



July 23, 2012

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

Monday July 23, 2012

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 Monday July 23, 2012

Meeting was called to order at 7:30 P.M. by Chairman M. Herde

ATTENDANCE ROLL CALL:

COMMISSIONERS Tom Adamski, William Richter, Sue Purcella Gibbons, Ethan Stewart. Also present was Denise Randall Secretary and Land Use Attorney Peter Olson

ABSENT:

I.W.E. Officer Ferrillo

AUDIENCE OF CITIZENS (NOT FOR PENDING APPLICATIONS):

L. Quirke from The Voices Newspaper entered the room with no questions or comments.

AMENDMENTS TO AGENDA (IF ANY):

None

OLD BUSINESS

None

NEW BUSINESS:

None

NEW APPLICATIONS REQUIRING OCCIWA APPROVAL (ACCEPTANCE)
IW 12-74 Garden Homes Management Corporation

Chairman M. Herde states: Tonight is just to receive this above application and we will discuss the proper fees at our next regular meeting and so we are here to accept the application as an application.

Attorney Peter Olson explained that the only item that has changed is that the applicants would like to change the date they will attend our next regular meeting from September 10th to September 24th. We also have received proposals from the Town Engineer (Nafis & Young) as well as the Soil Scientists and Environmental Services and so far the applicants have not yet agreed to pay for these services and so one of the purposes of opening the initial presentation on August 13th is to give us time to refine those proposals to make sure it covers what they have applied for, which is a petition for a declaratory ruling that they do not have any regulated activities as opposed to an application for a permit to conduct regulated activities.

Chairman M. Herde states: Yes, so if you look at are regulations and our fee schedule we have 99.9% of typical applications but what they are requesting is not a typical application for activity in a wetland or activity in an upland review area. They are coming in for a certification of no impact and that is why we are going to have to wait to open this up and see what is actually there. So at our next meeting we will look at it, and then we can determine fees. and if this is proper application for a certification of no activity in a wetland and what we need for professional assistance to make a decision on it as to whether a certification would be appropriate.

Commissioner T. Adamski asked: And we would also probably at the time ask for expert assistance to determine what the upland review area actually is?

Attorney Peter Olson states: The first thing is that whether you take a motion and make a motion to accept an application or simply ignore. The statute say it's deemed accepted at this meeting on this day. The outstanding issues on the professional fees and really the question of whether you want to have a public hearing or not and we asked them to make an initial presentation at the regular meeting on August 13th and at that initial presentation it will be decided whether they have paid the fees you have asked for and if they haven't, you can deny the application as incomplete without prejudice and not do anything else. Number 2 is hear the initial presentation and then decide whether you want a public hearing, as it would be in the public interest and then a public hearing is then scheduled, if not then they come back on the 24th of September.

Chairman M. Herde states: We have to re-look at our fee schedule as to how we receive professional services. I need a motion to receive this application.

MOTION made by Commissioner S. Purcella Gibbons accepts application IW 12-74 Garden Homes Management and Commissioner T. Adamski seconded. All in Favor 5-0

OTHER BUSINESS:

None

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

MOTION made by Commissioner S. Purcella Gibbons to approve the regular meeting minutes for July 9th, 2012 with the following correction: page 3, first paragraph the word "there" should be corrected to the word their. Commissioner T. Adamski seconded. All were in favor. Voted 5-0

ENFORCEMENT OFFICER:

Mr. Ghavami (5 Fiddlehead Rd.) entered the room to present photos and an update to the Lake front activity and asked the Commission what would you like me to do?

Chairman M. Herde replied: We are hoping for the whole side of that hillside to remain in a natural state other than your path.

Mr. Ghavami replied: Ok

Commissioner T. Adamski states: Basically all you've got is bare soil.

Mr. Ghavami replied: You're right, because I blew the leaves away. Here are photos that I recently took. I was told that pachysandra grows well there.

Chairman M. Herde replied: The only thing that will grow well on the side of that hill is what was native there. If you go out and get cultivated stock, I don't think you will be successful. It's a very dry environment and made up of organic soil over rock and trees are far and few between. Any disturbance in that kind of environment can be a really drastic intrusion.

Mr. Ghavami replied: Ok, what should I do, put the leaves back.

Chairman M. Herde states: Just let it go back to natural. Otherwise eventually, from what I have seen, almost all plants that people have planted have fallen into the Lake from past storms. You can't ever reproduce the soil that is there; it's a one of a kind soil and has a root mat in it.

Mr. Ghavami states: Ok, so concentrate on the narrow pathway. So you don't think that anything will grow there? Even if I open up the area and let the sunlight in?

Chairman M. Herde replied: That's the thing, this is an extremely dry environment and opening it up to more light it will just make it more dry.

Mr. Ghavami states: Ok, can I put an excavator in? (As a neighboring property owner has done)

Chairman M. Herde states: This would be a different type of problem. The ski boats cause a lot of wake and on the flat lots, they are losing there waterfront due to the boat activity. We understand this is a recreational area so we are not going to tell them to stop using boats but there is a certain amount of protection needed. Your waterfront is ledge, and doesn't have the same erosion problem.

Mr. Ghavami states: I already have an approval to put a 10' X 20' deck but then I changed it to smaller one. I'm not going to do that right now. I just want something small to put 3 chairs down there. I just want to cut down some trees in the area.

Chairman M. Herde states: You just need an access way. Please make sure you leave the stumps after you cut away some of the trees.

Mr. Ghavami agreed with the Commissions requests and at this point exited the meeting.

Mr. Ralph Crozier (10 Park Rd.) introduced himself and explained that he received a notice of violation cease & desist letter and was coming in to explain the situation. We had just moved in and within 48 hours we had no electricity and no water. The River hasn't been channeling the way it had been for a long time. It was going over and the souse way goes underneath the house and actually has portholes up above the dam which has since filled in and then when that was open it would come in and run the turbine. Every 6 foot of water we know turbine and was built in 1842 according to the mechanism. What happens is that the water come down the River and shot over the bank and goes in the souse way. Normally it would go right thru the bridge because there are 2 portholes in the bridge. But because debris had built up on the other side of the bridge, it blocked the portholes causing it to back up and came up the stairs and took out all the electricity.

Chairman M. Herde asked: Is this from the October 2011 storm?

Mr. Ralph Crozier replied: No this was just recently in June when we had downpours of about 3 inches in 3 hours. So we tried to figure out what was causing this to come in and flood the house. We discovered it had been blocked on the other side of the dam. I took several teenagers and paid them and went through the porthole and we cleared out all the debris that was blocking on the other side so that it actually goes downhill. Two weeks later it did it again. It seems that since Mr. Emerson has passed no one has done anything. The only way to stop this from coming over the top was to armor it and put down filter fiber over the armor and push the dirt back over it seeded and graded and put a silt fence along the way so nothing ever touch the water and that seems to have stopped it. I then spoke to Andy Ferrillo and told him as far as the stone put down, its all natural

stone put down protecting and I put down 30 to 40 pound boulders there and not even up to the waters edge and I then silted so not a single thing went into the water so that way the house moves it's own electricity. What happens is that Mr. Emerson decided to his electric box below the first floor and he also has pressure tank where it pushes the water onto the second floor into the bathrooms, below the floor. So when the water submerged the pressure tank which then submerged the electrical box and then the electricity shut off. The electricity is fuses instead of the modern electrical box. I went down and make sure the debris was taken out. One of the other things I discovered was an invasive species. I went down to the local high school and borrowed 10 kids and 14 five gallon buckets and went up the river 1400 feet and cleaned out all the garbage, debris, and car parts and brought the stuff to the dump. It took us 3 weeks to get out the debris and the invasive bamboo. I didn't want any of the children we have to get hurt, quite honestly.

Chairman M. Herde states: What this comes back to is activity in a wetland.

Mr. R. Crozier replied: And as you know the activity in a wetland down there, I think it's about 150 feet because it's river right? Don't you have rules about this?

Chairman M. Herde replied: No, it's actually the regulated area is anywhere that it might affect the wetlands.

Mr. R. Crozier asked: I'm sorry, I don't know your name?

Chairman M. Herde replied: It's Mike Herde. Whether its 50 foot or 100 foot or whatever, your right at the waters edge there and I'm sure technically in the wetlands. My question to you was at what point did you forget about the application process?

Mr. R. Crozier replied: When I was swimming in water up to my elbows with no electricity and 4 children in the house and I did it within 48 hours. This was an emergency situation.

Chairman M. Herde asked: With the fill and everything?

Mr. R. Crozier states: Everything in 48 hours, 1 weekend.

Chairman M. Herde asked: But you didn't call the town at all?

Mr. R. Crozier replied: Well, Andy called me and as well he should and invited him out and invited Anna as well. They came out and walk the area and they told me what I had done was in fact anything that anyone would have wanted, especially with the fabric fiber that I put so that the dirt wouldn't sink through and a silt fence to make sure it wouldn't. And the silt fence was put in a foot deep into rock and was actually put in before I spread it so that I knew it would be able to hold. And it's holding beautifully.

Chairman M. Herde: Especially along a the River we like to see a plan ahead of time because we have seen a lot of them infiltrated improperly and they disappear the following year and gone a little farther or all in someone else's part of the river. We need to at least start you off with an application.

Mr. R. Crozier asked: Is this application different then a building permit.

Chairman M. Herde replied: It's an Inland/Wetlands application.

Mr. R. Crozier states: Only because I had started that because they told me the re-sheathing wouldn't be a problem because it was pre-existing to the 1800's.

Chairman M. Herde replied: Yes, and that kind of stuff, repairs to the structure the Wetlands Officer will sign off on it as long as its not any extension to it that needs an application in itself to the Wetlands Commission because we can point it out that your whole place is in the flood plain. Any kind of extension to the building would need a regular application but any activity in the yard from clear cutting of trees to depositing of fill, the biggest one, or any kind of item that could be considered a pollutant, which is anything other than water in wetlands is going to need an application.

Mr. R. Crozier states: Well I went so far as to use natural stone so that it would be absolutely natural in nature. Basically, my fear is, when it pours, it comes down because the dam isn't there anymore. It will fill up and it will go up toward the back sliders. Now it doesn't and what its doing is following a natural course.

Chairman M. Herde states: Are fee schedule here is based on the activity in the water, activity in the wetland area. Square footage and such. Do you all want to ask for a survey here to come in right in with the application and just get a map of the place? We need an engineer or surveyor that this is a proper way to do the bank. So if you want to start with that first.

Mr. R. Crozier states: I'm a firm believer in conservation. I owned 787 acres of land in Southbury which I donated to the town of Southbury. I have a Masters degree in marine biology and I'm a tree hugger. I want everything to go to non-evasive plants. What do I need to do?

Chairman M. Herde states: Do an as-built of where your activity was and measure up the yard.

Mr. R. Crozier states: I had H.I. Stone come in and make sure it was done properly.

Chairman M. Herde states: Thanks you very much. You all are much more pleasant than I anticipated.

Mr. R. Crozier states: I will get this application filled out and bring it in this week. Is there a fee?

Chairman M. Herde replied: start off with just a minimum fee of, I think it's \$100.00

At this point Mr. Crozier left the meeting

COMPLAINT/CONCERNS:

None

APPLICATIONS NOT REQUIRING OCCIWA APPROVAL

None

MATTERS OF VIOLATIONS/LITIGATIONS:

1. Michael Ligi -501 Roosevelt (Town Engineered 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.
2. Notice of Violation Cease and Restore Order – Susan Kupec-Jutcawitz Randall
Drive Detention Pond Collapsed (Pending repair)
Town engineer has approved inland wetlands applications to remove the detention pond.
Client is now awaiting planning and zoning approval. (Related to tree stabilization)

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

OTHER ITEMS OF CONCERN:

Chairman M. Herde states we are in preliminary discussions on Garden Homes on professional etiquette with this application and have our Attorney Peter Olson here to give us some advice how to handle previous applications.

Attorney Peter Olson states: The applicants attorney has done work for the Commission in the past and was probably about 8 years ago. They have indicated that they had been called in as special counsel for a particular matter and they were not the general counsel for the Commission. In light of that, the rules of professional conduct say they can represent people who are adverse to a former client as long as they don't have specialized knowledge. Usually when we analyze these things we look at who is asking for the conflict waiver and see if that's somebody were comfortable working with and in this case you can probably feel comfortable with Mr. Branse as an Attorney. What I told Attorney Mark Branse is that I would check with the Commission and if you are inclined to grant a waiver then I'll have him ask for one, I don't want him to ask for one if you're going to

reject it. So if you're amenable you can make a motion that should be requested to waive the conflict. So if I receive that letter from him which I expect to receive then I will be able to reply with my letter saying that yes the Commission waives it and provide your copy to you.

Chairman M. Herde asked: Is everyone ok with that?

Commission S. Purcella Gibbons replied: Also, if this does come to a public hearing we should also disclose this at the public hearing.

All Commission members are in favor.

Chairman M. Herde states: What I would like all the members to do is to take a re-look at the regulations and fee schedule and try and re-brief yourselves and get a familiar with the certification with no activity in a wetland.

Attorney P. Olson also stated: It's important to remember the distinction between of what they are asking for which is a ruling that they have no impact on the wetlands and therefore don't need a permit because if you decide yes, there is an impact on the wetlands then they have to come in with permit application and then we can hash out all the other details. So this is a yes, no question that your going to have to answer.

Chairman M. Herde asked: Would we go to public hearing first just to get a yes or no on it by the basis of professional advice if there was an impact?

Attorney P. Olson replied: Whether you decide to have a public hearing or not, you would essentially get the same advice as to whether there is an impact. The issue ends up being not so much whether you let people speak but whether you have a formal hearing process as opposed to an informal process, where you can certainly allow members of the public to speak.

At this point Attorney P. Olson left the meeting.

Chairman M. Herde states: Regarding the letter sent to the D.E.E.P. Wildlife, I received a call from the man that manages the Stevenson Dam and he explained that he was getting his Eagle experts down to see what can be done and claims that the area law enforcement wants the signs in place and explained that just 2 weeks ago they arrested somebody who was trespassing. He said once the eagle expert scopes out the premises he will contact me when they are finished.

Commissioner T. Adamski: I wanted to mention that I spoke to Mike Horbel regarding the Von Wettberg property and he is going to give us a proposal which is \$2400 dollars. He is surveying like 1900 feet and he is familiar with the area as he surveyed quite a lot there. I guess my question is do we need to vote on this coming out of the mapping.

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Chairman M. Herde: We should vote on it and forward it to finance, but do we need approvals from anyone before we vote?

MOTION made by S. Purcella Gibbons to have Mike Horbel to a survey of the property between Oxford Glen and Von Wettberg property for \$2400 and come out of the mapping budget. Seconded by Commissioner B. Richter. Voted 5-0

Commissioner T. Adamski states: And one other thing, once the piping is placed, I'm going to walk it with them and put additional markings and flag all the points and pin.

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).
- 4) Town of Oxford Catch Basins (Silt Removal).
- 5) Storm Drain Marker Program (Phase II).
- 6) Meadowbrook Estates Detention Pond – Staff and town engineer will continue to monitor the site in accordance with the town engineer's recommendations.

MATTERS OF CONSERVATION:

None

ADJOURNMENT:

MOTION to adjourn by **Commissioner B. Richter** seconded by **Commissioner E. Stewart** to adjourn the meeting at 9:03 pm. All in favor 5-0

Respectfully Submitted,

Denise Randall
OCCIWA- Secretary

12 JUL 31 PM 4:35
TOWN CLERK
Denise Randall