



TOWN OF OXFORD

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

Oxford Conservation Commission / Inland Wetlands Agency

Special Meeting Minutes
12/16/13
6:10 pm, Oxford Town Hall

Special IW meeting was called to order by Chairman M. Herde at 6:10 pm

Roll Call by Chairman M. Herde, Commissioner Tom Adamski; Commissioner Bill Richter, Commissioner Sue Purcella Gibbons, Commissioner Ethan Stewart

Staff: Attorney Peter Olson, Andrew Ferrillo (I.W. Enforcement Officer), Denise Randall –Secretary

Absent: None

Chairman M. Herde asked the Commission for anymore further discussion.

Attorney Olson stated: From your direction a motion to approve the application and there is a copy. I have added a list of all the final plans that were submitted. The structure of this is a motion, findings and you're going to want to spend time on the finding number 10. After the findings there is a reason for the decision, which are quite simple and then the conditions of approval for the permit which are mostly standard conditions, erosion controls and a couple that were added. This is of course guidance, you can take a few minutes to read and then we can change what needs to be changed.

Commissioner T. Adamski asked a question about "J" (see below) about this only being a recommendation.

Attorney Olson replied: The issue is that in order to provide a concrete answer to that question is we would need to know where all the seasonal high ground water is. Where the bio swales are being installed into that seasonal high ground water and a hydrological study to tell us how much water. This is missing information and so Allan Young's point was there could be a lot of water and we don't know the answer, so we can't come to a conclusion but I wanted it in the condition.

Commissioner T. Adamski asked: Can't that be part of "M" then?

Attorney Olson replied: Well I think that if they go and change the grading plan to raise the bio swales above the level of the seasonal ground water, then it's irrelevant and with the under drains, it's done.

Commissioner T. Adamski stated: Ok.

Attorney Olson stated: Just a couple of changes were made while you were reading in paragraph 6, it says constituted regulated activities. On 10I: I added a clause at the end that says but if this condition could have an impact on the wetlands or watercourses. Allan did not this on his report that if this occurred, it could be a significant impact. At the end, I added total suspended solids. You guys can tell me anything else that you want added.

Attorney Olson asked: I did want to ask what you normally require a bond for?

Chairman M. Herde replied: It can overlap with Zoning on erosion controls. What does everyone else think?

Attorney Olson asked: Do you usually bond for potential restoration?

Chairman M. Herde replied: Yes, we just did one.

Attorney Olson stated: If you look at number 13 in the conditions, it just specifically includes estimates for restoration of the wetlands so that even if its part of P & Z Bond there is some part separated from it.

I.W.E. Officer A. Ferrillo asked: The outflow, is that a responsibility of the applicant because right now it's pretty basic falling under Hurley Road and has concrete blocks and the beavers have started raising it now?

Commissioner T. Adamski asked: Is that the maintenance of the outlet?

I.W.E. Officer A. Ferrillo replied: Maybe a more permanent structure, a direction of the deficiencies.

Commissioner T. Adamski agreed.

Attorney Olson stated: During the course of construction the outlet should remain a permanent structure.

Chairman M. Herde asked if everyone is happy with this at this point.

Commissioner T. Adamski asked: With a lot of commercial and retail we have the litter control standards in place which normally is not for residential but due to the intensity of the construction and the wetlands, should we have this control on the site as well?

Attorney Olson replied: It has the line litter free during the construction in place. Anything after construction could be considered deposition of material in the wetland and treat it as a case by case basis.

Commissioner B. Richter asked: The last page talks about the reporting and performance standards and within 48 hours and at least once a year, would if they see it disappear, what are they going to do?

Attorney Olson replied: We talked about it last meeting, if they report it, pretty much all they will say is, well, we can do that again. I think that if you observe a condition and find trouble during the course of the project you can issue a cease and desist and work it out through that process. It may be you can't make them tear down all the homes and raise the grade but there maybe other things that can be done to alleviate the problem.

Commissioner B. Richter asked: Can't we fix something at the end of this to say that?

Attorney Olson replied: I would rather not. I think you run the risk of creating a decision that is not a final decision and therefore it is not an approval. I think if we have the reporting and performance standards in place, it should be ok. I would like to see how the bio swales work and if it works well, everyone around the state will want to know.

Further discussion ensued with the Commission and Attorney Olson regarding the failure of the bio swales.

Chairman M. Herde stated: I think we are all set and the only other item is the fee to be paid.

Attorney Olson stated: A copy of the check and a letter was sent to Any Ferrillo today and the actual checks are in the mail. This is all fine and you can accept this as payment and the checks should be received by tomorrow. The letter does state that we are paying this under protest and under reservation of rights. The email from Attorney Branse indicated that this is to Nafis and Young but all 3 checks are in the mail. Now I have to tell you what this means, if you write a check to someone and you say paid in full and it is not in fact paid in full, but they accept the check anyway, and they sue you then you can say hey, I wrote you a check that said payment in full. Its called "according satisfaction". It's a similar concept that he is trying to say that he is annoyed with Allan Young for how much he is charging, he is paying under reservation of rights to at some point in the future, claim he is entitled to a refund. I don't think you should worry about it and I think Andy should deposit it as soon as he receives it tomorrow and we go from there. If at some point he takes appeals and decides he wants to get the money back, go for it.

I.W.E. Officer A. Ferrillo asked: Were the checks made out to the Town?

Commissioner B. Richter asked: Does it say paid in full?

Attorney Olson replied: Yes, to the Oxford Inland Wetlands Agency and there are 3 checks. It does not say paid in full but it does say under reservations of rights. It was the full amount. My only concern is if you denied the application and then stopped payment on the checks tomorrow. If an issue arises with Zoning in the future, it's not going to affect this.

APPROVED with conditions:

MOTION made by **Commissioner S. Purcella Gibbons** to approve application **IW 13-47** Garden Homes Management Corp. for a permit to conduct regulated activities on land location on Hurley Road, Assessors Map 2, Block 36, Lots 2, 2A and 2B, consisting of 40.79 acres (the "Property"), filed by the property owner Third Garden Park Limited Partnership (the "Application"), and issue said permit, for the reasons stated hereafter. This motion and findings, plans and storm water report are based upon the final plan submission by the Applicant, and the notes and 17 conditions of approval stated on such plans are incorporated herein by reference. **Seconded** by **Commissioner T. Adamski**
All in favor 5-0.

Permit Expires: 12/16/2018.

Conditions:

I hereby move that the Oxford Conservation Commission/Inland Wetlands Agency approve Application IW 13-47 for a permit to conduct regulated activities on land located on Hurley Road, Assessor's Map 2, Block 36, Lots 2, 2A and 2B, consisting of 40.79 acres (the "Property"), filed by the property owner Third Garden Park Limited Partnership (the "Application"), and issue said permit, for the reasons stated hereafter.

This Motion and Findings are based upon the final plan submission by the Applicant, and the notes and conditions stated on such plans are incorporated herein by reference. The plans are as follows:

Sheet 1 - Cover Sheet, dated June 10, 2013, received November 22, 2013

Sheet 2 - Overall Development Plan, dated June 10, 2013, received November 22, 2013

Sheet 3 -Site Development Plan, dated June 10, 2013, received November 22, 2013

Sheet 4 - Site Development Plan, dated June 10, 2013, received November 22, 2013

Sheet 5 - Site Development Plan, dated June 10, 2013, received November 22, 2013
Sheet 6 - Site Development Plan, dated June 10, 2013, received November 22, 2013
Sheet 7 - Road Profiles, dated June 10, 2013, revised November 21, 2013, received November 22, 2013
Sheet 8 - Road Profiles, dated June 10, 2013, revised November 21, 2013, received November 22, 2013
Sheet 9 - Road Profiles, dated June 10, 2013, revised November 21, 2013, received November 22, 2013
Sheet 10 - Road Profiles, dated June 10, 2013, revised November 12, 2013 and November 21, 2013, received November 22, 2013
Sheet 11 - Construction Details, dated June 10, 2013, revised November 21, 2013, received November 22, 2013
Sheet 12 - Existing Conditions Map, dated June 10, 2013, revised October 11, 2013, received November 22, 2013
Sheet 13 - Erosion/Phasing Plan, dated June 10, 2013, revised November 21, 2013, received November 22, 2013
Sheet 14 - Erosion Narrative, dated June 10, 2013, revised November 21, 2013, received November 22, 2013
Sheet 15 - Snow Management Plan, dated June 10, 2013, received November 22, 2013
Sheet 16 - Pre-Development Watershed, dated October 4, 2013, received November 22, 2013
Sheet 17- Post-Development Watershed, dated October 4, 2013, received November 22, 2013
Sheet 18 - Soil Results by EPS, Inc, dated October 22, 2013, received November 22, 2013
Existing Conditions Map for Garden Homes, dated July 8, 2003, signed by Michael Klein, October 17, 2013 and received October 16, 2013
This Motion and Findings are further based upon the Stormwater Management Report submitted by the Applicant, dated June 10, 2013 and revised November 19, 2013.

FINDINGS

The Agency hereby finds as follows:

1. The Agency received the Application at its meeting on July 9, 2013, found that a public hearing regarding such application would be in the public interest, and voted to hold a public hearing thereon.
2. The Agency held a public hearing on the Application commencing on September 9, 2013, and continuing

thereafter on September 23, 2013, October 17, 2013, November 14, 2013 and November 26, 2013.

3. During the public hearings, the Agency heard testimony from the applicant, its counsel and its consultants, from the public, and from the Agency's retained consultants.
4. The Agency finds that the Application does not propose any activities within the wetlands or watercourses located on the Property.
5. The Agency finds that the Application also does not propose any activities within 100 feet of the boundaries of the wetlands or watercourses located on the Property.
6. On October 23, 2012, the Agency concluded that the activities proposed by the Application were likely to impact or affect onsite and offsite wetlands and watercourses, and therefore constituted regulated activities pursuant to Section 2.1.30 of the Inland Wetlands and Watercourses Regulations of the Town of Oxford.
7. The Agency reiterates said conclusion in rendering this decision, and finds that it has jurisdiction over the activities proposed by the Application as regulated activities because they are likely to impact or affect onsite and offsite wetlands and watercourses, for the reasons stated herein.
8. The Agency finds that the Low Impact Development ("LID") techniques proposed by the Applicant are appropriate for the site, and represent a significant attempt to provide less impact on wetlands and watercourses through non-traditional stormwater management, and should be encouraged where feasible in the Town of Oxford.
9. The Agency finds, based upon the expert testimony provided to it by its consulting engineer Alan Young of Nafis & Young Engineers, and by its consulting wetlands scientist Thomas Pietras of Pietras Environmental Group, LLC, that there are not likely to be significant adverse short term or long term environmental impacts on the wetlands and watercourses located on or off site as a result of the activities

proposed by the Application, except as stated below in Finding No. 10.

10. Notwithstanding the foregoing, the Agency has significant concerns concerning the ability of the proposed bio-swales to function effectively in areas where the seasonal high groundwater intersects the lower bound of the bio-swale. With respect to said concerns, and based on the competent expert testimony provided by Alan Young and Thomas Pietras, the Agency finds as follows:

- a. The function of bio-swales in an LID project is to allow storm water to infiltrate into the ground through a treatment medium, rather than to convey storm water to a detention or retention system for treatment and discharge at a single point.
- b. In order for the bio-swales to function effectively, they cannot be installed in such a way that they intersect with the water table. None of the engineers or wetlands scientists who provided testimony to the Agency were able to provide any guidance from any source which would permit such a condition.
- c. A bio-swale that is installed in an area where it intersects with the water table will act as a conveyance system, and convey groundwater to the detention system.
- d. The on-site soil reports from test pits showed that at least some of the areas proposed for bio-swales experience seasonal high groundwater, and as such, for at least part of the year, the bio-swales would convey this seasonal high groundwater to the detention system, where it would discharge from a single point into the wetlands.
- e. Were such a condition to occur, the effectiveness of the bio-swales as a storm water quality treatment mechanism would be severely limited.
- f. To alleviate these conditions, the Applicant has proposed to install under drains beneath the bio-

swales to lower the seasonal high groundwater levels below the bottom of the bio-swales.

- g. The under drains will alleviate the water quality issues by allowing the bio-swales to function as designed to infiltrate storm water.
- h. However, the under drains create a secondary issue, in that they will, effectively, convey the seasonal high groundwater from its natural location into the detention system and into the wetlands from a single discharge point, which may simultaneously adversely affect water quality.
- i. As noted by Nafis & Young Engineering in its final report of November 26, 2013, there has been no information presented as to the volume of water that may be conveyed by this under drain system, but that this condition could have a significant impact on the wetlands or watercourses.
- j. In order to ascertain the extent of this potential impact, it is likely that additional test pits would be required to identify the full extent of the seasonal high groundwater in the location of the bio-swales, as well as a hydro-geologic study to determine the volume of the water that will be conveyed.
- k. This information would be necessary in order to ascertain the full extent of the impact on the wetlands of the under drains, as well as to ensure that the systems on site were adequately sized to convey and detain those volumes of water.
- l. In spite of the foregoing, the Agency finds that the because of (i) the limited time during the year that the seasonal high ground water will be present and subject to conveyance under the conditions described, (ii) the benefits to be obtained through the use of the bio-swales and LID techniques during the rest of the year, and (iii) that alternative methods of conveying storm water would result in significantly greater adverse effects on the wetlands year round, based on the competent expert evidence presented to it,

it cannot conclude with certainty that there will be a significant adverse environmental impact on the wetlands as a result of the proposed bio-swales with under drains.

- m. Nevertheless, the Agency finds that there is a strong risk of such adverse impacts, and that such impacts will include an increased volume of water discharged into the wetlands, and a relocation of one of the sources of water serving said wetlands from groundwater to single point discharge.
 - n. As such, it is the Agency's strong recommendation to the Applicant, and to the Planning & Zoning Commission when it reviews this application, that the overall grading plan for the site be revisited, and that the elevation of areas where bio-swales are to be installed in areas of seasonal high groundwater be raised to ensure that there is no intersection between the bottom of the bio-swale and the level of the seasonal high groundwater.
 - o. The expert testimony provided to the Agency indicates that there is no specific required separation distance between the bottom of the bio-swales and the level of the seasonal high groundwater, but there must be some separation.
 - p. In order to facilitate the plan revisions required to revisit the grading plan, the Agency hereby determines that should such revisions be made in the course of the review of the plans by the Planning & Zoning Commission, the Agency will accept an application for revised permit from the Applicant without application fee, and will review and act upon said application without public hearing unless so petitioned in accordance with statutes.
 - q. The Agency has also adopted reporting requirements and performance standards to allow it to monitor the effectiveness of the bio-swales.
11. The Applicant has proposed that a significant portion of the Property be placed under a Conservation

Easement which will protect that area from future development. Although the Agency has not required such as part of these proceedings, the Agency finds that elimination of future development is a significant reduction in risk of future impacts to the wetlands and watercourses, and as such, is a significant component of its decision herein. The Conservation Easement shall run to the Agency, and be substantially in the form provided by Counsel to the Applicant during the public hearing, as may be finally approved by the Agency's Counsel.

REASONS FOR DECISION

Based on the evidence and testimony presented during the public hearings, and based on the foregoing Findings, Application IW 13-47 is hereby approved, and a permit to conduct regulated activities is hereby issued as stated herein, for the following reasons:

1. Except as noted in the findings, there are not likely to be significant adverse short term or long term environmental impacts on the wetlands and watercourses located on or off site as a result of the activities proposed by the Application.
2. The feasible and prudent alternatives to the activities proposed by the Application would have greater adverse environmental impacts on the wetlands and watercourses.

CONDITIONS OF APPROVAL AND PERMIT

The issuance of this permit to conduct regulated activities pursuant to this approval is specifically conditioned on the following conditions:

1. The Permittee shall comply with the Town of Oxford Standard Erosion and Sedimentation Control Notes, which are incorporated herein by reference.
2. Prior to issuance of any building permits, and after review and action by the Planning & Zoning Commission, the Permittee shall submit a final set of revised plans to the Agency for review and confirmation that revisions to this permit are not required, and that all conditions contained herein are stated thereon.

3. The Permittee shall submit copies to the Agency of final revised site plans and all local, state and federal permits within thirty (30) days of issuance.
4. The Permittee shall submit a Spill Prevention Plan to the Agency for review and approval prior to construction activity.
5. This permit shall be valid for five (5) years, and all work proposed by the Application must be completed within that time period. The Agency may consider an extension of this time period providing that a request for same is submitted at least thirty (30) days prior to the expiration hereof.
6. The Agency has relied on information provided by the Applicant and if such information subsequently proves to be false, deceptive, incomplete or inaccurate, the permit may be modified, suspended or revoked.
7. A pre-construction meeting must be held prior to any site activity with the Permittee, contractors, Town Engineer and Inland Wetlands Enforcement Officer.
8. The Inland Wetlands Enforcement Officer shall be notified at least 48 hours prior to commencing any construction activity.
9. The Agency members and staff shall be allowed access to the construction site during any construction activity and may conduct such inspections as deemed necessary.
10. No work other than maintenance of sediment and erosion control devices shall be performed during significant rainfall events of one inch (1" or more in a 24 hour period).
11. Whenever any soil erosion and sediment control measure shall fail to function as intended, all work which could have an effect on that soil erosion and sediment control measure shall cease and immediate repair of the soil erosion and sediment control measure shall commence. Site work shall not commence until the measure is fully repaired.

12. At the completion of each phase of development, the Permittee shall submit to the Agency an as-built plan depicting all of the improvements.
13. The Permittee shall be responsible to ensure that, during construction, the wetlands, watercourses and development areas of the Property remain free of litter and debris.
14. The Permittee shall post a performance bond for erosion and sediment controls in an amount to be determined by the project engineer and reviewed and approved by the Town Engineer to ensure compliance with all provisions of the Town of Oxford Inland Wetlands and Watercourses Regulations and the conditions of the Permit as contained herein. The bond shall be in a form and surety acceptable to the Town Attorney, and shall specifically include estimates for restoration of wetlands.
15. The Permittee shall prepare, on an annual basis, an Integrated Turf Management and Pest Control Plan, detailing the chemicals, fertilizers and pesticides that have been applied to the Property in the prior one (1) year period, and proposed to be applied in the next one (1) year period. The Plan shall be submitted to the Agency for review. The Rules and Regulations of governing the use of land and structures on the Property shall require compliance with the Plan, including a requirement that all such substances be applied by the Owner of the Property, rather than the owner of any individual unit, homesite or structure.
16. Reporting and Performance Standards. In light of the Agency's concerns as to the effectiveness of the bio-swales, the Agency hereby requires the following reporting and performance standards:
 - a. Annual construction reports must be submitted evaluating erosion control, wetland conditions, storm water control measures including vortex units, ponds, siltation basins, incorporating inspections made and maintenance performed for the life of the construction activity plus one year.

- b. In addition to the foregoing, for a period of three (3) years following completion of construction, the Permittee shall:
- i. Within forty-eight hours of the end of any two (2) year or greater storm event, measure and photograph (a) the depth of the water in the detention ponds; (b) the volume and velocity of the discharge therefrom; and (c) the depth of the water in the bio-swales.
 - ii. At least once per year, during the annual period of seasonal high ground water, as best can be determined, measure and photograph (a) the depth of the water in the detention ponds; (b) the volume and velocity of the discharge therefrom; and (c) the depth of the water in the bio-swales.
 - iii. At least once per year, during the annual period of seasonal high ground water, as best can be determined, sample the water being discharged from the detention ponds and measure total suspended solids, nitrate, nitrite, and phosphorous.
17. During the course of construction, the Permittee shall correct the deficiencies of the outlet under Hurley Road and ensure that it remains free of debris.

Meeting was adjourned on a **Motion** by Chairman M. Herde seconded by T. Adamski at 5:23 pm.

Respectfully submitted,

Denise Randall

Denise Randall
OCCIWA- Secretary

RECEIVED 11/14 - 2014
AT 3:00 pm
Rosemary Herne
Asst TOWN CLERK