

**Inland Wetlands and Watercourses Commission
Town of Wallingford**

**REGULAR MEETING
Wednesday, November 4, 2009**

The Regular Meeting of the Wallingford Inland Wetlands and Watercourses Commission was held on Wednesday, November 4, 2009, in Council Chambers, the Municipal Building, Wallingford, Connecticut.

Seated Commissioners were Jim Vitali – Chairman, Ellen Deutsch – Vice Chairperson, David Parent - alternate, James Kovach – alternate and Environmental Planner Erin O’Hare.

Chairman Vitali called the meeting to order at 7:06 p.m.

CONSIDERATION OF MINUTES:

October 7, 2009 - Regular Meeting

Commissioner Deutsch made a motion to approve the October 7, 2009 – Regular Meeting Minutes. The motion was seconded by Commissioner Parent and passed.

October 14, 2009 – Special Meeting

Commissioner Deutsch made a motion to approve the October 14, 2009 – Special Meeting Minutes. The motion was seconded by Commissioner Parent and passed.

OLD BUSINESS:

#A02 – 6.12 / 63 GRIEB ROAD – Fieldstone Farm – Baker Residential LLC
– (release of bond)

Ms. O’Hare stated that the bond is not ready for release.

#A09 – 8.2 / 150 NORTH PLAINS INDUSTRIAL ROAD – John Carella –
Winstanley Construction Management, LLC – (industrial parking area)

Presenting the application was Robert Roles, Purcell Associates, and John Carella, Winstanley Construction Management, LLC.

Erin O'Hare, Environmental Planner, referred to the Environmental Planner's Report dated October 30, 2009. She stated that there were a number of revisions that were made to the plan. The most

recent plan is dated October 26, 2009. Ms. O'Hare indicated that all of her concerns have been met. She stated that the proposed swale is to be grassed and since the growing season is just about over the Applicant has requested that they wait until spring to construct the swale. The Applicant would like for the Commission to consider moving ahead with the improvement of the rear yard, which includes paving.

Mr. Roles indicated that the basic plan is to begin work on the rough grading on the rear parking area. Before winter they would have to do something about replacing the gravel that is in that area. If the weather is favorable they would pave the back area and install erosion control measures. They will clean out the swale of any debris but there will be no excavation. Mr. Roles stated that they would like to perform all of the swale grading and turf establishment in the spring.

Chairman Vitali pointed out the proposed swale is not a high flowing swale. He felt that there are different types of materials that could be used to line the swale but he certainly does not have any issues with the Applicant coming back in the spring. Mr. Roles stated that there is loose garbage, plastic buckets, and that type of material in the swale now that has to be taken out by hand so it doesn't disturb the existing vegetation. He indicated that there are small saplings and established grasses and weeds in the swale that would stabilize it against erosion in the winter. Mr. Roles assured the Commission that he would be back in the spring to take care of the swale issue.

MS. DEUTSCH:

MOTION THAT APPLICATION #09-8.2 / 150 NORTH PLAINS INDUSTRIAL ROAD BE DEEMED NOT A SIGNIFICANT ACTIVITY.

MR. PARENT:

SECOND

VOTE:

UNANIMOUS

MS. DEUTSCH:

MOTION THAT APPLICATION #09-8.2 / 150 NORTH PLAINS INDUSTRIAL ROAD BE APPROVED WITH THE FOLLOWING CONDITIONS OF APPROVAL:

- 1. SHOULD THE SWALE NOT BE CONSTRUCTED BEFORE WINTER, A ROW OF HAY BALE PROTECTION (STAKED) IS TO BE INSTALLED (AND IS TO BE MAINTAINED UNTIL SPRING GROWING SEASON) ALONG THE PARKING LOT LIMIT/EDGE OF EXISTING DRAINAGEWAY. THE SWALE SHALL BE INSTALLED BY JUNE 15, 2010.**
- 2. ANY DEBRIS OR TRASH WITHIN DRAINAGEWAY IS TO BE REMOVED AS SOON AS POSSIBLE AND CONSTANT MAINTENANCE IS TO BE CONTINUED UNTIL ACTIVITY WORK IN SPRING.**
- 3. STANDARD PERMIT CONDITIONS.**

MR. PARENT:

SECOND

VOTE:

UNANIMOUS

#A09 – 10.1 / 103 NORTH TURNPIKE ROAD – Yalesville Properties, LLC – (commercial development)

Presenting the application was George Cotter, OCC Group and Soil Scientist Tom Pietras.

Mr. Cotter gave some history on this piece of property and gave an overview of the plan. This parcel contains a sewer line. The wetland line as flagged by Tom Pietras was pointed out on the plan. There is a Stream Channel Encroachment Line that runs through the middle of the property that will require a permit from DEP. The 100-year floodway line and the floodplain limit line were shown on the plan. The parcel has 5.2 acres of wetlands and the remaining areas of the property are fill over upland soils. The flood elevation through this parcel is at elevation 46. The building and parking lot would be above that elevation. There is no filling proposed on the parcel within any wetland. The only activity in the wetlands would be the construction of a sewer lateral, which would be a temporary disturbance of approximately 75 feet. There are areas where they would be working within the 50-foot upland review area. There is an area of pavement that is proposed to be within the 50-foot setback in the rear of the building. There would be approximately 1,900 sq.ft. of wetland disturbance. Activity within the upland review area would be 9,700 sq.ft. Filling within the upland review area would be a total of 330 cubic yards and total fill for the parcel is approximately 3,250 cubic yards. Filling within the floodplain area would be approximately 831 cubic yards. There is an intermittent brook that flows through this property.

There is a swale proposed that will go around the property. The plan allows for sheet flow to the swale. There will be a small rain garden with plantings and there will be an oil/water separator for water quality. All of the runoff will flow through that oil/water separator for water quality purposes. The rear of the property will flow into the flat area and will be absorbed into the sand and gravel soils below the surface.

The upland area of this parcel had been cleared in 2003-2004. It came before this Commission as a violation. There was no remediation that was required by the Commission at that time. The parcel was left as a meadow. Back in 2003-2004 there was a map prepared by BL Companies that was submitted showing a wetland delineation line. In 2002 Mr. Pietras submitted a sketch of his review of the soils in this area. In December 2008 there were deep test pits dug on the site, which were shown and located on the plans. The test pits were dug to determine the underlying soils on this site.

Soil Scientist Tom Pietras indicated that the site has been disturbed a number of times over the years. He dug the deep test pits to do a more detailed interpretation of the soils on the site. On December 15, 2008, they dug 12 test holes between 4 ft. and 6 ft. deep. There is a very steep embankment to the Quinnipiac River. The adjoining floodplain on the site is approximately 8 feet higher than the river. Mr. Pietras described the soils on the site. He stated that typically he encountered 2-3 feet of fill over buried soil materials. He distributed and reviewed a handout regarding identification of alluvial and floodplain wetland soils. Mr. Pietras provided that literature to give some background information on alluvial and floodplain soils because this site contains these soils and is also within

the 100-year floodplain. There have been different mapped wetland boundaries on this site. Mr. Pietras stated that his map that was done in 2002 shows more wetland than the current map. He stated that the first time he visit the site the center portion of the site was thickly overgrown. Mr. Cotter stated that the original fill on this site was placed there prior to 1963. Chairman Vitali pointed out that the plan submitted from 2002 is very different from the current plan. Mr. Pietras stated that back in 2002 that was his interpretation of the site. At that time he only used hand tools and in December 2008 he used large equipment to do deep test pits. Mr. Cotter indicated that the map that was submitted in 2002 was just a hand sketch. It was not a map that actually physically determined where that wetland boundary was on that property. It was not intended to be an accurate delineation of identify where exactly that line was. The certified map is what the Commission uses to identify the wetland line. The site consists of upland soils that have been filled upon and that is what the deep test pits showed.

Chairman Vitali feels that the Commission may be looking for a third party review on the wetland mapping of this site.

Mr. Cotter stated that he did provide for the Commission an overlay of the 2004 map prepared by BL Companies. The wetlands are not significantly different from the current map provided by Mr. Cotter. He is proposing a 13,000 sq.ft. commercial plaza with 36,000 sq.ft. of paved area within an upland area. The wetland soils are floodplain soils. The storm water will be controlled and cleaned. In Mr. Cotter's view, there is really no impact to the wetlands on this site.

Mr. Cotter explained that there will be a swale that goes around the property to allow for biofiltration into the rain garden with the oil/water separator being the outlet and a storm drain pipe back to the edge of the wetlands.

Ms. O'Hare stated that the different soil maps would take some time for her to go through and compare. She pointed out that there are some numbers on the plans that don't correlate to any legend on the plans. Mr. Cotter verified these were "typos". She pointed out that there were no soil type boundaries on the plan. Mr. Pietras explained that the soil types are marked on the map to give a general soil type that can be found in that area. Ms. O'Hare felt after speaking to the project engineer and looking over literature from Tom Pietras there was an inference that floodplain soils weren't wetland soils. Mr. Pietras stated that floodplain soils are wetlands by definition according to the Inland Wetlands and Watercourses Act. Mr. Cotter made it clear that Mr. Pietras has not identified the soils below the area that they would be working as wetland soils. He has identified them as upland soils.

Mr. Pietras reviewed the soils conditions that he encountered on the site. On the east end of the site there is the Quinnipiac River with a steep 8-foot embankment. The site has 2-3 feet or deeper of alluvial soil materials. There are channels that the River has carved through the site. There is evidence of flood debris such as branches, logs, and miscellaneous material. He feels that this area gets flooded on a regular basis during the major storm events. Further to the west is the sewer line and shallow alluvial deposits overlying sands. There are areas of old fill including concrete materials. Wetlands on the north side of the site include the 2-3 foot embankments along that

watercourse. On the south end of the site there is a swale area that runs parallel to a major sewer line. At the eastern end of the property there is an excavated area that traps water with no outlet.

Chairman Vitali feels that there are issues that need to be settled as far as the boundary lines on the various maps before this application can move forward. Ms. O'Hare has to review the maps and there are a few Commissioners that were absent at the meeting that Chairman Vitali would like to get input from. Chairman Vitali would feel much more comfortable with a third opinion on which wetland boundary lines are correct. It was decided that Ms. O'Hare would review the maps and make a comparison and generate a report for the Commissioners to review for the next meeting. Mr. Cotter asked if there would be a site investigation. Chairman Vitali decided to choose two dates because there were three members that were not present and he did not know their schedules. After some discussion the Commission decided to schedule a Special Meeting site investigation on either Tuesday, November 17th at 3 p.m. or Thursday, November 19th at 7:30 a.m. Mr. Cotter and Mr. Pietras would arrange to have a backhoe on the site.

NEW BUSINESS:

#A08 – 7.4 / 35 NORTH ELM STREET – Choate Rosemary Hall – (permit commencement date extension)

Ms. O'Hare reported that the extension request is for a one-year extension from August 13, 2009 to August 13, 2010.

MS. DEUTSCH: **MOTION TO GRANT A ONE YEAR PERMIT EXTENSION DATE FOR APPLICATION #A08-7.4 / 35 NORTH ELM STREET.**

MR. PARENT: **SECOND**

VOTE: **UNANIMOUS**

RECEIPT OF NEW APPLICATIONS:

Ms. O'Hare explained the new set up for the agenda wherein items are broken out into "New Business" and "Receipt of New Applications". Items under New Business are simple requests that would not have to wait the fourteen days to see if someone wants a public hearing on it. The items under Receipt of New Applications could potentially have a public hearing. This breakdown has been done in order to comply with Freedom of Information (FOI). The Chairman would receive the items under Receipt of New Applications and he can determine if there would be a presentation or not, however only those items where the word "presentation" is on the Agenda can be presented for FOI reasons.

**#A09 – 11.1 / 38 HANOVER STREET – Quinnipiac River – David Hax –
(maintenance) – presentation**

Chairman Vitali asked for a brief presentation of the application.

Presenting the application was David Hax.

Ms. O'Hare stated that she was notified that there was work going on at 38 Hanover Street. She visited the site and issued a Notice of Violation on October 20, 2009. Mr. Hax has since come into the Wetlands office and made an application. Ms. O'Hare pointed out that there are certain maintenance activities that can be conducted on a residential property that are permitted as of right. It is up to the Commission to decide what is maintaining a pond or dredging a pond where it might require a wetland permit. One of the reasons Mr. Hax was dredging his pond was because it was choked with aquatic weeds called Parrotfeather. This weed is very aggressive and is highly invasive. Ms. O'Hare contacted the Connecticut Agriculture Experiment Station who will be working with Mr. Hax to contain this plant.

The rear part of this property is within the Stream Channel Encroachment Line. The DEP has visited the site. The issue is that there was work done in and along the banks of the Quinnipiac River. Mr. Hax was also cleaning out debris from the stream. He cleans out the pond about once every 25 years. Mr. Hax used equipment to make a canoe ramp into the Quinnipiac River. Ms. O'Hare stated that there is a sewer main that is exposed because Hanover Street Brook has washed it out. The Sewer Division was notified but will not be taking any action at this time.

Commissioner Deutsch stated that she visited the site with Commissioner Kern. She gave a report on what she saw on the site visit. Commissioner Deutsch feels that the work that Mr. Hax did along the river would be considered maintenance. In the area of a canoe ramp, Commissioner Deutsch did not see any debris out in the middle of the river. She feels that the least intrusive area was chosen for the ramp. Commissioner Deutsch did not feel that anything was put into the stream but she did ask Mr. Hax to document the area for future records. She asked that Mr. Hax wait to hear from the DEP before doing anything that would cause the spread of those invasive weeds. Commissioner Deutsch feels that if the cleaning out of the pond is only happening once every 25 years it would be considered maintenance. She didn't see the need for erosion control measures on the site. She stated that she and Commissioner Kern did see some ruts where the equipment got stuck on the site. They directed Mr. Hax to fill them in. Commissioner Deutsch stated that after visiting the site both she and Commissioner Kern considered the work done on the site as maintenance.

Chairman Vitali pointed out that since an application was filed, the Commission couldn't act on it before next month. If the permit were granted at that time, the Commission would motion to make the violation null and void.

Ms. O'Hare reminded the public that it is important to ask the staff at Town Hall for a request for determination if a proposed activity would require a permit. Maintenance work has to be reviewed to determine if it is non-regulated or if it needs a permit.

Chairman Vitali received the application.

#A09 – 11.2 / 890 NORTH COLONY ROAD– (aka 863 North Main Street)
– (modification to permit condition) – presentation

Ms. O'Hare stated that this permit was issued in August. There were several conditions of approval. The Applicant failed to comply with Condition #3, which discussed the planting plan for the basin. The plantings were never installed in the large basin. The Applicant realized it was getting to be too late in the season to plant so they asked for permission to brush hog the area. Chairman Vitali granted the Applicant permission to cut the area. 890 North Colony Road, LLC has applied for a modification to that term of the permit. The modification would allow planting installation to occur spring 2010. Ms. O'Hare visited the site and feels that esthetically it looks much better and it is functioning fine. She feels this modification should be granted.

MS. DEUTSCH:

MOTION THAT APPLICATION #A09-11.2 / 890 NORTH COLONY ROAD - MODIFICATION TO PERMIT CONDITION BE GRANTED AS REQUESTED.

MR. PARENT:

SECOND

VOTE:

UNANIMOUS

Others

There were no other applications filed.

VIOLATIONS:

1. **216 Northford Road – Lynne Cooke Andrews – (cease & desist)**

Present was Attorney Janet Brooks and Mr. Andrews.

Attorney Brooks stated that there is a report on the irrigation plan they are waiting on from the NRCS. She was told it would be prepared in time for the December meeting of the IWWC. Attorney Brooks stated that the Commission would not be required to make a decision at this meeting as stated by Ms. O'Hare in the Environmental Planner's Report dated October 30, 2009. She explained that the Applicant could grant an extension of time to the Commission. Mr. Andrews does consent to the issue being held over so he can provide the report from the NRCS to the Commissioners at the next meeting.

Chairman Vitali doesn't feel that the regulations are as clear-cut as Attorney Brooks stated. Attorney Brooks read from General Statute Section 8-7(d)(a), where she believes that it is clear that this request for a farming determination falls within the 65-day limit.

Ms. O'Hare spoke to the Town Attorney who had cited Section 4.5 of the IWWC regulations when she opined that a decision would have to be made at this meeting. The Town Attorney was made aware this afternoon that Attorney Brooks was citing Section 8-7(d). The Town Attorney stated it would be fine if Attorney Brooks wants to go with an extension but she must waive the right to claim that Section 4.5 holds. Attorney Brooks stated that would be fine with her as she just wants to have the opportunity to include for the record the report coming in from NRCS

There was discussion about if the Commission has to ask the Applicant to grant an extension or if the Applicant just has the right to ask for an extension. Chairman Vitali asked Attorney Brooks if her client would grant the Commission an extension. Attorney Brooks indicated that Mr. Andrews would grant the Commission an extension but he is prepared to make a presentation at this meeting. Chairman Vitali asked that the Applicant come back next month to make his presentation when all of the Commissioners are present to make his presentation.

Chairman Vitali stated that the Cease & Desist would stay in effect.

MS. DEUTSCH:

MOTION THAT THE COMMISSION REQUESTS AN EXTENSION FROM THE APPLICANT TO THE NEXT MEETING GIVEN THAT THE APPLICANT WAIVES THE RIGHT TO CLAIM THAT THE COMMISSION DID NOT MEET THE DEADLINE UNDER SECTION 4.5. THE EXTENSION IS FOR ALL OF THE MATTERS THAT THE COMMISSION WAS INTENDING TO ACT ON TONIGHT.

MR. PARENT:

SECOND

VOTE:

UNANIMOUS

Ms. O'Hare noted that the Regional Water Authority would be speaking to the State Department of Public Health about the issue at the IWWC's request. Chairman Vitali approved the request.

Commissioner Parent thanked the Applicant for appearing and bringing people to testify. He stated that the Commission wants to be sure that he has every opportunity to get a fair hearing.

Chairman Vitali stated the Cease & Desist remains in effect.

- 2. 475 Williams Road – Patricia Schlosser, owner, Art and Rita Pires, tenant – (cease & desist)**

Ms. O'Hare stated that Mr. Pires did come and got assistance in filling out an application. He just has to get the signature of the owner.

- 3. 252 Main Street, Yalesville – L&J Partnership, LLC – (violation remediation)**

Present was Lisa Morgillo.

Ms. O'Hare referred to the Environmental Planner's Report dated October 30, 2009. She stated that the site was looking good and the owners had done a great job. There was a large rainstorm on October 28th that did some damage to the work that had been done. Ms. O'Hare passed around photographs of the storm damage. The water that was hitting the parking lot was drifting down to the south and winding around the silt fence creating a gully. The owners have since installed some sod and repaired the plantings hoping to get the Cease & Desist order lifted.

Commissioner Deutsch has visited the site and feels that the owners have done a marvelous job. The owner stated that if there were plants that don't survive the winter she would replace them in the spring. Commissioner Deutsch feels that the Cease & Desist should be lifted at this time. Commissioner Parent and Chairman Vitali agree that the C&D should be lifted.

MS. DEUTSCH:

**MOTION THAT THE CEASE & DESIST BE LIFTED
FROM 252 MAIN STREET, YALESVILLE.**

MR. PARENT:

SECOND

VOTE:

UNANIMOUS

REPORTS & COMMUNICATIONS:

1. **#A04-8.4 / 1425 Tuttle Avenue – W&W Properties (aka Gaylord Farms Road – Cheshire Crossing – Pulte Homes) – (permit condition)**

Attorney Patrick Hughes was present representing the Permittee.

Chairman Vitali stated that a condition of the permit was that the wording had to be on the deeds of the property that were being dealt with.

Ms. O'Hare stated that the language that is going to be proposed as an amendment to the Declaration has gotten straightened out. There was a question about if the actual condition of approval #4 should be modified. Ms. O'Hare felt that the language of the condition should be modified. Attorney Molloy didn't feel that the language of that condition needed to be modified. Ms. O'Hare referred to a memorandum from Town Attorney Janis Small dated October 29, 2009, which indicated a modification was not needed.

2. **567 Center Street – (maintenance)**

Chairman Vitali asked if this bank needed the riprap for stabilization. Ms. O'Hare doesn't feel that the bank needed the riprap. She indicated that the owner wants to continue to add to what is already there going along the rest of the bank on his property. She noted the memorandum from Linda Bush, Town Planner, which indicated the fill in the floodway is not a zoning violation. Chairman

Vitali feels that the bank looks stable. Commissioner Deutsch isn't sure why the material was placed there. Ms. O'Hare indicated that the owner's position is that he is maintaining his property. Ms. O'Hare reported that she did not see any evidence of washout.

After further discussion the Commission directed Ms. O'Hare to notify the owner that the existing material can stay in place but no more material can be brought in. The Commission doesn't feel that additional riprap is necessary because no washout was seen and there has been no evidence that the bank needs further stabilization.

3. 38 Hanover Street / Quinnipiac River – David Hax – (violation)

Discussed earlier.

4. IWWC #A07-11.1 / MacKenzie Reservoir dredging project

Ms. O'Hare stated that 75% of the material is out of the East Reservoir. They are reworking the material behind the island. The last phase is bringing it down to final grade. The permanent haul road is not in yet and they have been using a temporary haul road. They expect to be done by January, weather permitting. The material is no longer being sold to local farmers.

The North Reservoir is completed except for a small area that has to be seeded. In the West Reservoir they have installed a plunge pool and a handicapped fishermen's area. There has been a request made to deepen the handicapped fishermen's fishing zone. This change amounts to approximately 3,500 cubic yards of fill.

After further discussion, it was determined that the Commission had no concerns with this modification. Chairman Vitali stated that he would give it administrative approval.

5. City of Meriden Sawmill Interceptor Well – Notice of Permit Application to DEP

Ms. O'Hare stated that the City of Meriden is seeking to renew an existing permit to discharge pumped ground water from the Meriden Sawmill Interceptor Well into the Quinnipiac River. She stated that the Commission could send comments before the DEP acts on it. The Commission had no issues with this item but it asked Ms. O'Hare to inquire about the function of this interceptor well.

6. DEP Notice of Public Hearing Re: Establishment of flows standards and other regulatory requirements for all river and stream in the state

Ms. O'Hare reported that there are hearings on November 9th and December 21st regarding the Notice.

7. DEP letter dated October 23, re: new river flood level data available via internet

Ms. O'Hare stated that this went out to all Commissioners because there are three different websites that you can go to for river forecasts, hydrographics, and that type of information.

8. Riparian buffer literature

Commissioner Deutsch stated that Ms. O'Hare was asked to get information on the riparian buffer in August. Ms. O'Hare got a list of literature in September but did not distribute it to the Commissioners as she thought the 50-foot buffer was decided.

9. 2010 Meeting Schedule

After some discussion it was determined that the Regular August meeting would be scheduled for the first Wednesday in August. The Chairman approved the Schedule.

10. Other

Ms. O'Hare stated that a Notice of Intent came in today from the DEP regarding the petition from Tilcon.

REGULATIONS REVISION:

1. Discussion of next series of draft proposed revisions

Chairman Vitali noted that Ms. O'Hare sent out a letter to DEP regarding revising the regulations as required. Since there were some significant changes made, the Chairman had requested that the DEP review the proposed changes to the definition of Regulated Activity specifically.

Ms. O'Hare stated that the public hearing date has been set for December 2, 2009 at 7:00 p.m. She is working on a list of attorneys and engineers to send out the proposed regulation changes to. After discussing possible agenda items for December, it was decided that the public hearing for the regulation changes would be held in January.

MS. DEUTSCH:

**MOTION TO CHANGE THE PUBLIC HEARING DATE
FOR THE PROPOSED REGULATIONS FROM
DECEMBER 2, 2009 TO JANUARY 6, 2010.**

MR. PARENT:

SECOND

VOTE:

UNANIMOUS

Ms. O'Hare stated that revisions for Section 4 was handed out tonight for review. She briefly reviewed the proposed regulation changes. Ms. O'Hare had updated the section to comply with the DEP Model Regulations of 2006. Chairman Vitali indicated, due to absence of some Commissioners, discussion in Section 4 would be at next meeting.

ADJOURNMENT:

Commissioner Deutsch made a motion to adjourn. The motion was seconded by Commissioner Parent and passed. The meeting adjourned at 9:55 p.m.

Sonja Vining
Recording Secretary
Town of Wallingford
Inland Wetlands and Watercourses Commission
November 4, 2009