

April 12, 2022



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

Conservation Commission / Inland Wetlands Agency

REGULAR MEETING MINUTES

Tuesday, April 12, 2022

The **Regular Meeting** of the Oxford Conservation Commission/Inland Wetlands Agency was held **Tuesday, April 12, 2022**. Regular Meeting Members of the public can meet at the S.B. Church Memorial Town Hall, 486 Oxford Rd, Oxford, Connecticut 06478 normally held in Room B but due to construction was held in the basement of town hall instead. Notices were posted to make the public aware.

Meeting was called to order at 7:30 P.M. by Chairman Susan Purcella Gibbons

PLEDGE OF ALLEGIANCE:

ATTENDANCE ROLL CALL:

COMMISSIONERS PRESENT: Chairman Sue Purcella Gibbons and Commission Members Ethan Stewart, Andy Ferrillo and Brian Smith, Joe Lanier

STAFF: Administrative Secretary Denise Randall & Enforcement Off. Mike Herde

ABSENT:

AUDIENCE OF CITIZENS (NOT FOR PENDING APPLICATIONS):

None

AMENDMENT TO AGENDA:

EXECUTIVE SESSION:

None

NEW BUSINESS:

None

OLD BUSINESS: (IW 21-81)

RE-APPLICATION:

NEW APPLICATIONS REQUIRING OCCIWA APPROVAL (ACCEPTANCE):

CORRESPONDENCE:

OTHER BUSINESS:

(IW 21-81) Pitt-Conn Holdings, LLC, 60 Oxford Rd, Oxford, CT (Map 35, Block 8, Lot 6) proposed use- Office/Dunkin Donuts, (total acres of site= .76 acres)

Enf. Officer Herde stated: A revised map that was just approved in the zoning department has come back to wetlands due to the revisions. It is a revised plan with just a little less of the parking requirements. It is still meeting the requirements of the final prior wetland plan.

Commissioner Andrew Ferrillo asked if they had to underground?

Enf. Officer stated: No, they don't need to change their storm water system. They are still in the negative of how much impervious surface they have.

Attorney McSherry added: The applicant applied for a text amendment for parking regulations was just approved regarding and a motion with a revision date of the final approved map should be in the motion. The town engineer wrote a letter and was ok with it.

Chairman Susan Gibbons asked if anyone had any questions or discussion?

None stated.

MOTION made by **Commissioner Andy Ferrillo** and seconded by **Commissioner Joe Lanier** to approve this revised map dated 4/8/22 for the following application (IW 21-81) Pitt-Conn Holdings, LLC, 60 Oxford Rd, Oxford, CT (Map 35, Block 8, Lot 6) proposed use- Office/Dunkin Donuts, (total acres of site= .76 acres). **All in favor 5-0.**

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

MOTION made to approve the 3/22/22 regular meeting minutes by **Commissioner Brian Smith** and seconded by **Commissioner Andrew Ferrillo**. Voted **4-0.**

ENFORCEMENT OFFICER:

Enforcement Officer report:

COMPLAINT/CONCERN:

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:

Small discussion on town wide clean up for the month of April.

APPLICATIONS NOT REQUIRING OCCIWA APPROVAL & PERMIT APPROVALS:

MATTERS OF VIOLATIONS/LITIGATIONS:

Notice of Cease & Restore -10 Park Road violation (Ms. Tkacz) (Pending Litigation) 7/26/16 awaiting notice from Attorney. (Update on litigation on 3/28/2017 application denied at 6/27/17 regular meeting) (Return of record received by judge on 7/7/2017)

48 Jacksons Cove Rd- Cease & Restore letter sent in December of 2020.

(IW 21-10) Cornerstone Assembly of God, Inc., 656 Oxford Rd, Oxford (Map 19, block 28, Lot 10,13,22) proposed use = New Church & parking, Total size of site 16 acres (Total acres of wetlands= 3.77 acres) (wetlands impact = 0 acres) (Upland review area impact = 78,780 sq. ft.) (amount of material removed= 2,455 c.y.) (Deposited= 5,055 c.y.) Summons received

NOTICE of Cease & Desist – 17 Fiddlehead Rd. (Clear cutting of trees and excavation performed without permits) (Certified letter sent 7/22/21) (Show just cause hearing on July 27th meeting)

Enf. Officer Herde stated: We are still waiting for a revised plan on this.

NOTICE of Cease & Restore – 40 Hunters Mountain Rd, Clear cutting in a regulated area. (Show cause hearing on Nov. 9, 2021) Updated map received and dated December 16th, 2021.

Enf. Officer Herde stated: We received another report from Env. Land solutions just today and here is a copy for everyone. Madame Chair I would like enter into the record the following books for referrals to physical changes in a wetland vernal pool.

- "Wetlands of Connecticut" from the state Geological & National History survey of Connecticut. Nation wetland inventory page #45.
- "Wicked Big Puddles" Guide to the study and certification of Vernal Pools Pages #1, #20, #55, #57 and A-9
- "A Guide to the Identification and Protection of Vernal Pool Wetlands of CT" Pages # 6, #7, #10, #11, #12, #14, #15, #16
- "Developers Handbook State of CT., Dept of Environmental Protection

Pages #5 and #6

- "Habitat Management Guidelines for Amphibian and reptiles of the Northeastern U.S. from the Partners in Amphibian & Reptile Conservation"
Pages #26, #28, #29 and #30

Commissioner Joe Lanier stated: I wanted to reference from the book called "Vernal Pool Wetland of Connecticut" on page #14 (Guide to vernal pool) which talks about changing the physical characteristics of a water habitat. It references changing the canopy and dealing with restoring around the vernal pool.

Enf. Officer asked: Is that from the book "A Guide to a vernal pool wetlands of Connecticut"?

Commissioner Lanier replied: Yes. Discussed the protocols for dealing with restoring near the buffer. If you're doing any activity, this is for timber harvesting and bringing machinery within certain distances.

Chairman Sue Gibbons asked: Are they suggesting 100 feet from any vernal pool generally?

Commissioner Joe Lanier replied: Generally, yes, to stay out of the wetland itself where it has been flagged. An undisturbed vegetative buffer should be 50 feet from the edge of the pool or the distance that equals the average height of the dominant trees, whichever is greater. The trees that were there are quite large and then whenever possible the trails should be away 100 feet from the pool itself. They are definitely talking about a buffer. On the page after #14 it talks about the ruts and everything else should be flattened out. Talks about seeding and restoring the area on page #15 and #16 as well.

Enf. Officer stated: Page #7 talks about that fact that vernal pools, one of the most important things as that they dry out most years and so the requirement is to actually protect it from getting too much water, so if you put a driveway next to one you might be getting water year round and then it becomes a year round pond which then changes the physical characteristics of the pond.

Commissioner Brian Smith added: So, you have to be care of what is around it such as a road or driveway.

Enf. Officer Herde stated: Yes, and you can't even point a leader pipe or a foundation drain from a house or any drainage from a driveway or road as it will change the physical characteristics completely.

Attorney McSherry stated: In the letter it talks about curb less roadways and curb less driveways it has to be designed properly to handle the water.

Enf. Officer Herde replied: Yes. There really shouldn't be any driveways close to it because of the migration but what they are saying in the latest report that came from the soil scientist that it should be within, I think about 700 feet because you run the risk of the animals getting stuck on the curb and getting run overed on just following the curb length wise instead of running with it. In this report from the wetland solutions, it does mention the egg masses. I originally saw 50 of them and yesterday I went, there were about 100 of them. The owner of the property might want to encourage your soil scientist to go take a peek for

your own re-verification as well, of the egg masses. There are white jelly masses about the size of your fist that are from the wood frog. With our soil scientist report, it basically states that the Wood Frog is a key ingredient there that determines a vernal pool and which falls into all of these articles about the nature of that pool. Specific requirements for it to be called a "Vernal Pool" in the beginning and it's about it drying up but then it's also about the animal species that are in there that determine our guidelines and the wood frog egg masses are in there.

Commissioner Ethan Stewart stated: Those egg masses were in the original vernal pool tire ruts and stuff.

Enf. Officer Herde replied: There is about a dozen in the tire rut, but there is about 100 masses in the vernal pool itself. I have not seen anything hatch yet but they could under the leaves. With any of these publications, you might want to read them into the record by page and what pamphlet it is from.

Commissioner Joe Lanier stated: Page #14 of the book called UConn Vernal Pool Wetlands of Connecticut. Buffers preserve environmental conditions that are vital for needs of the wildlife amphibians and they serve to moderate the water temperature relative to the humidity of the pool environment. Along with providing the annual leaf fall which provides the basis of the vernal pool food web. Talking about changing the physical characteristics of the aquatic habitat.

Enf. Officer Herde added: Yes, providing the leaf litter is a physical part of it.

Commissioner Brian Smith stated: It also states on page #15 to maintain an undisturbed vegetative buffer around the vernal pool which measures 50 feet from the edge of the pool.

Enf. Officer Herde added: Yes, and in one of the soil scientists report it is recommended to 100 to 125 feet.

Commissioner Joe Lanier: On page #28 and #29. Maintain and encourage the canopy that are appropriate to a vernal pool and threshold buffers and life zones. Additionally, also it states when feasible to minimize the soil disturbance when it comes to heavy equipment. I think this may be in reference to logging. And then to avoid diverting surface water from the existing roads and facilities into the wetland. So, avoid surface runoff, it's kind of diluted the land so it has the potential to run into it and not actually be absorbed. Which then ties into page #30 and talks about ensuring the natural integrity of the basin is to maintain and not filled or altered contours.

Commissioner Andy Ferrillo stated: We need trees to add the leaf litter.

Enf. Officer added: Yes. Our Environment Land Solutions recommended that for every 8 inch tree that was cut with 100 feet and inch and a half caliper, a tree such as a maple or Oak should replace that area aside from the previous recommendations from the owners Soil Scientist to just put in birch whips and little 4 foot replacement trees.

Commissioner Joe Lanier stated: The very likely of survival and providing they canopy much sooner.

Enf Officer stated: right and the other recommendation by (Cole) that the standing stumps

Re-generate as bushes not as trees. They will be mutli-trunked and won't be full size trees. That is why now the recommendation is to come in with inch and half caliper tree to replace and still leave the stumps remaining but it will need a canopy as fast as possible and waiting for 30 to 40 years after planting birch trees is going to be a huge period of time.

Commission Ethan Stewart asked about the boundary around the vernal pool.

Enf. Officer Herde replied: Our review stated about 100' to 125 feet specifically around the vernal pool completely replanting.

Commissioner Joe Lanier asked: Is there a little bit of flexibility on replanting as you go towards the front treeline?

Enf. Officer Herde replied: Yes, as you go away to the other wetland going toward the bottom of that valley, you might have a little more tolerance. We have a 100 foot regulations but you can still work within that area, there is some tolerance.

The Commission then looked at the current map pointing to the vernal pool area.

Mr. Scott Kimmer pointed out the plantings along the driveway area which would be pitched away from the pool.

Commissioner Joe Lanier stated: One of the things with the vernal pool is if you start to change the hydrological features of the land itself when you are diverting water, this may affect the levels on high or low it is. That is the challenge here.

Mr. Kimmer pointed the many areas of ledge and the hard pan soils. He also pointed out where he did test holes.

Commissioner Brian Smith stated: I want to read into the record the habitational Management Guidelines for reptiles of the Northeastern United States. Publication HMG-3 on page #30. Allow native vegetative to provide physical structure in organic inputs. Vegetative cover around the margin of the pools will provide over for adults and emergent juveniles. I think that's what is critical. Ensure that the natural integrity of the basin is maintained. Do not fill or alter the contours. Basin integrity is related to the hydrological dynamics. Contours and depths vary considerably due to soil type, underlying sub straight and vegetation input from the surrounding forest.

Enforcement Officer Herde added: So, when they are talking about a basin there, they are not just talking about the water, it's the basin that leads to it.

Commissioner Smith replied: Right, all around there.

Enf. Officer Herde added: It is saying don't alter the contents in that vicinity.

Commissioner Joe Lanier stated: Right. If you want are talking about 100 feet or 120 feet from the pool, you have a lot of permanent change going on and that is where we don't know if it is going to get re-charged or not.

Enf. Officer stated: There is probably know way of telling how it will get re-charged.

Attorney McSherry added: It is a little bit of a guessing game on how is can be properly hydrated, it will be hard to tell.

Commissioner Joe Lanier asked: So, do we now need to get both soil scientists to agree upon the appropriate restoration plan here?

Enf. Officer Herde replied: Yes, the next step the Commission has to decide whose restoration plan or if you want a hybrid of the 2 of them. If you want to have the applicant's work based on your consultant's recommendations? There has been 2 reports that have come out from them.

Commissioner Joe Lanier stated: Right. But we also have to make sure there is an agreement based on the area that is actually being restored. What are soil scientist has said is that anything within 125' should be restored. So that tells me that a driveway is a no go. If we are doing a restoration. I just want to make sure I am understanding what they are saying.

Enf. Officer Herde stated: That is the Commission's prerogative and then you can look at the other areas because there hasn't really been a proposed plan for any of the other restoration around the other wetlands. It has been primarily been around the vernal pool.

Commissioner Joe Lanier stated: And this is where we have a little bit more flexibility because we are not around the vernal pool.

Commissioner Smith added: yes, we can be more flexible on what needs to be done.

Enf. Officer Herde stated: Yes, but between even your setbacks, your normal buffer areas or land regulated area where the house location is, is tight in the first place. Then too tight where the driveway is. So, the Commission has to decide whether to have that area restored and keep it natural and keep the houses out of that area, so that you don't have a conflict. That is your prerogative.

Commissioner Joe Lanier stated: It really does seem like it's a challenge. I don't see you can't create this negative impact unless you have a helicopter land in.

Commissioner Brian Smith stated: Well in all fairness, I would at least like to have the applicant's soil scientist to have the opportunity to see this report that just came today. We can see what he comes back with. I guess what I am saying is that a hybrid plan would be fair right? A combination of both. Basically, getting together and saying this is what makes sense and what is doable based on this last report.

Enf. Officer Herde stated: Yes, I think that the Commission should give some direction on where the restoration should start from for them to finish developing their plan.

Commissioner Brian Smith stated: Well, I think this vernal pool is critical right?

Enforcement Officer Herde stated: You guys need to agree on what your distance is there and if you're going to go with a suggested plan or somewhere in between.

Commissioner Joe Lanier asked what the distance is (pointing to the map)

Discussion with Commission pointing to the map.

Mr. Kimmer pointed out some areas to the Commission on the map.

Enf. Officer Herde stated: So, the rock where the house is, is the critical part of the basin that leads to the hydrology of the vernal pool.

Commissioner Ethan Stewart pointed the map and stated: This is the hard pan of the vernal pool.

Enforcement Officer Herde stated: The vernal pool doesn't all come from one side, it is 360 Degrees so the house and proposed contours are all within the 100 feet, not the structure itself but the entire grading is. As well as the need to blast for the foundation.

Commissioner Andy Ferrillo stated: Well, that can disrupt a lot.

Attorney McSherry stated: Well, it seems to me the first place I would start to looking is at the driveway. Can the driveway be put where it is and is there a way to solve the issues that we have as a wetlands commission with the driveway sitting there. I think that is an answer for the soil scientist and the environmental people to answer because that is the first question, can that driveway be there.

Enf. Officer Herde: There recommendation was to re-forest that area.

Attorney McSherry stated: Exactly and I think that is a question that we want to have answered. The applicant has raised that question on how he describes it so we want to have our soil scientists to answer the questions for us and come up with a plan for us. I know they have come up with a variety of suggestions but I think that is where we need to go from here.

Enf. Officer Herde asked: Does anyone have the original report?

Commissioner Brian Smith showed the report dated February 28th.

Enforcement Officer read item #6 which stated: A tree replacement ratio for trees cut within 100 feet of the wetland line or 150' feet of the vernal pool should be established. A recommendation for trees removed includes trees caliper 8 or 16 inches small to be replaced at a 3 to 1 ratio. Consisting of one large growing shade tree and 2 under storage trees. Trees removed with a caliper greater than 16 inches be replaced at a 4 to 1 ratio. Two shade trees and 2 under storage trees. Shade trees should be 1.5 caliper or larger. Under storage trees should be 5 to 6 feet tall. There is your recommendation from the Environmental land Solutions. I think you can make a directional plan here based on that report.

The Commission discussed a restoration plan in detail for a possible motion and asked Attorney McSherry about requesting possible conservation easements.

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Attorney McSherry stated: This would be discussion for a later date after restoration plan.

MOTION made by **Commissioner Brian Smith** for the applicant to come back with a plan that follows the report detailed March 31, 2022. The Commission will have tolerance for north of flags #83 and #82. In addition to reference the report dated April 12th, 2022 for guidance. **Seconded by Commissioner Andy Ferrillo Jr. Voted 5-0.**

At 8:12 pm, Mr. Scott Kimmer exited the Inland Wetlands regular meeting.

Discussion on title search of records of land use to place a notice on the deed for the future.

Discussion with Attorney McSherry regarding a basic fine to the property owner for \$120 and to place a notice on the land record to say refer to the agenda.

MOTION made by **Commissioner Brian Smith** and seconded by **Commissioner Joe Lanier** to fine the property owner the basic fee of \$120 and to place a notice of the land record to refer to the agenda for the future if the fee is not paid. **Voted 5-0.**

MATTERS OF CONSERVATION:

ADJOURNMENT:

MOTION made by **Commissioner Brian Smith** to adjourn at 9:03 p.m.
Seconded by Commissioner Andy Ferrillo Jr. All in favor, voted 5-0.

Respectfully Submitted,

Denise Randall
I/W Administrative Secretary

22 MAY 26 PM 3:44
TOWN OF OXFORD, CT
Theresa A. West
TOWN CLERK