be installed around the house and added that he does not anticipate any problems. Chairman Kaputa remarked that high

groundwater was mentioned during the presentation. He asked Mr. Dutton to explain. Mr. Dutton explained that the groundwater issue is because of the soil conditions; in the past, vegetables were growing there and the farmer pushed soil around. Mr. Dutton explained that the water gets held up by a layer of topsoil. He added that the house next door has water in the basement and added that he does not know if the house has a foundation drain. Mr. Kaputa asked about the distance from the leaching field to the watercourse. Mr. Dutton replied that it is about 125 feet.

Mr. Dutton said that he will provide more information on the water quality and submit the soil report from Mr. Cole. He stated that he hopes to hear back from DEEP regarding the endangered species list. Mr. Dutton is not sure when they will hear back from the State and explained that it took them 5 months to acknowledge their inquiry. There was a brief discussion on the 25-acre land that is proposed for State purchase. Mr. Dutton explained that, in the event the State does not purchase the land, the site has the potential for 3 lots. He said that it will require grading and a creative design and added that the houses will sit along the ridge line. The houses would be out of the upland review area; the driveway is the only activity. Mr. Dutton remarked that they hope the State purchases the property and added that it will be expensive putting in a driveway.

II. CONSERVATION COMMISSION

Discussion requested by James Dutton, Dutton Associates, for conceptual plan for septic system installation at 240 Woodland Street – Jim Dutton, Dutton Associates, LLC – Anthony Cannariato, owner

Ms. Simone provided a brief history of the development proposal and the groundwater protection regulations. She explained that the Town Plan and Zoning Commission (TPZ) groundwater protection regulation applications are reviewed by the Health Department. Ms. Simone said that the applicant requested a discussion with the Conservation Commission for guidance on the process. She stated that the proposal was reviewed by Town departments on April 19, 2023 and added that TPZ has not received an application for the waiver yet.

Secretary McClain noted that the Commission is not required to weigh in and suggested the applicant work directly with TPZ and the Health Department. Ms. Simone provided additional background on the regulations and explained that the CC/IWWA had previously issued a permit for development within the upland review area. She said that the regulations changed and now upland area permits are issued by staff and noted that the current state of this development plan is not eligible for an administrative upland review area permit due to the lack of details of the proposed site disturbance, including clearing, grading, fill and septic system location. Ms. Simone noted that a concept plan has been submitted. Several Commission members suggested the application to go before TPZ and the Health Department.

Mr. Dutton remarked that he has never applied for a waiver to the groundwater protection regulations. In the past, Mr. Mocko would provide input on the regulations before a project starts. Mr. Dutton stated that he believes the submitted design plans for the leaching field are acceptable. He said that blasting is likely and added that the site had a wetlands permit at one

point. Mr. Dutton remarked that it is likely that TPZ will send the application back to the Conservation Commission for review. He stated that the application has to start somewhere and added that a permit for activity is needed. Mr. Dutton explained that he wanted to run the plans by everyone before proceeding. He noted that the proposed driveway construction will be in the upland review area. Mr. Dutton stated that they plan to put in a rain garden in the northwest corner of the site to pick up water from the driveway and the roof drain. He said that off-site water will be intercepted by a swale and piped to a catch basin. Mr. Dutton added that a curtain drain is proposed and added that they have monitored the groundwater. He explained that a waiver is required because the site does not have 5 feet of naturally occurring soil due to ledge. Mr. Dutton said that the lot is over 2 acres. Mr. Dutton reiterated that he does not have experience with this type of waiver and remarked that he wanted to begin the process with the Conservation Commission because a permit would still need to be issued.

Mr. Kaputa suggested the applicant go to TPZ first and explained that, if the Commission's input is required, the application can be sent back. Mr. Temple commented that the septic system did not meet the criteria and asked how far off it was from meeting the criteria. Mr. Dutton explained that they have dug 50 test pits over the years and they have about 2 feet of fill and they need to get to 5 feet. Mr. Temple remarked that it has been some time since he last read up on the aquifer protection zone regulations and explained that the intent is to protect the groundwater. He said that there is scientific rationale as to why 5 feet is required and noted that part of the rationale is to treat the nitrogen loading. Mr. Temple stated that there are private drinking water wells in the area and added that the proposal must be in compliance with the groundwater regulations. He said that engineered soils work and added that it is for another agency to approve. Mr. Dutton said that the intent of the regulations deals more with chemicals and pesticides. Mr. Temple noted that the regulations include nitrogen loading. Mr. Dutton reiterated that he has never applied for such a waiver and explained that he does not believe the intent of the regulations is to prevent the construction of a single-family home on a 2-acre lot due to less than 5 feet of naturally occurring soil. He said that a similar home was built in the Cedar Ridge area before the regulations changed. Mr. Temple asked Mr. Dutton to work with TPZ and the Health Department and noted that the Commission can review the application if TPZ specifies. Mr. Dutton agreed and thanked the Commission for their time.

Mr. Dutton brought up the issue of the unsafe wide road condition in the Goodale Hill Road/ "alligator rock" area which has resulted in speeding and car collisions. Mr. Dutton said that the Town should narrow the road to reduce speeding. There was a brief discussion on the unsafe conditions in that area.

III. SHOW CAUSE HEARING

Violation of conservation easement agreement at 150 Chatham Hill Road – Rural Residence Zone – Paul Gondek, contractor - James D. Jusko, owner

Mr. Webb signed into the Zoom meeting. Mr. Kaputa said that the show cause hearing can be closed if the Commission is in agreement about the violations. Ms. Simone added that, if the Commission feels that there is enough evidence, the order issued remains in effect and the

hearing can be closed. She noted that a draft motion to close the hearing has been included in the materials. Several Commissioners agreed that there are violations and agreed to close the show cause hearing. Ms. Gault Galjan questioned that they have not heard from Mr. Gondek to which Ms. Simone responded that is correct. Mr. Temple asked why the show cause hearing was not closed earlier. Ms. Simone explained that keeping the show cause hearing open allowed for the applicants to provide more information. She said that Mr. Gondek did not attend and the Commission did not receive an answer to the question of the sub-base for the stone wall. There was a brief discussion on the next steps including establishing precedent. Commissioners recapped that they did not receive any realistic proposals and agreed that the meetings were not progressing. Mr. Kaputa asked Mr. Webb if anyone else is present for the meeting to which Mr. Webb replied that it is just him. Mr. Kaputa asked Mr. Webb if there is anything he would like to add. Mr. Webb stated that he will pass the information along to Mr. Jusko. The Commission agreed to close the show cause hearing.

Motion by: Secretary McClain

Seconded by: Vice-Chairman Temple

MOVED, that the Conservation Commission upholds the May 18, 2023 violation order, sent certified mail to Mr. Jusko, owner of 150 Chatham Hill Rd. The show cause hearing was opened at the May 25, 2023 meeting and is now closed.

Result: Motion passes unanimously. (5-0-0)

IV. ENFORCEMENT: DISCUSSION OF RESTORATION ORDER 150 CHATHAM HILL ROAD

Mr. Kaputa said that the list of violations should include an 8th item, clear cutting of trees in 2021. He explained that the area north of the stone wall was heavily wooded and the area was cleared of trees, with stumps removed and the area regraded. Ms. Simone asked if this was in the area of the farm pond or within the conservation easement. Mr. Kaputa explained that it was in the area north of the rubble stone wall and added that it shows up on aerial photographs. He said that a swap for a conservation easement was not signed off on. Ms. Simone confirmed that it has not been recorded.

There was a discussion on how to address the conservation swap not recorded in the records. Mr. Thompson explained that one interpretation is that the discussions on the swap were negotiations and the applicant ended the negotiations. There was a brief discussion on the violations and whether there was any documentation regarding the easement swap. Ms. Simone noted that she found a draft agreement with the standard language which does not provide additional details. Mr. Webb said that Mr. Todd Clark drew up the plans and added that after that point he was no longer involved with the project. Mr. Webb offered to find the information. Ms. Simone has initiated conversation with the Town Attorney. A pertinent question is the conservation easement language which specifies that no structures are constructed and yet there is the stone wall. Ms. Simone will ask the Town Attorney if there is a way for the wall to be permitted. Mr. Kaputa explained that, if both parties are in agreement, it can be worked out and the language in the easement can change. Mr. Temple brought up the point that there was a wall

there before. He asked Mr. Kaputa if there was an aerial photo he can provide to support the claims that clear cutting of trees happened. Mr. Kaputa replied that he will look for it.

Ms. McClain explained that the action the applicant is proposing “Donate \$2,500 to the Conservation Commission to be used for a restoration project at the discretion of the commission” is in violation of a Supreme Court case. Ms. McClain cited the case and explained that developers paying a fee for mitigation can be considered a bribe and added that they cannot entertain this. Mr. Thompson said that he was going to make the same point and agreed with Ms. McClain. Mr. Kaputa found and displayed a GIS image from 2019. He pointed out the edge of the woods. Mr. Temple noted that this image can be submitted and supports the fact that a violation happened. Mr. Thompson explained that the owner may not have been provided with adequate notice of this violation at the time of the initial order and explained that the Town has to provide enough time to the owner to address the violation. He explained that adding this may weaken their position because the landowner can state that he was not given adequate time. Ms. McClain agreed with this and added that the Commission can address this later. There was a brief discussion on the initial violations and the clear cutting, as well as Mr. Mocko approaching the initial situation as a misunderstanding. There was a brief discussion on proceeding with the 7 violations and addressing the 8th violation at another time.

Mr. Kaputa said that the \$2,500 offered by the owner will not work and explained that relocating a portion of the gravel pathway that it is in the conservation easement only addresses one item, ignoring the rest of the violations. He remarked that the proposed mitigation actions are insufficient. Mr. Kaputa noted that the Commission is open to a proposal which creates a new conservation easement to the north, as discussed in previous meetings. Mr. Webb said that he will discuss the issues with Mr. Jusko. There was a discussion on requiring the owner to do a full restoration. Several Commissioners were in favor of this approach. Ms. Simone suggested for the Commission to go through the items to see where members stand. Several Commissioners reiterated their position on a full restoration. Mr. Thompson said that his position would be to communicate back to the owner informing him of their inclination for a full restoration. Mr. Thompson explained that the Commission can be open to looking at a proposal that is environmentally sound. He explained that he is open to this as long as the discussions do not drag on.

There was a discussion on bonds, liens, and other enforcement measures. Ms. Simone said that she will speak with the Town Attorney. She asked the Commission if they wanted to go into detail regarding the expectations of the full restoration order. Ms. Simone explained that, without any guidelines, the applicant might bring in heavy equipment. Mr. Thompson noted that this is a good point and added that the language must be concise. In addition, the Commission discussed whether the Town can select the engineer who would come up with the restoration plan, whether the Town can require the owner to sign off on this, as well as additional questions on bonds and liens to pay for the restoration. Ms. Simone reiterated that she will speak to the Town Attorney about the questions that were raised. Mr. Thompson suggested the Commission enter into Executive Session with no public members present to discuss the violations. Ms. Simone said that there are limitations to Executive Session and stated that she will ask the Town Attorney. Mr. Thompson asked if a member of the Commission can meet with the Town

Attorney without the meeting having to be noticed. Ms. Simone stated that one Commission member can meet with the Town Attorney. Ms. McClain nominated Mr. Thompson to meet with Ms. Simone and the Town Attorney. Mr. Thompson nominated Mr. Kaputa. Ms. Gault Galjan suggested for the Town Attorney to speak with the Commission to save time. Mr. Kaputa asked Mr. Webb to bring a realistic proposal and noted the one submitted is insufficient. There was a brief discussion on the construction project. Mr. Webb stated that he has not signed off on the construction of the outlet pipe yet. Mr. Temple asked if there were any issues due to the rain. Mr. Webb responded that there are no issues and explained that the pond is about 3 feet, with some extra capacity remaining.

V. APPROVAL OF MINUTES - Meeting of July 13, 2023

Ms. Gault Galjan directed the Commission to the bottom of page 4 of the minutes. She asked to correct the minutes to remove the words “and contaminants”. The Commission agreed to the change.

The minutes were accepted as modified. (4-0-1)

(Mr. Thompson abstained because he chose not to vote as he was not at the meeting.)

VI. COMMENTS BY CITIZENS ON NON-AGENDA ITEMS - None

VII. OTHER BUSINESS

1. Chairman’s Report - None

2. Environmental Planner’s Report

Ms. Simone updated the Commission on the EPA’s work identifying sensitive areas, mostly oil spills. The boat launch area was one of the sensitive sites identified. Ms. Simone explained that an emergency management plan is in place in conjunction with the Coast Guard. Ms. Simone briefed the Commission on the press release informing the public that parts of the Connecticut River have been dyed red. She noted that an email should have been sent out. There was a brief discussion on the research project and the goal of treating the invasive hydrilla. There was a brief discussion on erosion in the Dug Road area.

With no other business to discuss, Chairman Kaputa adjourned the meeting at 8:19 P.M.

Respectfully Submitted,

Nadya Yuskaev

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Recording Secretary