

INLAND WETLANDS AND WATERCOURSES COMMISSION

TOWN OF WALLINGFORD

SPECIAL MEETING

WORKSHOP

WEDNESDAY, OCTOBER 16, 2013

6 p.m.

MINUTES

A Special Meeting of the Wallingford Inland Wetlands and Watercourses Commission was held in Room 315, Town Hall, 45 South Main Street, Wallingford Connecticut on Wednesday, October 16, 2013 at 6 p.m. for the purpose of conducting a Workshop discussion relative to:

Violations of the IWWC Regulations, in general:

Unpermitted, unauthorized activities conducted within the jurisdictional area (wetlands, watercourses and the 50-foot area surrounding these resources termed the upland review area) in general, townwide and:

Specifically relative to noncompliant conditions/activities identified at several properties in "The Willows" subdivision development (originally approved under IWWC #A07-6.6) including the common open space property.

Seated Commissioners were: Chairman James Vitali; Vice-Chair Ellen Deutsch; Commissioners Nick Kern; Deborah Phillips, Alternate; Dave Parent; Dennis Murphy; Jim Heilman, Alternate; Erin O'Hare, Environmental and Natural Resources Planner; Joan Molloy, Loughlin FitzGerald, P.C.; Joe Tatta, member of the public.

Chairman Vitali called the Special Meeting workshop to order at 6 p.m.

In his opening remarks, Chairman Vitali said the purpose of the Workshop was to get opinions from the Commissioners regarding what would or would not be accepted in the upland review area. He said the Commission determined the upland review area was not a no-build zone. He said he wanted to get input from the Commissioners on what they would allow, what they would accept, regarding the upland review area.

Chairman Vitali said there are currently a group of Applicants that have created activities in the upland review area. He said instead of hashing out feelings every month at the regular IWWC meetings, he hoped the workshop would enable the Commission to garner a consensus on non-compliant conditions and activities.

Commissioner Parent said he takes a strict view on the way he looks upon a subdivision and open space. He said whatever is approved by the IWWC is a contract and once this is done, when someone deliberately sets out to violate that condition, he is all for taking a hard line. He said the IWWC has to make sure that a way is provided so if the Environmental Planner sees a violation, the IWWC has a strong enforcement mechanism. Commissioner Parent said how this would be enforced would usually require money, or liens on the property or the posting of a bond.

Commissioner Murphy said he was also taking a hard-line approach. He said he wondered if people knew that building in the upland review area was something they could not do, even if it were in their contract. He said he wondered how much of this information is passed along to the owners, and how many people read the contract, and does that contract spell out the can and can't do.

Commissioner Phillips said that besides "The Willows," there are other sub-divisions where people are putting up structures, i.e., playscapes and other things. She believes people did know when they bought the properties and signed the contracts, what they were limited to and are choosing not to pay attention because they don't believe they will be fined.

Vice-Chair Deutsch said she agrees with the contract idea, but there is also the flip side with these contracts and the possibility they can be modified. She said you have to consider whether the homeowner had a lawn and put a structure on it, or was it a pristine upland review area and it was cut up. She said she would react differently to these two scenarios. She said if the owner was destroying the function the upland review area is serving, she would take a hardline attitude; if it were a yard and it isn't changing anything, she would not be so willing to take a hard line. She noted she is willing to take a hard line to someone who is disregarding something.

Commissioner Heilman said he wants to weigh things as to what difference would it make. He said he did not believe the concerns the IWWC has tonight are not the same. He said it is drastically different because these are not lawns which have been here since the days the wetlands formed, or before. He said these are new established residential areas that the IWWC fought very hard against in concept because the IWWC recognized the importance of people's feelings and their desire to have a back yard and to use the back yard. He said if pushed against the wall, the IWWC couldn't just deny this Application. The IWWC had to deal with what was forced upon us by Planning and Zoning and the IWWC did the best it could with all sorts of legal guarantees that the wetlands would be protected. He said upland review, does not mean it is not buildable. He said he grants this 100%, but doesn't think this situation with "The Willows" doesn't grant this, and is a unique situation. He said if the IWWC doesn't stand firm in support of our wetlands, because of its uniqueness, we are in big trouble.

Commissioner Kern asked if the IWWC was here to crucify "The Willows." He asked the Chairman what the original question was.

Chairman Vitali said the question was what would be the IWWC's policy regarding the upland review area.

Commissioner Kern asked if the IWWC wanted to move to the next step, i.e., fines or penalties or more enforcement for violators that are using the upland review area without permission and do we want to see all of the upland review violators appear before the IWWC.

Chairman Vitali summarized the feelings of the IWWC Commissioners by saying the IWWC should look at this group of violators at "The Willows" differently because the IWWC worked hard and it was a brand new subdivision compared to someone just putting in a shed and a pool in an upland review area. He said he is only trying to bring some thoughts together because the IWWC has precedence elsewhere.

Commissioner Heilman said, regarding putting a pool in an upland review area would it make a difference, and that is the traditional thing the IWWC would do. He said the IWWC is here to protect the wetlands and that is why we have the upland review area. He said "The Willows" is like a smack in the face, a rudeness to the IWWC's authority and our purpose of being here.

Chairman Vitali said the IWWC created, through Ms. O'Hare, the after-the-fact process. He said this is not a great tool but it fits an occasion. He said he has gotten the consensus from the group that there are exceptions to different upland review area violators, but if the IWWC focuses on "The Willows," which is approximately three years old, and, in that three years, they have disregarded everything that the IWWC worked for.

Chairman Vitali asked Ms. O'Hare if "The Willows" residents were invited to the workshop.

Ms. O'Hare said it was a public meeting that was publicized, but individual notices did not go out. She said Corporation Counsel Janis Small requested that a form letter be sent out to all 62 residents of "The Willows" because Atty. Small believed the residents needed to be reminded that "The Willows" is a special type of sub-division with certain deed restrictions and to remind them the Town will be looking at this closely. She added that when conducting the site visit, she told several owners and some said they might come to the meeting.

Atty. Molloy said the process started when there were potential purchasers of the property. She said the developer property owner had a fairly detailed contract, and they also provided copies of any of the restrictions that impacted the property. She said in addition, a photo was taken from the sub-division map which showed an individual lot which would be highlighted and any non-disturbance area shown. Atty. Molloy said before the purchaser ever entered into a contract, all of this documentation was provided. She said any potential buyer had a four-day review period. She said from her prospective a great deal of pre-contract information was provided. Atty. Molloy noted that at the closing, each party was provided with an as-built which showed placards. She said the purchasers' deeds also included this information. Atty. Molloy said she always took out the survey and laid it out in front of the buyer and their attorney and pointed out if there was something on this particular lot. She said she informed the buyer and

attorney that if anything was to be done in these areas, the Environmental Planner had to be contacted.

Chairman Vitali asked Ms. O'Hare how many issues she had in "The Willows" area.

Ms. O'Hare said she had approximately 20 issues. She noted because of the assignment she was given, she had to go out to "The Willows" again and look with greater detail, which included taking photographs, and when this was done, more non-compliance issues were found. Ms. O'Hare explained there was some non-compliance on the part of the Developer, i.e., missing posts, shrubs and wetlands placards in the wrong place. She said when these issues are corrected, other things will fall into place.

Ms. O'Hare said the biggest non-compliance issues were the clearing of open space, and intruding into the common open space area, all of which would be in the upland review area.

Commissioner Kern asked if Ms. O'Hare worked with the Developer regarding the installation of the placards and posts. He said if there are 26 violators they should be asked to appear before the IWWC with a copy of their deeds and paperwork, and there should be documentation on their deeds. He said it is unfortunate the violators did not read their deeds because they would have been aware of their violations and this needs to be rectified.

Ms. O'Hare discussed 22 Twin Pines Drive, lot 11. She said either the owner or developer made an error. The owner constructed a basketball court in the upland review area. She said there is supposed to be a 30-foot wide upland review area but after measuring, Ms. O'Hare said she discovered the area was only 15-feet wide from the pins to the placards and the bushes.

Chairman Vitali asked Ms. O'Hare if it were possible that the bushes and posts got moved back.

Ms. O'Hare said she wasn't sure what was going on. She said she did not know who moved the bushes or the placards from the line, the developer or the owner. She said if the map is correct, the basketball court went over into the upland review area.

Chairman Vitali said looking at the maps, he feels the basketball court location is fine.

Atty. Molloy said one could not judge by the conceptual map. She said she has a problem with a blanket statement made by Ms. O'Hare that the developer did not do something. She said we should not be making assumptions.

Chairman Vitali told Ms. O'Hare he didn't believe she had enough information to determine that the basketball court is in the wrong place.

Ms. O'Hare said if one looks at the As-built map, the basketball court is in the upland review area. Ms. O'Hare also spoke about several homeowners who had planted their lawn to the crest of the slope in the upland review area and in the process, have endangered the slope.. She said some homeowners have put in drainage pipes into the upland review area and deposited leaves and lawn cuttings. She noted a few homeowners stopped mowing that part of the lawn

after they received word of the violation. Ms. O'Hare said the 50% slope rule regarding the upland review area was approved in 2010, and this subdivision was approved in 2007. She said the slope is very steep and fragile and once the protection is taken away, the water will go down the homeowners lawn and keep going, that is why this upland review area is important. Ms. O'Hare noted that on 7 Twin Pines Drive, the homeowner installed an ornamental garden in the upland review area. She said a lot of fill was brought in to make the garden. She said it is not eroding. Ms. O'Hare said a lot of people removed the wetlands posts because they were in the middle of their backyards.

Commissioner Parent said that the homeowner has violated the wetlands and asked why the shed isn't removed and should not wait for a decision by the IWWC.

Chairman Vitali noted that Ms. O'Hare told the homeowner to apply for an after-the-fact permit and asked why didn't she require the homeowner to remove the shed from the upland review area.

Ms. O'Hare said the property deed notes that if the homeowner comes before the IWWC, the homeowner might be able to get a permit. She also noted that the homeowner's variance application has been denied but she told him not to move his shed until the IWWC renders a decision on it.

Chairman Vitali said he believed the deed states that "if" the property owner wants to do anything, the property owner must come before the IWWC.

Ms. O'Hare also spoke about three lots where in the process of obtaining subdivision approval, the IWWC allowed the developer to fill wetlands on lots 14 and 15 which were wet meadows in return for creating a wetlands in another location in the open space area. She said this has not gone well and there is a lot of work still needed to be done at the intersection of the three lots where the wetlands was supposed to be created. She said this affects the residents because some of the wetlands that were supposed to be created were relocated on Lot 15. She said placards, posts and shrubs are missing.

Chairman Vitali noted that the discussion tonight is just centered on violations in the upland review area. He said the IWWC is not here to take about the entire project.

Ms. O'Hare said Lot 14, which is 9 Padens Court, has had the shrubs mowed down and a vegetable garden and lawn was planted in the upland review area. She said after being made aware of the violation, the garden was removed and a wildflower mix and Christmas trees were planted in the wetlands area on the property. She said the land was also graded up and is not a wetlands anymore.

Chairman Vitali asked Ms. O'Hare to stay focused and asked about the sheds.

Ms. O'Hare said at "The Willows" there are two sheds in the upland review area, the second one is located at 24 Padens Court and will be heard at the Nov. 6th IWWC meeting.

Ms. O'Hare said in answer to Chairman Vitali's question, some owners have installed lawns and one has installed a playscape, and several gardens and birdbaths have been installed in the upland review area. She said some homeowners have taken out the developer's shrubs entirely and some have replaced the developer's shrubs with their own shrubs.

Chairman Vitali said he gathered from Ms. O'Hare's reporting that the majority of the violations involve the creation of lawns in the upland review area. He said the shed being built in the upland review area is a different issue.

Mr. Tatta said he resides on North Farms Road and also received a notice, reference was to a violation letter, but did not believe he was part of the inland wetlands area. He said the developer had planted grass in the open space. He said when he purchased the home, the lawn was there and he maintained it. He said he received a letter saying he was encroaching on open space.

Chairman Heilman said this is understandable because when development is taking place, the developer has to stabilize the wetlands or upland review area, install the markers and let it go.

Chairman Vitali said he spoke with Ms. O'Hare about the possibility of fining people for depositing grass clippings in the wetlands or upland review area and said she was not fond of that idea. He asked how the grass clippings would be removed from the open space area because it seems as if everyone is using this area as an organic dump. He said he is not so adamant against grass growing in the upland review area and it is not as crucial as pulling up posts or a shed.

Mr. Tatta said he met with Ms. O'Hare when he received the notice who told her the open space near North Farms Road is supposed to be mowed annually, and asked what was the difference between mowing it annually and maintaining it.

Atty. Molloy said she understood that area was supposed to go natural and not be mowed.

Chairman Vitali said he recalled that Mr. Tatta's strip of land going down to North Farms was not requested to be mowed.

Vice-Chair Deutsch said as far as the lawns are concerned, if the Developer had planted the lawns in the area to stabilize it, just stop mowing it and move on to something else. She said as far as the sheds, she said she would want them removed from the upland review area unless there is a hardship and sees no reason to grant an exception.

Commissioner Heilman said this is a unique situation and one of the feelings he senses is to stop the homeowners from utilizing the wetlands and upland review areas be it with gardens, lawns and allow the area to revert back to its natural conditions. He said this is not like other situations which come before the IWWC. He said there has been a law here for the past number of decades, and now people want to move in and want to install a pool, it is in the upland review area, but if the area they want to develop has been a lawn since forever-keep it

that way because it won't make any difference. He said the IWWC's task is to protect water quality for future generations. He believes the IWWC's regulations are far more important to the future of humanity than to the aesthetics of zoning. He said the IWWC regulations need to be upheld especially in this situation.

Commissioner Kern said he has been on the side of the fence where he has mowed in the open space. He said a person spends half a million dollars for a piece of property and they have a backyard that is wooded. He said everyone looks for a place to dump their grass clippings or their brush. He said he can see where we don't want anything to happen in the upland review area or open space area, but what do we want people to do with their brush and grass clippings, should they go to the dump or recycle center. He said we are all guilty of something that is happening. He wanted to know what should be done about the sheds. He said we have to give merit to each one of these cases.

He said if Ms. O'Hare has 25 or 26 potential violators, it sounds as if the Developer did 99.9% of what needed to be done here, there are a few shrubs missing because either they were planted or taken out or whatever. He said we need to back off the Developer because he believes most of the property out there has been sold and developed. He said we have to go after the violators with a copy of their deed. He said as far as the basketball court goes, he wants to make sure this person is violating. Mr. Kern said he wants to make sure Ms. O'Hare can read the print and if she needs the Engineering Dept. out there because she is having trouble with the prints, then that is what we need to do.

Atty. Molloy said she made copies of all of the letters that were sent out to the homeowners, which was basically a form letter, and on the bottom of each page was a list of things based on Ms. O'Hare's original inspection. She said she broke down to P & Z versus Inland Wetlands and in some cases it was a joint P & Z Inland Wetlands issue because it might have affected the open space. She said that Ms. O'Hare's summary at the end where a lot of the issues are mowing, dumping leaves, gardens being built, sheds or playscapes, some of these are P & Z issues because they are in the open space. Atty. Molloy said what has been talked about regarding communicating with the homeowners, may be the simple way of solving most of the problems. She said if people should be given the opportunity to comply after letters are sent out as suggested by Atty. Small.

Commissioner Heilman said every citizen should have the right to come before the IWWC to request things and a review of what their options are.

Atty. Molloy said as the Association is taken over by the homeowners you may see more enforcement because they are there every day.

Chairman Vitali asked the Commission members if it was their intention to request that everyone who has done activity in the upland review area be requested to stay out of the upland review area, do not mow it and let it return to its natural state. He asked Ms. O'Hare if this should take care of the majority of the issues.

Ms. O'Hare said this will not take care of all of the issues because people have gotten creative.

Chairman Vitali noted that the consensus of the IWWC was to not allow anything in the upland review area.

Ms. O'Hare asked if there is a drain pipe in the upland review area, will it be allowed to remain. Chairman Vitali said as long as it was not draining the wetland, he did not see a problem.

Commissioner Kern asked how the IWWC could tell one homeowner not to have their flower bed and another homeowner they can have their shed.

Chairman Vitali said the letter should begin by notifying the 26 out of 28 people that they are not to cross the upland review area line and that it is the intention of the IWWC to let the area return to its natural state.

The IWWC requested that Ms. O'Hare send out two letters – one general and one letter more specific.

Commissioner Kern said this should be a partnership type atmosphere.

Chairman Vitali said Ms. O'Hare needs some direction, some will abide and some won't and the ones that don't are invited to come in front of the IWWC to explain their case. He said the letter should also state that if a homeowner has an upland review area on their property, they are not to cross it. He said the letter has to be forceful.

Ms. O'Hare said that two letters will be put in the envelope-a general letter and a more specific letter. She asked the IWWC about the specific letter, whether it should be a stern letter or just a Notice of Violation.

Atty. Molloy suggested Ms. O'Hare consider the second letter as a follow-up to her (Atty. Molloy's) letter stating something to the effect that if the activity continues in the upland review area, no further enforcement action will be taken.

Chairman Vitali said putting the word "violation" in the letter is important. He said the other issue is the fines, but he didn't believe anything would happen unless this was successful with Planning and Zoning.

Commissioner Heilman said he doesn't like to see upland review areas turned into lawns because the lawn ends up with pesticides which end up in the upland review area.

Chairman Vitali suggested adding that application of pesticides, herbicides and fertilizers, should be prohibited into the language of prohibited activity in the upland review area in the letter Ms. O'Hare will be sending to the homeowners. He suggested Atty. Small review any letter to be sent out to the homeowners.

Adjournment

Chairman Vitali adjourned the meeting at 7:33 p.m.

Respectfully submitted,

Cynthia A. Kleist

Recording Secretary