

Staff Report
Application #IWW/M 10958-20
109 Morningside Drive South
Prepared: March 2, 2020, revised March 30, 2020
Public Hearing: April 15, 2020

Application Request: The applicant is requesting to amend wetland map # G07. The Current Town GIS map shows the wetland boundary to include only the pond in the southernmost portion of the property.

Soil Scientist for Applicant: Otto Theall, Soil & Wetland Science, LLC
Thomas Pietras, Pietras Environmental Group, LLC
Soil Scientist for Town of Westport: Jay Fain, Jay Fain & Associates, LLC

Plan reviewed:
“Existing Conditions Plot Plan Prepared for Peaceful Valley Farm, 109 Morningside Drive South, Westport, Connecticut”, Scale: 1”=50’, dated October 28, 2019 last revised to March 26, 2020, prepared by Leonard Surveyors, LLC

Wetlands Description:

Soil Investigation Report- prepared by Otto Theall, dated October 25, 2019
Wetland Delineation Report – prepared by Thomas Pietras, Dated May 28, 2014; found the **wetland** soils described below occurring on the property;
A subsequent report was prepared by Mr. Pietras on April 24, 2019.
Wetland Confirmation Report – prepared by Otto Theall, dated March 31, 2020

Aquents (1) – Consists of soils found on 0 to 3 percent slopes in disturbed areas that generally have less than two (2) feet of fill over naturally occurring poorly or very poorly drained soils, or are located where the naturally occurring wetland soils are no longer identifiable, or the original soil materials have been excavated to the ground water table within twenty (20) inches of the soil surface, have an aquatic moisture regime and can be expected to support hydrophytic vegetation.

Leicester fine sandy loam (4) --This nearly level poorly drained soil is in drainageways and depressions. Slopes range from 0 to 5 percent. Typically, this soil has a surface layer of black fine sandy loam seven (7) inches thick. The subsoil is twenty-two (22) inches thick. This Leicester soil has a seasonal high water table at a depth of about 6 inches from fall until late spring. A few areas are used for hay and pasture, and a few scattered areas are used for community development.

The seasonal high water table limits this soil for community development; sites for on-site septic systems commonly need extensive filling and require special design and installation. Where suitable outlets are available, footing drains help prevent wet basements. Using siltation basins and quickly establishing plant cover help to control erosion and sedimentation during construction. Even when drained, the soil remains wet

for several days after heavy rains, restricting the use of farming equipment. Wetness make this soil poorly suited for trees. The shallow rooting depth to the seasonal high water table causes the uprooting of many trees during windy periods Leicester soils

Non-wetland soils were identified as:

Ninigret and Tisbury Soils (21) - The Ninigret series consists of very deep, moderately well drained soils that are eolian deposits over sandy and gravelly glacial outwash. The Tisbury series consists of very deep, moderately well drained loamy soils formed in silty eolian deposits overlying outwash. The Ninigret and Tisbury soils are nearly level to strongly sloping soils on glaciofluvial landforms, typically in slight depressions and broad drainage ways.

Woodbridge Fine Sandy Loam (45) - This component occurs on upland drumlin and hill landforms. The parent material consists of lodgement till derived from schist, granite, and gneiss. The depth to a restrictive feature is 20 to 40 inches to densic material. The drainage class is moderately well drained.

The Woodbridge series of soils is nationally recognized as prime farmland soil by the U.S.D.A.

Sutton fine sandy loam (50) - This soil unit consists of gently sloping, moderately well drained soil found in slight depressions and on the sides of hills and ridges. This Sutton soil has seasonal high water table at a depth of about 20 inches from late fall until mid-spring. Many areas of this soil type are used for community development, with limitations caused by the high water table.

Paxton and Montauk Fine Sandy Loams (84) - These soil components occur on upland hill and drumlin landforms. The parent material consists of lodgement till derived from granite, gneiss, and schist. The drainage class is well drained.

Udorthents, smoothed (308) - This component occurs on leveled land and fill landforms.

Property Description and Facts Relative to the Map Amendment Application:

- The property is 535,890 sq. ft. or 12.302 acres in size.
- It is located within the New Creek watershed and is not located within the FEMA Flood Zone
- Property does not exist within the Aquifer Protection Overlay Zone.
- Property does not exist within the Coastal Areas Management Zone.
- The Waterway Protection Line Ordinance boundary will be 15' from the edge of wetlands.

Background: The Conservation Department issued a Notice of Violation & Citation as well as a Cease and Correct Order to the owner on August 15, 2007. These enforcement actions were issued based on fill brought to the property and placed on/near wetlands identified by Soil Report from April 30, 2007. The chronology of events associated with this enforcement is listed at the end of this staff report. The Cease and Correct order was **withdrawn on January 10, 2008.**

Discussion:

The Applicant submitted individual soils report and a letter from two different soil scientists that have investigated the soils on site over the last several years. They are listed herein:

- **“Wetland Confirmation Peaceful Valley Farm 109 Morningside Drive South Westport, CT”**, Dated **March 12, 2020**, Prepared by Soil & Wetland Science, LLC, Otto Theall, Professional Soil Scientist, Wetland Scientist
- **“Wetland Confirmation Peaceful Valley Farm 109 Morningside Drive South Westport, CT”**, Dated **November 22, 2019**, Prepared by Soil & Wetland Science, LLC, Otto Theall, Professional Soil Scientist, Wetland Scientist
- **“Soil Investigation Report 109 Morningside Drive South Westport, Connecticut”**, Dated **October 25, 2019**, Prepared by Soil & Wetland Science, LLC, Otto Theall, Professional Soil Scientist, Wetland Scientist
- **Letter: “Kowalsky Farm, 109 Morningside Drive South, Westport, CT”**, Prepared by: Thomas W. Pietras Professional Wetland and Soil Scientist, Written to: Barr Associates LLC., Dated **April 24, 2019**,
- **“Wetland Delineation Report 109 Morningside Drive South, Westport, CT”**, Dated **May 28, 2014**, Prepared by Pietras Environmental Group, LLC, Thomas W. Pietras Professional Wetland and Soil Scientist

In addition, the soils were also investigated at the behest of the Conservation Department in 2007 to determine if wetlands were present on the property. Those findings are found in a report entitled:

- **“Wetland/Watercourse and Soil 109 Morningside Drive South, Westport, CT”**, dated **April 30, 2007**, Prepared by Soil Science and Environmental Services, Inc, Thomas W. Pietras Professional Wetland and Soil Scientist.

An additional letter was submitted after a **joint meeting was held on-site with the Applicant’s and Town’s soil scientist:**

- **“Wetland Confirmation Peaceful Valley Farm 109 Morningside Drive South Westport, CT”**, Dated **March 31, 2020**, Prepared by Soil & Wetland Science, LLC, Otto Theall, Professional Soil Scientist, Wetland Scientist

In the October 25, 2019 soil report, Mr. Theall states his onsite inspections occur over multiple dates of July, August, and October 2019 with multiple soil samples and test pits taken throughout the property. The test hole information is included with the description. The wetland soils onsite are identified as the soils surrounding the pond. He states that his “investigation of the property **essentially agrees with the results** obtained by Thomas Pietras, Professional Wetland Scientist and Soil Scientist, in May of 2014 and April of 2019.”

The April 24, 2019 letter from Mr. Pietras, summarizes the April 18, 2019 site inspection, where he states: “Since 2014 there has been minimal to no change to the property. The wetlands I previously identified along the northern fringe of the pond **are still present**

with no change.” He also concludes with, “**The remainder of the 12.3 +/- acre property consists of upland soils.**”

The report by Thomas Pietras from **May 28, 2014** describes the site inspections done on May 20 and 22, 2014. This report details the wetland soils located around the pond and identifies them as **Aquents (Aq)**. The report also includes a description of the non-wetland soils found throughout the rest of the property, as listed above. Mr. Pietras also references his previous inspections and his soils report from **April 30, 2007**, when he was retained by the Town to investigate the presence of wetlands on the site. Here he discusses the identification of a wetland soil type known as **Leicester (Lc)** located “to the north of the barn within the grassed hayfield.” Herein, he describes the history of agricultural use on the property and installation of drains within these areas to improve drainage on the property. Additionally, he states “**...there was no indication that a wetland was formerly present to the north of the barn.**” The report continues to discuss the test pits conducted to the north of the barn that reviews the soil composition below the disturbed soils and fill materials. The underlying soils is identified as poorly drained Leicester (Lc) but concludes that the presence of greater than twenty inches of fill ovetop would classify this area as having Udorthents, which is not regulated as a wetland soil. Finally, the report states that the 2007 report was limited in that the investigation was done with the use of a hand tools. **The underlying soils were misinterpreted as Leicester soils and not as fill materials (below the topsoil layer) in 2007.**

The **April 30, 2007** report prepared by Mr. Pietras identifies the wetlands associated with the pond and the Leicester soils located to the north of the barn. The report identifies the long history of agricultural use as well as the classification of the Leicester soils identified above.

For this present application, the Town of Westport retained the services of Soil and Wetland Scientist, Jay Fain, Jay Fain & Associates, LLC to review the proposed wetland boundary. Specifically he was asked to review the boundary established by both Mr. Theall and Mr. Pietras. Mr. Fain’s initial inspection questioned whether additional wetlands are present in the north central and eastern portions of the property. Mr. Fain submitted an email on **March 5, 2020** indicating another area of suspected wetland that should be further investigated. An on-site investigation with Mr. Fain and Mr. Theall occurred on March 12, 2020 in the presence of Conservation Department Staff. An area was identified on the property and marked in the field (Wetland Flag markers: #201-#216) as Leicester fine sandy loam (4), as agreed by both parties. This compromises an additional area of 4,505 sq. ft. of wetlands on the property. The plot plan, last revised to March 26, 2020, reflects this area.

Staff recommends the Town’s wetland boundary map be amended to reflect the combination of boundaries as flagged and concurred to by both soils scientist as shown on the revised plot plan. Staff recommends this wetland boundary amendment application be approved by the Commission

**109 Morningside Drive South
Enforcement Actions August 15, 2007**

Chronology:

February 7, 2007 – Town of Westport Tax Card showing the property is designated as Open Space.

April 30, 2007 – The Conservation Department retained the services of a soil scientist to investigate where wetlands were located on the property. A soils report and sketch map of wetlands was submitted by Tom Pietras, soil scientist.

June 7, 2007 – Letter to Jay Kowalsky from A. Mozian regarding the results of the soil scientist's investigation at 109 Morningside Drive South, which notes the presence of two wetland areas. A copy of Mr. Pietras' report was attached. She indicated that the town wetland maps would have to be amended prior to issuance of any future permits since the investigation differed from the Town's official wetland map.

August 6, 2007 – Letter to Laurence Bradley, Planning & Zoning Director, from Frank Bruno, 32 Clapboard Hill Road, regarding a complaint about fill being brought onto the property. Forwarded to the Conservation Dept. August 10, 2007

August 13, 2007 – An inspection was conducted and photo taken of site showing where the fill was spread.

August 15, 2007 – Cease & Desist Order issued by Susan Reynolds, Zoning Enforcement Officer for filling without approval, increasing coverage without obtaining approvals and not providing required drainage.

August 15, 2007 – Notice of Violation and Citation of \$2,000 issued by C. Kelly, Conservation Compliance Officer for fill brought onto the property and placed within the wetland limits.

August 21, 2007 – Letter to Susan Reynolds dated August 17, 2007 with cc to A. Mozian, C. Kelly and Lee Starr, Conservation Commission Chairman acknowledging receipt of the notice of violation. A. Mozian noted she "spoke with J. Kowalsky. On Saturday, 8/18/07, he removed the top soil but plans on having Henry Moeller, soil scientist, also investigate as to whether he thinks a wetland is present. I told Jay to send us a different letter asking for a Citation Hearing date just to preserve his right. AMM"

September 4, 2007 – Revised Notice of Violation and Citation issued. Notice revised based on inspection confirming that soil had been removed and stockpiled next to the wetland.

September 11, 2007 – Complaint received. Fill on property. owners are seeding area. They only removed a small portion of the fill. Inspection notes from C. Kelly dated 9/11/07 state "Area appears to be "fine graded" with soil and seeded. No silt fence is up. Some water is ponding from the rain today. Photos taken. Attempted to determine the amount of fill that remains on the wetland area. Dug 4" down in area but saw no difference in soils. Will have L.K. review tomorrow. Spoke with neighbor Kim Kean who verified that several trucks removed soil earlier

in the week.” Inspection note from L. Krynicki dated 9/12/07 indicates “3 test holes in wetland area augered. Depth of existing fill over wetland: 6” – 12”.”

September 11, 2007 – E-mail from local neighbor regarding the installation of drainage ditches and spreading of fill on the Kowalsky property.

September 11, 2007 – Reply to “Local Neighbor” from A. Mozian describing wetland location and enforcement action taken to date

September 18, 2007 – E-mail from Frank Bruno incorporating photos on September 13, 2007 of ponding on the Kowalsky property where drainage work had been done the previous year.

September 18, 2007 – Note to File from A. Mozian regarding the site inspection on 9/12/07.

September 21, 2007 – Revised Notice of Violation and Citation noting the September 12, 2007 site inspection and the remaining fill within the wetland. Fine of \$2,000 remains. Notice also indicates a hearing to dispute the fine can be requested within 10 days of the Notice. Also, a deadline of October 1, 2007 was given to remove the remaining fill.

October 1, 2007 – Print of Assessor’s field card. Notes indicate the land code was changed from open space to farmland on October 1, 2007

October 5, 2007 – Letter to Ann Gill, Citation Officer, from A. Mozian certifying the Conservation Department has not received written notice by the property owner of 109 Morningside Drive South requesting a citation hearing.

October 5, 2007 – Notice of Assessment to Jay Kowalsky from A. Gill

October 9, 2007 – Conformance Order: Cease and Correct Order issued to Jay Kowalsky by C. Kelly and recorded on the land records.

October 9, 2007 – Notice of Show Cause Hearing to be held on October 17, 2007. Clocked with the Town Clerk.

October 17, 2007 – Show of Cause Hearing – Opened, evidence heard, and continued for legal opinion.

November 16, 2007 – Show of Cause Hearing – Evidence heard, requested flagging by owner, hearing continued.

December 28, 2007 – Letter from Town Attorney to Owner’s Attorney, proposes resolution for owner to present the Commission

January 10, 2008 – Show of Cause Hearing – Approved agreement set forth in Town Attorney Letter of December 28, 2007, motion to withdraw Cease and Correct Order approved.

January 10, 2008 – Removal of Violation and Conformance Order is discharged, recorded with the Town Clerk.