

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

**REGULAR MEETING  
Wednesday, May 6, 2009**

The Regular Meeting of the Wallingford Inland Wetlands and Watercourses Commission was held on Wednesday, May 6, 2009, in Council Chambers, the Municipal Building, Wallingford, Connecticut.

Seated from the Commission were Ellen Deutsch – Vice Chairman (Acting Chairman), Nick Kern – Secretary, Jeff Kohan, Jim Heilman – alternate, James Kovach – alternate, Dave Parent – alternate, and Environmental Planner Erin O’Hare.

Acting Chairman Deutsch called the meeting to order at 7:01 p.m.

**CONSIDERATION OF MINUTES:**

April 1, 2009 - Regular Meeting

Mr. Kohan made a motion to approve the April 1, 2009 – Regular Meeting Minutes. The motion was seconded by Mr. Kern and passed. Mr. Heilman and Mr. Kovach abstained.

**OLD BUSINESS:**

**#A09-2.1 / OFF COOK HILL ROAD** – Oakdale Woods Homeowners Association – (roadway improvement)

Presenting the application was Phil Largo, Oakdale Woods Association.

Ms. O’Hare indicated that she has received a report from the Applicant completed by Roman Mrozinski, Southwest Conservation District, dated April 21, 2009. She has passed the report on to the Water & Sewer Division and the Engineering Department. Although she has not received a written report back from either department, she did get some comments verbally at the close of business today. Ms. O’Hare indicated that both departments would like to see this application tabled as there are some changes that these two departments would like to see. Basically they would like to see more fortification.

Mr. Kern felt that the plan from the Southwest Conservation District was a good one and he doesn’t believe the plan should be held up any longer. If the plan fails, the Applicant will have to come in front of the Commission to fix it. Mr. Kohan also felt that the plan proposed by the Southwest Conservation District was a good one.

**MR. KERN:**                    **MOTION THAT APPLICATION #A09-2.1 / OFF COOK HILL ROAD BE DEEMED NOT SIGNIFICANT ACTIVITY.**

**MR. KOHAN:**                **SECOND**

**VOTE:**                        **UNANIMOUS**

**MR. KERN:**                    **MOTION THAT APPLICATION #A09-2.1 / OFF COOK HILL ROAD BE APPROVED WITH THE FOLLOWING CONDITIONS OF APPROVAL:**

1. **THE APPLICANT IS TO FOLLOW THE RECOMMENDATIONS OF THE SOUTHWEST CONSERVATION DISTRICT REPORT, DATED APRIL 21, 2009.**
2. **THE ENVIRONMENTAL PLANNER IS TO BE CONTACTED PRIOR TO ANY ACTIVITY ON SITE.**
3. **ALL S&E CONTROL MEASURES ARE TO BE IN PLACE AND INSPECTED BY THE ENVIRONMENTAL PLANNER PRIOR TO ANY FURTHER ACTIVITY ON SITE.**

**MR. KOHAN:**                **SECOND**

**VOTE:**                        **UNANIMOUS**

**#A04-8.4 / 1425 TUTTLE AVE.** – W & W Properties (aka Gaylord Farms Road – Cheshire Crossing – Pulte Homes) – (release of bond)

Ms. O’Hare indicated that there were two Environmental Planner’s Reports on this application; one report, dated May 1, 2009, and the second report, requested by Ellen Deutsch, dated May 6, 2009. Ms. O’Hare stated that the bond release is not ready. The bond was separated into two parts; foundations and erosion control/stormwater management. The Vortecnic units have not yet been installed. The erosion controls are fine; the project is 95% complete. There is a problem with one of the “As built” surveys. She expects that these outstanding issues will be cleared up by the next meeting.

**#A07-11.1 / 135 FAWN DRIVE** – Fawn Drive Associates, LLC – (permit commencement extension)

Ms. O’Hare referred to the memorandum from Janis Small, Town Attorney, dated April 6, 2009. Ms. O’Hare has visited the site and stated that there is no physical change in circumstances and there is no enforcement action, and no violations on the site and, therefore, in her opinion the Commission should grant this extension as was recommended by the Law Dept. should there be no such findings.

Mr. Kern questions the word “shall” as used in the memo random from Janis Small. He has the feeling that the Commission is being told that it must extend the permit and he doesn’t agree with that. He believes that if the Commission is not comfortable with the application, it should not

approve the extension request... Mr. Kern explained that it doesn't make sense because, if the Commission **must** grant an extension, then there is no need for any time limits to be put on an application when it is first granted.

Mr. Heilman suggested that the application be tabled because of all of the confusion, and requested that the Town Attorney do some further research. Mr. Kohan doesn't have a problem with tabling the application but he questioned who decides if there has been "a substantial change in circumstances". Mr. Parent finds it hard to believe that Attorney Small would underline a word like "shall" unless it was stated in the statute. He indicated that he would do some research on his own and report back at the next meeting. Mr. Heilman suggested to Ms. O'Hare that before the next meeting she contact the Applicant to see if he intends to make any changes to the plan. He suggested that she get the Applicant's intentions in writing.

Ms. O'Hare read from Section 11.6 of the DEP Model Regulations. She stated that it has been strongly suggested that the Commission not have a one-year time frame for commencement of a permit. Chairperson Deutsch directed Ms. O'Hare to find the State statute that Attorney Small was referring to and report back to the Commission with her opinion as to what it means and how the Commission should handle it.

The application was tabled to the June meeting.

**#A09-3.1 / 8 & 9 ATWATER PLACE / QUINNIPIAC RIVER** – Howard Lohman, Sr. – (industrial development – contractor storage units)

Presenting the application was Chris Juliano, Juliano Assoc.

Ms. O'Hare referred to the Environmental Planner's Report, dated April 30, 2009. There was a revised plan submitted May 4, 2009. Ms. O'Hare handed out an updated Environmental Planner's Report, dated May 6, 2009, as had been requested by Acting Chairman Deutsch, that refers to the revised plan. In reviewing the cross section included in the plan you can see that the seasonal high water table would be approximately 1-½ feet below the existing grade. The Engineer does not have a concern with the system getting flooded out or malfunctioning in the freezing weather she said due to the phenomenon of colloidal action. Ms. O'Hare indicated that there was an intermittent waterway inadvertently left off of the plan that she would like to place on a revised plan.

Ms. O'Hare indicated that she has not received a report yet from the Engineering Department. She reported that the Town Planner is going to request verification of the location of the banks of the Quinniac River as the banks on the plan were field located in 1988. Ms. O'Hare asked for an erosion control contingency plan for the area in the floodway but has not seen that plan yet.

Mr. Juliano briefly reviewed the plan. The proposal is for nineteen (19) 1,000 sq.ft. contractor storage units. They need a wetlands permit because they are over the 20,000 sq.ft. of parking surface. All of the development is outside the 50-foot regulated area. Mr. Juliano is proposing an underground storage reservoir utilizing porous asphalt. The water will infiltrate through the pavement. The concept of the stormwater management system is to get the water to infiltrate through the pavement, through the various layers to the reservoir layer and infiltrate into the ground.

The only activity in the southerly portion of the site is the planting of eight (8) trees in that area, everything else is beyond the FEMA Floodway. The trees will form a visual buffer and a natural fence to deter the renters from moving into the Floodway. The buildings were designed to be one foot above the flood elevation.

The Applicant is currently going through the DEP Stream Channel Encroachment Line permit process. The DEP had asked for pre-treatment so he added catch basin inserts and he added two as requested to make sure subsurface system was working correctly. The plans have been revised to incorporate comments for the Wallingford Water & Sewer Divisions and the Environmental Planner. Mr. Juliano discussed the application with the Engineering Department and has not received any negative comments. Ms. O'Hare stated that she did not hear of any objections from the Engineering Department although it has not run the calculations yet.

Mr. Juliano indicated that the flows coming out of the stormwater management system are very insignificant. The system as proposed will reduce erosion and continue to feed the river and the aquifer.

Mr. Kern discussed the discharge point for the catch basin. He wanted to be sure that the discharge be on this site not on someone else's property. Mr. Juliano assured Mr. Kern that the water would stay on the property until it enters the Quinnipiac River. Mr. Kern stated that the open area between the river and the trees would be enough room for a small retention pond to catch the water before it is discharged into the river. He questioned why a retention pond was not designed. Mr. Juliano indicated that generally he does not put retention ponds in the upland review area and the zoning greenbelt in this case is very limiting as to where you can have activity. He felt that it would be better to stay completely out of the greenbelt, Floodway and the regulated area. Mr. Kern suggested putting an open swale in that greenbelt area and discontinuing everything under the parking lot. He feels it would have a minimum amount of maintenance and do the same job that the porous asphalt would do. Mr. Juliano stated that he would view an open swale as having more maintenance than the porous asphalt system. He indicated that he would be willing to talk to the Town Planner about placing a swale in the greenbelt if that is what the Commission would like to see. Mr. Kern stated that he did not mean to change the entire plan but he would feel more comfortable with an open swale. Mr. Heilman agreed with Mr. Kern that an open swale would be a good idea.

Mr. Kohan agreed with the earlier comment that the banks of the river should be updated on the plans. Acting Chairman Deutsch asked the Applicant to make that verification for the next meeting.

There was some further discussion about the porous asphalt which was indicated to be approximately 60% pervious and what long-term maintenance would be involved. Mr. Juliano stated again that if the Commission would like to see a more traditional swale design he would make that change as long as the Town Planner allows it.

The application was tabled to the June meeting.

Ms. O'Hare referred to her letter dated April 22, 2009, addressed to W. Dean Cox, Tennessee Gas Pipeline Co., and an update of her Environmental Planner's Report. She stated that the Applicant would like to have the Commission table the application because there are many issues on this site and they want to be sure they are resolved before they present at the June meeting. Ms. O'Hare spoke to the Legal Department and they indicated that there should be no action taken by the Commission at this meeting since the application is not complete.

Mr. Kohan asked if this would fall under the jurisdiction of the Connecticut Siting Council. Ms. O'Hare stated that they do not have to apply to the Council; they just need local approval.

The Commission tabled the application to the June meeting.

## **NEW BUSINESS:**

None

## **VIOLATIONS:**

### **1. 252 Main Street – L & J Partnership, LLC – (cease & desist and remediation plan)**

Present were John Gable, CT Consulting Engineers, and the Applicant, Lisa Morgillo.

Mr. Gable referred to the Environmental Planner's Report, dated May 1, 2009, and a letter from Marla Butts, DEP. He has incorporated the comments into his plan. A portion of the concrete foundation will be allowed to stay as long as it does not impact the FEMA Floodway area.

Mr. Kern would like to see the existing concrete pad remain as it is instead of being removed. He would also like to see any leader drains from the roof of the garage remain in place. In his opinion, he would like to see as little disturbance as possible in that area.

Ms. O'Hare referred to her Environmental Planner's Reports dated May 1, 2009 and May 6, 2009. She pointed out that in the letter from Marla Butts, DEP, it is clearly stated that she wants the grade in the area of the garage and the concrete pad to be returned to the grades of March 1965. The concrete pad is above the grade from 1965. Mr. Kern feels that it should stay because of all the disturbance it will cause to remove that concrete. Mr. Heilman thinks the DEP's elevation concern has to do with flood storage and it is so small that it is immeasurable and insignificant.

Ms. O'Hare indicated that the action the Commission should take tonight is that the Cease & Desist remain in affect with the exception of the activities that are being approved tonight. She suggested four conditions of approval as listed in her Environmental Planner's Report, dated May 6, 2009.

Mr. Kern would like to see the plantings put in earlier then September/October as suggested by Ms. O'Hare. Mr. Heilman felt that the plantings could go in at any time. Mr. Kern suggested to the Applicant that the plantings be put in between now and June 15, 2009.

Ms. O'Hare indicated that if the Commission is planning on approving the revised plan that came in on Monday, there would need to be some additional conditions of approval regarding the retention of the concrete pad, the slab under the garage and to make clear what is going to happen to the unpermitted back side of the garage. She stated that she has been working with Ms. Butts, DEP, and Ms. Bush, Town Planner, and it is Ms. O'Hare's understanding that removal of the unpermitted rear portion of the garage and restoration of 1965 grades is what is needed to get the Stream Channel Encroachment Line Permit.

**MR. KERN:**                    **MOTION THAT VIOLATION 252 MAIN STREET REMEDIATION PLAN BE APPROVED AS SUBMITTED WITH THE FOLLOWING CONDITIONS OF APPROVAL:**

1. **THE APPROVAL OF THIS REMEDIATION PLAN IS TO RELEASE THE CEASE & DESIST THAT IS CURRENTLY IN PLACE.**
2. **THE CEASE & DESIST WILL BE RELEASED WHEN THE AS-BUILT SURVEY IS SUBMITTED AND APPROVED BY THE ENVIRONMENTAL PLANNER.**
3. **THE IWWC WOULD LIKE ALL OF THE CONCRETE SLABS AROUND THE EXISTING NONCONFORMING, IN-THE-FLOODWAY BUILDING TO REMAIN INTACT AND NOT BE DISTURBED.**
4. **THE (GARAGE) LEADER DRAINS ARE NOT TO BE DISTURBED OR REMOVED.**
5. **THE PLANTINGS ARE TO BE IN PLACE BEFORE JUNE 15, 2009. IF NOT, THEY SHOULD BE PLANTED IN SEPTEMBER/OCTOBER.**

Mr. Heilman repeated that the rationale for leaving the concrete slab is a balance between two concerns; one is the fact that you are impeding the flow of the floodplain and we recognize that is it an extremely minute interruption. That is weighed against the potential damage that could be caused by the removing of that concrete slab on such an elevation.

**MR. KOHAN:**                    **SECOND**

**VOTE:**                                **UNANIMOUS**

**2. 134 Grove Street Extension – Edward J. & Doreen Beauvais – (cease & desist – filling)**

Present was Edward Beauvais. Ms. O'Hare referred to her Environmental Planner's Report, dated May 1, 2009. She indicated that more information is needed from the Applicant - a revised plan showing the watercourse on the site, the filling area, and the septic system.

Mr. Beauvais displayed a plan, dated 2005, to the Commission. Mr. Kern noted that the plan had no engineer stamp. Ms. O'Hare stated that the watercourses need to be placed on this plan and the septic system needs approval.

Mr. Kern suggested that Ms. O'Hare review the plan and work with the Applicant. Ms. O'Hare indicated that if the Applicant wants the fill to stay on the site, he needs to come in and fill out a wetlands application. The Applicant agreed to do so.

### **3. 12 Old Colony Road – Old North Colony Properties, LLC – (drainage improvements)**

Representing the Applicant was Attorney Joan Molloy.

Ms. O'Hare referred to her Environmental Planner's Report, dated May 1, 2009. The Planning and Zoning Commission has approved a permit for permanent fill at this site, 12 Old Colony Road. She explained some confusion regarding which site actually had the Notice of Violation. Ms. O'Hare indicated that on 12 Old Colony Road everything that was asked for in her letter was done except that they have filled the swales in with stone. She would like to have the stone removed from the swales, have dirt put back in there, stabilize the swales, and have an earth berm installed along the 50-foot regulated boundary.

Mr. Kern questioned what takes place between the Environmental Planner and an applicant prior to her issuing a Notice of Violation. He feels that she should be working with the applicants to resolve issues before it comes to this point.

Ms. O'Hare made it clear to the Commission that before she sends out a Notice of Violation, a letter about a violation, or a Cease and Desist, she contacts Chairman Vitali who determines which enforcement letter is sent. She stated that once she receives a complaint, she visits the site to see it for herself. Ms. O'Hare then calls the contact number on record. She explained what action she took and the order of things that happened with this particular application. She contacted Chairman Vitali and he directed her to send out a Notice of Violation in this instance relative to the swales and the drainage there.

Attorney Molloy stated that on April 3, 2009 there was a complaint that there was mud coming out of this site onto South Broad Street. Ms. O'Hare contacted Attorney Molloy who contacted her client who responded very quickly and got to the site and dealt with the problem. On April 6<sup>th</sup>, Ms. O'Hare visited the site and noticed the drainage swales. On April 8<sup>th</sup>, Attorney Molloy received a memorandum from Ms. O'Hare stating what had happened on April 3<sup>rd</sup> and April 6<sup>th</sup>. In that memo she made some suggestions about what should be done on the site. The Notice of Violation was issued on April 9, 2009. When Attorney Molloy received the memo she contacted her client. The Applicant agreed to do the installation of the check dams and the hay bales. He did put stone in the swales. Attorney Molloy indicated that she has talked to her client and he is willing to take the stone out and put the dirt back in if that is what the Commission wants. Attorney Molloy presented photos to the Commission. She indicated that, at this point, neither she, nor her client, are prepared to install a berm the entire length of the regulated area as was recommended by Ms. O'Hare. Attorney Molloy knows of no facts that are in the record that establish that anything has been done by the Applicant to change the existing drainage pattern on the site.

Mr. Kern feels that if the contractor put extra stone in the swale he must have had a good reason why. He is not sure that Ms. O'Hare has the expertise to determine that there is too much stone in

the swales. Mr. Kern stated that there needs to be a working relationship with the Applicant so everything doesn't turn into a violation or a cease and desist. He doesn't feel that some extra stone in the swale should be a violation.

There was some discussion about when the swales were installed. Attorney Molloy has no knowledge of when and how those swales were installed, but if they are determined by this Commission to be a problem, the Applicant is willing to pull the stone out and put dirt in. Mr. Kern indicated that it has to be determined if the swales are in the regulated area or not. He recommended that the stone be left in the swales until all of the Commission members can visit the site and get a better idea of what is happening out there. Mr. Kern would like to see some flags out on the site to make it clear where the regulated area is. He believes that these swales may have been needed for drainage when the site conditions changed. If it is a regulated area, the Applicant must apply to the Commission. Mr. Kern feels it could be handled with an administrative approval because it is something that happened because of the site conditions.

Mr. Heilman disagreed with Mr. Kern. Mr. Heilman stated that if there was an Applicant that came before the Commission and got approvals for doing certain things and as they work in the field they find other issues that come up, they just couldn't do what they want. If there is activity that is going to affect the wetlands or the review area, they must apply to the Commission.

Attorney Molloy doesn't feel it is fair to make the presumption that this Applicant is the one who installed those swales because of a drainage problem. She stated that she has no facts that support that presumption. Attorney Molloy feels that her client has been very cooperative with the Environmental Planner and the Commission. Ms. O'Hare stated that of course these swales are in the regulated area - they dump into the river. Attorney Molloy stated that they don't dump into the river, they dump into the drainage way. The point is, she said, that this Applicant is not asking for the swales and they are willing to remove them.

Mr. Kern feels that the first step would be to determine if they are in the regulated area. If the swale is in the regulated area, the Applicant needs to apply for a permit. Attorney Molloy is unclear as to what she would be applying for. She is not acknowledging that this property owner put in those swales. What work the Applicant did was done under the requirement of the Environmental Planner pursuant to a Notice of Violation.

Mr. Heilman suggested that the Commission members visit the site to try and determine if these swales were recently installed. Mr. Heilman doesn't see it as a real big issue that some extra stone was installed in the swales. He feels that the Notice of Violation has been fulfilled at this time.

Acting Chairman Deutsch set a Special Meeting site investigation to visit the site on May 13, 2009 at 4:30 p.m.

Mr. Kohan stated that the silt and mud that came off that site onto South Broad Street was disgusting and it was a public relations disaster for the Town. He stated that the owners are responsible for cleaning up the mess. Mr. Kohan doesn't care if anybody knows who built the swales but, as an owner, they are responsible to keep it contained. Attorney Molloy feels that the owner has done everything that has been asked of him. Mr. Kohan feels that the Planning & Zoning Commission

allowed this to happen. He feels that someone should have been on the site inspecting to be sure that the erosion controls were in place and working properly.

## **REPORTS & COMMUNICATIONS:**

### **1. IWWC Mailings** – Mailings will be one a month.

Mr. Heilman stated that he has been by the Workstage site and the fields have not been mowed or maintained as they are supposed to be. The ponds behind the houses are filling due to the fact that there is no outflow drainage. He suggested to Ms. O'Hare that they get together and walk the site. Ms. O'Hare will contact Mr. Heilman to walk the site.

## **REGULATIONS REVISION:**

### **1. Discussion of draft provisions**

Ms. O'Hare referred to the memo from Attorney Small, dated April 23, 2009. Ms. O'Hare typed her response, dated May 6, 2009, but was unable to make copies because the copier was not working tonight. She reviewed her response for the Commission. Attorney Small would like a definition for "upland review area" and she would like it to include the phrase, "50 feet at a minimum." Ms. O'Hare indicated that there needs to be some measurement put on it whether it is 50 feet or 100 feet or whatever. If there were no measurement, the average citizen would have no way of knowing if they were in the upland review area and enforcement would be a problem as well. There were different possible situations discussed. The majority of the Commissioners felt that the regulations should be changed to a 100-foot regulated distance from wetlands and watercourses.

Ms. O'Hare will work on addressing the issues raised in the memo from Attorney Janis Small. She is expecting to have the issues addressed for the next meeting.

### **2. Set public hearing date**

Ms. O'Hare sent the revisions to Attorney Small and it came back with several comments that have to be addressed before the Commission is ready for a public hearing.

## **ADJOURNMENT:**

Mr. Kohan made a motion to adjourn the meeting. The motion was seconded by Mr. Parent and passed. Acting Chairman Deutsch adjourned the meeting at 10:27 p.m.

Sonja Vining  
Recording Secretary  
Town of Wallingford  
Inland Wetlands and Watercourses Commission  
May 6, 2009