

**Inland Wetlands and Watercourses Commission
Town of Wallingford**

**SPECIAL MEETING
Wednesday, August 12, 2009**

The Special Meeting of the Wallingford Inland Wetlands and Watercourses Commission was held on Wednesday, August 12, 2009, in Room 205, the Municipal Building, Wallingford, Connecticut.

Seated from the Commission were James Vitali – Chairman, Ellen Deutsch – Vice Chairperson, Nick Kern – Secretary, Jeff Kohan, James Kovach – alternate, and Environmental Planner Erin O’Hare.

Chairman Vitali called the meeting to order at 7:00 p.m.

**1.) Violation - Cease and Desist hearing - 216 Northford Road / Lynne Cooke Andrews -
(excavation, deposition, alteration of wetlands and stream)**

Chairman Vitali indicated that the first item to be discussed was a violation – Cease and Desist hearing – 216 Northford Road / Lynne Cooke Andrews – (excavation, deposition, alteration of wetlands and stream)

Present to discuss the violation was Jeff Andrews, husband of property owner Lynne Cooke Andrews.

Chairman Vitali stated that there was a Cease and Desist Order issued relative to this property after a site investigation conducted by Erin O’Hare, Environmental Planner.

Ms. O’Hare explained that Linda Bush, Town Planner, had received a letter of complaint and had notified Ms. O’Hare that they were going visit the site. On August 6, Linda Bush, Ms. O’Hare, and Kacie Costello, Assistant Town Planner, went out to the site. Ms. O’Hare passed out photos that were taken at that site visit. The Cease and Desist Order was issued on the 7th of August to Lynne Cooke Andrews. The area of activity being discussed is approximately 1-½ acres. This property (42 acres in Wallingford) came before this Commission in 2003 with a proposed subdivision. The Planning & Zoning Commission denied that application. Ms. O’Hare stated that in the file there was a map of the wetlands that were delineated at that time. She passed around a copy of that map where she colored in the wetlands, the activity area, and the approximated excavation operation. The basin being excavated is approximately 50’ x 70’ in dimension. The property that is being discussed is bounded on the north by Town-owned land (Field 6B). The Engineering Department surveyed the line and there has not been any encroachment onto Town-owned property but to within a few feet of Town property.

Ms. O'Hare stated that Ms. Bush, printed off an aerial shot of the site from Goggle Earth from 2006. She passed it around to show that the area was open at that time. The area in question was not wooded; it was a wet meadow type of area. Ms. O'Hare indicated that you couldn't see the violation from the road.

She indicated that there was a second site investigation that occurred Monday morning with herself, James Vitali, Chairman IWWC, Town Attorney Janis Small, Ms. Bush, and Ms. Costello. They viewed the activity area from the vantage point of the edge of the Town property.

On the south, this site is bounded by property owned by the South Central Connecticut Regional Water Authority. Ms. O'Hare contacted them on Friday because this is in their watershed. There is a stream that runs through this activity area. Mr. Ron Walters, Senior Environmental Analyst, South Central Connecticut Regional Water Authority, submitted a report yesterday, circulated to the IWWC, and was present to discuss it.

Ms. O'Hare made it clear that it is known where the wetlands are because they were delineated on the map for the previously proposed subdivision. She indicated that there is quite a large area out there that has been disturbed but she did not see any signs of trees that have been removed. The stream channel has been altered for approximately 200 feet. Heavy equipment has gone through the stream at some points. There is a concrete pipe in the stream but it is only partially installed. At the time of the site investigations there was a pump pumping water out of the basin and into the stream. The water being discharged to the stream is silted. Ms. O'Hare stated that she called the home of Ms. Andrews on Thursday and left a message to call her office as soon as possible. She clarified that the unauthorized, unpermitted work was done in a regulated area without a permit. She read from the Cease and Desist letter listing all of the unpermitted and unauthorized activities.

Ms. O'Hare indicated that she could only assume that the equipment on the site was leaking because she found petroleum on the surface in several spots around the activity area.

Chairman Vitali asked Mr. Andrews if he would like to address the Commission.

Mr. Andrews passed out to each Commissioner a packet of materials with the cover sheet being a copy of a letter to Lynn Cooke Andrews from Shelby Jackson, Town Assessor, dated February 4, 2002 relative to tax status as farmland. Mr. Andrews read from Section 22a-40, Permitted Operations and Uses. He stated that he is creating a farm pond to irrigate his crops of corn and hay. He stated that he has not filled any wetlands with the material that has been excavated for the pond. Chairman Vitali indicated that by statute, a farmer can have a haul road to bring the spoils out but cannot pile the spoils into a wetland.

Mr. Kern referred to the page in the submitted materials from the Connecticut Department of Agriculture. He stated that what has been done on this site is a nuisance and there is no proper management for what has been done out there. Mr. Kern explained that Mr. Andrews may have the right to do this but it has to be done with the proper procedures in place.

Mr. Andrews stated that he should have discharged the water further upland from the watercourse so the South Central Connecticut Regional Water Authority would not have an issue. As far as Ms. O'Hare finding petroleum products, he stated that sometimes when he is fueling up his equipment there could be a small spill.

Ms. O'Hare explained that if a farm pond less than three acres is being built, it has to be essential to the farming operation. Mr. Andrews indicated that the pond would be used to irrigate his present and future corn and hay essential to his farming operation. Ms. O'Hare stated that no extracted materials could go in the wetlands. Mr. Andrews feels that is true unless it is essential to the farming operation. Ms. O'Hare read from Section 22a-40, which was provided by Mr. Andrews and also from the IWWC regulations. The IWWC regulations state that the IWWC shall be notified to determine if a permit is required. Ms. O'Hare stated that there is a way to build a farm pond the right way. Mr. Andrews stated that this is the right way. Ms. O'Hare explained that the problem is that the material pulled from the pond was placed in the wetlands and it cannot be there.

Mr. Walters, South Central CT Regional Water Authority, explained that his biggest concern right now is that the water being pumped from that "pond" be discharged some place else. Mr. Andrews stated that he doesn't have a problem with moving the discharge 100 feet further away. Mr. Walters made it clear that the discharge point is not the only issue that he has with this activity. There are a dozen other issues that the SCCRWA has with this farm pond. They have concerns with the refueling activity, maintenance of the backhoe, proper notification if there is a spill, and wetland buffers among other concerns. Mr. Walters stated that building a farm pond within a wetland area has a negative impact on water quality, there are temperature issues with it, and there are nutrient and algae problems. He would like to see a buffer to treat any overflow, and some shade in the area. Mr. Walters brought up the area of the stream that has been crossed with equipment where he would like to see some riprap placed.

Mr. Walters explained that he visited the site on Monday and wrote this letter. At that time he was unsure about the circumstances of what was occurring on the site. He assured the Commission and Mr. Andrews that he will put together a report including all of the concerns of the Water Authority and submit it as soon as possible.

Chairman Vitali stated that what the job of the Commission is tonight is to determine if the Cease and Desist Order should stay in place. Mr. Andrews feels that it is not necessary to file an application because he has a right to build this pond.

Chairman Vitali believes that the DEP would be a good place to start in determining if this is a farm pond or not and if this pond is essential to the farming operation in this case and directed Ms. O'Hare to pursue this.

Mr. Kern explained that what would be best with everyone involved would be a good working relationship. He asked Mr. Andrews if he wanted to have a working relationship with the Town. Mr. Andrews indicated that he is all for a working relationship. Ms. Deutsch feels that a working relationship would be nice but before anything can be started there needs to be some input from the

Water Authority indicating what its concerns are. She doesn't want to see any more work done out there until the Commission knows exactly what the plan is. Ms. Deutsch would like to keep the Cease & Desist in place until there is a definite plan that can be reviewed. Mr. Kern would like to have Ms. O'Hare draft up a document explaining what her concerns are and submit it to Mr. & Mrs. Andrews. Mr. & Mrs. Andrews would then have the opportunity to explain their reasons for doing things or their plan for the future in writing to the Commission. Mr. Walters indicated that he would also put together a letter expressing all of the concerns that the Water Authority has. Mr. Kern would like to see the Cease and Desist remain in place, have Ms. O'Hare and the Water Authority put together all of their concerns, submit them to Mr. & Mrs. Andrews, and have Mr. & Mrs. Andrews address the concerns. From that point, everything should be able to be put together to make it work.

Mr. Kohan asked Mr. Andrews when he was planning on starting his planting. Mr. Andrews would start planting this year. The pond would actually service what he already has planted. Mr. Kohan is concerned that Mr. Andrews never presented anything to the Commission or inquired about anything before he began this work. He stated that he feels that this pond is essential to Mr. Andrews farming operation. Mr. Kohan stated that there needs to be erosion controls installed since there is such a large piece of property opened up. He would like to see something formally submitted.

Mr. Andrews stated that his intention is not to build a three-acre pond. What is there is it except for one corner that he has to finish. Mr. Andrews stated that he put some 24-inch pipe through the stream covered it and cast material over it. The pipe is exposed because of conditions created by all of the rain. When it rained hard, the stream flow filled up the basin.

Mr. Kern expressed his concern for what happens out there post-construction. He asked if Mr. Andrews is aware of what it will take to maintain this pond so it stays clean and algae free. Mr. Andrews knows it will be a challenge but good water quality is his biggest concern.

MS. DEUTSCH: **MOTION THAT THE CEASE AND DESIST REMAIN IN PLACE UNTIL THE CONCERNS OF BOTH THE ENVIRONMENTAL PLANNER AND THE SOUTH CENTRAL CT REGIONAL WATER AUTHORITY ARE ANSWERED.**

MR. KOHAN: **SECOND**

VOTE: **UNANIMOUS**

The discussion regarding the Cease and Desist at 216 Northford Road ended at 7:45 p.m.

2.) Workshop Session on draft proposed Regulation Revisions

The Commission moved on to discuss the acceptance of draft proposed revisions for adoption. Chairman Vitali indicated that there are changes that need to be made to the regulations for many different reasons and from different sources. It is possible that the Commission would hold four or

five public hearings as they go along. The first public hearing is going to include the upgrade from the State of CT. Ms. O'Hare clarified that right now the Draft she has provided includes upgrades relative to the State changes and changes requested by the Commission for Sections 1, 2, and 3 only. Once these sections are accepted as drafted, there will be a public hearing on those sections. There was some discussion about who should be notified when a regulation change occurs. Ms. O'Hare stated that at the hearing it is important for the Chairman to state the intent of these regulation changes in the event that the amendments to the regulations were to be appealed.

Ms. O'Hare prepared a memorandum, dated August 5, 2009, which includes the proposed changes to Section 1, 2, and 3 and the Fee Schedule, along with the new Fee Schedule. The Commission reviewed and discussed the memo section by section.

Section 1 – Title and Authority

(No revisions proposed)

Section 2 – Definitions

The Commission discussed “Regulated activity”. The question was who is going to decide if an activity is likely to impact or affect the wetlands or watercourses. Mr. Kohan feels that it would be the position of the Environmental Planner to determine if an activity would have negative impact. There was discussion about the possible need to identify a limit to the geographic territory that can be regulated. Ms. O'Hare stated that this is just about wetlands and watercourses and it is not about the upland review area. After further discussion the Commission decided to leave the “regulated activity” definition as proposed.

The Commission discussed subsection 1, under “Regulated activity”. The 50-foot versus 100-foot was debated. Ms. O'Hare pointed out that the public health code today requires 50 feet. The Commission decided to leave it at 50 feet at this time.

The Commission discussed subsection 2, under “Regulated activity”. Chairman Vitali wants to be sure that the regulation is clear enough for staff to explain it and the applicants to understand it. Ms. O'Hare suggested breaking the section out in subsections a, b and c to make it easier to discuss with people. She would also like to title the section “Surfaced Area Provision”. The Commission was for anything that would make the section clearer.

The Commission discussed subsection 3, under “Regulated activity”. Ms. O'Hare gave her explanation of how the regulation works. This regulation discusses footprint or roof area. Ms. O'Hare indicated that the Engineering Department inserted the word “coverage” into this section but she would prefer not to have that word in there. Ms. O'Hare will ask the Engineering Department what it meant by that word.

The Commission discussed subsection 4, under “Regulated activity”. Once again, the Commission debated the 50-foot versus 100-foot regulated area. Ms. O'Hare will gather documentation to

support the 100 feet. She pointed out that with every copy of the regulations sold there is literature handed out that discusses vegetative buffer strips. After further discussion, the Commission decided to change the 100 feet in the proposed regulation to 50 feet at this time. Ms. O'Hare stated that the Law department would like to see "at a minimum" deleted from this section. The Commission agreed to have "at a minimum" deleted.

The Commission discussed subsection 6, under "Regulated activity". As discussed earlier, the Commission decided that the proposed 100 feet will remain at 50 feet at this time and that the phrase "at a minimum" will be deleted. Chairman Vitali feels that there should be some more details added such as degree of slope. He stated that such terms as "steep slope" are just too vague. Ms. O'Hare indicated that she felt that would be difficult because slopes undulate.

The Commission discussed subsection 7, under "Regulated activity". Ms. O'Hare explained that this provision is what has been referred to as the "magic sentence". Attorney Small recommended that the phrase "or in any other non-wetland or non-watercourse area" be deleted because it would be too hard to defend. The Commission agreed to take that phrase out. After further discussion it was decided that Section 7 would not stand-alone but would be added to Section 6 as modified.

The Commission decided to leave in "New Haven County" in the definition of "Town".

The Commission discussed the definition of "Watercourses". Ms. O'Hare indicated that the DEP explained to her that an area can be classified as a watercourse under "other water bodies" if it is standing water that is not intermittent and not a pond or lake.

Section 3 – Inventory of Regulated Areas

Ms. O'Hare passed out an update to the proposed Section 3 previously forwarded which is dated August 12. The Commission discussed the section. They decided to delete "or the Agency" from line 4 of subsection 3.1.

(New) Section 18 – Fee Schedule

Ms. O'Hare indicated that the only thing that has changed on the fee schedule is the "After-The-Fact" fee where the Law Department had Ms. O'Hare add a definition: "(applicable to any activity conducted prior to a permit being issued)". The Commission discussed the need or logic behind this "After-The-Fact" fee. Ms. O'Hare indicated that the Towns of Branford and Guilford use this fee. The Commission discussed what incentive there is for people to come in and apply for an application. They talked about there being a fee for a violation but not having it be a doubling of anything - just having it be a flat fee.

Ms. O'Hare pointed out that the Law Department eliminated the waiver section of the fee schedule because it is not legal. After further discussion the Commission asked that Ms. O'Hare do some further research regarding the waiver issue.

The Commission decided to look at the revisions at its next regularly scheduled meeting and, if there is no time to move it forward at that time, they will schedule another Special Meeting.

Chairman Vitali brought up the issue of conditions of approval. Many of the applications that come before the Commission have numerous conditions but most of them are standard conditions for all activities. He would like to see them simply added to the permits issued as standard conditions of approval, along with any other conditions approved by the IWWC specifically for the particular permit.

Ms. Deutsch made a motion to adjourn the meeting. The motion was seconded by Mr. Kohan and passed. The meeting adjourned at 10:08 p.m.

Sonja Vining
Recording Secretary
Town of Wallingford
Inland Wetlands and Watercourses Commission
August 12, 2009