



TOWN OF OLD SAYBROOK
**Inland Wetlands & Watercourses
Commission**

*J. Colin Heffernan, Chairman
Chuck Savage, Vice Chairman
Laura Parker Gray
Peter DeLisa (Conservation)
Mark Caldarella (Zoning)
Paula Kay (Planning)
Sandra Roberts (Economic Development)*

www.oldsaybrookct.gov

Alternate Members
*Elizabeth D. Steffen, Secretary
Janis Esty
Jay Kulowiec*

MINUTES
REGULAR MEETING
Thursday, September 21, 2023
Via Hybrid Meeting
Town Hall 1st floor conference room
302 Main Street, Old Saybrook

I. CALL TO ORDER

Chairman C. Heffernan called the meeting to order at 7:00 pm.

II. ROLL CALL

Members Present: C. Heffernan, C. Savage, L. Gray, M. Caldarella, P. Kay, S. Roberts, E. Steffen (not seated), J. Kulowiec (seated).

Members Absent: P. DeLisa, J. Esty

Staff Present: L. Wacker, Assistant Town Planner; C. Maharbiz, Recording Clerk

Audience Present: 10 in person, 8 remote

III. OLD BUSINESS

A. 23-007 “Atlas Construction” Application to Conduct a Regulated Activity

0 Middlesex Tpke, Maps 41 & 42 Lots 12 & 13-3

Construction of a commercial business storage facility including a 2,400 square foot storage building, 13,500 square foot outdoor storage area, driveway, utility services, signage, and landscaping.

Applicant: Atlas Construction Services LLC Agent: Michael J. Ott, P.E., L.S.

ACTION: Consider proposed activities, Deliberate and Act (NLT 9/22/23).

<p>MOTION to change the order of the agenda to hear 23-007 “Atlas Construction” at the end of the meeting; MADE: by C. Heffernan; SECONDED: by P. Kay; VOTING IN FAVOR: C. Heffernan, C. Savage, L. Gray, M. Caldarella, P. Kay, S. Roberts, J. Kulowiec; OPPOSED: None; ABSTAINING: None; APPROVED: 7-0-0.</p>

IV. CONTINUED PUBLIC HEARING

A. 23-006 “CGCT Old Saybrook, LLC” Application to Conduct a Regulated Activity

1654 Boston Post Road, Map 26/Lot 39

Construction of a 40,000 s.f. Whole Foods grocery store and renovation of 25,365 s.f. of additional retail space and potential medical office within inland wetlands and 100’ upland review area.

Applicant: Carpionato Group, LLC Agent: Attorney Edward M. Cassella

ACTION: Close ph by 9/21/2023 (1 of 65 day extension granted)

C. Heffernan stated that the Commission received an Intervenor application. Attorney Matthew Willis, representing the IWWC, explained the meaning of an intervention petition and stated that the impact of the intervention is that the intervenor becomes a party to the proceeding. Attorney Cassella then reviewed the Applicant’s submitted Objection to the Intervention. Attorney Willis noted the objection and stated his opinion that the Petition was valid.

Attorney Joseph Mortelliti, on behalf of Intervenor Louis Treschitta, stated that engineer Steven Trinkaus will provide evidence to the Commission. He further stated in response to the Bohler Letter to C. Heffernan from September 12, 2023 (Exhibit 50) that, as a matter of law, the IWWC does have jurisdiction to consider effects outside of the upland review area when there could be adverse environmental effects to that area. Engineer Steven Trinkaus then provided his findings regarding adverse environmental impacts to wetlands. He discussed the 2004 DEEP Stormwater Quality Manual, the stormwater basins proposed by the applicant, the proposed forebays, pollutant load analysis, the effects of nitrogen, the lack of information about the septic system, bacteria, viruses, and nitrogen dilution from the septic system, the MS4 General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems, and the erosion control plan.

J. Kulowiec asked about the 2023 proposed Stormwater Quality Manual and how a developer can use percentages for pollutant removal that have not yet been approved. Mr. Trinkaus stated that a licensed P.E. in Connecticut has an obligation to public health, safety, and welfare and should do whatever necessary to ensure that there is no adverse environmental impact. J. Kulowiec further asked whether engineer Geoffrey Jacobson’s review meets the standard of care and Mr. Trinkaus stated it did not.

C. Heffernan asked whether, in his opinion, the Applicant meets the standards provided under the 2004 Manual. Mr. Trinkaus stated that the Applicant does not meet those standards.

Intervenor Louis Treschitta presented additional evidence. Specifically, he showed a video and provided pictures taken during a site walk of the area, which included pictures of drains, a 24-inch pipe, and an 18-inch pipe near Summerwood Condominiums. He also stated that the parking spaces proposed exceed the town’s parking requirements. Mr. Mortelliti clarified that engineer Trinkaus represents both Intervenor Treschitta as well as the Chalker Beach Improvement Association.

Engineer Geoffrey Fitzgerald from Bohler Engineering responded to the information presented by Intervenor Treschitta and Engineer Steven Trinkaus. He discussed the trolley berm, the differences from the Max's Place project, E.coli, nitrogen and nutrient removal, the forebays, the septic system, and soil and erosion control.

Regarding the Applicant's calculations for the anticipated use for the retail spaces and grocery store, C. Heffernan asked if there is any method or plan to monitor what the actual water flow will be in the future. Mr. Fitzgerald responded that there is none because the numbers that the public health code requires are so conservative that the actual flow should be less than calculated. C. Heffernan also asked if there is a plan for cleanup of the sediment buildup in the detention ponds and how often will it be monitored. Mr. Fitzgerald stated that cleanup is typically done twice a year.

Town engineer Geoffrey Jacobson provided his comments to Intervenor Treschitta and engineer Steven Trinkaus. He discussed the 2004 guidelines and stated that retrofitting existing developments is harder than new developments. He stated that he does not believe a wet pond is the most appropriate for this site. He pointed out that the plans have gone through transformative improvement from what was originally proposed and what is shown now.

J. Kulowiec asked about a point included in Mr. Jacobson's June 30 comment letter stating that because of the amount of acreage that will be disturbed, the project will need to get registered under the DEEP general stormwater permit for construction activities. Mr. Jacobson confirmed that to be correct. J. Kulowiec asked if this site will need an operating general permit for commercial activities. Mr. Jacobson stated he was not sure because the criteria are very specific and that he would need to check. Mr. Kulowiec responded that the burden is on the applicant to get the proper permits from DEEP to which Mr. Jacobson agreed.

Mr. Jacobson also stated that he agreed with Mr. Trinkaus regarding his comments about having wings on the perpendicular silt fence. The applicant agreed to add wings to the silt fence as discussed.

Attorney for the Intervenor Joseph Mortelliti asked to be allowed to submit written rebuttal statements.

C. Heffernan opened the floor to public comment.

Attorney Steven Sheehan, representing Chalker Beach Improvement Association (CBIA), stated that the CBIA is concerned with how additional water may affect the problems that the association is already suffering. It is CBIA's position that the applicant is choosing to increase the surface area by having extra medical offices, rather than just a Whole Foods. The Applicant has more than enough parking spaces to meet zoning requirements but wants to add more parking. The developer is choosing additional parking over the consequences of overflow water to CBIA. Mr. Sheehan stated that the applicant needs to follow more stringent requirements in order not to cause further harm to residents or needs to forego additional profit from extra space.

Gary Albanese, a Chalker Beach property owner, stated that he was witness to the walk on the trolley line and witnessed the water going through in two areas. He stated that the trolley line does not slow water down during a 1-inch storm. He further stated that no one is addressing the tide gate or the size of the pipe.

Attorney Cassella stated that the Applicant will not consent to an additional extension and that the Intervenor should present rebuttal testimony at this time. Town Attorney Matthew Willis gave the opinion that the Commission does not have the ability to sua sponte extend the public hearing timeframes nor can it accept evidence after the public hearing closes; if the Intervenor's expert would like to make comments or suggestions, he should make them during this meeting.

Attorney Cassella discussed updated documents that were submitted as well as alternatives. He stated that the Applicant has incorporated certain alternatives proposed, including enlarging the detention basins, removing a portion of the existing building to accommodate the truck turning radius and pushing it away from the wetlands. The alternatives that have been implemented are those that are both prudent and feasible; further alternatives suggested are not prudent and feasible. The redesign of the site will be beneficial to the wetlands because there will be a new septic system and for the first time the DOT runoff is going to be discharged into a basin to achieve some water quality where there is no water quality now. The Applicant considered making the parking impervious in the rear but that cannot be done because that is where the truck loading area is located.

C. Heffernan stated that one alternative proposed is less retail space. He asked what is the analysis on where the line is as to what is economically feasible. Mr. Cassella stated that the analysis is based on the extent of work being done and its cost; the Applicant cannot afford to do the work if will not get a certain return. He also stated that there is no evidence that elimination of parking spaces will cause less impact to the wetlands.

M. Caldarella asked for confirmation that the existing size of the building is increasing, which Mr. Cassella confirmed.

Town Engineer Jacobson commented that the Town is pursuing a resolution to the tide gate and has applied for a grant to undertake the study DEEP requested. He also discussed the comments in his September 19, 2023, including his suggested alternatives. Mr. Fitzgerald then commented that increasing the impervious surface area will have a negligible impact to receiving waters.

J. Kulowiec asked about the infiltration characteristics of the soil and Mr. Fitzgerald explained that as soils become saturated, if they are not well draining, then whether the surface is pervious or impervious matters to a lesser extent.

Attorney Cassella asked for clarification on the impact from a negligible increase of one thirty-seconds of an inch of water on a wetlands system. Mr. Fitzgerald stated that it is within the natural variability of the inundation that happens in a year.

L. Gray asked if the Applicant took into account the Connecticut sea level rise predictions, which Mr. Fitzgerald stated that he did not.

Attorney Mortelliti asked that the Commission consider conditioning approval on some level of inspections as discussed during the meeting. Engineer Trinkaus then provided his rebuttal to the information provided by the Applicant. Intervenor Treschitta also provided rebuttal remarks.

MOTION to close the public hearing for application **23-006 “CGCT Old Saybrook LLC”**; **MADE:** by C. Heffernan; **SECONDED:** by P. Kay; **VOTING IN FAVOR:** C. Heffernan, C. Savage, L. Gray, M. Caldarella, P. Kay, S. Roberts, J. Kulowiec; **OPPOSED:** None; **ABSTAINING:** None; **APPROVED:** 7-0-0.

C. Heffernan stated that the Commission will deliberate and act at the next meeting.

V. NEW BUSINESS

A. 23-009 “HollyHead, LLC” Application to Conduct a Regulated Activity

1379 Boston Post Road, Map 26/Lot 14

Construction of a 504 s.f. lean to shed roof within 100’ upland review area.

Applicant/Agent: Samuel B. Jones Owner: HollyHead, LLC

ACTION: Receive, review for completeness, accept application and determine if regulated activities are significant.

Agent Samuel Jones was not present. The Commission reviewed the documents submitted.

MOTION to accept **23-009 “HollyHead, LLC” Application to Conduct a Regulated Activity** as complete, that the regulated activities are not significant, and that no Ordinance 71 fees are required; **MADE:** by C. Heffernan; **SECONDED:** by P. Kay; **VOTING IN FAVOR:** C. Heffernan, C. Savage, L. Gray, M. Caldarella, P. Kay, S. Roberts, J. Kulowiec; **OPPOSED:** None; **ABSTAINING:** None; **APPROVED:** 7-0-0.

B. Permit Extension Request

21-006 “Route 1 Sidewalks” Application to Conduct a Regulated Activity for Municipal Improvement

Construction of sidewalks along the south side of Route 1 between Old Post Road & Westbrook Town Line

Boston Post Road (Old Post Rd. to Westbrook Town Line) (Maps 17, 25, 26 & 27)

Applicant: Town of Old Saybrook Owner: State of CT Dept. of Transportation

ACTION: Requests an extension of the permit to complete regulated activities. Permit expiration 7/15/2023. Extend to 7/15/2028.

MOTION to grant an extension of IWWC permit **21-006 “Route 1 Sidewalks”** until July 15, 2028; **MADE:** by C. Heffernan; **SECONDED:** by C. Savage; **VOTING IN FAVOR:** C. Heffernan, C. Savage, L. Gray, M. Caldarella, P. Kay, S. Roberts, J. Kulowiec; **OPPOSED:** None; **ABSTAINING:** None; **APPROVED:** 7-0-0.

Discussion of “Atlas Construction” Application to Conduct a Regulated Activity:

Michael Ott presented remotely. Mr. Ott stated that the landscaping plans were changed to reflect that no landscaping improvements will be closer than 50 ft. from the wetlands. In response to a question from the Commission at the previous meeting, he estimated the number of trees to be removed. He stated that there will be approximately 30 trees removed, only 2 greater than 12 inches in diameter, with the majority 6 inches or less in diameter.

MOTION to approve **23-007 “Atlas Construction”** Application as submitted with the condition that the applicant clearly mark the limits of disturbance in the field prior to beginning construction; **MADE:** by C. Heffernan; **SECONDED:** by P. Kay; **VOTING IN FAVOR:** C. Heffernan, C. Savage, L. Gray, M. Caldarella, P. Kay, S. Roberts, J. Kulowiec; **OPPOSED:** None; **ABSTAINING:** None; **APPROVED:** 7-0-0.

VI. REGULAR BUSINESS**A. Minutes** – August 17, 2023 Regular Meeting

L. Gray corrected her statement about the trolly line on page 2 to state that it was “completed in 1910” rather than state “upgraded in 1911.” E. Steffen corrected the spelling of her name on page 2 to state Steffen rather than Steffan.

MOTION to approve the regular meeting minutes of August 17, 2023, as amended; **MADE:** by C. Heffernan; **SECONDED:** by E. Steffen; **VOTING IN FAVOR:** C. Heffernan, C. Savage, L. Gray, M. Caldarella, P. Kay, S. Roberts, J. Kulowiec; **OPPOSED:** None; **ABSTAINING:** None; **APPROVED:** 7-0-0.

B. Committee, Representative & Staff Reports – L. Wacker stated that the Land Use office received two new wetlands applications after the deadline for packets: First, at 367 Main Street, Banbury Crossing Units C41 and B42 (Map 22/Lot 251), which includes constructing a sunroom on top of existing decks at both units and some septic work. Second, at 70 Otter Cove Rd. (Map 63/Lot 36-1), for a single-family home and driveway, which involves a significant amount of grading and a wetlands crossing for the driveway. Because of the direct filling of the wetlands, Ordinance 71 fees would be reasonable to have an engineer and soil scientist review for the commission. Both applications are available on the website and will be in the packets for the October meeting.

C. Correspondence & Announcements – L. Wacker stated that the CACIWC conference will be on Saturday, November 11. It usually covers interesting and relevant wetlands topics. The location has not yet been announced. Reimbursement is offered after attending. Additionally, she stated that the Land Use office received a notice to the IWWC that WPCA will be constructing a Pilot Dispersal Test for Effluent Dispersal at the OSHS fields. The activity is not taking place within the wetlands or URA; the notice is to make the IWWC aware of the project. Project documents are available to view in the Land Use office.

VII. ADJOURNMENT

MOTION to adjourn the meeting at 9:52 p.m. to the next regular meeting on October 19, 2023, 7 p.m. Old Saybrook Town Hall, 302 Main Street, 1st Floor Conference Room and via Zoom;
MADE: by C. Heffernan; **SECONDED:** by M. Caldarella; **VOTING IN FAVOR:** C. Heffernan, C. Savage, L. Gray, M. Caldarella, P. Kay, S. Roberts, J. Kulowiec; **OPPOSED:** None;
ABSTAINING: None; **APPROVED:** 7-0-0.

Respectfully Submitted,
Carolina Maharbiz, Recording Clerk