

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

**REGULAR MEETING  
Wednesday, December 2, 2009**

The Regular Meeting of the Wallingford Inland Wetlands and Watercourses Commission was held on Wednesday, December 2, 2009, in Council Chambers, the Municipal Building, Wallingford, Connecticut.

Seated Commissioners were Jim Vitali – Chairman, Ellen Deutsch – Vice Chairperson, Nick Kern, David Parent - alternate, Jim Heilman – alternate, James Kovach – alternate, Jeff Kohan – alternate (arrived during meeting) and Environmental Planner Erin O’Hare.

Chairman Vitali called the meeting to order at 7:03 p.m.

**CONSIDERATION OF MINUTES:**

November 4, 2009- Regular Meeting

Commissioner Deutsch made a motion to approve the November 4, 2009 – Regular Meeting Minutes. The motion was seconded by Commissioner Heilman and passed. Commissioner Kern abstained from voting.

November 17, 2009– Special Meeting

Commissioner Deutsch made a motion to approve the November 17, 2009 – Special Meeting Minutes. The motion was seconded by Commissioner Kern and passed. Commissioners Kovach and Parent abstained from voting.

**OLD BUSINESS:**

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

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

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

Presenting the application were Mr. George Cotter, OCC Group, Soil Scientist Tom Pietras, Soil Science and Environmental Services, Inc., Ms. Deutsch Pawlak, Soil Scientist, Connecticut Ecosystems, LLC, was present representing the IWWC.

Mr. Cotter indicated that he has had significant contact with staff in the last two weeks. He has received and reviewed the report from Mr. Pawlak, Connecticut Ecosystems, LLC, from the site walk on November 17<sup>th</sup>. Mr. Cotter handed out a packet of materials to the Commission that included a site grading plan.

Mr. Pawlak stated that this afternoon he reviewed some correspondence from the Town Engineer and Mr. Cotter but has not had the opportunity to put together a formal report. He is prepared to comment on several items when the Commission feels it is appropriate.

It was decided that Mr. Cotter would make his presentation first and then the Commission would hear comments from Mr. Pawlak.

Mr. Cotter stated that he had a meeting with the Engineering Department and Ms. O'Hare, Environmental Planner, on Monday and from that meeting he has generated a revision to the maintenance agreement and a response to the report received yesterday from Erin O'Hare. The site grading plan that was handed out tonight is an upgrade from discussions between Engineering, Ms. O'Hare, and Mr. Pawlak. Mr. Cotter pointed out the revisions using the site plan.

Mr. Cotter stated that the site walk was to review the wetland limit lines around the property. Some additional test holes were dug which the two soil scientists reviewed. The southeast corner of the property is an upland area that had been filled around 1961. This is a very complex site that had up to 3 feet of fill put on it and there was difficulty in determining the wetland lines. After the Commissioners left the site, the two soil scientists walked the entire perimeter of the site.

This site is a commercial property and is located in the Quinnipiac River floodplain. The State of Connecticut Stream Channel Encroachment Line runs through the property. There is 36,000 sq.ft. of proposed impervious surface for parking and access. There will be two swales created. The stormwater will sheetflow into those swales, which will flow to a water quality basin located in the southeast corner. That basin will discharge upland of the wetlands into a riprap plunge pool. Mr. Cotter stated that the sewer connection would go right into the trunk line itself. In doing that, they will review the location of any significant trees and show them on the map. Mr. Cotter indicated that they would adjust that sewer line to avoid those trees.

The area of proposed flood storage has been limited to an area along the tree line along the brook. The bottom of that flood storage area will be widened and the bottom would be brought up  $\frac{3}{4}$  foot to elevation 43. Mr. Cotter indicated that they are looking for grading rights from the adjoining property owner. The utilities were pointed out on the plans. A planting plan was previously submitted to the Commission. There will be pines along the eastern and southern property lines as a

buffer. Approximately 15-20 feet around the project there will be a grassed area. The balance of the site is to grow back as a natural area. There will be eight red maples in the vicinity of the wetland basin along with 150 bushes. The Applicant will work with Ms. O'Hare to develop a planting list that meets her approval. The entire flood storage area will be allowed to grow back natural. The water quality basin would be planted with a restoration mix.

Mr. Cotter explained that the water quality basin is located in the southeast corner of the property off the end of the pavement area. The tree line will be modified in that area. There will be an oil/water separator on the outlet end of it and there will be a pipe down to a riprap plunge pool at wetland flag 23. On the east and west sides of the building there will be a grass swale that is within the upland review area. There is a portion of the parking lot that is also located within that review area. The discharge will go into the water quality basin or into the flood storage area as a discharge. The discharge from the paved areas will filter through the grass swales that will send the flow to the water quality basin or to the north to the flood storage area. A portion of the storm water management storage area is in the upland review area. The bottom of the basin would be three feet higher than the brook at the discharge point. If the Applicant can obtain grading rights to that brook the water would flow in and flow out of that basin. If they are unable to acquire those rights the basin has been designed to hold a maximum of 5 inches of water for a period of time. The water that will fill this basin will either come back from the Quinnipiac River, back up the brook course and flow in or it will come from the overland area, the wetland area. The high point of the property is up to one foot above the flood elevation.

Commissioner Heilman asked how flood storage volume was determined. Mr. Cotter explained that in this area the 100-year flood elevation is elevation 46. They reviewed the areas of development where they have filled the grade up to 46. Commissioner Heilman indicated that the volume is a surface area matched to an elevation. Mr. Cotter stated that he came up with a physical volume of what it would take from elevation 46 back to original ground. Most all of where is being developed is above the 45 elevation. Commissioner Heilman asked for a definition of a "significant" tree. Mr. Cotter stated that he believes it would be a mature, healthy, well-established tree. Commissioner Heilman expressed some concern for planting certain kinds of pines where they would be getting their feet wet. Mr. Cotter indicated that could be reviewed and modified if necessary.

Commissioner Kern asked what the elevation is from the top of the brook to the top of the River. Mr. Cotter stated that the River itself is down at elevation 34-36 at the river bottom.

Chairman Vitali asked how much storage was gained by excavating? Mr. Cotter indicated that there was about 840 cubic yards of water storage gained.

Erin O'Hare, Environmental Planner, pointed out that on the plans it states that the "rain garden" would be mowed. Mr. Cotter indicated that the change and clarification would be made on the plans that the area is actually a water quality basin and it would be mowed once a year. Erin O'Hare, Environmental Planner, doesn't feel that the area should be called a water quality basin because it doesn't attenuate pollutants. Mr. Cotter stated that what is on the outlet of that basin is what the Water Division requires for enhancement of storm water in areas where they have concerns. He calls it a water quality basin because it is a minor detention basin and it is the point where the

water is being collected. They are providing the properly sized oil/water separator as required by the Water Division. Ms. O'Hare suggested that Mr. Cotter take another look at #4 of the report from the Engineering Department regarding the water quality basin. Mr. Cotter indicated that he has spoken to Engineering about this issue and the plan has been revised to install a hooded inlet in the basin.

Ms. O'Hare asked Mr. Pietras to discuss why the soils with mottles found at a depth of eight inches was not considered a wetland soil. Mr. Pietras indicated that Test Pit 11 was located between the brook and the floodplain area just to the south of the flood storage area. What was found in that area was a loam surface with gravel sands underneath. Water was generally found within two feet. The soils in that area formed over sands and gravels. It is a Rippowam/Ellington soil. The proposed flood storage area will be a wetland. There would not need to be any modification made to the soils map.

Mr. Pawlak, Connecticut Ecosystems, LLC, pointed out that he does not support or oppose this project. He stated for the record that he was formerly employed by Soil Science and Environmental Services, Inc. from 1989 – 1995 and, in that capacity, worked with Mr. Pietras. Mr. Pawlak has reviewed some of the memos that he received today. Based on his observation of the test pits and further review of the wetland that Mr. Pietras had delineated, it is his opinion that the most recent delineation, the ones shown on the site plan, is substantially correct. He found no reason to suggest that any of the flags be shifted. The site is very difficult with all of the historic fill that is out there. It is very difficult to interpret those soils.

Mr. Pawlak commented on a letter from OCC Design Consortium, LLC dated November 23, 2009. He asked what the origin of the runoff flowing into the swales was. He would like to know what percentage of the paved parking areas is directed to the north into the flood storage area and what percentage of that runoff is directed to the south and to the water quality basin. If there is runoff coming from paved surfaces he asked what kind of treatment it would receive to the north in the flood storage area. He feels that all of the runoff from the paved areas should be directed into the water quality basin. Mr. Pawlak asked where the roof runoff would be directed. He would like to see the roof runoff infiltrated.

Mr. Cotter stated that the parking area to the rear of the building would sheet flow from the building to the swale. The W&S Divisions requested that the roof runoff not be infiltrated as this is an Aquifer Protection area. The reason that actual structures and pipes have not been provided on this site is because it is so flat. There is no real place for discharge. The rear of the building has about 3,500 sq.ft. that would flow to the north and about the same along the east side that would go to the south collection area where the oil/water separator is. Each of those is about 10% of the paved surface area. 90% of the paved area runoff is going to the small detention basin that has the oil/water separator through grass swales and 10% is going to the north. The area to the north will be collected and left to infiltrate back into the ground in that area.

Chairman Vitali asked if the driveway is draining to the quality control basin. Mr. Cotter indicated that not 100% was. He used the map to show the flow division of the paved area. Mr. Cotter indicated that the roof structure is undecided at this time. If it is a pitched roof the flow will go half and half, front to back. If it were a flat roof there would be options. The problem they have is that

they are limited in the elevation differences on the property. They didn't want to go too low with the basin and they have filled 2 ½ - 3 feet on the property. A formal storm water structure system would really not work on this site.

Mr. Pawlak asked why isn't all of the runoff from the paved areas being directed into the water quality basin. He asked if infiltration from roof runoff is not desirable, why would they promote infiltration of that 10% of the paved area runoff to the north. If infiltration of the roof runoff were not desirable why would they infiltrate runoff from the parking area?

Mr. Cotter indicated that the parking area would not be curbed. There has been a swale created around the perimeter of the parking lot and there have also been trees planted to create a buffer to the wetland. Since the site is so flat, moving water any distance would be difficult. There is some time for the water to flow through those grass swales and that would provide for sunlight to filter. Chairman Vitali agrees that would be good but what about the other 10%. Mr. Cotter stated that the Commission could make that a condition of approval and he would make the change. He stated that to put pipes underground, he doesn't have a place to discharge.

Mr. Pawlak commented on an OCC letter dated November 23, 2009. As he understands, there would be a one-foot to 1 ½ foot cut into the bank. He recommended that this activity and the activity within the wetlands be shown in greater detail on the site plans. He feels the site plan should be modified to show how that cut bank is going to be stabilized. The wetlands disturbance should be quantified and it should be put onto the wetlands application. Mr. Cotter stated the latter was done the last time the plans were revised. He explained that there would be no disturbance of the bank slope itself. It is being brought down and they are cutting a foot off. They would stabilize it with erosion blankets and seeding. They are not doing anything down the bank itself.

Mr. Pawlak moved on to OCC letter, dated December 1, 2009. He wanted to be sure that the shrub and tree line adjacent to the wetland be preserved. Mr. Cotter indicated that it would be. Mr. Pawlak discussed Test Pit #11, which sits in the flood storage compensation area. He pointed out that the elevation at Test Pit #11 is important because Mr. Pietras observed common distinct red mottles within 8 inches of the soil surface and groundwater seepage 18 inches deep in the hole. He stated that the modeling indicates the depth of the seasonal high water table in the area. In the area of Test Pit #11, the ground water comes up seasonally as high at 8 inches from the surface. If that area is going to be taken down to elevation 43, there would be times of the year that there could be up to ten inches of standing water in that basin. His understanding of flood storage compensation calculations is that you assume that the basin is dry at the time that the flooding occurs. The seasonal high ground water table indicates that would not be the case. Mr. Pawlak has based this on the observation of mottles that indicates a seasonal high water table.

Mr. Pietras stated that Test Pits #10 and #11 were dug in that area and both had gravelly sands. That sandy material will tend to drain water and the brook elevation is approximately 3-4 foot lower than the top of the bank. The brook does draw down the water through that area.

Mr. Pawlak explained that the calculation done for the storage of a basin is based on the fact that it is dry at the time of a flood event. If you dig down into a seasonal high ground water table that

assumption of a dry basin may not be correct and there may not be enough storage. Mr. Cotter stated that this application would be seeking a Stream Channel Encroachment Line permit from DEP. In many places, if you fill within the floodplain, you are required to create some type of storage. Wallingford does not require that but Mr. Cotter felt it would be good practice to create the detention area. He feels that if ground water is hit it would be some type of a perched water table condition in the area of Test Pit #11. Throughout the balance of the property they did not find water elevations that high. It is the belief of Mr. Cotter that they would not see any more than a minute amount of standing water during high ground water conditions; it is a slow seepage. Mr. Cotter stated that there is no more room on the site to increase capacity.

Mr. Pawlak pointed out that there are no calculations to support the statement that the water quality basin would remove pollutants. He stated that a detention basin and an oil/water separator do not equal a water quality basin. The finer soil particles would not be removed because they won't settle out. An oil/water separator will take care of floatables but will not do anything for dissolved pollutants. He stated that there are at least two key design elements in designing a water quality basin and that is the volume of storage and the residence time of the runoff in that basin. Most recommend that the basin be sized to retain the water quality volume, which is the runoff from a 1-inch storm event. When a basin is designed you need to demonstrate what the storage is in that basin and it should be sized to capture, retain, and treat the water quality volume. The second element is the residence time. If the water is just moving through the basin quickly, it will have little opportunity to drop sediment or contact the vegetation in the basin. He did not see anything in the plans that supports the contention that basin would function as a water quality basin. Mr. Pawlak requested that the engineer provide those calculations.

Mr. Pawlak spoke about the basin bottom. He recommended that it contain one foot of topsoil to support the seed mix that will be planted.

Mr. Cotter pointed out that this site discharges to the Quinnipiac River. They have provided for 500 feet of flow through a vegetated medium before it gets into the detention area that is being discussed. The water still flows through some vegetated area from the discharge point before it reaches the River. The oil/water separator in this case is sized as per requested by the Water Division. Mr. Cotter stated that the flow does have detention time on the front end and the back end of this basin. He does not want to disturb any more of this property and he believes from the runoff of this parcel through the system that was developed is going to be as clean as it could be. At this time, the water quality basin is within 8-10 feet from the upland review area. That is a collection basin and they are looking to use the grass swales and the oil/water separator as the medium for enhancing water quality back to the River.

Mr. Pawlak stated that he fully supports the use of the grass swales but indicated that they work best with dense tall vegetation. He suggested that the swales be seeded with the New England Erosion Control Restoration Mix and that they be mowed no more than once a month. He recommends that the swales be final graded with a foot of topsoil. The plans should provide for how that seed is going to be held in place until it germinates.

Ms. O'Hare, Environmental Planner, suggested the possibility that the swale be widened. On the plan submitted tonight, she pointed out a typo on the elevation on the plans that Mr. Cotter indicated he would look into. She also pointed out that, on the Detailed Drawing of the basin, the swale that is on the east side must be added.

Mr. Cotter stated that the area around the building outside the collection basin is to be maintained as a grassed area. There is less than 20 feet and they are not looking to create a natural area right up to the parking area. They are looking for some lawn around the building. Mr. Cotter feels that commercial areas generally have a problem with debris. The mowing and picking up the area is a good process, in his opinion. The grass swales will function as intended. He believes that minimal landscaping around the parking area should be kept so it can be cleaned and maintained. Chairman Vitali doesn't feel that mowing once a month as opposed to once a week should be a big issue on this site. Chairman Vitali requested that Mr. Cotter look a bit closer at those swales. Mr. Pawlak feels that if the swales are going to be the primary pollutant removal, then mowing them once a week would be going against the design of them. He referred to the DEP Manual which states that swales such as these should be maintained with a grass height of 4-6 inches. Mr. Cotter would suggest that the swales be mowed and maintained to a 3-inch height. Commissioner Heilman stated that you really have to look at the kind of grass that is being planted to see what it needs as far as maintenance. Mr. Pietras agreed that the optimum mowing height should be 2-4 inches. The swale has a very gradual pitch so you don't want a thick growth that would inhibit water drainage.

Chairman Vitali directed Mr. Cotter to consider and incorporate some of the issues discussed this evening and work with Ms. O'Hare on a revised plan to be ready before the next meeting.

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

Erin O'Hare, Environmental Planner, referred to her Environmental Planner's Report, dated November 24, 2009. She circulated to the Commissioners photos she took when the Applicant had called her to the site to review the erosion controls and work done. The Applicant has installed erosion controls, a silt fence around the pond, mulch along the side of the stream, some logs were taken out of the edge of the stream and he put some hay bales in a drainage ditch as requested by Ms. O'Hare. Staff from the Connecticut Agricultural Experiment Station were out at the site. They are very concerned with the invasive plant species, Parrotfeather, on this site and have given the Applicant tips on how to control it. Ms. O'Hare feels that the site is moving along well. She indicated that if the Commission chooses to approve this application, the violation would become null and void.

Commissioner Deutsch commented on item #3 on the Environmental Planner's Report, dated November 24, 2009. She felt, after visiting the site, that the ramp was placed in the appropriate place. Ms. O'Hare stated that since the River floods she is not sure how long that ramp will be there. She indicated that the State does not like things that project out into the River, they like the riverbanks to be clear. When the ramp needs to be replaced, she would recommend that the ramp be pulled back to go into his property rather than project out into the River. Commissioner Deutsch feels that what she saw there is what she would want replaced if it were to be washed away.

Commissioner Kern indicated that the ramp does not project into the River. It comes down to the toe of the slope to access the River. He is more concerned with the erosion that is happening with the sewer trunk line. Ms. O'Hare had checked with the Water & Sewer Divisions twice on this property. One time she alerted them that to make them aware that this erosion was happening and recently she talked to them again. She was told that they were aware of the situation and had restored it once before a few years ago. At the advise of Ms. O'Hare, they had looked at it again and determined that it did not have to be restored at this time but they will keep their eye on it. Commissioner Kern asked if she had gotten that in writing. Ms. O'Hare indicated that she did not receive a written report, she just got that information verbally. Commissioner Kern directed Ms. O'Hare to contact the Water & Sewer Division and get those comments in writing.

**MS. DEUTSCH:**            **MOTION THAT APPLICATION #A09-11.1 / 38 HANOVER STREET BE DEEMED NOT A SIGNIFICANT ACTIVITY.**

**MR. KERN:**                **SECOND**

**VOTE:**                      **UNANIMOUS**

**MS. DEUTSCH:**            **MOTION THAT APPLICATION #A09-11.1 / 38 HANOVER STREET BE APPROVED WITH THE RECOMMENDED CONDITIONS OF APPROVAL NUMBERS 1, 2, 4, AND 5 FROM THE ENVIRONMENTAL PLANNER'S REPORT DATED NOVEMBER 24, 2009.**

**MR. KERN:**                **SECOND**

Commissioner Kern commented that Ms. O'Hare should make the Applicant aware that in the future he should contact the office of the IWWC if there is any further maintenance that he would like to do.

**VOTE:**                      **UNANIMOUS**

Commissioner Kohan arrived at this time.

**216 NORTHFORD ROAD** – Lynne Cooke Andrews – (agricultural exemptions)

Present was Mr. Jeff Andrews representing Lynn Cooke Andrews.

Chairman Vitali explained that this is not an application. It is a determination of essential operations to a farming activity. The Commission would be considering both the violation and the consideration of the agricultural exemption.

Mr. Andrews passed out a packet of materials to the Commissioners including photographs. He stated that he had fellow farmers present to talk about the pond being essential to the farming operation. Mr. Andrews had no Attorney or professional experts involved in his presentation.

Speaking from the public at the request of Mr. Andrews were the following farmers:

**Al Rose**, Rose Orchards, North Branford, stated that he has been in the agriculture business all of his life. He explained some of the requirements to establish an organic farm as proposed by Mr. Andrews. He stated that roots from alfalfa good down approximately 40 feet so, in the present, he is not sure that irrigation would be needed for alfalfa. He gave some history on his own agricultural experiences stating that, in southern CT, farming is always a challenge to figure out what is going to work and be successful. Mr. Rose stated that, in his opinion, the first thing you would do in building an organic operation would be to put in a pond because you wouldn't be growing anything without irrigation. There is not a successful farmer in southern CT that does not have irrigation. Farming today is a science and they just can't rely on the rainfall. He believes that, if Mr. Andrews is going to have any chance in agriculture on that property, he must have the pond for irrigation. Maybe not in the short term but definitely in the long term.

Commissioner Kern pointed out that the Commission is to determine if the pond is essential for the farming operation that is occurring. He asked Mr. Rose if he has ever done any organic farming. Mr. Rose has not and explained why. If his farm were to go organic, then his abutting property owners would have to agree to go organic too because of runoff and drift issues. As Mr. Rose understands it, Mr. Andrews is planting and irrigating the alfalfa field for the transition period so that in the future he can proceed with an organic vegetable operation. If he was going to buy a piece of land for farming, the first thing he would need is a water source.

Commissioner Parent asked if Mr. Rose's pond was built in the middle of a free-flowing stream. Mr. Rose indicated that his pond was an active spring-fed swamp. He stated that he has a one-acre surface pond that is about 16-18 feet deep. The pond was installed and placed with the help and direction of Soil Conservation Service. Two years ago he had an algae problem and the pond needed to be cleaned out. He had asked the Town if he needed a permit to do the work. He was told that, for an agricultural pond of one acre, there was no permit or inspection required. A farm pond definitely needs to be maintained.

**Nelson Cecarelli**, Cecarelli Farms, Northford, stated that irrigation is essential in agriculture. To stay competitive you need to irrigate. Cecarelli Farm is a vegetable farm and they don't do hay. He stated that if someone is doing something new and cutting edge, it doesn't make it wrong. Mr. Cecarelli does not do organic farming. There was discussion of the placement of the pond and the possible dewatering of the area. Mr. Cecarelli indicated that he irrigates some crops overhead with sprinklers and some through a drip system. He stated that the water has to be filtered before it is sent through the irrigation system. Commissioner Kern asked how they prevent something that might be in the water source from starting some type of disease or sickness in their plants. Mr. Cecarelli stated that the pond is tested for bacteria in the spring. He feels that anyplace there are animals or birds you run that kind of risk. He has never had any problem with diseases coming from the water source.

**William Delacamera**, Cecarelli Farms, Northford, stated that there are three ponds in a row that are used for his farm. Two are on the Cecarelli property and those are filled by runoff from Old Post Road. The water flows into the first pond, which drains into the second pond and then goes to the third pond, which reroutes back into the farm river. 75% of the crops are irrigated on the farm. The last time Mr. Delacamera saw the pond on the Andrews property was approximately the second week of October and he did not observe any algae.

Mr. Cecarelli stated that one pond was dug in approximately 1958 and the other was dug in approximately 1962. The farm was originally purchased in 1912.

**Charlie Christoforo**, North Haven, stated that he runs a farm in the Wallingford/North Haven area. His farm is approximately 90% irrigated. They operate out of five different ponds and two different rivers. He stated that you couldn't farm without water. Not only do they use water to help the plants grow, they use the drip irrigation to conserve water and they do their feeding through the water. Mr. Christoforo is a vegetable farmer and does not farm organic. There is only one pond that they use that has an algae issue and it is not all of the time. He does not believe that his crops have ever picked up a disease through the irrigation system. Mr. Christoforo has never grown alfalfa and does not use hay on his farm. The ponds were dug prior to 1959. The farm has been on this property since around 1910. One pond is approximately 5½ acres and 12 feet deep, one is 1½ acres and 6-8 feet deep, and one is about 4 acres and about 30 feet deep. The pond that has algae is the 5½ - acre pond. The ponds are fed by runoff.

Commissioner Heilman pointed out that it is important to remember that what farmers did 100-200 years ago is irrelevant as to what they can do today. Back then, if you needed a pond, you found a wet area and dug it out. Nowadays that practice has changed.

Mr. Christoforo indicated that when he was doing his farm in Wallingford he used surrounding ponds for irrigation and they were adequate. The farm's water consumption is much better than it was years ago because now they use the drip irrigation system. Chairman Vitali pointed out that water was purchased from the Town of Wallingford to feed into those ponds. Mr. Christoforo has never seen the pond dug by Mr. Andrews. He indicated that one of his ponds was dug into a swampy area, the one on Middletown Avenue is fed by direct runoff, the little pond runs to the river and fills the pond on the way, and the other ponds were just dug in a low spot.

Commissioner Kern asked about the pump used by Mr. Andrews. Mr. Delacamera indicated that the pump was from the Cecarelli Farm and the walker was from Mr. Rose. He stated that the pump that was used is an 850-gallon a minute pump at 115 lbs. The furthest you can go from the water source is 28.5 feet. Mr. Andrews used that pump to irrigate the hay field when it was planted because it was dry at the time. Mr. Delacamera believes that the alfalfa did come up.

Mr. Rose stated that he was told that there is no permit required for an agricultural pond less than an acre in surface area. Farmers can dig them, clean them, drain them or do whatever they want to. Mr. Rose indicated that he has seen the field planted by Mr. Andrews and the alfalfa has come up. He feels that the Commission needs to give Mr. Andrews direction as to what it expects him to do. Mr. Rose stated that he was told that there is a Cease & Desist on the entire property and that needs

to be addressed. The Cease & Desist should only be for a specific area. Mr. Rose pointed out that there is a federal law that is a Right to Farm Act and Mr. Andrews has the right to farm and no local commission can take that away from him.

Commissioner Kern asked Mr. Rose what Mr. Andrew's livelihood was. Mr. Rose stated that Mr. Andrews is a framer by trade. Mr. Rose stated that he, himself, is an excavator and a builder of single family homes, Mr. Cecarelli is an insurance salesman, Lyman's have a golf course, and Bishops had a town dump. He stressed that there is not one farm in this state where the family doesn't have a job that they can earn a living with and keep the family farm going.

Mr. Andrews stated that he would like to go over the response letter that was sent to Ms. O'Hare along with other information. He referred to a several handouts that he gave to the Commissioners previously. These handouts showed what he wants his farm to look like when his plan is completed as well as the intent of the farm. He will use grassed waterways, prescribed grazing, access roads like in the handout, and someday pipelines will be installed. He does not want cattle to be anywhere near this pond. He has no problem building the farm road the way that the NRCS recommends. Mr. Andrews then passed out one more piece of correspondence to the Commissioners. He stated that when he was doing research in the Connecticut State Library he found the name of a man involved in developing the State Statute who he has spoken to several times. The letter explained why the language in the State Statute reads "essential to a farming operation".

Commissioner Parent pointed out that the State Statute says that it does not apply to a relocation of watercourses with continuous flow or filling or reclamation of wetlands or watercourses with continual flow. He stated that Mr. Andrews placed his pond right in the middle of a watercourse with a continual flow. Mr. Andrews stated that the pond was not put in the brook. He has no problem with the DEP looking at his site. He stated that he did not divert the water. Mr. Andrews indicated that he would do a water test on the pond but he does not believe there is any algae in there.

Chairman Vitali stated, once again, that the job of the Commission is to determine if this item falls under an agricultural exemption. The next step would be to determine if this pond is "essential to the farming operation". Chairman Vitali pointed out that even Attorney Janis Brooks who represented Mr. Andrews has stated in a publication that if the activity falls within the first sentence or the second sentence (of the provision) the activity requires a permit. Another publication from the office of Ms. O'Hare, Environmental Planner, talks about a definition for "essential to the farming operation" which means that the proposed activity is necessary and indispensable to sustain farming activities on the farm. Chairman Vitali stated that this has been a moving target but it all stems around growing and irrigating alfalfa. He referred to a memo from the Town Attorney Janis Small that discusses case law and states that the Town of Wallingford regulations require a person to seek a determination prior to commencing the activity. If it is going to be exempt from the regulation you must seek the determination from the Commission before beginning activity.

Chairman Vitali stated that agriculture is not new to him and he gave some of his history in the field. He stated that filling a wetland is not being a steward of the land. He does not believe that the farm pond is necessary for irrigating alfalfa. He pointed out that the pond was dug in the wetlands, the

stream was moved and eliminated, wetlands were filled, a farm road is proposed, and grazing is proposed in the alfalfa fields and alfalfa does not tolerate grazing. Chairman Vitali asked if hay bales have been placed around the stockpiles. Mr. Andrews indicated that they have been installed. Chairman Vitali stated that Mr. Andrews is a framer and was previously a developer. This would be Mr. Andrews first year making hay. His wife and brother-in-law have haying equipment. He does not own an excavator. Chairman Vitali concluded that, with his years of agriculture experience, it is his opinion that this pond is not essential to this farming operation.

Commissioner Parent pointed out that much of the literature provided to the Commission by Mr. Andrews refers to farming in the Midwest. Even in that literature, it stated that it is not essential to irrigate all crops to get the same yield.

Chairman Vitali stated that he is not against Mr. Andrews having a farm pond but he is against where he built it and how he built it and the fact that he put the spoils in the wetlands.

Commissioner Deutsch read her comments into the record and submitted a copy to Ms. O'Hare to be included in the file. Chairman Vitali stated that all documents that have been submitted to the Commission regarding this issue have become part of the record. Commissioner Deutsch concluded that the farm pond is not essential to the farming operation and, therefore, is not an exempt activity.

Commissioner Kern stated that he does hay every year and is very familiar with agriculture. He doesn't feel that Mr. Andrews has provided the Commission with enough specific information regarding his plans for this farm. He is not confident that Mr. Andrews has enough farming knowledge to make this work. Commissioner Kern stated that there is a way to do things and Mr. Andrews did not go about it in the right way. He was not saying that Mr. Andrews could not dig a farm pond but there is a way that it needs to be done and a process that needs to be followed. Commissioner Kern stated that he does not feel comfortable saying that this farm pond is essential to the farming operation because there is a pond right across the street that could be used. He doesn't feel Mr. Andrews is sincere about wanting to plant the farmland since he has shown to the Commissioners future plans to build homes in this area. Commissioner Kern stated that he does not believe the pond is essential to the farming operation.

Commissioner Kohan has looked at some of the court cases that have been submitted to the Commission. He pointed out that throughout all of the meetings where this issue has been discussed the focus has been on the growing of alfalfa. He agreed with the other Commissioners that, in this case, the pond is not essential to the farming operation. Commissioner Kohan feels that the Applicant should have filed, or can still file, an application to be reviewed by the Commission.

Chairman Vitali feels that at this time it would be appropriate to call for a vote. The vote would be to determine if an agricultural exemption is in order. Ms. O'Hare stated that could be the first piece; it would then have to be determined if the pond is essential to the farming operation. Ms. O'Hare stated that the Applicant has asked for several different elements on this site. Chairman Vitali feels that many of the elements would go away once the agricultural exemption is determined. Ms. O'Hare stated that the first step would be to determine if the pond is essential to the farming operation. As far as the other items that the Applicant has asked for, the IWWC must state that the

agricultural exemption does not apply. They would need to have a wetland permit for the road, the culverting of the brook, and for the grading of the wetland.

As Commissioner Kern sees it, there are two items to be voted on. The first item would be to determine if the farm pond is essential to the farming operation and the second item would be to decide if the Applicant needs to submit an application so that the Cease & Desist could be lifted off of the property either through remediation or the Commission's permission to continue forward with what he was doing.

**MR. PARENT:**        **MOTION THAT THE POND BE DEEMED NECESSARY FOR THE PROPER OPERATION OF THE FARM.**

Discussion ensued. Commissioner Parent withdrew his motion.

**MR. PARENT:**        **MOTION THAT THE POND, AS IT EXISTS TODAY, IS NOT ESSENTIAL FOR THE GROWING OF ALFALFA.**

Ms. O'Hare made the point that at the last meeting everything was put on hold until this meeting and a lot of the documentation that she was prepared to present was never read into the record or acknowledged. And, there is a lot of information that has been digested by the Commissioners but not entered into the record. Chairman Vitali stated once again that all documents submitted for this file have become a part of the record.

**MS. DEUTSCH:**        **SECOND**

Ms. O'Hare stated that in all of the literature that has been submitted by Mr. Andrews he has mentioned many different things. He has mentioned things other than alfalfa. None of the items have been substantiated with any kind of business plan or maps.

Commissioner Parent's motion was repeated for clarification. Commissioner Kern suggested that the motion be changed to include the farming operation rather than just the growing of alfalfa.

**MS. DEUTSCH:**        **WITHDREW HER SECOND**

**MR. PARENT:**        **WITHDREW HIS MOTION**

**MR. PARENT:**        **MOTION THAT THE POND, AS IT EXISTS TODAY, IS NOT ESSENTIAL TO THE FARMING OPERATION.**

**MS. DEUTSCH:**        **SECOND**

**VOTE:**                **UNANIMOUS**

**MR. KERN:**                    **MOTION THAT THE CEASE & DESIST ON 216 NORTHFORD ROAD REMAIN IN EFFECT UNTIL THE APPLICANT FILES AN APPLICATION AND PROVIDES THE COMMISSION WITH DETAILS ON WHERE THE SPOILS WILL GO THAT ARE PRESENTLY IN AND ALONG THE WETLAND AREA.**

**MS. DEUTSCH:**            **SECOND**

Erin O'Hare, Environmental Planner pointed out that jurisdiction of the IWWC extends to the wetlands and watercourses and the 50 feet either side. The Cease & Desist would extend to those areas only and Mr. Andrews would be able to plant on his upland area. Chairman Vitali asked how it is distinguished on the Cease & Desist. There was discussion about how the Cease & Desist would be specific to only certain activities. Commissioner Heilman stated that, in this case, it is the operation of farm pond activity that needs to cease and desist.

Ms. O'Hare indicated that the Commission could choose to add items to the Cease & Desist. Commissioner Kern stated that he wants everything left like it is on the site until the Applicant comes in and files an application with a formal plan. Ms. O'Hare asked Mr. Andrews for permission to walk the property. Mr. Andrews denied Ms. O'Hare permission to walk the property. Chairman Vitali directed Ms. O'Hare to view the subject property from abutting Town property.

**VOTE:**                        **UNANIMOUS**

**NEW BUSINESS:**

**#A09-9.2 / 51 DIBBLE EDGE ROAD** – Mark & Diane Szetela –  
(foundation bond release)

Ms. O'Hare has visited the site and advised the Commission to release the \$10,000 foundation bond.

**MS. DEUTSCH:**            **MOTION TO RELEASE THE FOUNDATION BOND ON APPLICATION #A09-9.2 / 51 DIBBLE EDGE ROAD.**

**MR. KOHAN:**            **SECOND**

**VOTE:**                        **UNANIMOUS**

**#A04-4.1B / 1365 DURHAM ROAD** – James Carrera – (extension)

Ms. O'Hare referred to the Environmental Planner's Report dated November 25, 2009. The permit expired in November and Mr. Cerrera is looking for an extension. She is in favor of granting an extension. Commissioner Kern feels that a two-year extension would be acceptable

**MR. KERN:**                    **MOTION TO GRANT A TWO YEAR EXTENSION TO APPLICATION #A04-4.1B / 1365 DURHAM ROAD.**

**MS. DEUTSCH:**            **SECOND**

**VOTE:**                        **UNANIMOUS**

### **RECEIPT OF NEW APPLICATIONS:**

**#A09-11.3 / 1033 NORTH COLONY ROAD – Meetinghouse Brook – Mesite Family Limited Partnership – (commercial development) – presentation (if time allows)**

Chairman Vitali received the application and explained that, given the late hour, there really isn't time for a full-blown presentation. Attorney Ceneviva stated that his group would be able to complete a brief presentation in 15 minutes.

Presenting the application was Attorney Ceneviva, Robert Mesite, and Engineer John Mancini, BL Companies.

Attorney Ceneviva stated that Meetinghouse Brook flows to the north and west of the site. It is the western part of the lot where there is some proposed encroachment into the upland review area. The existing broken pavement and gravel area in the upland review area is about 12,900 sq.ft. into that upland review area. The proposal that is in front of the Commission now has about 8,350 sq.ft.

Mr. Mancini reviewed the revised plan for the Commission and he compared the plan to the plan that was approved in 2005. Mr. Mancini indicated that all Ms. O'Hare's comments to the PZC will be addressed in a forthcoming revision to the plan. The impervious surface has been reduced from the 2005 plan by about 1,000 sq.ft. There are a few areas that were improved upon since the 2005 plan. The drainage calculations were not changed so they are not taking credit for infiltration but they will be taking roof drainage from one of the buildings and putting it into an infiltration strip. In that same area they have created a sediment forebay and a leaky stone berm. There was a retaining wall shown on the plans that would be removed along with two parking spaces with the result being that they would be meeting grade at the corners of the parking lot before it goes down the slope. They will be eliminating a riprap pad and creating a biofiltration area with a series of doubling back fingers that would then discharge to a specific rock channel that goes down the embankment that exists today. The roof water from the Sonic building can be infiltrated and the roof water from the third building is currently going into the storage system but he can look into infiltrating that water as well. There will be two oil/water separators in the parking lot. Mr. Mancini indicated that the base survey was going to be updated for two things: Locating the specimen trees that are on the slope and locating the existing riprap that is on the slope. Commissioner Kern indicated roof recharge will help ease up on Meetinghouse Brook.

Mr. Mancini will submit the revised plans next week and Ms. O'Hare asked the IWWC to use the revised plan when conducting any site investigation.

**#A09-11.4 / 333 CHRISTIAN STREET** – Choate Rosemary Hall – (pond restoration project)

Chairman Vitali received the application. There was no presentation.

**#A09-12.1 / 1189 SOUTH BROAD STREET** – Stephen Barberino – (commercial development)

Chairman Vitali received the application. There was no presentation.

## **VIOLATIONS:**

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

Still in effect. Discussed earlier.

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

Erin O'Hare, Environmental Planner indicated that Mr. and Mrs. Pires were ordered to submit an application but have not submitted it yet. She would like the Commission to schedule a site walk or give her direction about the fill being removed from the wetlands. Chairman Vitali directed Ms. O'Hare to order the Applicant to file an application by January 6, 2010 or at the January meeting the fill will be ordered to be removed from the wetlands. At this time the Cease & Desist shall remain in effect.

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

Discussed earlier.

## **REPORTS & COMMUNICATIONS:**

1. **CACIWC membership**

The Commission granted Ms. O'Hare permission to pay the \$50 fee for the CACIWC membership.

2. **DEP Notice of Tentative Determination – Intent to Renew NPDES Permit – Nucor Steel Connecticut, Inc.**

## **REGULATIONS REVISION:**

- 1. Discussion of next series of draft proposed revisions**
- 2. Comments received on proposed amendments**

Ms. O'Hare stated that the Environmental Planner's Report, dated November 25, 2009, summarized what the DEP said and what Janis Small, Town Attorney said on the amendments to the regulations that are going to be discussed at the January 6, 2010 public hearing.

- 3. Legislative request proposal**

Ms. O'Hare discussed the deadline for filing applications. The deadline used to be Friday at 5 p.m. and now it is Tuesday at 5 p.m. 24 hours before the meeting. The Commission directed Ms. O'Hare to request that the deadline be changed back to what it used to be.

## **ADJOURNMENT:**

Commissioner Deutsch made a motion to adjourn. The motion was seconded by Commissioner Kohan and passed. The meeting adjourned at 11:26 p.m.

Sonja Vining  
Recording Secretary  
Town of Wallingford  
Inland Wetlands and Watercourses Commission  
December 2, 2009