MEMORANDUM

TO: Inland Wetlands and Watercourses Agency

FROM: Patricia Sesto, Director

Robert Clausi, Senior Wetlands Analyst

DATE: June 23, 2016

RE: IWWA#2016-002 – Post Road Iron Works Recommendation of Action

345 West Putnam Ave.

After receipt of individual comments from agency members, and at the direction of the agency, the following recommendation of action is presented with supporting rationale for your consideration.

For the reasons articulated below, the applicant is not entitled to a permit and a denial of IWWA#2016-002 is recommended.

1. The concept of remediating the site from contamination is accepted and supported. However, crucial information was not provided to allow adequate review of the proposal for impacts to wetlands and watercourses by the agency. Specifically:
   1. In defining the limits of soil remediation, the applicant relied on an actionable level of lead contamination as defined by a Residential Direct Exposure Criteria. The RDEC sets standards for human health and does not reflect criteria to safeguard ecological resources. Areas of lead contamination in RA-5 and north on 24 Hemlock Drive originating from the Post Road Iron Works site are noted in an area upslope of wetlands on 24 Hemlock and 10 Edgewood Drive properties’ pond and wetland.

Despite concerns raised by the agency and Dr. Michael Klemens, the applicant did not further the discussion on the impacts to the aquatic life in the wetlands and pond which lead contamination can impose and the impacts of bioaccumulation.

In the absence of this information and definition of how the remedial area will change on steep slopes in proximity to wetlands and watercourses to account for wetland impact thresholds, there is insufficient information for the agency to determine what the impacts to wetlands and watercourses would be.

* 1. In correspondence dated May 9, 2016 and May 27, 2016 from Agency Director Patricia Sesto, a closed circuit TV investigation of the existing drain pipe discharging to the wetlands and pond was requested. This pipe was the main conduit of contaminated runoff from the site and is proposed to again be used as the main conduit for post development stormwater. The agency and staff requested verification that contaminated sediment is no longer present in the pipe, confirm there are no breaks in the pipes which would have allowed contaminated stormwater to historically leach from the pipe, and confirm the integrity of the pipe is adequate to serve the post development stormwater needs without failing, which would subsequently pollute the down gradient wetland and pond with sediment.

A very poor quality video was submitted just prior to the last public hearing session with no professional interpretation. Accordingly, the applicant has not fulfilled the request for information to allow the agency to make a determination regarding impacts to the wetland and pond.

1. Section 10.2.f requires assessment of impacts to wetlands or watercourses outside the area for which the activity is proposed. The applicant consistently referenced the limited area of wetlands, 87 s.f., actually on-site. The applicant did not adequately evaluate the off-site wetlands, some of which are immediately adjacent to the property and under the same ownership as the subject parcel. In consideration of documents incorporated from IWWA#2011-102 ( Michael Klemens, LLC environmental report dated November 10, 2011 and Natural Resource Evaluation and Wetland/Watercourse Impact Assessment Reports, prepared by Land-Tech, dated August 22, 2011 and January 26, 2012) and testimony received from Dr. Klemens, the proposed development is likely to have adverse impacts to these off-site wetlands and watercourses. Further, unanswered requests for detailed hydrologic cycle information from applicant did not allow the agency to properly assess the seasonal changes and impacts to the off-site wetlands and watercourses.
2. As directed by sections 10.2.c of the IWWA regulations, the agency considered the short and long term impacts of the proposed activity. The loss of the residential forest on the subject property will cause long term adverse impacts to the vernal pools on 6 and Lot 4-2 Hemlock Drive through the loss of critical terrestrial habitat of the wood frog on the subject property and will foreclose opportunity for enhancement of the long-term productivity of the vernal pools.
   1. As stated in reports and testimony from Dr. Michael Klemens, wood frog egg masses and tadpoles were observed in vernal pools off-site on 6 Hemlock Drive (aka Copp pool or Wetland #3) and Lot 4-2 Hemlock Drive (aka Wetland #4). In his May 14, 2016 report he states, “Survival of the wood frogs is important because of their ability to cycle nutrients effectively in small wetland during the tadpole stage, countering eutrophication. Loss of wood frog populations results in impairment to wetlands by altering the quality of the water chemistry, and thereby ultimately the quality of the wetlands.” The applicability of this relationship to wetlands in accord with CGS 22a-41 was upheld in River Sound Development vs. Old Saybrook.
   2. Portions of the subject parcel were identified as being within the critical terrestrial habitat for wood frogs. The forest within the critical terrestrial habitat has already sustained loss from past development, bringing the extent of forest to a critical low. As explained by Dr. Klemens at the May 23, 2016 meeting, the primary goal to support continued recovery of the wood frog population in order to keep the vernal pools from becoming eutrophic has to be preservation of forest habitat within a 750 foot radius from the pools.
3. As described above, the consumption of over 90% of the subject parcel, including the portions within the critical terrestrial habitat of the off-site vernal pools will cause irreversible and irretrievable loss of wetland resources and would foreclose a future ability to protect, enhance and restore such resources. Section 10.2.d directs the agency to consider these factors. As described above, further depletion of the wood frog’s forested habitat will jeopardize the recovery of the population to the detriment of the vernal pools.
4. Also in reference to section 10.2.d, mitigation measures to ameliorate these impacts are to be considered. No mitigation to offset loss of forest cover in the critical terrestrial habitat was offered by the applicant.
5. Consideration was given to the memorandums prepared by Richard Feminella, Wastewater Division Manager and Amy Siebert, Commissioner, Department of Public Works, dated May 4, 2016 and June 10, 2016, detailing the condition of the existing sewer line the proposed development would feed into. The line, identified as the Horseneck Brook sewer is presently overcapacity and subject to surcharging and overflows adjacent to the Horseneck Brook. The agency determined upgrades to the Horseneck Brook sewer are reasonably associated with the proposed regulated activity and are made inevitable by the proposed regulated activity. Additionally, the concept of the proposed repair will likely cause excavation potentially within regulated areas.
   1. After reviewing the development proposal and relationship to the Horseneck Brook sewer, the agency found the sewer upgrades associated with the proposed regulated activity to be inevitable and therefore germane to the application. In accordance with section 10.2.f, the details of the proposed sewer upgrade should have been provided to the agency.
   2. As stated in a letter dated June 6, 2016, prepared by Ted Hart, P.E. Milone and MacBroom and referencing their conceptual repair to the sewer line, “No design plans have been created for this work yet.” The same report describes potential scenarios which may include regulated activities. In the absence of a plan, the agency was unable to determine if the repair work included regulated activities.
   3. In accordance with section 10.1.c of the regulations, the agency defers to the Department of Public Works who found the conceptual repair to the Horseneck Brook sewer unacceptable.
   4. The DPW memorandums state the Horseneck Brook sewer would sustain increased surcharging and overflows should the development proceed without sewer upgrades. Photographs taken in June 2016 and submitted to the agency by Robert Clausi, Senior Wetland Analyst demonstrate existing overflows are occurring in close proximity to Horseneck Brook.
6. In accordance with section 10.3, the agency was unable to conclude no feasible and prudent alternatives exist with less or no impact to the regulated resources and as directed in this section, the agency shall not issue a permit in the absence of this finding. As noted above, impacts to wetlands and watercourses will occur with the development as proposed and the applicant has not met its burden to establish other alternatives do not exist.
   1. The only alternative submitted by the applicant was the site plan for the “Tollgate” application, IWWA#2011-102, which was denied. This alternative is irrelevant as it included additional parcels not part of this application and those parcels remain available for development.
   2. Dr. Klemens proposed the applicant pursue an alternative which largely restricts the development to the industrial portion of the site and leave the forested area in the critical terrestrial habitat intact. A request for this alternative from the agency was formalized in a letter from Patricia Sesto, Director, dated May 24, 2016. This alternative was not addressed by the applicant.
   3. In a letter dated May 11, 2016 from Patricia Sesto, Director, the applicant was requested to provide alternatives to eliminate the issues with sewer capacity. These were not provided.
   4. As instructed in section 10.4 of the regulations, the agency suggests the applicant to pursue alternatives will notably less or no destruction of the forested area on-site. Additionally, the applicant should pursue means to enhance this forest as mitigation. A development proposal consistent with current zoning is likely to accomplish this goal. The applicant is also encouraged to work with the Department of Public Works to find a sewer repair acceptable to them.
7. Section 8.6 of the regulations states an application deemed incomplete by the agency shall be denied. The agency finds the application incomplete based on the following.
   1. The criteria for soil remediation are based on residential thresholds as opposed to ecological thresholds. The applicant did not present information to refute the applicability of the more stringent ecological threshold to protecting the down gradient wetland, nor did they submit a remediation plan to more fully address aquatic concerns.
   2. In the May 27, 2016 letter requesting additional information, the results of a closed captioned TV investigation of the existing drain pipe was requested. Poor quality video was submitted immediately prior to the final public hearing on June 13, 2016 with no professional interpretation of the results.
   3. In the May 27, 2016 letter, the applicant was asked to present information that verifies their legal right to discharge collected stormwater directly onto the neighboring property. While Attorney Studer orally stated it was his client’s right as an upgradient neighbor to drain to a lower elevation property, he did not substantiate his statement with statutory or case law reference. His assertion alone does not enable the agency to determine what qualifications the law may include, which may or may not be relevant to this development.
   4. In the May 11, 2016 letter requesting information, the applicant was asked to provide a risk assessment regarding the contaminated pond at 24 Hemlock Drive. While this parcel is not included in the proposed development, it is under the same ownership and the contamination is a result of historic pollution originating from the subject parcel. The risk assessment was not provided.
   5. A hydrologic assessment of the impact to the wetlands was requested by Mr. Benton at the May 9, 2016 public hearing session. The assessment subsequently provided by the applicant spoke to the overall annual hydrologic budget without detailing this budget on a monthly or seasonal basis.
   6. Section 7.11.e requires measures designed to mitigate the impact of the proposed activity that avoid destruction or diminution of the wetland and/or watercourse functions, degradation of water quality, and safeguard water resources to preserve and protect adjacent wetland and watercourse areas and natural buffers. No such mitigation was submitted.
   7. The applicant was asked to submit an alternative which would be consistent with the sewer capacity of the Horseneck Brook sewer. No alternatives were submitted.
   8. In the May 27, 2016 letter to the applicant, the applicant was requested to submit their plans for the sewer line repair. This plan was not submitted.
   9. Authorization from the Town of Greenwich Department of Public Works for a sewer repair to sustain the proposed development was requested and not received.
   10. Section 7.10.e requires sketches or plans of alternatives considered but rejected by the applicant. In a letter to the applicant dated May 27, 2016 the applicant was specifically asked to submit an alternative which would preserve the on-site forested area. This alternative was not provided, nor were other alternatives aside from the “Tollgate” site plan discussed above.