

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

**REGULAR MEETING  
Wednesday, September 2, 2009**

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

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

Chairman Vitali called the meeting to order at 7:02 p.m.

**CONSIDERATION OF MINUTES:**

**August 5, 2009 - Special Meeting**

Ms. Deutsch made a motion to approve the August 5, 2009 – Special Meeting Minutes. The motion was seconded by Mr. Kohan and passed.

**August 12, 2009 – Special Meeting**

Ms. Deutsch made a motion to approve the August 12, 2009 – Special Meeting Minutes. The motion was seconded by Mr. Kohan and passed.

**OLD BUSINESS:**

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

Ms. O'Hare referred to the Environmental Planner's Report dated August 28, 2009. She has met with representatives from Pulte Homes and compared the “As built” drawings to the original approved plan.

Presenting the application was Attorney Joan Molloy.

Attorney Molloy referred to a letter she wrote dated August 27, 2009 addressed to James Vitali, Chairman. She indicated that there were four units where the main structure was in the right place

but there are some decks and sunrooms that created some encroachment. Attorney Molloy spelled out the details in her letter.

Ms. O'Hare explained that there are two bonds that total \$40,000. \$20,000 for the foundation locations and \$20,000 for stormwater management improvements. Separate from the issue of the bonding, one permit condition that has not been met is that when the individual units were purchased there was supposed to be a provision in the deed. Ms. O'Hare doesn't believe that a bond can be held up for this noncompliance because it is a separate issue.

Attorney Molloy has been discussing this deed issue with Attorney Janis Small and has proposed an amendment to the Declaration of the condominium association. Every unit owner in the complex would be subject to the Declaration of condominium as it is amended. She has communicated with the condominium association and it has indicated its willingness to cooperate in amending the Declaration to include the proposed language. Attorney Molloy submitted the language to Attorney Small for her review. Presuming the language is acceptable to the Town she would do a formal presentation to the condominium association and it would be submitted to the unit owners for a vote.

Chairman Vitali asked Ms. O'Hare if the language that has been submitted by Attorney Molloy satisfies the condition of approval on Pulte Homes. Ms. O'Hare stated that it does not exactly but it would be up to the Chairman to deem if it is close enough. Ms. O'Hare discussed condition of approval #4, which states that "in the deed it must be stated that the wetland and 50 foot buffer around the wetland are not to be disturbed, cannot be built on and are to be protected". Since the units have already been sold, the language cannot be put on each deed because it is too late so Attorney Molloy is proposing putting language in the homeowner's association Declaration as an amendment. Ms. O'Hare read the proposed language from Attorney Molloy.

Ms. Deutsch doesn't feel it is appropriate to forbid people from coming before the Commission as long as the Applicant understood that it is within the right of the Commission to deny their application and they would be in violation if they didn't come before the Commission. She doesn't believe that forbidding people from coming before the Commission was the original intent.

Chairman Vitali feels that there needs to be some type of report by staff to the Commission comparing the two different items. That issue would be discussed at the next meeting.

Ms. O'Hare recommends that \$20,000 of the \$40,000 bond money be released as the stormwater management portion of bond is ready to be released. Release of the other \$20,000 would require an administrative approval modification to permit. Attorney Molloy suggested that the permit be modified to allow the activities as explained in her letter dated August 27, 2009 or she could submit a plan showing the specific encroachments. Ms. O'Hare would like to see this handled the same way all modification applications are filed, or, if the Commission wanted, it could be handled with administrative approval. Chairman Vitali feels that the language has to be given to Ms. O'Hare before there can be any movement on this issue. Mr. Kohan, Mr. Heilman and Mr. Kern feel comfortable handling it with administrative approval. Ms. Deutsch asked at what point they would be getting the bond back. Chairman Vitali indicated that it could wait until next month. Mr. Kovach feels comfortable with waiting until next month.

Attorney Molloy indicated that if she gets approval from the Town Attorney she would try to get it on an agenda for the next condo association meeting.

**MS. DEUTSCH:**      **MOTION TO RELEASE THE STORMWATER MANAGEMENT BOND IN THE AMOUNT OF \$20,000 FOR APPLICATION #A04-8.4 / 1425 TUTTLE AVENUE.**

**MR. KOHAN:**      **SECOND**

**VOTE:**              **UNANIMOUS**

**#A09-6.3 / 134 GROVE STREET EXTENSION – Edward Beauvais – (residential lot)**

Presenting the application was Edward Beauvais.

Ms. O'Hare referred to the Environmental Planner's Report dated August 28, 2009. She has sent the plan to the Engineering Department for review of drainage calculations but she has not heard back from them yet. With that exception, she recommends approving the plan. Chairman Vitali indicated that until the report comes back from Engineering the approval is on hold. Ms. O'Hare stated that the Applicant would have to grant the Commission an extension.

Mr. Kern feels comfortable with releasing the Cease & Desist so the property can be sold because when someone buys the property they will have to come back in front of the Commission. Ms. O'Hare clarified that this application is on the agenda under Applications and also under Violations. Under the violation section, Mr. Kern is recommending that the Cease & Desist be lifted. Mr. Kern would like to see the Cease & Desist lifted and have the Applicant withdraw his application since the property is going to go dormant. Chairman Vitali doesn't believe that the Applicant needs to withdraw the application. Mr. Heilman would like to see the Cease & Desist lifted but go forward with the application and wait until next month to see what the Engineering Department has to say. Chairman Vitali feels that the Commission should really wait until next month to see the report from the Engineering Department.

After further discussion it was determined that this application would be continued to the October meeting to review the comments from Engineering. Mr. Beauvais granted an extension to the Commission. The Chairman indicated the Cease & Desist will remain in place.

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

Ms. O'Hare referred to the Environmental Planner's Report dated August 28, 2009. All of the bond money has been released for Fieldstone Farm up to this point except for \$7,000. A neighboring property has reported an increase in flooding. The Engineering Department is going to review the

design and the calculations for the area before that last \$7,000 is released. The Chairman tabled the matter.

**#A09-6.6 / 3 FAIRFIELD BOULEVARD – Bear Industries, LLC –  
Peter Gavin – (modification to permit)**

Presenting the modification application was George Cotter, OCC Group.

Mr. Cotter indicated that wetland placards have been placed around the large basin. The same number of plantings and same type of plantings that were approved in the original plan are proposed to be planted around the large basin except that the location has been modified. The plantings are being placed in three groupings rather than four groupings as shown on the original plan. He reviewed the plan giving some history on the application.

Ms. O'Hare brought up the issue of the trimming of the trees in the bottom of the large basin. The Commission is in favor of trimming the trees above three feet in the bottom of the large basin.

**MS. DEUTSCH:      MOTION TO APPROVE APPLICATION #A09-6.6 / 3 FAIRFIELD BOULEVARD MODIFICATION TO PERMIT BASED ON THE PLAN RECEIVED AUGUST 27, 2009.**

**MR. KOHAN:      SECOND**

**VOTE:              UNANIMOUS**

Mr. Kern brought up the issue of releasing the bond on this project. Ms. O'Hare indicated that that item is not on the agenda. She believes that the planting plan has to be installed and checked before the bond can be released. Mr. Kern would like to see the plantings inspected by Ms. O'Hare as soon as they are in place then have Chairman Vitali sign off administratively to release the bond. Mr. Kohan, Mr. Heilman, Mr. Kern, Ms. Deutsch and Mr. Kovach agreed to have the plantings inspected by Ms. O'Hare and approved administratively by Chairman Vitali for the release of the \$2,500 bond.

**#A09-7.2 / 31, 33, and 35 Elmhill Drive – Rocco and Frank Totino –  
(extend yard)**

Ms. O'Hare referred to the Environmental Planner's Report dated August 28, 2009. Mr. Totino contacted Ms. O'Hare stating that he had some health issues and was unable to remove the fill that he was directed to up to his proposed yard limit. Mr. Totino intends to have the fill moved by October. The Chairman indicated the violation remains in place.

**#A09-8.1 / 112, 114, and 118 Dibble Edge Road – Shweky Developers,  
LLC – (residential lots)**

Ms. O'Hare indicated that the Applicant's engineer submitted a letter withdrawing the application.

## **NEW BUSINESS:**

### **#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.

Mr. Roles indicated that Winstanley is proposing improvements to the property one of them being an increase in the paved area. There is existing gravel parking that they are proposing to pave. This paved area was part of the original site plan approved back in 1979 that was never paved. There are no wetlands on the site. The proposed improvements consist of taking a gravel loading dock/truck parking area behind the building and paving it. The area is approximately 44,000 sq.ft. The proposed paving would be graded just as the gravel to allow for sheet flow to the east of the property where it would enter into a proposed grass swale and then into an 18" pipe which connects to existing drainage on North Plains Road. There is a slight increase in runoff of approximately .33 CFS for the ten-year storm.

Mr. Heilman would like to hear some background at the next meeting as to the significance of the profiles of the gravel that were found on the site with regard to water table.

Chairman Vitali asked the Applicant to look at the possibility of widening the swale to allow for some recharge in the area. He recommended that the Applicant stay in contact with Ms. O'Hare.

## **VIOLATIONS:**

**1. 134 Grove Street Extension – Edward J. & Doreen Beauvais – (cease & desist – filling)**  
Discussed earlier.

**2. 216 Northford Road – Lynne Cooke Andrews – (cease & desist)**  
Ms. O'Hare stated that she received a message from Attorney Timothy Lee who is representing Lynne Cooke Andrews that as he was unable to attend this evenings meeting, he requests that the matter be tabled. Ms. O'Hare indicated that if the issue is going to be tabled she would recommend that it be stated that the Cease & Desist is to remain in effect. Chairman Vitali stated that there is no question that the Cease & Desist will remain in effect.

The Chairman requested staff report on status. Ms. O'Hare referred to the Environmental Planner's Report dated August 28, 2009. She received a letter from Ronald Walters, South Central Connecticut Regional Water Authority, dated August 26, 2009. Ms. O'Hare indicated that the Applicant submitted a sketch on August 25, 2009 and, on August 28, 2009, he submitted a colored map and a short statement. Ms. O'Hare has drafted a response to the Applicant's submittals.

Chairman Vitali stated that he had asked Ms. O'Hare to send a memo to the Commissioners indicating that it has to be determined if this pond is essential to the farming operation. Mr. Heilman would like to see some documentation as to what was last year's production was or some history of farming activity in the last 3-4 years. Chairman Vitali believes there has been hay cut on this farm for many, many years and there is sweet corn grown there now. Ms. O'Hare talked to the NRCS who stated that they are unaware of anyone in the state of Connecticut irrigating hay but there are a few farmers who irrigate sweet corn. She sent out a newsletter from the Connecticut Federation of Planning & Zoning Agency that mentioned ponds used for agricultural irrigation. Chairman Vitali indicated that his understanding is that if it is determined that this pond is essential to the farming operation, Ms. Andrews cannot be denied a permit but she must satisfy the regulations and inspection from the IWWC and the Environmental Planner.

Ms. O'Hare indicated that she was directed at the last meeting to work with the South Central Regional Water Authority and prepare a list of questions and concerns regarding this issue. She stated that she was to wait until the Applicant submitted a plan and then prepare her comments in response to whatever she received from the Applicant. Ms. O'Hare received the plan from the Applicant on Friday and she worked on her response today and has a draft prepared.

Chairman Vitali directed Ms. O'Hare to send out the draft as soon as possible to the Commissioners. He stated that as there are other activities included in the Applicant's plan, it has to be determined if it is the pond that is essential or all of the activities that are requested are essential to the farming operation. Mr. Kern believes that the importance of water quality may be something that the Applicant has to be made aware of. He would like to see the Applicant come before the Commission with an engineered plan to let the Commission know what her intentions are. Mr. Kern feels that water quality is the most important thing. Chairman Vitali indicated that there are many different aspects related to this site; the Legal Department is involved as well as Planning & Zoning so there is a lot of work to be done to satisfy everyone.

It was decided that Ms. O'Hare's draft would be sent out tomorrow and the Commissioners will return comments or additions to the draft to Ms. O'Hare by September 10.

### **3. #A05-10.2 / 110 Leigus Road – Workstage-Connecticut, LLC – (violations)**

Ms. O'Hare indicated that there were several memos that went back and forth since the last meeting. She indicated that the Town Attorney gave her a directive to get certain specific things in a time line over the 3½ years with all of the ups and downs of the project. It has to be determined if there are any violations at this time. It also has to be determined when the timeline runs out on certain approvals. The Town Attorney indicated that once she receives that information from Ms. O'Hare she will review it and have a response by the October meeting. At that time the Commission may or may not take action on a Notice of Violation.

Chairman Vitali clarified that Ms. O'Hare has to submit a complete and in depth violation letter to Workstage. Mr. Heilman believes that it should include the horrible condition of the large detention pond. He stated that it was never completed property and does not function properly. Mr. Heilman feels that the Law Department should look into the responsibility of the engineers that designed the

site. He feels that the engineers should have some legal responsibility for what they do as an engineering firm. He indicated no one is acting as site manager to maintain the temporary sediment basins as previously done and this is a big concern.

**4. 31, 33, and 35 Elmhill Drive – Rocco and Frank Totino – (filling)**

Discussed earlier.

**5. 51 Dibble Edge Road – Mark and Dianne Szetela – (cease & desist)**

Present were Mr. and Mrs. Szetela, Attorney Stephen Ketainek, and Engineer Rob Hilbrand.

Attorney Ketainek handed out a packet of materials for the Commissioners to follow along as he made his presentation. In 2008 Mr. and Mrs. Szetela found this lot and began inquiring within the Town about what they needed to do in order to build their house on that site. Mrs. Szetela met with the Planning Department about any wetlands issues. She was told that if she was building a lot within an approved subdivision she didn't really have to be concerned about wetlands issues. Attorney Ketainek stated that at no time with discussions with the developer's attorney or between the realtors was there any ever disclosure of the existence of the requirement for the bonds or the transfer of permit or the limits on the placement of the foundation. The Cease & Desist order came as a surprise to the Applicant. Mr. and Mrs. Szetela were unaware of the bond requirement for the foundation and the additional \$2,500 bond for the completion of other items.

In May, Mr. and Mrs. Szetela went through with the purchase of the property not being aware of all of the conditions attached. They then hired Mr. Hilbrand to design the plan that was submitted to the Town as part of the application for a building permit. The plan that was designed by Mr. Hilbrand was a change from the upgradient pump-up septic system, which was originally shown to be in front of the house. The revised plan was developed with consultation with the Wallingford Health Department and moves the house forward on the lot and moves the septic to the rear. The new plan puts the septic system within the 200-foot radius that is prohibited under the regulations of the IWWC. That new plan is the one upon which a building permit was issued.

Attorney Ketainek stated that there was nondisclosure by the developer, seller, the seller's attorney, and the seller's realtor and anyone on that side of the transaction. The building permit was issued with no mention of any approval being required by the Environmental Planner or the IWWC. Mr. and Mrs. Szetela had no indication that there were any issues so they were extremely surprised when they received the Cease & Desist. They have done everything requested of them since they received the C&D and have acted in good faith.

Mr. Hilbrand worked with Rosalind Page on this site. Mr. Hilbrand spoke to Ms. Hudd (*Hazelwood*) in the Health Department about the design of this site. She provided the soil test data on this site. Mr. Hilbrand picked up comments that stated that a curtain drain was going to be required on this site. He stated that the feasibility plan did not show a curtain drain. When he applied the curtain drain to the plan it put the drain into the town roadway. Mr. Hilbrand picked up on the fact that the distance between the proposed structure and the septic system was only 45 feet where 50 is required. After coming up with those issues he once again contacted the Health Department to discuss these

issues. Mr. Hilbrand wanted to come up with a better plan. He worked with Ms. Hudd (*Hazelwood*) and did some new soil test pits to develop a better plan. Mr. Hilbrand submitted to the Commission a diagram of what was approved on the site.

Ms. O'Hare referred to the Environmental Planner's Report dated August 24, 2009. She stated that the Cease & Desist order was based on the fact that the work on the site was conducted without a permit. Dibble Edge Realty had a permit but it was never transferred to Mr. and Mrs. Szetela. Ms. O'Hare stated that if the Commission felt so inclined they could do a transfer of permit. She received correspondence from the Dibble Edge Realty attorney asking the IWWC to transfer the permit from them to Mr. and Mrs. Szetela.

Ms. O'Hare clarified that a \$10,000 bond was required for the foundation location, which would have been posted just prior to getting a building permit. The \$2,500 bond for erosion controls should have been posted before that. Ms. O'Hare referred to a letter written by the attorney for Dibble Edge Realty. The letter made no mention of them telling Mr. and Mrs. Szetela about any of the conditions attached to this lot.

Chairman Vitali isn't sure the Commission should transfer the permit at this time because perhaps Dibble Edge Realty still has some liability in this case. Mr. Kern is not comfortable transferring the permit at this time. He doesn't believe the curtain drain issue is legitimate. Mr. Hilbrand asked if the regulation includes the reserve area of a septic system. Mr. Kern stated that is a gray area because the reserve areas really aren't used anymore. Mr. Hilbrand pointed out that if a reserve area is required by the Health Department it has to be included in the plan. Mr. Hilbrand stated that to do everything that is required for the Health Code everything would have to be moved about 15-20 feet toward the wetland. He stated that on the originally approved plan the reserve for the septic was within the 200 feet from the wetland. Ms. O'Hare clarified that the regulation states that the measurement should be taken from the tributary not from the wetlands. She stated that the key is finding where that tributary actually is on the site. Ms. O'Hare believes that it may be possible to pull everything back and get the curtain drain out of the road. Mr. Hilbrand stated that he would have the property surveyed to see where that tributary is and then create that 200-foot line and see how that affects the existing design. Ms. O'Hare stated that the way she reads the regulations, the reserve has to be 200 feet from the tributary. Chairman Vitali feels that there may be some flexibility in those 200 feet for the reserve system.

Mr. Kern suggested that if the owners can stay out of the regulated area, move the septic system around so it meets the Health Code, and can satisfy all of the IWWC regulations and post the two bonds, the Cease & Desist can be lifted administratively and the permit can be transferred administratively and the project can continue. Mr. Hilbrand would like to have Rosalind Page and Ms. O'Hare agree on the location of that tributary so it can be field located and put on a map. She can then locate that 200-foot line on a map and go from there with the placement of the septic and the house.

Chairman Vitali stated that the Cease & Desist would remain in place.

**6. 475 Williams Road – Patricia Schlosser, owner, Art and Rita Pires, tenant – (cease & desist)**

Mr. Pires was present to discuss this issue.

Ms. O'Hare referred to the Cease & Desist Order dated August 26, 2009. She stated that there is a lot of activity on the site. It is a large property that is approximately 12.6 acres but most of it is floodplain and the house is surrounded by wetlands. The permit back in 1991 was to construct the house and a wetland crossing to access the house. Ms. O'Hare was called to the site because of a complaint of a neighbor that there was activity. She met with Mr. Pires who stated that he was unaware that he was doing anything wrong. Ms. O'Hare stated that Mr. and Mrs. Pires had met with her a few months previously and had been told that they really couldn't do anything more than was already one on the site. Ms. O'Hare asked Mr. Pires to stop the activity on the site and come into her office so they could work together to see what options he had. Mr. Pires did meet in the office however he has not yet applied for an application. Ms. O'Hare visited the site again only to find out that the activity has continued on the site. She requested Mr. Pires to remove "approximately 20 logs" that were piled close or into the wetlands. When Ms. O'Hare visited the site three weeks later, the logs were still there and the filled area had been further compacted and graded and had heavy equipment parked on it. Ms. O'Hare circulated photos of the site to the Commissioners. She indicated that this site is also the subject of a zoning violation. She indicated that there is a storage container that is partially in the wetland. Ms. O'Hare stated that Mr. Pires had Tom Pietras and Ken Stevens out to the site to flag the wetlands a few weeks ago.

Mr. Pires stated that he did not fill in any wetlands. He had Ken Stevens visit the site and flag the wetlands. Mr. Pires indicated that the logs that Ms. O'Hare requested be moved were moved within two days of the second request and placed on the pavement. Mr. Pires stated that he has done everything that was asked of him by Ms. O'Hare. He has done nothing since Ms. O'Hare visited except plant some trees. Mr. Pires stated that this piece of property is agricultural and he is just trying to improve the property. He gave some history on this piece of property and the structures that were on the property before he had anything to do with it.

Chairman Vitali recommended that Mr. Pires submit to Ms. O'Hare the report and maps that he had done by Mr. Stevens. Ms. O'Hare will compare the new map with the maps that are on file for this site. Chairman Vitali stated that if there has been fill placed in the wetlands it must be pulled out. Mr. Kern feels that the maps need to be compared by Ms. O'Hare first to determine where the actual wetlands are. Mr. Pires indicated that he would make some copies of the report prepared by Mr. Stevens to review.

Ms. O'Hare asked if the Commission would be interested in doing a site walk. She also asked if the Commission believed that Mr. Pires should be or would be filing an application. Chairman Vitali doesn't think either one of those could be answered before the maps are compared. The Chairman indicated the Cease and Desist stays in place.

**REPORTS & COMMUNICATIONS:**

**1. #A07-11.3 / East Center Street / MacKenzie Reservoir – staff report**

Ms. O'Hare reported that the work is moving along and there are field changes every day when you go out to the site. She wanted to get a sense from the Commission about how to handle all of the field changes that occur from day to day. The Commission feels that this type of project cannot be micromanaged. As long as the project is under control and moving along Ms. O'Hare should be able to handle the field changes.

Mr. Heilman asked Ms. O'Hare to see if she could obtain any records they have of the strata from that project.

## **REGULATIONS REVISION:**

- 1. Discussion of draft proposed revision**
- 2. Acceptance of draft proposed revisions for adoption**

Relative to the memorandum from the Law Department on the Queach case, Chairman Vitali stated that he feels that the "magic sentence" does not belong in the regulations and he believes that the Law Department feels the same way. Relative to previously requested revisions, Ms. O'Hare stated that she went back since the last meeting and refined the surface area and the roof area provision. The other item that she worked on further was the slope regulation. She worked with Mr. Heilman on identifying a degree of slope to be included in the regulations. Ms. O'Hare handed out and reviewed a revised proposed draft of the regulations she has been working on. The Commission discussed the revised proposed draft. After discussing the issue of percentage versus degree of slope, it was decided that Mr. Heilman would try and come up with a chart to correlate the two. Mr. Heilman and Ms. O'Hare will work on some modified language for that one regulation regarding slope.

The Commission went on to discuss Item 7 on Ms. O'Hare's proposed revision. Chairman Vitali is not in favor of Item 7.

Ms. Deutsch understood that Ms. O'Hare was going to gather some information regarding the benefit of having a 100-foot buffer versus the 50-foot buffer. Ms. O'Hare did not research that yet. Mr. Heilman will try and gather some information for the next meeting.

Ms. Deutsch would like to see on the agenda for the next meeting Ms. O'Hare's report on the DEP training class that she attended 3-4 months ago. Ms. Deutsch would like to see the handouts that Ms. O'Hare collected at that class. It was decided that Ms. O'Hare would mail out the handouts with the draft letter for the Andrews application.

Ms. O'Hare reported that the Tennessee Gas Pipeline project started one week ago and she has been following that closely because they are moving right along. She also made the Commission aware that the corrective action at Brother's Pool started today.

## **ADJOURNMENT:**

Ms. Deutsch made a motion to adjourn. The motion was seconded by Mr. Kohan and passed. The meeting adjourned at 10:55 p.m.

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