

**GLASTONBURY CONSERVATION COMMISSION  
(INLAND WETLANDS & WATERCOURSES AGENCY)  
MEETING MINUTES OF THURSDAY, JANUARY 25, 2024**

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

**ROLL CALL**

**Commission Members-Present**

Frank Kaputa, Chairman

Mark Temple, Vice-Chairman

Kim McClain

Brian Davis

Anna Gault Galjan

Jim Thompson

*Vacancy*

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**

**1. Draft Motion for Application of the Town of Glastonbury for a general inland wetlands & watercourses permit to maintain and repair existing Town infrastructure within areas regulated by the Agency**

Ms. Simone presented updated information on the Town's application for a General Permit. She read the definition of "emergency". She displayed a newly revised document with the newest changes shown in red. Ms. Simone directed the Commission to the matrix that details what will be repaired or replaced. She said that culverts larger than 36 inches will come before the Commission for review if it is covered under the General Permit or requires an individual permit. Ms. Simone noted that a description of recordkeeping and reporting was included. She explained that the East Hartford General Permit has a similar setup to what the Town is proposing. Ms. Simone said that the East Hartford Permit does not specify a reporting timeframe and is set up as an ongoing process. She explained that in the draft motion the reporting schedule was left open. Ms. Simone said that quarterly reports are more manageable for staff and added that the frequency would be similar to the agent approved permits. Mr. Pennington stated that the matrix provides clarity on what the permit covers. He noted that Mr. Braun has opted to go above and beyond the recordkeeping process by incorporating the data into the GIS system. Mr. Braun explained that the GIS reports would keep the Commission and public informed. Chairman Kaputa asked how it would work and asked if there would be a link to the GIS. Mr. Braun replied that they are still thinking it through and explained that the record could be another layer. Mr. Kaputa said that it sounds like a good idea and a lot of work. Mr. Braun remarked that, if they have to do the work of inputting the information into a spreadsheet, they might as well

attach a coordinate and have the information included on the GIS. Vice-Chairman Temple asked about the percentage of culverts sized over 36 inches. Mr. Pennington responded that there are different definitions of culverts and estimated that about a quarter of the culverts in Town are larger than 36 inches. He provided an example of box culverts which are larger than 36 inches and would require review to determine they it would be covered under the General Permit or would require an individual permit.

Commissioner Davis asked if photos will be part of the record. Commissioner Gault Galjan remarked that she thought the Commission agreed that before and after photos are necessary and would be part of the record. Mr. Pennington stated that he is fine with that requirement and added that it can be a condition of approval. Mr. Kaputa noted that a 5<sup>th</sup> condition can be added. Mr. Temple remarked that he does not think it is unreasonable and said that before and after photos should be included. The Commission further discussed the issue and agreed to add a 5<sup>th</sup> condition requiring before and after photos. Ms. Gault Galjan asked if significant expansions or functions would be covered under the General Permit. Ms. Simone replied that repairs would be covered under the upgraded best management practices, including expansion of original design function to meet the new standards. The Commission discussed the issue and the wording in the report. Ms. Simone directed the Commission to attachment A and explained that the report references repair and replacement. She noted that new designs are excluded from the matrix. Mr. Pennington went over different scenarios and explained that an individual permit would be needed when there is a change in function. The Commission agreed to proceed with the motion and several Commissioners said that they trust Town staff to keep them informed. There was a brief discussion on quarterly reports versus monthly reports. Mr. Temple remarked that he has no problem with quarterly reports and added that he is comfortable with the level of oversight.

Mr. Kaputa asked if the frequency of reports should be specified in the motion. Ms. Simone replied that it is her recommendation that the frequency is left open. Mr. Davis explained that the rationale for specifying quarterly reports is to ensure that the Commission receives at least four reports. Secretary McClain agreed with Mr. Davis. She explained that specifying the number of reports ensures that the Commission is informed and added that it will be helpful to future generations. Mr. Pennington stated that the General Permit will be valid for five years and added that they are all on the same team with the same objectives. Ms. McClain agreed. The Commission discussed the wording for the 5<sup>th</sup> condition and agreed to the following: “Photos of the before and after site conditions and repair shall be recorded and made available upon request.”

***Motion by:*** Secretary McClain

***Seconded by:*** Commissioner Davis

MOVED, that the Inland Wetlands and Watercourses Agency grants an inland wetlands and watercourses permit to the Town of Glastonbury for a general permit to conduct regulated activities associated with repair and replacement of infrastructure within wetlands, watercourses and upland review areas, and in compliance with the following stipulations:

1. Maintenance Activities With Suggested Best Management Practices (Attachment A of the permit application) shall be adhered to and expanded upon as necessary.

2. Engineering Department and Environmental Planner shall coordinate and communicate regarding activities to be conducted under this permit.
3. The Engineering Department shall maintain records and report to the Agency all activities completed under this permit, a reporting schedule to be determined by the Agency.
4. The permit is valid for 5 years from date of issuance, and shall expire on January 25, 2029.
5. Photos of the before and after site conditions and repair shall be recorded and made available upon request.

**Result:** Motion passes unanimously. (6-0-0)

**2. Application of ZK Builders, LLC for an inland wetlands and watercourses permit to allow a watercourse crossing for septic system at 390 Ash Swamp Road – Jim Dutton, Dutton Associates, LLC – Rural Residence Zone**

Mr. Jim Dutton provided a brief overview of the proposal. Mr. Dutton said that the plans include a lot line adjustment to add land from an adjacent 25-acre parcel which is needed for the septic system. They are waiting to hear back from the State of Connecticut regarding their inquiry to sell land to the State. He explained that the land is rugged with giant rock outcrops which border State forest. Mr. Dutton provided a brief history of the Ash Swamp Road area and previous property owners. He explained that years ago the area was regraded and used as an agricultural field. Mr. Dutton spoke about the soil conditions and noted that the layers consist of topsoil, fill, more topsoil and gravel soils. He stated that test pits were conducted and they found good sand and gravel soils. Mr. Dutton stated that a raised ranch-style home is proposed and explained that this type of design is better suited for the wet conditions. Mr. Dutton said that the watercourse is flowing a little now and added that during the dry season the watercourse dries up. Mr. Dutton explained that he convinced the Engineering Department that a detailed watershed study is an onerous task for the construction of one house. He added that he is in the process of working with the Engineering Department.

Mr. Dutton discussed the proposed rain garden which will capture runoff from the driveway and roof. He talked about the history of the culvert in the area and stated that it has never overtopped. Mr. Dutton said that the past property owners raised horses. Mr. Dutton reiterated that the soils are good and explained that a 248-foot long sanitary force main pipe is proposed. He spoke about his experience living in the area. Mr. Dutton stated that, if any stone is required, it would be a minimal amount. He said that there will be no direct wetlands impact. Mr. Dutton added that the final house plans might change. He explained that the photos of the watercourse were taken in the spring. Mr. Dutton stated that it took them about 3-4 hours to locate the inlet pipe. He explained that in the spring and summer it is very overgrown and difficult to walk through. Mr. Dutton reiterated that he is working with the Town Engineering Department. Mr. Dutton said that the installation of the pipe would require a foot-wide trench up to the edge of the culvert. He stated that they would push the pipe and back fill. Mr. Dutton explained that the

pipe is flexible and comes in a roll. He noted that this type of pipe is much different than the larger diameter concrete pipes. Mr. Dutton explained that the flexible pipe will be about 42 inches below ground to protect it from freezing conditions.

Mr. Dutton stated that he filed an inquiry with the Natural Diversity Data Base and has not heard back. He spoke briefly about the species in the area. Mr. Dutton stated that the proposed septic system is an easy system to install. He explained that no new regrading is proposed and added that additional fill is not needed.

Mr. Temple asked how much old fill is present. Mr. Dutton replied about a foot. Mr. Temple wanted to confirm that there is no expectation to move large amounts of soil. Mr. Dutton confirmed this. Mr. Temple asked about the disturbance. Mr. Dutton responded that disturbance would be minimal and limited to the edge of the watercourse. He stated that the Project Engineer, Mark Reynolds, prepared the calculations, selected plantings and proposed armor for added stability. Mr. Dutton reiterated that he has never seen the watercourse overtop. Mr. Temple asked if the area near the revised drainage swale would be lawn. Mr. Dutton replied that it is a field now and would essentially become a lawn area. He explained that the area was mowed on a regular basis and was fertilized naturally with horse manure; the previous owner had two horses. Mr. Davis asked Mr. Dutton to point out the existing tree line. Mr. Dutton pointed out the area, which is located on the other side of the brook. Mr. Davis asked if the lawn would be expanded into the wooded section. Mr. Dutton replied yes and explained that it was a previously cleared area and is now revegetating slowly. Mr. Dutton discussed the existing drainage easement and explained that they have no rights to make drainage improvements at 402 Ash Swamp Road. He said that the drainage easement was not shown properly and added that the culvert and the watercourse are not within the easement. Mr. Dutton remarked that he is not old enough to remember the history of the drainage easement. Mr. Dutton spoke about the history of the area detailing the farms and various construction projects through the years.

Mr. Kaputa asked about the total acreage with the lot line adjustment. Mr. Dutton replied 1.45 acres. Mr. Kaputa asked for an update on the land sale to the State. Mr. Dutton responded that State agencies move very slowly and explained that he called them recently and was promised that the inquiry would be moved up. Mr. Kaputa asked if there were other options in case the State purchase does not work out. Mr. Dutton replied yes and explained that they have a development plan for three lots. He said that extensive grading is required and that sand and gravel soils have been found. Mr. Dutton stated that there is already a crossing which needs to be improved and modified. He explained that the knoll would need to be smoothed out and some of the material would need to be removed. Mr. Dutton explained that the property owner is not really interested in further development and added that they will continue to investigate other options.

Mr. Kaputa wanted to confirm that there was no draft motion. Ms. Simone replied yes and explained that the Engineering Department would have to look at the revisions to the plan. She noted that the soonest action is at the next meeting.

### **3. Show Cause Hearing concerning Violation of the Inland Wetlands & Watercourses Regulations at 210 Commerce Street – Planned Commerce and Flood Zones – Bruce Bemer for 210 Commerce Street LLC, owner**

Attorney Ryan Barry of Barry, Barall, Taylor & Levesque, LLC stated that he is representing the property owner. Ms. Simone presented the 1987 site plan for 210 Commerce Street. She said that a portion of the property at 210 Commerce Street was encumbered into a conservation easement in 1987, as a condition of approval in the TPZ permit for fill within a flood zone. She shared that the conservation easement agreement was signed on May 5, 1987. Ms. Simone explained that her department was contacted by the Fire Marshal because of propane tanks storage and the conservation easement area. Ms. Simone stated that on November 14, 2023 Town staff (Community Development, Building Department, Fire Marshal, Survey Crew) and the US DOT Pipeline and Hazardous Material Safety Administration visited the site and observed numerous propane tanks. Photos of the site visit were included in the submitted documentation. Ms. Simone displayed a series of GIS aerial photographs of the site. The first aerial photo was dated 1998 and shows items stored near the conservation easement boundary. The second aerial phot was dated 2014 and shows an expansion of storage around the conservation easement boundary. The 2016 aerial photo is similar to the prior photo. An aerial photo from 2019 was displayed showing more materials stored and encroaching into the conservation easement. Ms. Simone said that the 2019 photo shows the expansion of asphalt. Aerial Photos from 2022 and 2023 were shown. Ms. Simone noted that they used a 2023 aerial photo for reference at the site visit. She said that in 2016, the CT DEEP issued a letter to the Fire Marshal informing them of the hazards associated with storing propane tanks near the wetlands/conservation easement - water rising and propane tanks bumping into each other could occur. Ms. Simone added that the 2016 letter demonstrates that another agency had issues with the site conditions.

Ms. Simone said that they have enough information on the record and have observed the wetlands violations at the site visit. She noted that Town staff determined that a soil scientist should delineate the boundary. Ms. Simone explained that the property owner will be required to come up with a restoration plan that will be reviewed by the Commission. Mr. Kaputa remarked that he is out of town and did not go to the site. He said that the CT DEEP letter reported corrosion of the propane tanks. Ms. Simone noted that she did not mention corrosion in her narrative and thanked the Chairman for bringing it up. Ms. McClain remarked that she appreciates the thoroughness of the work Ms. Simone put in. Mr. Temple asked if there were any tractor trailers on site, to which Ms. Simone replied yes. Ms. Simone explained that the amount of material stored in front of the vehicles suggest that the vehicles have not moved in a while and added that some of the vehicles had flat tires. She stated that they observed two trucks that were deep within the conservation easement. Ms. Simone noted that the encroachment ranges from small tanks to larger tanks. Mr. Temple asked if other agencies are involved and asked if the draft motion would require a soil scientist to look into soil contamination. Ms. Simone answered that the first step is to require the property owner to put together a plan that will be shared with the other agencies. She explained that the other agencies can review and respond to the plan. Ms. Simone explained that other agencies may have jurisdiction with requirements and reiterated that the submitted plan will be shared with other agencies.

Commissioner Thompson agrees with Ms. Simone's plan to coordinate with other agencies. There was a brief discussion on the information that was shared with Attorney Barry.

Attorney Barry said that his client, Mr. Bruce Bemer of Bemer Petroleum, has run the business for decades. Attorney Barry stated that it is the busy season and his client is a hard worker, who makes sure that fuel is delivered when needed. Attorney Barry stated that it is important for his client to assemble a team of experts and added that they are in the process of dealing with several agencies at a great financial cost to his client. Attorney Barry stated that he would like to discuss some issues, including insufficient notice regarding the conservation easement violations. Mr. Kaputa noted that the conservation easement violation is the next agenda item. Attorney Barry stated that the notice fails to state specific information that would allow them to prepare a defense. He read off the sentence "Propane tanks, vehicles, asphalt millings and stone are located within the wetland area which constitute Regulated Activities conducted with a permit in violation of the Inland Wetlands and Watercourses Regulation of the Town of Glastonbury." Attorney Barry stated that the notice is confusing and added that the notice is a violation of Mr. Bemer's constitutional due process rights. He stated that the notice does not provide an opportunity for his client to be heard and added that the notice is a deprivation of property rights. Mr. Davis asked Attorney Barry to address the issue with the wetlands notice succinctly.

Ms. Simone explained that the information was reviewed, crafted, and edited by the Town Attorney. She said that she will follow up with the Town Attorney regarding some of the comments. Attorney Barry stated that he will be succinct and noted that, with respect to the conservation easement notice, it requires a finding of a violation and added that this violates due process. He directed the Commission to the conservation easement agreement, roman numeral IV and page 2, stated that it requires a finding, and added that it requires that they are given a show cause hearing. Attorney Barry displayed a letter from the Fire Marshal dated May 3, 1990. Mr. Barry read out the letter which was addressed to Mr. Mike Morrissey of Bemer's Petroleum, 210 Commerce Street: "This office has been requested to research the requirements pertaining to the storage of propane cylinders adjacent to the wetlands area at the south side of the complex at 210 Commerce Street. Apparently there has been a question with regard to the potential for contamination into the wetlands. This office can find no apparent violation of applicable codes with the area in question being used for the storage of propane cylinders, with exception to the fact that the area must be maintained free of brush, grasses, and other combustibles. This office approves of this area being utilized for storage of propane cylinders above and beyond any other area at the complex." Attorney Barry stated that the Fire Marshal found no violation pertaining to the storage of propane cylinders. He also read out a passage that states: "It is also the opinion of this office that storage of containers and cylinders awaiting use or resale is subject to the approval of the authority having jurisdiction which in this circumstance is the Fire Marshal for the Town of Glastonbury. Furthermore, it is the understanding of this office that tanks, cylinders and containers which are being refurbished, purged, or repaired are kept in distinct and separate groups, which is also a sound practice and in accordance with appropriate regulations." Attorney Barry stated that there is no expiration date on the letter and added that the letter was not rescinded. He noted that his client operated in good faith, relying on the letter. Attorney Barry stated that it is difficult to ascertain what Mr. Bemer needs to fix and added that he learned a little more from viewing the maps. Attorney Barry stated that, from the letter they received, they

could not understand or identify what needed to be fixed. He stated that they are cooperating with the Town and asked the Commission to share photos with him to help his client and team of experts understand what it means to be in compliance. Mr. Kaputa remarked that he trusts the Town Attorney to do things correctly and added that to him it is clear cut. The Chairman stated that he thinks the Commission should proceed with the motion. He asked if there was any discussion.

Mr. Temple asked if there was a date when the certified mail was sent. Ms. Simone replied that the signed, certified mail return receipt was received by the Town. Mr. Temple asked if there was an issue of not providing notice. Attorney Barry stated that they only received one letter. Ms. Simone displayed the Inland Wetlands and Watercourses Agency Corrective Order draft motion. She read off the first condition requiring a soil scientist to delineate the wetlands boundary. Ms. Simone noted that Attorney Barry mentioned experts to help restore the area and added that it is good to hear. She explained that wetland soils can expand overtime and the boundary can expand or contract. Ms. Simone said that the first step is to locate the boundary and not to remove anything. Attorney Barry asked who would pay for this. Ms. Simone replied the property owner. Attorney Barry asked for thirty days to talk to experts and his client. Ms. Simone responded that draft motion allows 60 days to comply and that the Commission had issued an extension of time in the past when property owners request it. Ms. Simone asked the Commission if a 4<sup>th</sup> condition should be added. The Commission discussed the issue briefly and agreed that they should move on to the motion. They agreed that a letter requesting more time will be considered if the owner needs more than 60 days to comply with the order.

Attorney Barry stated that the third condition pre-supposes an encroachment and stated that he objects to this condition unless the wording “if necessary” was added. The Commission discussed the objection and agreed not to change the wording of the motion. Ms. McClain remarked that the Commission is trying to be reasonable and noted that this issue has occurred over the course of many years and suggested proceeding with the motion. There was a brief discussion on one of the photos that shows an old refrigerator stored on the site. Attorney Barry stated that he had seen the photo only 30 minutes before the meeting. Mr. Thompson asked Attorney Barry to share the letter from the Fire Marshal dated May 3, 1990 for the Commission to review. Attorney Barry asked about the sharing process. Ms. Simone replied that the letter could be emailed to her. Attorney Barry agreed. Ms. Simone asked the Commission to make a motion for the cease and desist letter to remain in effect.

**Motion by:** Vice-Chairman Temple

**Seconded by:** Commissioner Thompson

MOVED, that that the Inland Wetlands and Watercourses Agency orders the cease and desist order to remain in effect.

**Result:** Motion passes unanimously. (6-0-0)

**Motion by:** Secretary McClain

**Seconded by:** Vice-Chairman Temple

MOVED, that the Inland Wetlands and Watercourses Agency orders a restoration plan be presented to the Agency for the restoration of the wetland/conservation easement area as identified in the 1987 conservation easement agreement.

The following shall be submitted to the Community Development office by March 28, 2024:

1. a soil scientist's wetland delineation and survey showing field located wetland boundary and conservation easement boundary
2. a soil scientist's wetland assessment report of current conditions and proposed restoration plan
3. a restoration plan sequence identifying how the encroachments will be removed and a timeline to complete the restoration

**Result:** Motion passes unanimously. (6-0-0)

## **II. CONSERVATION COMMISSION**

### **1. Violation of the Conservation Easement Agreement at 210 Commerce Street – Planned Commerce and Flood Zones - Bruce Bemer for 210 Commerce Street LLC, owner**

Ms. Simone said that she would like the presentation that was made for the previous agenda item to be included in this section; the Chairman agreed. There was a brief discussion on the 1987 conservation easement and the wetland boundary. Ms. Simone had nothing further to add and asked the Commission if there were any questions for Attorney Barry.

Attorney Barry asked the Commission to review the May 3, 1990 letter. He asked the Commission to fully investigate before voting on the draft motion. Ms. Simone asked Attorney Barry if he has a map that goes along with the letter; the letter does not give a location. Mr. Barry stated that he does not have a map and does not have the books mentioned in the letter. Ms. Simone asked if the letter mentioned the conservation easement. Mr. Barry replied that the letter mentioned the wetlands and added that they are one and the same. Mr. Kaputa noted that the letter mentions the word adjacent and storing adjacent to the wetlands. He remarked that he is not sure how that applies and agreed with Mr. Thompson's position that the letter should be reviewed by the Commission. Mr. Kaputa said that the Commission should proceed with the motion. Attorney Barry asked Ms. Simone if a delivery confirmation was received for the second letter. Ms. Simone responded that one of the letters was received and signed for at the front desk. She checked the USPS tracking information and found that the wetland violation letter was currently in Portland, Oregon. Mr. Barry stated that for the record that his client did not receive the wetland letter. Ms. Simone said that the USPS website shows the conservation easement violation letter was received at the front desk at 210 Commerce Street and that she provided both letters to the two attorneys via email on Monday and that she requested they email her for a Zoom link to the meeting. Mr. Barry said that his client proceeded under good faith and he double-checked his information and stated that it was the wetland letter that was not received, not the conservation easement letter as he had stated during the show cause hearing for the wetland violation.

**Motion by:** Secretary McClain

**Seconded by:** Vice-Chairman Temple

MOVED, that the Conservation Commission orders a restoration plan be presented to the Commission for the restoration of the wetland/conservation easement area as identified in the 1987 conservation easement agreement.

The following shall be submitted to the Community Development office by March 28, 2024:

1. a soil scientist's wetland delineation and survey showing field located wetland boundary and conservation easement boundary
2. a soil scientist's wetland assessment report of current conditions and proposed restoration plan
3. a restoration plan sequence identifying how the encroachments will be removed and a timeline to complete the restoration

The Commission briefly discussed the motion. Mr. Kaputa wanted to confirm that it is identical to the previous motion. Ms. Simone replied yes. Mr. Kaputa noted that he brought up the issue to ensure that Attorney Barry understands that one copy is needed. Ms. Simone replied yes and thanked the Chairman.

**Result:** Motion passes unanimously. (6-0-0)

### **III. COMMENTS BY CITIZENS ON NON-AGENDA ITEMS - NONE**

### **IV. APPROVAL OF MINUTES - Minutes of the Regular Meeting of January 11, 2024**

**Motion by:** Chairman Kaputa

**Seconded by:** Commissioner Davis

MOVED, that the Commission approves the January 11, 2024 minutes as corrected.

Mr. Kaputa directed the Commission to the bottom of page 5. The sentence reads: "He noted that Mr. Mocko explained the situation to him and was told that an armored channel would be put in to address the water issues." The sentence should be changed to "He noted that Mr. Mocko explained the situation to him and was told that the armored channel was put in place to address the water issues." The Commission agreed to the change.

Ms. Gault Galjan directed the Commission to the bottom of page 2. The sentence reads: "Mr. Pennington replied that they have no reservations about using green infrastructure solutions and explained that they can implement them when viable." The sentence should be changed to "Mr. Pennington replied that they have no reservations about using green infrastructure solutions, but that green infrastructure solutions would most likely not be implemented in an emergency situation." The Commission agreed to the change.

**Result:** Motion passes unanimously. (6-0-0)

## V. OTHER BUSINESS

### 1. Chairman's Report - None

### 2. Environmental Planner's Report

Ms. Simone provided the Commission with an update on the Chatham Hill Road application. She said that the applicants began the dewatering and added that the forms were constructed and the concrete poured. Ms. Simone noted that the work is expected to be completed in a day or so. She stated that their engineer provided an erosion control report stating there were no negative impacts from the recent heavy rain event. Ms. Simone said that the Project Engineer, Wayne Zirolli, met with the property owner about the conservation easement restoration plan. Ms. Simone stated that the applicants plan to submit materials by March 1, 2024 to make the March 14, 2024 agenda.

The Commission discussed the protocol regarding site visits. Ms. Simone appreciated the concern for safety brought up by Ms. Gault Galjan. There was continued discussion on the Town officials and departments that take part in the site visits.

With no other business to discuss, Chairman Kaputa adjourned the meeting at 8:33 P.M.

Respectfully Submitted,

*Nadya Yuskaev*

Nadya Yuskaev  
Recording Secretary