

December 10th, 2013



S.B. Church Memorial Town Hall
486 Oxford Road, Oxford, Connecticut 06478-1298
www.Oxford-CT.gov

Oxford Conservation Commission Inland Wetlands Agency

REGULAR MEETING MINUTES

Tuesday, December 10, 2013

The **Regular Meeting** of the Oxford Conservation Commission/Inland Wetlands Agency was held in the Main Meeting Room of the S.B. Church Memorial Town Hall on Tuesday, December 10th, 2013.

Meeting was called to order at 7:43 P.M. by Chairman Michael Herde

ATTENDANCE ROLL CALL: Chairman Michael Herde

COMMISSIONERS PRESENT: Tom Adamski, Bill Richter, Sue Purcella Gibbons, Ethan Stewart
Also present: Land Use Attorney Peter Olson, I.W.E. Officer A. Ferrillo Jr. & Denise Randall
Administrative Secretary.

ABSENT:

None

AUDIENCE OF CITIZENS (NOT FOR PENDING APPLICATIONS)

None

AMENDEMENTS TO AGENDA:

None

NEW BUSINESS:

None

OLD BUSINESS:

1.) (IW 13-47) Garden Homes, Hurley Road.

First Public hearing was held on September 9, 2013 at Oxford Town Hall and now the continuation of the public hearing to be continued on November 26, 2013 at 6:30 pm in room B.

Commissioner B. Richter stated: I have a concern with the groundwater recharge. If it does not work, what can we do? When this first started it the wetland was fed by groundwater and now Mr. Klein says 30% and if that is the case, then what happens when the water starts going down. Can we say stop right here and lets find out why this is happening? When you change something like that, what's it going to do?

Chairman M. Herde added: That was my concern too. I had some notes from the Mr. Trinkaus's storm water management report where it shows on page 6 it said what they were clearing out on part of the quality, nitrogen, phosphorus, zinc and hydro carbons were all going to be taken care of pretty good by this system. That is the other facet, in that direction, the water quality will be ok.

Commissioner B. Richter stated: You have a nice sheet flow now and the ground water is getting re-charged now you come and change it by putting in the swales.

Commission T. Adamski asked: Do the under drains carry the water to the same place, with just a different route? Is that a correct statement?

Chairman M. Herde replied: Yes. So that could be part of the problem is you then interrupt the ground water. When you're trying to take off the surface water and then you're cutting off some of the ground water that would have been traveling underneath. I know Mr. Trinkaus said that it would work either way and it didn't matter if you were cutting off the ground water.

Commissioner T. Adamski asked: Well his point was your taking the ground water turning it into surface water and then its going in the same place. Is that correct?

Chairman M. Herde replied: You're just re-routing it and then it ends up in a wetland. It perches from out of the ground.

Commissioner B. Richter stated: I'm not convinced that the flow will be normal runoff though.

Chairman M. Herde stated: Is the wetland going to exist once this project is done. In the future if a parking lot goes or an industrial building and you have a pitch with water traveling across it and now you have to cut into the hillside and anyone, even if an industrial type building goes in, if there is water coming out with a high seasonal water table, there going to put some sort of drains in. My point is, no matter how you develop this property, someone at some point would have to place drains in otherwise whatever you build.

Commissioner B. Richter stated: And also there is a lot of concern regarding the under drains and the below that with the seasonal high ground water.

Chairman M. Herde replied: Right. Once they go into that low area of the swales and they have no other drain, it will interrupt the water. That's exactly what its doing and another common thing to do is to place a curtain drain there when you trying to dry up a piece of property.

Commissioner T. Adamski asked: Is there a condition we can put on the under drains for a quick fix, if it was found that the under drains are going to change the wetlands? Or something as simple as a shelve.

Chairman M. Herde replied: Well then you have perched water and your swales are only 12 inches deep.

Attorney Olson stated: The difficulty with conditions is that conditions such as that when are approvals, not approvals. It becomes difficult to ascertain that you got an approval if your development can then be stopped in the future due to a failure of a condition.

Commission T. Adamski asked: Can you apply it to any condition?

Attorney Olson replied: No. But we tried very hard to have a few conditions as possible. You also can't have conditions that require approval of a coordinate agency, for example. I think that what the issue that your struggling with is the drains in the seasonal high ground water in that portion of the year where is ramping up to at seasonal high ground water and then down flow. Based on the reports you can redirect the flow at that time period. The ground water, where it would go to in the detention basin with a point discharge. The solution to that doesn't fill your swales in seasonal ground water but that is not a condition. I think what you can do is strongly encourage the applicant to revisit that issue when they go to Planning and Zoning. Bring those swales up a bit and with additional grading and let P & Z handle it. Just remember you have 2 decisions to make. You have to decide on whether you think there is a significant impact on the wetlands. Number 2, you have to decide whether that proposal is the most feasible and prudent alternative or that there are no other feasible prudent alternatives that would have less impact. Keep in mind alternatives with less impact. We spend so much time talking about the proposal and not talking about alternatives in the public hearings.

Commissioner B. Richter stated: That is what I'm dealing with. I don't know if there is going to be an impact.

Chairman M. Herde asked: And is it significant?

Commissioner B. Richter stated: Being that this wetland has never moved this far, with all that testimony, seems something is not working.

Commissioners agreed.

Attorney Olson stated: The most you can do is require performance standards in reporting. To make sure you're kept up to date with the impact. There is not much you can do.

Commissioner B. Richter stated: All of the sudden they start digging the roads and the wetland disappears, what do you do?

Attorney Olson stated: I think what you have to remember is that your position is to whether there is a significant impact has to be supported by substantial evidence in the record. It is a technically complex issue that is expert testimony and you have to find and the expert has to state that there will be adverse impact and what that impact will be. It is an incredible difficult standard for the Commission to deal with.

Commissioner B. Richter stated: How can we make this decision and they say it's going to work and then we turn around and now it's not working.

Commissioner T. Adamski stated: There are 2 experts conflicting in their opinion. Nafis and Young basically saying that ground water recharge runoff will diminish with seasonal low ground water and create a significant adverse impact to the wetland. Then the response was this statement is actually incorrect.

Chairman M. Herde stated: You have to weigh in that this is a certain time of year. Its temporary but it is annually.

Commissioner T. Adamski asked: So it could be less significant if it is not a continuous issue?

Chairman M. Herde agreed: Right. I think for a good part of the year, the system looks as though it will work. High ground water which can be anywhere from September to March and then you have your dead time in July and August. Much of that area is still bone dry at this point.

Commissioner B. Richter stated: This wetland seems to be different as it is staying right there.

Chairman M. Herde replied: Well, yea because it is at the bottom of the slope so there is obviously a hard layer of gravel or ledge which acts as a bowl that receives it and it is coming from a big enough area that keeps it full year around pretty much.

Commissioner T. Adamski stated: I just want to make a point regarding the November 25 letter from Mr. Trinkaus sent on number 7 where the hydrological report and where it states about the comparison to Marcus Dairy. That is irrelevant first of all that was not L.I.D., this one is and even if I was in error with my vote, if I was, I don't think there is anything that requires me to continue me to be in error with this application.

Chairman M. Herde and Commissioners agreed.

Commissioner T. Adamski asked: As far as changing the grade on the swales that did not intercept ground water, now if there is nothing that we can do with the condition, all we can do is make a recommendation to Zoning?

Attorney Olson replied: There are 3 ways to handle it. The first would have been to have a longer public hearing process and during that, we could have tried to fix this but we hit the end of the time limit and there was nothing we can do. I would have like it to have come out at the first hearing but it just didn't. The second thing is to just approve it with a strong condition that this is fixed with Planning and Zoning. The other option is to move to deny it and say your grading doesn't fix this and to do that you need to find as a result of this, one issue, there is significant impact and no feasible alternative. I don't think I answered your questions for you with the 3 options but I can't tell you which one is the best, I can only tell you the options.

Chairman M. Herde stated: What happened with the whole sandbox routine where it went back and forth on how many more test holes should be dug. I really think that it closed the door on good engineering review.

Attorney Olson stated: Let's say that at the end of the day, some of the test pits revealed seasonal high ground water below the level of the swales. I don't really care if you dig 70 more; you're still going to have that conclusion in some areas.

Chairman M. Herde stated: Right. But at least we would know how much more and maybe Mr. Trinkaus would have seen, at that point, that he really should have done new grading. Basically he is saying he is draining everything with swales, he is also draining everything with curtain drains and after they go out and find out that the seasonal high water table is around in a lot of places they didn't do test holes, there is going to be a fair amount of interruption.

Attorney Olson added: Yes, you're right.

Chairman M. Herde stated: You know, Allan Young was not trying to tell him he had to do a million holes. He was saying you should do up to this and if your reading the results as you go, come up with something that your more comfortable with. I really think their engineer didn't want to do more holes and to me the whole system looks an awful lot like a septic systems. The Health Dept requires much, much tighter test holes and there readings are for the same thing and for the same reasons. Every one here has taken a class on how to read the test holes. I kind of disagree with Mr. Trinkaus on some of his testings where there was a discrepancy about the depth of the test holes. Where you going to change the grade by 7 feet or whatever, and you're trying to find where the ground water is, you have to start from where your new grade will be and then go down. I just couldn't believe an engineer was saying that.

Chairman M. Herde stated: Mr. Young's report from November 8, 2013 says how retesting will require calculating of the bio swales and such. It comes around to the grading of how much will work part of the time and some all of the time. If everyone can look at the back of that which shows a graph of this information. Finally on November 12, there is a response to some of the velocity questions. It wasn't until this date our engineer finally received the information he was looking for. Where as everything was pointed to the Town Engineers as

being evil and destructive engineer, how are you supposed an evaluation of something when you're waiting 2 and 3 months for information. Mr. Young put in his October 17th memo, calculations not assertions. He wanted true calculations and you can see he was frustrated from early on and it took a month before he actually received what he was looking for. Mr. Pietras, October 29th memo that he agrees about the bottom of the bio swales interception of the seasonal high ground water.

Commissioner E. Stewart added: If the mottling is there, it does not interrupt ground water.

Attorney Olson stated: I think that it is important that Tom brought that up because that's to make the swales function as designed.

Chairman M. Herde agreed.

Commissioner E. Stewart stated: I did look at the town GIS website which showed basically the whole wetland system in a larger area and on the website you can see that wetland is probably fed by obviously other waters coming in, it wouldn't be just ground water.

Chairman M. Herde stated: Yes. It's connected to another wetland but the major feed is coming in from this property.

Commissioner E. Stewart stated: What they were saying was that 1/3 of the ground water fed the wetland and that just seem kind of high.

Chairman M. Herde asked: The ground water from this property was feeding 1/3 of that?

Commissioner E. Stewart replied: Well, the wetland was broken out in thirds.

Chairman M. Herde stated: Oh right, I remember that now.

Commissioner E. Stewart stated: I spoke with other people in my office who are expertise in how you calculate the filtration rate and it sounded kind of high. I know its site specific but with the soils and the surface it seemed high.

Commissioner B. Richter stated: I remember way back it was mentioned in the meeting that 95% was ground water.

Chairman M. Herde stated: I didn't get to go back and look at the letter regarding if a permit is issued then the other side of the property will remain undeveloped.

Attorney Olson replied: Basically, no permit, no easement.

Commissioner T. Adamski stated: Well the other thing is development in that area had a permit then they would have to come in with another application.

Commissioner T. Adamski asked: One thing I would like to bring up is maintenance of the grounds such as fertilization and pest control and what not.

Attorney Olson replied: Trailer Parks and mobile homes are not condo associates where you're a member of an association and/or a board and it would be essentially private. The developer is the one who owns the complex and each individual owns a piece of their own lot but it's within that entire complex. The owner of the park is the one that has to maintain it, whether that is the developer or someone he sells it to. I believe this company buys and builds homes. So they will be responsible and we can place this on the conditions and approvals.

Commissioner T. Adamski stated: What I'm looking at is individual owners maintenance such as fertilizers.

Attorney Olson replied: There will just have to be rules and regulations that we want to put into the approval.

Chairman M. Herde stated: Which something like Phosphorus which has been outlawed in Connecticut.

Attorney Olson stated: This is now becoming more common like road salt use and it's not a big deal to add it.

Chairman M. Herde asked Commissioner S. Purcella Gibbons.

Commissioner S. Purcella Gibbons asked: I'm looking at this map dated 10/10/13 and I just made some notes on it, can you remind me what this inconsistent soil results that Tom Pietras wrote.

Chairman M. Herde replied: That was in the beginning when there were tests done and a little bit of percolation tests performed and that was when Mr. Klein and Mr. Trinkaus came up with not identical readings in their soil tests. The other dots there are when Allan made a rough suggestion to where he thought areas of further testing were needed.

Commissioner S. Purcella Gibbons asked: Ok. So this was never really resolved right?

Chairman M. Herde replied: Actually it was. They went out and read them and everyone agreed to where the hard pan soil was. That is where the testing is now and it showed potential high ground water.

Chairman M. Herde asked the Commission if they thought this system will work.

Chairman M. Herde stated: I'm really not 100% happy with this but it's a working plan. I really wish that the grades were better and that Mr. Trinkaus spent more time on readings his test holes.

Commissioner T. Adamski explained that he think it will work.

Commissioner B. Richter stated: He thinks it can maybe work.

Attorney Olson stated: One thing to keep in mind is that Mr. Young (Town Engineer) worked very hard on this review and its very clear that they have done more than just deal with issues related to impact on the wetlands and both of the applicants experts complained about that at the public hearings and noted that certain comments were not addressed only to the wetlands. But I think what they are trying to do, is only do a an engineer once for us and when they are done and its approved then the applicant would have to go to Planning and Zoning and not have to go through another full engineering review on all the issues that didn't relate to an impact.

Chairman M. Herde agreed.

Attorney Olson continued: I think we got 95% of the way there on that and unfortunately this one issue of the separation distance between the swales and the high ground water is the issue that didn't get resolved. I think a lot of that issue is more related to planning and zoning storm water issue than it is necessarily a wetland issue. Yes, there is a change and we have decided whether it's a direct impact. The fact that issue wasn't resolved here, if your comfortable, we can make changes to make it a lot better. Planning & Zoning has to deal with it to. You may not be able to require significant plan changes like that as a condition of approval that would go beyond the nature of what an approval is. I can't say I would anticipate Allan Young letting the issue go and not for any reason other than it isn't right.

Chairman M. Herde stated: Yes. I think it was 2 different directions shown on that last report.

Commissioner T. Adamski asked: Both to Planning and Zoning and to the applicant.

Chairman M. Herde stated: Yes. Nafis and Young November 25, 2013 looks like the final letter and shows in item D which reads: Issue regarding the discharge from the detention from the Northwest and Southwest draining systems is unresolved.

Attorney Olson replied: Yes. That would be one of those P & Z Storm water issue but not necessarily a wetlands impact issues. Another extension of the pond across the street.

Chairman M. Herde stated: Right. Mr. Trinkaus does surprise me, I think some of his stuff has some merit and I don't know how much Mr. Young was questioning that during some of the storms there might be a little less flooding downstream, same amount of water but over a longer period of time. So some of the storm water directions could be a positive.

Attorney Olson stated: The point I'm making Tom is that even though all you can do is strongly recommend that the applicant look at it and P & Z look at it and then when the application is made to Zoning, its still an engineering and the issue will still be there because it is a storm water issue and it can be resolved, fairly easily I think but it's a lot of work on the applications engineer to adjust the grading plan to resolve the issue. All I'm trying to say is even though you can't make the condition, I would absolutely require, in addition some

performance standards and some reporting that if it doesn't get done, you're at least getting information back as to what is happening out there.

Attorney Olson stated: Not for nothing but LID is an important evolution in engineering practice.

Chairman M. Herde stated: Believe it or not, about 2 or 3 years ago we asked Jim Galligan of what he thought about LID in Oxford and he said 95% of the properties either have too much ledge or too much slope. I see where this property is in that 5% where it could actually work. There is ledge along all of our roads.

Attorney Olson stated: If everyone is in agreement and you authorize it, I can draft a resolution for you and make sure I get all of your normal conditions. I will bring my laptop and we can make necessary changes. We can set up an appointment for Monday, December 16, 2014.

Chairman M. Herde asked the Commission if they were all in agreement with this. There are additional invoices for the applicant and Commission requires that all fees are paid up to date before a decision is made.

I.W.E. Officer A. Ferrillo stated: I have an overall of the outstanding fees with invoices attached. There are also additional fees for the 2 previous public hearing continuances held on November 14 and November 26 which totals \$400.00. We also received an \$8000 estimate from Nafis & Young for estimated review fee which was exceeded significantly. The \$8,000 was paid and we have an outstanding balance of \$13,185 that was received on the 11/26/13. As far as Soil Scientist & Environmental Services, we paid a total of \$2850.00. We paid Ken Stevens a total \$1,115.00 back in September. Tom Pietras we paid in October \$935.00 and we paid a total of \$2850.00 so we have a balance of \$2210.00. I still have an escrow account with \$550.00 remaining. So we have an outstanding balance of \$1,660.00.

Chairman M. Herde stated: Ok. Just a reminder of Nafis & Young's estimate. I have it here and then he read it.

MOTION made by Commissioner B. Richter and **seconded** by Commissioner Adamski to pay the outstanding fees. All in favor **5-0**.

MOTION made by Commissioner T. Adamski to hold a special meeting on Monday December 16, 2013 for further deliberations and for Attorney Olson to draft an approval. **Seconded** by S. Purcella Gibbons. All in favor **5-0**.

2.) **(IW 13-93) Cocchiola Paving** - Riverview Subdivision Public Hearing set for November 12, 2013 at 6:30 in Main Meeting room at Oxford Town Hall

I.W.E. Officer A. Ferrillo stated: Mr. Horbal called and wanted to let the Commission know that an extension can be granted if the Commission feels its needed.

Chairman M. Herde stated: I think we all have a direction of this project already. It's pretty clear that there is a prudent and feasible alternative. I think we need a statement of findings for the decision. There is a significant impact.

Proposal: The proposal is for direct impact in the intermittent watercourse. Crossing the brook itself is a significant impact. Requires us to look at prudent and feasible alternatives.

Findings: Direct impact in intermittent watercourse. There is an alternative route by way of East Hill Road. It's a clear access large enough for the construction of 2 residential homes. No evidence in the record from Town Engineer or Fire Department that the Bridge on East Hill Road entrance is not usable. No evidence that it is structurally deficient. The May 6, 2013 memo from Nafis and Young states no evidence of the structural integrity of the culvert has been compromised. Evidence in the record shows that East Hill Road is a viable access and that the culvert is intact and other homes are using it. The applicant is showing that he does have access from it. The applicant has not demonstrated that it is unsafe. Crossing the brook itself has direct physical impact. Concrete piping and rip rap would all be placed in the watercourse leading to direct impact in the intermittent watercourse which requires us to look at a prudent and feasible alternative. Refer back to the 2006 minutes for discussion on an agreement for the new road not to be completed because the road would be destroyed when doing further construction.

MOTION by Commissioner Ethan Stewart and seconded Commissioner William Richter to **DENY WITH PREJUDICE (IW 13-93) Cocchiola Paving, Inc. Riverview Subdivision of Parcel D: (2 lot residential subdivision with appurtenances) Map- 15, Block 57 and lot 50D** decision is based on a significant impact to the wetlands and the existence of feasible & prudent alternative to impacting the wetland as the property can currently be accessed through East Hill Road. The application was denied unanimously. **Voted 5-0**

Resolution: If the applicant has any reservations about crossing the bridge, he should use lighter weight loads on trucks. The Commission feels at this time there is a probability of still building 2 Lots on a portion of the property and the Commission would have to look at final site plans, subject to review of that application as to impact on the wetlands.

Closing Statements: The Commission advises the applicant that they would receive an application for 2 residential lots with East Hill Road access. Further stabilization will still be needed in the Roosevelt Drive section of the project. The Commission considers this site to be under temporary stabilization and continued maintenance and final plantings.

Chairman M. Herde stated: Send a letter to applicant to please advise us of your intention of scheduling the completion of the road and for final stabilization.

NEW APPLICATIONS REQUIRING OCCIWA APPROVAL (ACCEPTANCE)

None

OTHER BUSINESS:

ACCEPTANCE OF APPROVAL MINUTES & CORRECTIONS TO MINUTES (IF ANY):

MOTION made by **Commissioner T. Adamski** to approve the regular meeting minutes for November 26, 2013. **Seconded by Commissioner S. Purcella Gibbons. All in Favor 5-0**

ENFORCEMENT OFFICER:

COMPLAINT/CONCERN:

APPLICATIONS NOT REQUIRING OCCIWA APPROVAL:

4/20/2013	Jacki Halpern	56 Jackson Cove Rd.	Interior alteration - no ext of foot.
4/29/2013	Edwards Realty	16 Edwards Drive	Cottage Biz
5/6/2013	Richard Hoepfner	9 Owl Ridge Rd. 505 Traditions Court	CO for enclosed sunroom
5/7/2013	Chris Kelly	621 Championship Dr.	Bathroom remodel
5/13/2013	Larry Sims	268 Oxford Road	partial finish bsmt for closet
5/14/2013	Pheonix Propane	71 Oxford Road	CO for Office
5/20/2013	Gary Hylinski		Remodel for Velvet Hair

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5/21/2013	David Giovanetti	549 Putting Green In	Salon Bathroom in bsmt.
6/5/2013	Ed Cirella	575 inverness ct	Bsmt. Remodel

MATTERS OF VIOLATIONS/LITIGATIONS:

1. Michael Ligi -501 Roosevelt (Town Engineers report dated 9-12-2011)
Commission requested the Enforcement Officer to contact Mr. Ligi regarding the current status of the wall constructed without a permit. Mr. Ligi is currently filing reports with all departments under court order. Matter is being reviewed by the State's Attorney.
2. Notice of Violation Cease & Desist ---Mr. Frank H. & Robert Samuelson (Under the Rock Park) on Roosevelt Drive
2. Notice of Cease & Restore -- (88 Perkins Rd) Debris and garbage on property.
3. Notice of violation --(543 Roosevelt Drive), wall constructed in a flood zone without a permit.

MOTION made by Commissioner T. Adamski to remove Mr. Ligi- 501 Roosevelt Drive off of the matters of violations. **Seconded** by Commissioner B. Richter. All in favor 5-0.

REPORTS ON SEMINARS, INSPECTIONS, and OTHER MEETINGS SCHEDULED OR ATTENDED NEWSPAPER ITEMS & P & Z MINUTES:

OTHER ITEMS OF CONCERN:

COMMENTS FROM THE CHAIRMAN & OTHER COMMISSION MEMBERS
OTHER:

- 1) **Oxford Oak, LLC 360 Oxford Road** (Lot 39) (Stabilization of site).
- 2) Open Space Inventory Map. Completed by New England Geosystems
- 3) **NOV WR SW 06 007 (Issued 4/10/06) CT DEP Meadow Brook Estates, Great Hill Road** (Remove Sediment from Pond & Stream) (Letter dated 9/27/06) (Memo dated 8/4/06). Work completed, staff to monitor site for 1 year.
- 4) Town of Oxford Catch Basins (Silt Removal).
- 5) Storm Drain Marker Program (Phase II).

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MATTERS OF CONSERVATION:

ADJOURNMENT:


MOTION made by **Commissioner B. Richter** to adjourn at 9:25 p.m.
Seconded by **Commissioner T. Adamski. All in Favor 5-0.**

Respectfully Submitted,



Denise Randall

Administrative OCCIWA Secretary

RECEIVED 1/10 2014
4:10 PM

TOWN CLERK