

SPECIAL MEETING

Wallingford Inland Wetlands and Watercourses Commission

Robert F. Parisi Chambers

2nd Floor, Town Hall

45 South Main Street

Wallingford, CT

Thursday, November 10, 2016

MINUTES

PRESENT: Chairman James Vitali; Secretary Nick Kern; Commissioner Deborah Phillips; Alternate Daryll Porto; Erin O'Hare Environmental Planner.

Chairman Vitali called the Special Meeting to order at 7:01 p.m. and the Pledge of Allegiance was recited.

Cease & Desist Hearing – 8 & 10 Atwater - Howard and Gail Lohmann – unpermitted filling of wetlands and uplands.

Chairman Vitali explained this Cease & Desist order was issued to the Lohmann's c/o Logan Steel. He said a meeting is required after 10 days after the Cease & Desist is issued. He said this Special Meeting will determine whether the Cease & Desist stays in effect or will be removed. He said it is the Lohmann's responsibility to prove they did not fill the wetlands and uplands.

Appearing in front of the IWWC was Atty. Dennis Ceneviva, Ceneviva Law Firm, representing Howard and Gail Lohmann and the Lohmann's two sons, Howard Lohmann Jr. and Eric Lohmann, both principals in Logan Steel.

Atty. Ceneviva noted that since the Cease & Desist letter was received from Ms. O'Hare, no activity has been undertaken at the site. He said the property was purchased back in 2000 and was developed through approved plans beginning in 2003 and occupied in 2004. Atty. Ceneviva said based upon the Cease & Desist order, the Lohmann's have retained his office and has also contacted Rosalind Page of Winterbourne Land Services and engaged her to begin work at the site. He said Ms. Page reached out to Tom Pietras, Soil Scientist. Atty. Ceneviva said Mr. Pietras has begun looking at the report he believes was filed in 2003 and Google Earth to determine any changes from 2012 to the present. Atty. Ceneviva said he has no information with which to respond to at this time, but they intend on honoring the Cease & Desist order.

Atty. Ceneviva said his clients take this seriously and as soon as they have results, if there has not been a violation, he will come back with requisite reports, and if there were any unintentional violations, he will come back with a plan on what is appropriate remediation. Atty. Ceneviva said his clients will do whatever it takes to comply with the regulations.

Chairman Vitali said he knows the people involved and have always wanted to work with the Town, not against it. Chairman Vitali referenced a statement made "started developing with permits in 2003." He said Ms. O'Hare has mentioned that whatever application was before the IWWC for this property was withdrawn. Atty. Ceneviva noted in 2009, he believed there was going to be an addition. He said he believed Ms. O'Hare referenced in her letter the 2009 application which was withdrawn, the issues of removing steel which Logan Steel had on-site in order to proceed. He said he believed Mr. Lohmann Sr. made an executive decision at that time not to proceed with the addition. Atty. Ceneviva said he recollected from his clients that the work was started through the proper approvals back in 2003 and the building was occupied in 2004.

Chairman Vitali noted this was a different parcel. Atty. Ceneviva pointed out he believed this was all part of Atwater 8 & 9. Commissioner Kern asked what year it was when the Lohmann's presented in front of the IWWC regarding making more room for the raw materials. Howard Lohmann Jr. said the property was purchased in 2003 and the building was constructed in 2004. He said a second building was proposed in 2008.

Commissioner Kern said the print in front of him states this occurred in 2009 and was withdrawn. He said the IWWC already reviewed a conceptual design so he believes this will be an easy task. Atty. Ceneviva said he believes there is a lot of information which will be able to be gathered quickly so he can come back with something responsive. Chairman Vitali said he believed the biggest challenge would be flagging the wetlands and surveying lines. Atty. Ceneviva said he would also have to compare what was done in the past.

Chairman Vitali said the Cease & Desist stays in effect and the Lohmann's will start an investigation process and this will be put on the regular IWWC meeting agenda for December 7.

Ms. O'Hare said Corporation Counsel Janis Small wants the IWWC has to vote to affirm the Cease & Desist letter and vote that the Cease & Desist remains in effect. Ms. O'Hare said she sent out through Certified Mail, the Cease & Desist letter and also by regular mail to several parties. She said she was told by Howard Lohmann Sr. that the addresses had changed, so she resent the letters to his home address and his other address in Meriden on November 4, 2016. She said the original letter was issued on November 3, 2016. Ms. O'Hare said she visited the property on November 1, 2016 after receiving a complaint. She said she gave a verbal Cease & Desist to a man on a piece of equipment who told her he worked for Logan Steel. She said after she returned to her office, she spoke with Howard Lohmann, Jr. by phone and issued him the verbal Cease & Desist and also informed him this would be coming by letter in the mail. Ms.

O'Hare said she wants to get direction from the IWWC and asked them to look at her photographs taken outside. She noted currently, there are no erosion control measures, and noted in some places there are 8 ft. to 9 ft. of fill coming down into the floodplain floor. She said she doesn't know how long this enforcement action will last before the Lohmann's have any permits they might need retroactively from Planning & Zoning and the IWWC.

Ms. O'Hare said she didn't know at what point the IWWC would want to have erosion controls put in place at the edge. Chairman Vitali asked if the Commission could wait until the December meeting. Ms. O'Hare asked the IWWC if they were concerned about the type of material that was used for the fill. Chairman Vitali said he wasn't concerned if the fill was placed outside the 50 ft. buffer for the upland review area. Ms. O'Hare said there is no drainage and is like a mesa, a plateau. She said if this moves forward, there has to be drainage.

Ms. O'Hare said she wasn't sure if the current fill violation stays within 8 Atwater Place and 10 Atwater Place. She said she copied a mock-up of the Assessor's data which shows 9 Atwater Place which is 9 acres and wraps around 8 Atwater Place. She said some of the fill might also be on 5 Barker Drive. She said at this point, she knows two tax parcels are involved, but isn't sure if a third or fourth tax parcel is involved. She said Rosaline Page of Winterbourne Land Services, came into her office today, (Thursday), and looked at the 2009 site plan. Ms. O'Hare said she is pleased the wetlands will be flagged. She said her follow-up decision letter will state that the Lohmann's are directed to flag the wetlands. Atty. Ceneviva said he has engaged the services of Mr. Pietras who will inform him of what is appropriate. He noted there are identified locations for the flags from the earlier plans. Atty. Ceneviva said that Mr. Pietras told him that much of the information available would be sufficient to come back with a professional report.

Chairman Vitali said the wetlands are the starting point. He if Mr. Pietras has to convince the IWWC that the fill is outside the 50 ft. of the wetland flags. Commissioner Kern said this area has to be flagged so the IWWC can show staff where the 50 ft. line is. He asked if the Lohmann's will be allowed to use the area out of the 50 ft. buffer. He said these areas are still workable. Chairman Vitali said he wouldn't have a problem with this, and said if they were 100 ft. from the wetland area or 150 ft. from the river, it leaves some area on top. Commissioner Kern said this is two-parts: where the wetlands are located and the remediation, if there is fill in the wetlands, how this can be shaped to be out of the wetlands. He said there can't be a 10 ft. to 12 ft. high bank because when the river comes up it will erode. He said he would rather have this stabilized and not waste time with S&E control measures, leave it the way it is and come back with a plan for December.

Ms. O'Hare asked if the IWWC wanted to give the Lohmann's a time period in which to give her the map before the meeting or at the meeting. Chairman Vitali said he believed the Lohmann's would give Ms. O'Hare the map as soon as it can be generated. He said this situation is in the Lohmann's best interest to get this done. Commissioner Kern said he couldn't see the entire property being shut down. He said work can be done as long as the bank is not touched.

Chairman Vitali noted the Cease & Desist is for the depositing of the material. Atty. Ceneviva said his client is not trying to hide anything and is just trying to put down millings so there will be more storage. He said his client is trying to be compliant. Howard Lohmann Jr. said the millings will be put on top of the soil.

Ms. O'Hare said maybe the Lohmann's can use some of the area and noted she received a copy today, (Thursday), of a Notice of Violation letter which went out from the Zoning Enforcement Officer who listed all the sections of the zoning regulations which are being violated which is mostly fill. She said the Notice of Violation letter stated "you are hereby ordered to correct these violations within 30 days. Failure to do so will result in a Cease & Desist Order."

Commissioner Kern noted that the ZEO has nothing to do with tonight's meeting. He said the IWWC is concerned with the wetlands and if there is usable area outside the wetlands that is between the Lohmanns and Planning & Zoning. Chairman Vitali said if the Lohmanns are 100 ft. from the wetlands and are parking trailers there, the IWWC is not that concerned but this doesn't override anyone else in Town Hall. Ms. O'Hare said the IWWC will be receiving a site plan, possibly the old 2009 plan or whatever base map they can use, with the extent of the fill line drawn on it, superimposed on top of the former wetlands and upland review area.

Chairman Vitali asked if this is surveyed and they find material which doesn't belong, can it be removed before the Dec. 7 meeting. Ms. O'Hare said this would be up to the IWWC. Commissioner Kern said they will start the remediation, but if there is a storm all this will soften up and erode. He said it may be worthwhile to come in front of the IWWC with a plan at the Dec. 7 meeting. Atty. Ceneviva said it may take this long to come up with information because it has to be confirmed first that there is a violation. He said once this is confirmed, an appropriate remediation will be presented.

Chairman Vitali said based upon Ms. O'Hare's rough estimate from the property line towards the wetlands, indications are there has been some fill material deposited in the upland review area. He said this confirms the Cease & Desist was needed in this case.

Chairman Vitali entertained a motion

MR. KERN: MOTION THAT THE CEASE & DESIST ISSUED ON NOVEMBER 3, 2016 STAYS IN EFFECT UNTIL THE DEC. 7, 2016 IWWC MEETING AND THE CEASE & DESIST WAS JUSTIFIED

MS. PHILLIPS: SECOND

VOTE: KERN-YES; PHILLIPS-YES; PORTO-YES; VITALI-YES

Commissioner Kern noted the upland review area is open for modification so if it fits into the scheme of the plan it is workable. Ms. O'Hare said the Lohmanns may want to submit an application for the December 7th meeting.

Chairman Vitali entertained a motion to adjourn the meeting.

Mr. Porto made a motion to adjourn the meeting at 7:25 p.m. Ms. Phillips seconded the motion which passed unanimously.

Respectfully submitted,

Cynthia A. Kleist

Recording Secretary