

SPECIAL MEETING MINUTES
WINDSOR INLAND WETLANDS & WATERCOURSES COMMISSION
WEDNESDAY SEPTEMBER 8TH, 2021 7:00PM

Online webinar, to join via computer please go to the link below
<https://us02web.zoom.us/j/85435818689>

Chairman Morando called the meeting to order at 7:00 PM.

I. ROLL CALL

Present: Chairman L. Morando (virtual), Secretary Towers, Commissioners; A. Schibley (virtual), S. Fraysier, and D. DeCarlo.

Also present was Environmental Planner, Chloe Thompson.

II. PUBLIC COMMUNICATIONS (3-minute limit on items other than Public Hearings)

- a. No public communications, closed at 7:04pm.

III. BUSINESS MEETING

a. MINUTES:

- i. Commissioner Towers made a motion to approve the minutes for August 3, 2021 as amended. Commissioner DeCarlo seconded the motion. Vote 5-0-0**
- ii. Commissioner Towers made a motion to approve the minutes for August 18, 2021 as submitted. Commissioner DeCarlo seconded the motion. Vote 5-0-0**

b. NEW BUSINESS

- i. Application 21-264: 37T Canterbury Ln, Hartford Audubon Society - Mowing and maintenance of access path and property boundary**

Commissioner Schibley stated that he believes the proposed activity to be “regulated” as opposed to the non-regulated claim made by the applicant/petitioner because it involves the mowing of vegetation to maintain the boundary, therefore this would be something the Commission would have to grant a permit for.

Annette Pasek, President of HAS addressed the Commission and explained that they believe the activity qualifies as a permitted and non-regulated activity as the maintenance of their boundary involves the “conservation of soil, vegetation, water, fish, shellfish and wildlife” [CGS 22a-42b and Windsor IWWC Regulations Section 4.2]. Ms. Pasek added that this is the most direct access point to their property, and if they were required to enter elsewhere, there would be more disturbance required.

Commissioner Schibley stated that he doesn't consider the activity itself to be a Conservation effort, but understands that this application is claiming that access and boundary marking is necessary for the conservation efforts. Commissioner Fraysier concurred with Commissioner Schibley, that he thinks this is a regulated activity; this is clearing and the application should be subject to the normal permitting process.

Sarah Faulkner of the Hartford Audubon Society addressed the Commission, and explained that this is frequently considered a non-regulated activity by surrounding municipalities. Commissioner Schibley suggested that the Wetlands Agent do research on this, and inform the Commission of findings on how nearby towns have categorized this activity.

Commissioner Schibley made a motion to table application 21-264: 37T Canterbury Ln, Hartford Audubon Society – Mowing and maintenance of access path and property boundary, to the next regular meeting and that associated application fees be waived. Commissioner DeCarlo seconded the motion. **Vote 5-0-0**

ii. Application 21-267: 84 Winthrop Rd, Tony Jorgensen – Fencing and regrading of side yard

Env. Planner Thompson described the general details of the application to the Commission. The property owner wishes to erect some type of barrier between his property and his neighbor, but there is a wetland area located around the property lines.

Tony Jorgensen addressed the Commission as the property owner, and said that he would like to be able to plant privacy shrubs along the northern boundary, and manage the drainage in this area by re-grading and pushing the available water into the forested wetland to the east. Mr. Jorgensen expressed concern with the exposure his backyard has to the neighboring property as some type of visual screening is necessary to the enjoyment of his property. Mr. Jorgensen stated that he looks for guidance from the Commission as to what his options are, and that he'd like to have a "green" buffer rather than a vinyl fence to maintain the aesthetics of his neighborhood and to minimize any impact on the wetland areas.

Commissioner Schibley asked Mr. Jorgensen what he intends to do in regard to regrading of the side yard. Mr. Jorgensen described the drainage issue along the property line after storm events, and that water flows from the northern neighbor's property down toward his. Water tends to pool in the grassed areas, and adding material would encourage the water to run into the forested area rather than open grass. Mr. Jorgensen said that he understands that removing vegetation will also increase the available water, and some of the brush in the forest canopy would have to be removed to allow for arborvitae to be planted. Commissioner Schibley stated that the Commission has to be privy to concentrations of water when regrading of wet areas is introduced, as channelization has the potential to increase water velocity and the likelihood for erosion. Commissioner Schibley added that to avoid this, grading would have to be minimal.

Commissioner Towers made a motion to accept application 21-267: 84 Winthrop Rd, Tony Jorgensen – Fencing and regrading of side yard. Commissioner Fraysier seconded the motion. **Vote 5-0-0**

iii. Application 21-268: 4 Walters Way, Thomas DeFranzo – Agricultural Exemption for vineyard

Skip Alford of Alford Associates addressed the Commission as the engineer representing Thomas DeFranzo. Mr. Alford explained that the application submitted is to obtain an agricultural exemption a farming of grape vines within the upland review area. Mr. Alford stated that part of the delineated wetland boundary has been recently verified by George Logan, Mr. DeFranzo’s wetland scientist.

Chairman Morando asked if they are seeking the exemption only for the area needed to grow grape vines as indicated on the provided plans. Mr. Alford said, “Yes, correct”.

Commissioner Schibley asked Mr. Alford if Mr. DeFranzo had been conducting additional work on-site, as an image presented by Mr. Alford showed a small patch of sod in the area. Mr. Alford said that this sod was outside of the upland review area. Commissioner Schibley stated that while it may be outside of the upland review area, the on-site conditions support the reasoning that activity outside the upland review area has the potential to impact the wetland areas as the entire site is prone to erosion.

Commissioner Schibley stated that farming is clearly listed as a non-regulated use, but the section in the regulation states that clear cutting is not permitted unless it is for the expansion of agricultural land. Commissioner Schibley added that he interprets that as not allowing for clear cutting to occur unless crops were pre-existing. Commissioner Schibley expressed concern with the order in which activities on-site have occurred; the applicant has already begun to establish the croplands for grapes through the large swaths of land that were completely cleared of trees and understory. The applicant previously submitted and withdrew an application for similar activity, and then proceeded to conduct work without the approval of the Commission. This cleared area and the area labeled “Farming operation” on the site plans is roughly 1.7 acres and Commissioner Schibley estimated about 60% of this is within the upland review area.

Mr. Alford stated that clear-cutting is allowed for the expansion of croplands. Commissioner Schibley asked Mr. Alford if there were farmlands existing in this area before the work began. Mr. Alford said, “No, there was not”. Commissioner Schibley expressed concern with the interpretation of the word “expansion”, and asked Env. Planner Thompson to read the section of the regulations aloud.

Commissioner Schibley stated that it is a difficult to determine if the regulation allows a homeowner to clear-cut an area to establish an entirely new farming operation. Mr. Alford disagreed, and stated that he doesn’t believe this regulation would prevent the establishment of new farms and only pertain to pre-existing farms.

Commissioner Schibley stated that because the subject of the outstanding Cease and Desist Order and this petition are for the same activity, he feels as though the best option is to table this application until the Cease and Desist Order has been resolved. Mr. Alford argued that these are two different issues to be treated differently, and they are seeking to obtain the definition of a farm. Commission Fraysier pointed out that farming activity has already occurred, which is the issue the Commission is faced with. Mr. Alford said that all of the planted grape vines are outside of the upland review area. Commissioner Schibley asked Mr. Alford to confirm the finding from previous meetings that the applicant had in fact clear-cut the area and re-graded the land within the upland review area without the approval of the Commission. Mr. Alford said that he was unsure, and believes the applicant cut some trees in the upland review area.

Commissioner Schibley stated that during the site visit, he noticed clearing and removal of vegetation had occurred within a short distance of the wetland area closest to the road crossing behind the barn. Mr. Alford said that recent storms have eroded that area.

Commissioner Schibley stated that because this area is in close proximity to a significant body of water, and because the project area being of a large size, that he believes a public hearing on the matter is necessary.

Commissioner Fraysier said that if the application were considered a separate matter from the Cease and Desist, a public hearing may not be necessary, but due to the complexity of the matter, the Cease and Desist should be resolved before taking action on this application. Commissioner DeCarlo added that the issue the Commission has is that the applicant repeatedly asks for permission after the activity has been completed, and is a direct violation of the regulations.

Commissioner Schibley asked Mr. Alford if the map presented shows the pre-existing topography. Mr. Alford said that was correct. Commissioner Schibley asked what the purposed of the berms are and Mr. Alford said that they were created as a privacy screen from the boat launch. Commissioner Schibley said the current map showing pre-existing topography doesn't reflect the location of the berms, and that as Mr. Alford just indicated, they are not essential to the farming operation.

Commissioner DeCarlo stated that a current topographical survey is necessary for the Commission to make the most informed decision. Mr. Alford said he would prepare plans showing the current topography including the berms and the current crops in relation to the upland review area.

Commissioner Schibley made a motion to accept and table application 21-268: 4 Walters Way, Thomas DeFranzo – Agricultural Exemption for vineyard. Commissioner DeCarlo seconded the motion. **Vote 5-0-0**

c. OLD BUSINESS

i. 220 Kennedy Rd, Tameka Hewitt – Pre-implementation meeting follow-up

Env. Planner Thompson stated that this matter is

Tameka Hewitt, property owner of 220 Kennedy Road addressed the Commission and provided an update on the ongoing activity, and that fostering of plants has completed as described in the restoration plan. Commissioner DeCarlo asked Ms. Hewitt if there was anything she needed from the Commission, and she replied saying that everything is going as planned.

Sarah Faulkner of HAS asked Env. Planner Thompson if the comments on the Final Restoration Plan submitted by HAS were incorporated into the Final Plan. Env. Planner Thompson said that the binding document is the plan that was officially acted on by the Commission which includes the Conditions and Modifications document distributed to all parties the Friday following the previous hearing date. The comments on the previously acted upon document were sent to the Commission per HAS' request.

Ms. Faulkner said that the pre-implementation has not yet occurred. Ms. Hewitt stated that per the restoration plan, the location of the plantings is at the discretion of REMA Associates, and asked what the intent of the meeting would be should they have one. Ms. Faulkner said that they are currently unaware of where exactly the plants are to be located. Ms. Hewitt said that the professionals from REMA are well qualified to determine the locations and have been approved to do so through the approval of the restoration plan.

Env. Planner Thompson stated that as discussed in the previous meeting, exact plant locations would be determined at the time of planting and a map showing this would be submitted to the Commission upon completion. This was something that was added to the plan, and is described in the Conditions and Modifications document. Plants to be fostered at the time had not been entirely determined, so a final map depicting the locations was not expected at this time.

Commissioner Towers drew attention to a map that was sent to the Commissioners via email from George Logan (REMA) earlier in the day that showed the general areas where fostering and plantings have and will occur. Ms. Faulkner asked to have the email forwarded to HAS, and said that a general map of where plants are located after planting would be sufficient. Ms. Hewitt added that this was part of the initial plan, and they have been preparing to do this from the beginning.

IV. HEARINGS

a. 130 Merriman Road / 4 Walters Way – Thomas DeFranzo

Chairman Morando asked if the documents required to proceed with the hearing were submitted to the Commission. Env. Planner Thompson said that George Logan, the applicant's consultant, verified the wetland boundaries depicted on the plan presented to the Commission which were originally established in 2010. Commissioner Schibley asked if the map submitted showed the

limits of the work conducted so far on the property as ordered in the last session of this hearing. Env. Planner Thompson said the map only shows that a portion of the wetland boundary had been verified for current accuracy of the 2010 map. Commissioner DeCarlo said that Chairman Morando was correct then; the Commission still has yet to receive the plans as ordered.

Commissioner Towers said that even with the site visit Commissioners conducted, there is still more information the Commission needs to understand the details of preexisting conditions. Env. Planner Thompson said that there is historical imagery available, and that pictures of the site were taken prior to the mass clear-cutting dated December 2020.

Thomas DeFranzo, property owner addressed the Commission. Commissioner Schibley asked Mr. DeFranzo of his opinion on which order to address the application and the Cease and Desist. Mr. DeFranzo said that he will do whatever is necessary to rectify the situation.

Commissioner DeCarlo said that Mr. DeFranzo was responsible for delivering a map showing the work conducted so far, including where the berms are located. Mr. DeFranzo said that the berms were on the map, and that they are outside of the upland review area. Commissioners Schibley and DeCarlo explained that there is nothing on the map depicting the location of the berms, and the features he is referring to represent other entities and are in fact not the berms. Mr. DeFranzo said that Mr. Alford showed them images of very mature tree stumps that provide insight on the preexisting elevation/topography.

Env. Planner Thompson stated that while berms may exist outside of the upland review area, the Commission still has jurisdiction over this as the drainage pattern for the adjacent road has been altered, which promotes the erosion of sediment into the boat launch parking lot and sediment has deposited into the Farmington River/Rainbow Reservoir as a result of this. Mr. DeFranzo stated that the erosion has stopped. Env. Planner replied saying that there is a temporary silt fence that may be aiding this and is not a permanent solution.

Commissioner Fraysier stated that the Commission isn't able to address the Cease and Desist without being presented with the plans as ordered in both of the previous sessions of this hearing.

Mr. DeFranzo stated that he was unaware he needed a permit to operate as a farm, as his property is zoned as agricultural land, and that is why he has conducted activity without a permit. Mr. DeFranzo said he was confused as to why he needed an exemption if he already has the parcel zoned "AG".

Commissioner Schibley stated that upon delivery of the plans ordered, the Commission will be able to address both the Cease and Desist and the petition for agricultural exemption. This will allow the Commission to appropriately assess the intentions for the area, and inform Mr. DeFranzo of all necessary detail to ensure conformity to the regulations.

Commissioner Schibley explained to Mr. DeFranzo that if he wishes to conduct activity outside of the upland review area that doesn't pose an impact to the regulated areas, the Commission does not have jurisdiction over that activity. The Commission needs to see plans with all of the relevant information in order to determine if the activity does or does not have impact on regulated areas. Commissioner Schibley asked Mr. DeFranzo to confirm that he understands the Commission has

ordered him to present plans showing the information discussed. Mr. DeFranzo confirmed this and said he has had both Mr. Alford and Mr. Logan working on his property and will ask them again to produce maps for the Commission. Commissioner DeCarlo said that if the Commission still hasn't received plans for the next meeting, then he doesn't know what more the Commission can do.

Commissioner Schibley asked Mr. DeFranzo if there was anything he needed to do to the property before the next meeting. Mr. DeFranzo said he would like to remove the stumps that are outside of the upland review area, and to place the sod around his grape vines that will help with erosion of sediment. Commissioner Schibley asked if the sod he wishes to place would be outside of the 150 foot upland review. Mr. DeFranzo said that it was, and that once he removes the stumps, he will take the pile of logs from the upland review area and place them outside of the regulated area.

Commissioner Schibley asked that the 150 foot upland review area be clearly flagged on-site to ensure the activity to take place is not within regulated areas. Mr. DeFranzo agreed, and asked if for Env. Planner Thompson to review the flags once they are placed.

Commissioner Schibley made a **motion to amend the motion from 8/3/21 to allow the placement of sod and the removal of two existing stumps outside of the upland review area, provided the wetlands and upland review area are both clearly delineated and all work falls outside any regulated areas.** Commissioner DeCarlo seconded the motion. **Vote 5-0-0**

Motion from 8/3/21:

“Commissioner Schibley made a motion to lift the Cease and Desist Order for 130 Merriman Road/4 Walter’s Way only with respect to the removal of previously felled trees from the property, and to order the property owner to submit maps to the Commission prior to the next meeting to allow for review, which shall show existing conditions of the relevant work conducted and wetland boundaries. Commissioner Towers seconded the motion. Vote 5-0-0”

V. AGENT REPORTS

a. Amazon Site Wetland Violation

Env. Planner Thompson presented details of a wetland violation occurring as a result of sediment and erosion control failures from the Amazon construction site at 1201 Kennedy Road. The property manager and permit holder is SPA Properties, LLC.

Tom Cody addressed the Commission as the attorney for SPA Properties, LLC. Atty. Cody explained to the Commission that there have been unprecedented rainfall events that have exacerbated the situation and emergency repairs to the outfall have been made in attempts to mitigate the erosion of sediment.

Tim Onderko addressed the Commission as the Engineer from Langan Associates working for SPA Properties. Mr. Onderko explained the details of their restoration proposal plan.

Commissioner Fraysier asked what size the rip-rap was that was installed at the outfall. Mr. Onderko replied that it is intermediate rip-rap at about 12-18 inches in diameter which are in accordance with DOT standards. Commissioner Fraysier asked if the stone that was there before modified in any way. Mr. Onderko said there was no change in the stone size, and that it was the force of water that was unexpected.

Chairman Morando asked Atty. Cody and Mr. Onderko what they were seeking from the Commission tonight in regard to the restoration process. Atty. Cody stated that they wanted to inform the Commission, and allow them to proceed immediately with the work presented to them by Tim Onderko to remediate the issues both on-site and off-site. Atty. Cody also sought agreement and permission from the abutting property owner to allow for the proposed work to be completed. Atty. Cody proposed that the Wetland Agent be allowed to conduct inspections to ensure compliance.

Env. Planner Thompson stated that a separate permit would need to be submitted to the Commission and the Engineering Department to ensure that the efforts proposed by Mr. Onderko (Langan) would be sufficient and meet all necessary requirements. A plan has not yet been received, and the presentation given tonight is the most response the town staff has received since the incident was brought to our attention. This review process would need to occur prior to any in-depth corrective action.

Atty. Cody asked how much work can be done immediately without the lengthy process of a formal submission. Atty. Cody expressed concern with the likelihood of additional rain events and further erosion of sediment, and that emergency action is necessary. Atty. Cody said that most of the proposed work on-site is on their property, and is outside of the upland review area which they hope to have the Commission grant permission to conduct immediately. Off-site work would require permission from the property owner.

Commissioner Schibley asked Mr. Onderko to clarify the details regarding two options Langan considered for outfall reconstruction. Mr. Onderko explained the options considered, and how they determined the best course of action.

Commissioner Schibley proposed that emergency actions be treated differently than entire site restoration efforts. He suggested that any complex engineered plans would be something the Commission should consider through the submission of a formal application, however emergency actions could be immediately considered and monitored through the use of the Wetland Agent (Env. Planner Thompson).

Env. Planner Thompson explained to the Commission that “Emergency Permits” are not something the Commission has the discretion to do, however the issuance of a Cease and Correct Order would allow for the property manager to implement immediate action much faster than requiring a formal application submission.

Commissioner DeCarlo asked if the Engineering Department has a specific time period of when

Commissioner DeCarlo asked how long we should expect Engineering to be able to process this. Env. Planner Thompson explained that this erosion and sediment control failure is also a violation of the permit obtained from the Engineering Department and they will hand that as a separate matter on their end. Env. Planner added that this is also in violation of the IWWC Permit from March 2020, in addition to the IWWC Regulations. Commissioner Schibley asked how they were in violation of the IWWC Permit. Env. Planner Thompson said that the wetland impacts occurring on-site are greater than the permitted, and the required notification of such was not received. An abutting property owner notified the town nearly a week after the violation occurred.

Commissioner Fraysier asked why the IWWC would regulate the some of the maintenance activities proposed in non-regulated upland areas. Commissioner Schibley replied that because these structures have proven to have significant impact on the wetlands and watercourses, this extends their jurisdiction. Env. Planner Thompson added that any maintenance they wish to do to their outfall structure would not require a permit, but any action that will be part of the final restoration plan must be submitted in an application to the IWWC.

Chairman Morando asked in the Engineering Department is prepared to approve of plans through such an expedited process. Env. Planner Thompson said that she cannot confirm how much time is available for approval by the Engineering Department.

Commissioner Schibley asked Atty. Cody if his client, SPA Properties, LLC. was amenable to the issuance of a Cease and Correct Order. Atty. Cody consulted with his client and said, "Yes", they are amenable to this proceeding.

Commissioner Schibley stated that he understands that an abutting property owner has in fact been impacted by this violation and would like to give them the opportunity to speak on the matter.

Chairman Morando stated that if the property owner at 445 River Street, Mr. & Mrs. Stosonis and counsel wished to speak, they are welcomed to do so.

Jackie Reardon addressed the Commission as the attorney for the abutting property owner. Ms. Reardon asked for clarification on the Cease and Correct, ensuring that the order wouldn't allow access to the Stosonis property without agreement and permission from Mr. Stosonis. Chairman Morando and Commissioner Schibley confirmed that the order would not govern property rights.

Ms. Reardon said she would be in contact with Atty. Cody regarding specifics of the proposed restoration plan development.

All parties were polled for availability, and scheduled the show cause hearing for the Cease and Correct tentatively for September 21st at 7:00pm.

Commissioner Schibley made a **motion to direct the Agent to issue a Cease and Correct Order to SPA Properties**. Commissioner Towers seconded the motion. **Vote 5-0-0**

VI. ADJOURNMENT

Commissioner Schibley made a **Motion to adjourn at 11:07pm**. Commissioner Towers seconded and it passed **5-0-0**.

I certify that these minutes were approved on

Marlene Towers, Secretary
Inland Wetlands and Watercourses Commission