

INLAND WETLANDS & WATERCOURSES COMMISSION
September 20, 2010

The Town of Bloomfield Inland Wetlands & Watercourses Commission held a meeting on September 20, 2010 scheduled for 7:30 p.m. at the Town Hall in Bloomfield, Connecticut with the following members present:

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| Present: | Also Present: | David Peter Castaldi, Wetlands Agent Maureen Sullivan, Recording Clerk |
| Howard Hunter, Vice Chairman | Absent: | Kenneth Bennett Donald Evans Laurianetta Huguley, Secretary Nick Panke, Chairman |
| Barry Berson | | |
| Alan Budkofsky | | |
| David Mann | | |
| Daniel Mara | | |

Mr. Hunter, Vice Chairman, called the meeting to order at 7:34 p.m. and discussed the procedures for a public hearing. There were five Commissioners in attendance; therefore four affirmative votes are needed for a motion to pass. Mr. Hunter and Mr. Mann were not at last month's meeting but read the minutes and felt they could sit on the applications this evening.

1. **Cease & Desist Order 195 West
195 West Newberry Road
(Cont. from August 16, 2010)**

Mr. Mara made a motion to remove the item from the table. Mr. Berson seconded the motion and it was approved unanimously.

Attorney Corey Brinson of the Law Office of Corey J. Brinson, LLC, represented the owner of 195 West Newberry Road, Mr. Christian Meissenn.

Mr. Castaldi stated at last month's meeting the Commission voted to extend the Notice of Violation and issue a Cease & Desist Order if the work was not completed by September 10, 2010. Mr. Castaldi discussed his memorandum of September 13, 2010. The Wetlands Agent issued a Cease & Desist Order to the property owner because the work was not completed by September 10, 2010. Mr. Castaldi visited the site on September 15, 2010, a concrete block wall was being constructed, and some material had been removed from the abutting property and conservation easement. The Wetlands Agent visited the site again on September 16, 2010 and September 20, 2010. Mr. Castaldi distributed pictures taken on September 20, 2010 at the site. Mr. Castaldi recommended the Commission uphold and continue the Cease & Desist Order for another month, or until the next scheduled meeting on October 18, 2010, in order for the property owner to complete the required corrective measures. The work on the site was

discussed. Erosion and sedimentation control measures were not in place. The construction of the wall and material on the site were discussed. The applicant did not receive any guidance from staff regarding the height of the wall.

Mr. Budkofsky asked about the location of the wall with respect to the wetlands. Mr. Castaldi stated wetlands were flagged on the property by a soil scientist some years ago. On the applicant's property, the southerly end of the wall almost touches the wetlands. Mr. Budkofsky was concerned because there was no plan, no specifications and thought there should be more detail before going further. Mr. Berson asked if there were footings under the wall to which Mr. Castaldi replied the applicant did not pour a standard footing. They are concrete blocks. Mr. Berson was concerned the ground will shift and that there is no drainage behind the wall. Mr. Berson commented that a wall of four feet typically needs to be designed by a professional engineer. The Town Engineer has not looked at the wall. Mr. Berson recommended either the Town Engineer or building inspector look at the wall.

Attorney Brinson stated Mr. Meissenn is working with the town to protect the wetlands and has a right to develop his land. Attorney Brinson stated Mr. Meissenn was asked to develop a wall or silt fence and has purchased the material to build a wall and hired a qualified firm to build the wall. The pictures distributed to the Commission were discussed. The survey of the land was done in the mid-1980's. Attorney Brinson stated the ground and the land have since shifted since that survey and did not believe there was an immediate danger to the wetlands based on the development of this land. Mr. Meissenn is cooperating and after some confusion regarding his legal obligations is moving forward. Attorney Brinson asked the Commission to consider vacating the Cease & Desist Order as Mr. Meissenn has taken measures as requested.

Mr. Berson stated in his professional opinion (as a Professional Engineer) it would be in the applicant's best interest to have someone look at the wall. The Commissioner was concerned that there is no drainage behind the wall. If the wall fails, it will be Mr. Meissenn's responsibility. There are building, wetlands and zoning regulations that govern what can be done on one's property.

Attorney Brinson commented about not changing the rules of the game in the ninth inning.

Mr. Mann commented the reason this issue came to the Commission's attention was because Mr. Meissen filled the (west) side of his property and had it spill into the wetlands. The Commissioner was concerned there was little communication between the client and the Wetland's Agent about what was going to be done to comply with the corrective measures. Mr. Mann commented the wall needed to be looked at.

Mr. Budkofsky was concerned the owner was missing for five months and had no response. The Commissioner was concerned with the wall and its effect on the wetlands if it collapses. Safety issues were a concern. Mr. Budkofsky thought construction should stop and the applicant should provide detailed plans.

Attorney Brinson stated Mr. Meissenn retained an attorney, hired a company to build the wall and expected his client to remedy the situation. There was a question regarding Mr. Meissenn's legal obligations and that has been cleared. Attorney Brinson believed it would be unfair to his client who had been asked to build a retaining wall and then after construction of the wall the possibility that the Commission may want to tear the wall down and start from scratch. Attorney Brinson stated if there was a certain specification, it should have been communicated to the client prior to the construction of the wall. Attorney Brinson stated there was no reason to believe that the wall was being built incorrectly.

Mr. Mara stated Mr. Meissenn was not asked to build a wall but told to remove the spoil and soils that he put into the wetland and into the conservation easement. The applicant asked to build a wall and was allowed to employ that as an alternative to the remediation plan. That is quite different from being asked to put up a wall. Mr. Mara was also concerned about the propriety of the wall. It was Mr. Meissenn's choice and request to put up the wall in lieu of removing the fill that needed to be removed. The Commission responded to Mr. Meissenn's

suggestions that were made in response to a Notice of Violation order that went out in May. Attorney Brinson responded he would agree to disagree with those facts in terms of whether the applicant was asked to have a retaining wall. Attorney Brinson stated there was no evidence heard that the wall was inadequate except for what was seen in the pictures.

Mr. Hunter believed someone should intercede as far as the structure of the wall. Mr. Castaldi would ask the Town Engineer and Building Official to look at the wall.

Mr. Mara made a motion to continue the Cease & Desist Order on 195 West Newberry Road, Lot 5A until the next meeting in light of the comments made by Peter Castaldi and the concerns expressed tonight. The Commissioner strongly recommended to the respondent that he consider all of the requirements that may be put in place by the Town of Bloomfield in connection with the wall or whatever alternative corrective method the applicant chooses to employ and strongly recommended to the respondent that he comply with whatever rules and regulations were imposed by the town to actually effectuate the corrective method he chooses to employ. Mr. Berson seconded the motion. The motion was approved unanimously.

Mr. Budkofsky discussed fines.

Mr. Mann was concerned with the lack of communication between the applicant and staff.

**2. Notice of Violation – 99 & 101 Old
99 & 101 Old Windsor Road
(Cont. from August 16, 2010)**

Mr. Castaldi was on the site this afternoon and the erosion controls were put up and the seeding was underway. Mr. Castaldi recommended the Commission lift the Notice of Violation. Mr. Castaldi showed a picture of the site taken today. The required corrective measures were satisfactorily completed by September 20, 2010.

Mr. Mara made a motion to lift the Notice of Violation at 99 and 101 Old Windsor Road. Mr. Mann seconded the motion and it was approved unanimously.

**3. Application of Griffin Land,
In industrial subdivision, modification
to a farm pond dam and road construction,
partially within wetlands and watercourses –
Lots 8, 1003 & 1005 Old Iron Ore Road
(public hearing)**

Mr. Mara made a motion to open the public hearing. Mr. Berson seconded the motion and it was approved unanimously.

Attorney Tim Hollister from Shipman & Goodwin in Hartford spoke on behalf of the applicant and introduced the team. The mailing receipts and affidavit of the signed posting were submitted. The proposal is to remove an existing farm road, replace it with a new road that will serve several new industrial lots, install new culverts to restore the stream flow in Mill Brook and a variety of stream channel improvements and restoration. An outline of the presentation was distributed to the Commission. Mr. Pettinelli and Mr. Wilson's resume were submitted to Mr. Castaldi.

Mr. Richard Pettinelli, a Professional Engineer with Fuss & O'Neill, discussed the site. The proposal is to construct a road across an existing farm pond on Mill Brook. A subdivision is also proposed with four industrial lots. The location of the road was discussed. The property presently includes the General Cigar building and tobacco fields with 11 barns. The partial removal of the embankment (farm pond dam) was discussed.

Mr. Josh Wilson, a Professional Wetlands Scientist and Registered Soil Scientist with Fuss & O'Neill, discussed the wetlands on the site. The wetlands were delineated in November 2008. The site crosses the Windsor/Bloomfield border. The wetland soils were discussed. A signed copy of the soil delineation map was submitted. Mr. Wilson discussed the functional value assessment of the wetlands.

Mr. Pettinelli stated the applicant proposed construction of a town standard road from Blue Hills Avenue to the town line that will require reconstruction of the farm pond dam (embankment) and the alteration of the wetlands around the pond. The road will be 4,200 feet long, 30 feet wide. There will be curbs and catch basins and they will discharge into open swales. The applicant proposed installation of two concrete box culverts to convey Mill Brook. This will reduce the elevation and size of the pond. Utilities and a gravity sewer will be installed. A pumped sanitary sewer was considered but was rejected as being too dangerous to the wetlands and watercourses from an accidental spill. At this time, the applicant did not propose any action on the buildings or the individual lots. The regulated activities and impacts were discussed.

Mr. Wilson discussed the project impacts and benefits. The lower pond elevation will allow the formerly submerged edge of the pond to be restored as functional wetlands. Other mitigation measures were also discussed.

Mr. Pettinelli discussed the alternatives to the plan. The applicant was working on the comments and requests for additional information from Mr. Castaldi.

Mr. Scott Bosco from Griffin Land stated the plan was to construct a road, roughly 4,000 feet, over an existing farm pond. The pond is used for irrigation. The goal was to try to improve the road, while providing access to the rear of the property from Blue Hills Avenue. The Army Corps of Engineers have been involved with the project. The existing dam is three to five feet above the current water level in the pond. The applicant is proposing to raise the elevation of the new road 10 to 12 feet higher than it is now across the farm pond dam. Soil erosion and sediment control was discussed.

Mr. Castaldi stated the application was submitted on July 7, 2010 and was officially received at the July 19, 2010 meeting. A public hearing was scheduled for this evening. A special meeting was scheduled on July 19th for a field walk on the site. Only the Chairman and the Wetlands Agent were in attendance, therefore, there were no minutes as it was not an official meeting. Mr. Castaldi recommended hearing the presentation, ask questions and have any additional information submitted in time for the next meeting, October 18, 2010. The flagged wetlands generally agree with the official map and no Map Amendment is required. The wetlands on the site were discussed. The application is for the road crossing as well as approval for the subdivision. Mitigation measures were discussed. Mr. Castaldi was concerned about the removal of sediments behind the old farm pond and suitability of the pond bottom for construction of the new road. He would also like the applicant to consider some kind of restoration or improvement of the downstream channel. Any areas within the buffer zones that are not presently wooded should be considered for planting to create woods as additional mitigation. Mr. Castaldi also discussed the use of low impact development techniques for the development of the individual lots.

Mr. Bosco stated a large portion of the parking has been placed in reserve. As tenants come in, they can expand the parking if need be. The applicant has talked with staff about reducing the required parking requirement. Mr. Bosco would like to work directly with Mr. Castaldi as far as construction methods for the dam removal and new stream crossing with the Commission's approval.

There were no questions from the public.

Questions from the Commission:

Mr. Budkofsky left the meeting at 9:30 p.m.

Mr. Mara asked Mr. Castaldi about the gravity sewer to which Mr. Castaldi responded the gravity system is preferred.

Mr. Mann asked about the pond and stream. Mr. Pettinelli stated there will be both a stream and there will still be a pond but it will be smaller. Mr. Mann asked if it functions now as an intermittent stream to the south. Mr. Castaldi replied he would classify it as a stream with continual flow or a perennial stream, Mill Brook.

Mr. Mann asked if there was any affect from agriculture activity on the water quality or sediments in the pond. Mr. Wilson said that the soils had been tested and did not exceed the criteria for residential exposure. The marsh system was discussed.

Mr. Hunter commented the applicant was working with the Army Corps of Engineers with the coordination and modification of the existing dam and construction of the new road.

Mr. Mann made a motion to table the application and continue the Public Hearing until the next scheduled meeting (October 18th). Mr. Berson seconded the motion and it was approved unanimously.

4. Approval of minutes of August 16, 2010

Mr. Mann made a motion to approve the minutes of August 16, 2010. Mr. Berson seconded the motion and it was approved unanimously.

5. New applications received.

Mr. Castaldi received two new applications; a map amendment and a four-lot subdivision of the Stout property on Stone Hill and Gun Mill Road. These applications are officially received at tonight's meeting and will be scheduled for separate Public Hearings at the October 18, 2010 meeting.

6. Status of on-going projects.

The Garden Homes Subdivision on Privilege Road is moving forward. The Stop & Shop fueling facility at 33 Granby Street is also moving forward.

Mr. Mann made a motion for the meeting to adjourn. Mr. Mara seconded the motion and it was approved unanimously.

The meeting adjourned at 9:52 p.m.

Respectfully submitted,

Maureen Sullivan, Recording Clerk

Laurianetta Huguley, Secretary