

TOWN OF OXFORD

CONSERVATION COMMISSION / INLAND WETLANDS AGENCY

DECISION

June 27, 2017

Application No. 12-82

Applicant: Vicki Tkacz and Ralph Crozier

Property: 10 Park Road

Date of Application: July 23, 2012

For the reasons stated herein, the Conservation Commission / Inland Wetlands Agency of the Town of Oxford (the "Agency") hereby denies the Application.

The Agency hereby makes the following findings of fact:

1. On April 24, 2014, the Agency denied the Application by a 4-0 vote.
2. The applicant brought an appeal of that decision to the Superior Court, in an action entitled *Tkacz v. Conservation Commission/Inland Wetlands Agency of the Town of Oxford*, to the judicial district of Ansonia/Milford at Milford, bearing docket no. AAN CV 14 6016164 S.
3. On April 10, 2017, the Court (Hiller, J.) issued an order remanding the case to the Agency "for the purpose of the Commission restating and reconstructing the discussion that was had at the time of their meeting denying the application for permit."
4. The Agency initially scheduled a special meeting for May 16, 2017, and provided notice to the Applicant of the meeting, which notice states that

The Superior Court has directed that the Commission may not accept new evidence, and that any decision be based on evidence currently in the record. The Commission may receive reports from expert witnesses summarizing the information in the record. You are invited to submit your own summary of the information, demonstrating why the application should be granted and a permit should be issued.

5. The Commission rescheduled the matter to June 13, 2017 to accommodate the schedule of the Commission members, and on that date, the Agency held a special meeting for the purposes of carrying out the remand order.

6. At the special meeting, the Commission received:

- The entire record from the initial Application;
- A letter from Jim Galligan, of Nafis & Young, summarizing the information in the record;
- Testimony and argument from the plaintiff and her authorized representative;

7. The Applicant and her authorized agents engaged in activities consisting of the placement of earth materials and vegetation within regulated areas (the "Activities").

8. The Applicant did not apply for nor receive a permit to conduct the Activities, and did not submit the Application until after receiving a cease and restore order to restore the affected areas to their condition prior to the Activities.

9. During the initial proceedings on the Application, the Applicant submitted a plan dated December 17, 2012, prepared by Frederick D'Amico, a professional engineer and land surveyor ("The December 17, 2012 Plan")

10. The Plan shows that the regulated areas affected by the Activities are:

- The streambed of the Little River;
- The floodway associated with the Little River;
- The floodplain adjacent to the Little River (Zones AE and X);
- Additional land located within 100 feet of the Little River.

11. General Statutes § 22a-38 (16) defines "Watercourses" as

rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs and all other bodies of water, natural or artificial, vernal or intermittent, public or private, which are contained within, flow through or border upon this state or any portion thereof, not regulated pursuant to sections 22a-28 to 22a-35, inclusive. Intermittent watercourses shall be delineated by a defined permanent channel and bank and the occurrence of two or more of the following characteristics: (A) Evidence of scour or deposits of recent alluvium or detritus, (B) the presence of standing or flowing water for a duration longer than a particular storm incident, and (C) the presence of hydrophytic vegetation.

12. General Statutes § 22a-38 (15) defines "Wetlands" as

land, including submerged land, not regulated pursuant to sections 22a-28 to 22a-35, inclusive, which consists of any of the soil types designated as poorly

drained, very poorly drained, alluvial, and floodplain by the National Cooperative Soils Survey, as may be amended from time to time, of the Natural Resources Conservation Service of the United States Department of Agriculture.

See also Inland Wetlands and Watercourses Regulations for the Town of Oxford (the "Regulations")

13. General Statutes § 22a-42a provides that "no regulated activity shall be conducted upon any inland wetland or watercourse without a permit."

14. Regulations § 2.1.30 provides that "Regulated activity" means

any operation within, or use of, a wetland or watercourse, involving removal or deposition of material, or any obstruction, construction, alteration or pollution, of such wetland or watercourse, and any earth-moving, filling, excavation, construction, installation of septic systems, or clear-cutting of trees within a minimum of 100 feet of wetland or watercourse, or activity, which could affect wetland or watercourse on said property or any other property, but shall not include the specified activities in Section 22a-40 of the Connecticut General Statutes. This includes the clearing, grubbing, filling, grading, paving, excavating, constructing in, depositing and/or removing of material and/or discharging of storm water on the land within a minimum of 100 feet (or as determined by the Agency) measured horizontally from the boundary of any wetland and/or watercourse, as a regulated activity. The Agency may rule that any other activity located within such upland review area or in any other nonwetland or nonwatercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity.

15. Based upon the foregoing definitions, and based on the December 17, 2012 Plan depicting the boundaries of the Activities, the Agency finds that the Activities were Regulated Activities as defined by the Regulations, in that they involved

- the deposition of material within a wetland and a watercourse, being the Little River and the associated floodway and floodplain; and
- earth-moving, filling and excavation within 100 feet of a wetland or watercourse, being the Little River and the associated floodway and floodplain.

16. The Agency evaluated the functions and values of the resources affected by the Activities, and finds that:

- The Little River is a Class 3 trout stream and provides habitat for brook trout; and
- The floodway and floodplain provide storage for water during periods of high rainfall and flooding;

17. The Agency evaluated the impact of the Activities on the resources affected by the Activities and finds that:

- The deposition of between 16 and 32 yards of earth material within the Little River, floodway and floodplain, in some cases in excess of one foot of material, has impacted the flood storage capacity of those areas.

18. The Agency finds that these impacts are significant, and finds that there is likely to be an adverse impact on properties downstream, as

- Additional floodwaters will be received by properties downstream; and
- The earth materials will eventually be subject to erosion and scouring by floodwaters, and will be carried downstream and deposited on downstream properties.

19. Based on the foregoing, the Agency finds that the Activities have had a significant impact on the Little River and its associated floodway and floodplain.

20. The Agency finds that the Applicants have failed to demonstrate that there were/are no feasible and prudent alternatives to the Activities. In particular, the Applicants' engineer stated that a better approach would have been to armor the streambank and fill a smaller area. See Transcript, May 28, 2013 at 5.

21. The Agency finds that there were/are feasible and prudent alternatives to the Activities, including, *inter alia*:

- Clear obstructions in the sluiceway downstream of the house;
- Perform work above the house to relieve pressure on the sluiceway;
- Redirect the flow of water around the house by removing the sluiceway;
- Deposit significantly less earth material, or deposit such earth material in a minimal area;
- Use a different earth material to better armor the streambank;
- Leave the natural condition of the area undisturbed.

22. The Commission finds that the best course of action is to remove the earth material from the property and return the area to its natural condition.

The Activities did have a significant impact on wetlands and watercourses, and there were feasible and prudent alternatives which should have been explored with the Agency prior to conducting any work.

MOTION

MOTION made by **Commissioner J. Lanier** and seconded by **Commissioner B. Richter** move that we deny the Application (IW 12-82) Vicki Tkacz, 10 Park Road, Oxford, CT., in accordance with the written Decision dated June 27, 2017, which is incorporated in this motion by reference. All in favor 4-0.

By Direction of the Commission,

Denise Randall

Denise Randall

Administrative Secretary

17 JUN 28 AM 11:28
TOWN OF OXFORD, CT
Magda H. West
TOWN CLERK