

REGULAR MEETING MINUTES
WINDSOR INLAND WETLANDS & WATERCOURSES COMMISSION
TUESDAY JUNE 4TH, 2024 7:00PM
HYBRID MEETING – COUNCIL CHAMBERS AND ONLINE
Online webinar: <https://us02web.zoom.us/j/85435818689>

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

1. ROLL CALL

Chairman Fraysier, Vice Chairman Elder, Secretary Towers, and Commissioners D. DeCarlo, C. Elkins, B. Stearns, and alternate Commissioner M. Cote.

Also present was Wetland Agent, Chloe Thompson.

2. PUBLIC COMMUNICATIONS (3-minute limit on items other than Public Hearings) – None; communications closed at 7:01pm.

3. BUSINESS MEETING

○ **MINUTES**

Commissioner Towers made a **motion to approve the minutes for May 8th, 2024**. Commissioner Elkins seconded the motion. **Vote 7-0-0**

○ **OLD BUSINESS**

• **Application 24-196: 4 Walters Way, Thomas DeFranzo – 16' x 31' Shed**

Chairman Fraysier stated that this application has reached the maximum amount of time it can be considered, and it must be acted on today. W.A. Thompson recommended the Commission deny without prejudice or ask the applicant to withdraw.

Attorney David Sherwood addressed the Commission as the representative for Mr. and Mrs. DeFranzo, property owners. Also present was George Logan, PWS, from REMA. D. Sherwood stated that all of the necessary information to consider this application has been submitted, and being that the shed would have virtually no impact on the wetlands, requested that the application be approved. D. Sherwood submitted copies of supporting documents that were previously submitted to the IWWC.

Chairman Fraysier stated that there was a lot of new information discussed during the Cease and Correct in the area where the shed is in regard to the historical presence of wetlands, which is why they needed to address the violation before acting on the permit application.

Commissioner DeCarlo agreed, and asked W.A. Thompson if there was any relevant information found during the site visit. W.A. Thompson stated that a test pit was dug adjacent to the shed,

where natural gravel and wetland soils were buried, suggesting a stream was once present in this location.

D. Sherwood stated that there is no indication that any filling was completed to allow for the construction of the shed and if there is fill in this location there is no evidence that Mr. DeFranzo is responsible for such.

D. Sherwood added noted that W.A. Thompson commented on the additional structures on the property that are not on the site plans. D. Sherwood added that these structures can be removed, but has instructed Mr. DeFranzo to not conduct any activity in any of the regulated areas.

Commissioner DeCarlo stated that he was uncomfortable making a decision on the application with the outstanding issues concerning the wetland violation.

Chairman Fraysier made a **motion to consider the violation associated with this property before application 24-196: 4 Walters Way, Thomas DeFranzo – 16' x 31' shed**. Commissioner Elder seconded the motion. **Vote 7-0-0**

***** Application 24-196: 4 Walters Way, Thomas DeFranzo – 16' x 31' shed was withdrawn by the applicant.**

4. HEARINGS

- Violation 23-115: 4 Walters Way, Thomas DeFranzo – Feb. 6, 2024 Cease & Correct Order

W.A. Thompson stated that she distributed comments on the submitted materials and a memo of observations made during the site visit on 5/29/24 on the property. W.A. Thompson highlighted key observations from this memo and the comments on the submitted materials [attached]. W.A. Thompson stated that given these observations, especially those of buried wetland soils, she believes further investigation is warranted to determine where wetlands and streams have been filled, and/or diverted in any area showing signs of disturbance. This investigation should be compiled into a report with pictures of the test pits and notes on the soil characteristics. All wetland impacts need to be properly accounted for; fill deposited into wetlands that have developed hydric characteristics is still considered filling of a wetland. W.A. Thompson specifically highlighted that water diversion was discussed as being a violation with the Commission and Mr. DeFranzo previously but it is still ongoing. Depending on the volume of water diverted, a permit from the State may be required.

W.A. Thompson added that additional permitting may be required from Army Corps of Engineers or CT DEEP for the activity that has taken place, as well as a proposed restoration plan depending on the level of activity to take place.

Commissioner DeCarlo asked if the new shed was in a location that was previously identified as a wetland. W.A. Thompson affirmed that this shed is in an area identified as wetlands in 1995. Commissioner DeCarlo noted that the recent delineations are now showing that this area is outside of the wetland boundary, but is still within 150ft. Commissioner DeCarlo asked W.A. Thompson if she believes this shed has been placed in an area that was once a wetland. W.A.

Thompson said that she believes this area was previously a wetland; at some point between 1995 and 2010, she believes this wetland was filled.

Commissioner DeCarlo asked if there were any approvals granted previously for the creation of ponds. W.A. Thompson said the IWWC has never approved of a plan to create ponds; there was one pond identified on the site plans submitted for an application in 2021 that was withdrawn.

D. Sherwood commented on the DEEP Enforcement document supplied to the Commission, highlighting the procedure of a show cause hearing and asked the Commission to follow such. D. Sherwood stated that a certified mailing of this hearing was not sent, even though they were made aware of the hearing in previous meetings.

W.A. Thompson presented compiled evidence of the violations as presented previously in the February 2024 meeting. This included a report of her findings through the use of aerial imagery, site photos and the overlay of previously submitted site plans and existing conditions plans dating back to 1995.

D. Sherwood asked what the 2004 imagery was showing. W.A. Thompson stated that you can see an established and armored stream channel to the north of the barn/carriage house and it appears as though the southern stream follows a darker line along a stand of evergreen trees. W.A. Thompson stated that this appears to be similar to the details of the 1995 site plan. D. Sherwood asked if there was any other source of information on the existing conditions for 1995, besides the site plan that was used to compile the information. W.A. Thompson stated that this was the cleanest page of a collection of information; there was another site plan from 1997 that included this detail. D. Sherwood noted that on the 1995 site plan there is no indication that the wetlands and watercourses were delineated by a soil scientist. G. Logan stated that he did not conduct a delineation on this property in 1995. D. Sherwood stated that this document should not be used as evidence if the site plans are not certified by a soil scientist. D. Sherwood stated that the 1995 site plan is critical to understanding the wetland impacts, as it is much less severe when only considering the impacts since 2010. D. Sherwood stated that the requests from the Commission exceed the standards included in the 1995 site plans, therefore issues will arise when comparing the two plans as if they are of the same quality in detail and accuracy.

D. Sherwood stated that it would be plausible for a wetland to undergo changes naturally without human disturbance, especially on sites with a high susceptibility to erosion and with an outfall from the road furthering the erosion. D. Sherwood stated that the IWWC is attributing all of these changes to Mr. DeFranzo's activity, which he feels is inappropriate.

D. Sherwood added that Mr. DeFranzo has certainly excavated ponds, and while W.A. Thompson questions the intent of this, G. Logan has had many conversations with Mr. DeFranzo, and the ponds were created in an attempt to control the water coming down the slope from Merriman Road. This was an attempt to prevent the sedimentation of his property and to protect the barn from flooding.

D. Sherwood stated that in G. Logan's report, it is stated that this portion of the property was farmed until 1986. G. Logan reviewed the attachments of his report, which included several historical aerial images of the farming activity. D. Sherwood and G. Logan noted features of these aerials, and noted that the wetlands and watercourses on the property have a long history of disturbance from this farming activity, dating back as early as the 1930's.

D. Sherwood asked W.A. Thompson about the source of aerial imagery from 2004 and parcel boundaries. W.A. Thompson stated that the imagery is sourced from UConn's CTECO database of georeferenced imagery of which an exact citation can be provided if necessary, and the parcel boundaries are derived from the Town's parcel files of the entire town which were drawn from meets and bounds as listed on land records. The aerial imagery for 2004 was most likely the same image provided by George Logan in his report. D. Sherwood asked if W.A. Thompson was a land surveyor. W.A. Thompson stated that she is not. W.A. Thompson added that the parcel boundaries will always have an assumed amount of error; this imagery is also in a different spatial projection from the parcel files which may be an additional source of marginal error.

D. Sherwood asked W.A. Thompson if she could tell there was any fill deposited or if a wetland violation had occurred based on any of the aerial imagery. W.A. Thompson stated that imagery doesn't necessarily show whether or not areas have been filled, but she believes that it can be used to infer whether or not a violation may have occurred. D. Sherwood asked W.A. Thompson to explain how this was so. W.A. Thompson explained that, for example, the historical imagery shows how the northern stream path has changed; 2016 imagery shows that the northern stream has stone or armoring of the banks, and the streams are now conjoined without separate discharge points as shown in contrast to imagery in years prior. There is also ponding of water shown around the property. D. Sherwood asked if the cause of this was known and if it was possible that it was a result of the water discharged from Merriman Road. W.A. Thompson asked if D. Sherwood was suggesting that discharge from the road was causing the armoring of the northern stream. D. Sherwood asked W.A. Thompson how she can tell this stream has been armored. W.A. Thompson zoomed in on the imagery of the northern stream and pointed to what she believes is stone placed around the stream banks in a meandering pattern. D. Sherwood asked if there was some kind of certification for attributing aerial photographs. W.A. Thompson stated she doesn't believe there is.

D. Sherwood asked to view imagery from 2017, and noted the presence of a pond, which is clearly not the result of water discharged from Merriman Road. D. Sherwood asked W.A. Thompson to explain what is shown in the 2018 imagery. W.A. Thompson stated that the ponding appears to have grown larger than it was in 2017. D. Sherwood asked if there was an increase in the volume of water on an erodible site, wouldn't the stream channel become larger over time? G. Logan stated this is a probable outcome; as more water is discharged from impervious cover the banks of streams could erode into a wider stream. Commissioner Elkins asked how long this would take to occur and how much water. G. Logan stated that it depends on the severity of the storm event and the conditions of the soil. A single significant storm can cause a lot of erosion. Commissioner Elkins asked if there was any proof available to show that a storm of that severity occurred and could have caused this.

D. Sherwood stated that there was a letter produced by Ed Lally, P.E. discussing the erosion on the property. D. Sherwood read from and summarized this letter. D. Sherwood highlighted that this letter states the outfall was built in 1990, which was five years before the 1995 subdivision map. Ed Lally states that he discussed the severe erosion issue with Mr. DeFranzo prior to the development of Walters Way; this would become more severe overtime and the riprap was undersized and at an insufficient depth. Ed Lally stated he was told the Town was notified of the situation, and yet the issue remains. The letter further reads, *"The erosion has continued to this day, not only eroding the stream bed, but also causing massive slope failures on each side of the*

stream bed, causing this soil to fall into the stream, resulting in a deposit of literally tons of silt and sediment. In the watercourse, wetlands, areas, and ponds on the land of Patricia DeFranzo. All the while increasing the cost of the repair of the system”.

D. Sherwood stated that it is obvious that this site is experiencing significant erosion and while this doesn't excuse Mr. DeFranzo's efforts to fix this through the excavation of streams and ponds, it certainly explains his motivation for such.

W.A. Thompson asked G. Logan if the widening of stream banks, caused by increased water collected in the streams, might also result from reduced water storage due to soil compaction and/or wetland filling. This, in turn, could exacerbate erosion issues, as D. Sherwood suggested that increased water volume is one of the causes for erosion. G. Logan said they have some indication of topography through MDC data from the 1995 site plans however, he does not feel there is a legitimate comparison between the wetlands in 1995 to the conditions now. G. Logan added while this question is legitimate, as wetlands have a natural capacity to store floodwater, Mr. DeFranzo thought the creation of ponds would be a solution to alleviate issues from the discharge of water from Merriman Road.

Commissioner DeCarlo asked where exactly this discharge was coming from. W.A. Thompson displayed the 2024 site plans showing the culvert under Merriman Road. Commissioner DeCarlo asked W.A. Thompson if the application submitted in 2021 for the creation of fish ponds mentioned any attempt to alleviate sedimentation. W.A. Thompson stated that she had a copy of the minutes from this meeting and doesn't believe this was mentioned. Commissioner DeCarlo asked if there would be more ponding and sedimentation closer to the outfall rather than adjacent to the house if the cause was the outfall just east of the road. G. Logan stated that there is a significant slope, and it makes most sense to have a pond once the grade becomes less steep. G. Logan stated he believes Mr. DeFranzo mentioned in the 2021 application that the pond would have several purposes one of which could have been to control sedimentation. Commissioner DeCarlo stated that he would like some clarification on the details of this withdrawn application in regard to this.

D. Sherwood stated that there is no doubt that Mr. DeFranzo excavated ponds on the property, but what W.A. Thompson has not discussed is that the land in the southern portion of the property was historically farmed, which would have completely disrupted the characteristics of the soil. D. Sherwood stated that she does not believe W.A. Thompson, with her current training, can tell if non-permitted activity has occurred with the exception of the appearance of a pond that was present in previous years. D. Sherwood added that there are multiple causes of the soil disturbance of the property being the historical farm use and the erosion caused by the outfall at Merriman Road. D. Sherwood stated that W.A. Thompson is treating this property as if it were previously a pristine wetland system. Based on the report from G. Logan and the analysis from Ed Lally, there is a significant erosion issue that has to be addressed, which the Commission should consider.

W.A. Thompson introduced the Town Engineer, Suzanne Choate, P.E. S. Choate stated that the culvert was replaced in 1979, therefore it has been in place for a long time. S. Choate added that she believes this issue is separate from the issues the Commission is faced with addressing tonight, which is a wetland violation on the property. D. Sherwood asked why it is a separate issue. S. Choate stated that it is her understanding that wetland violations have occurred that

does not involve erosion issues with an adjacent stream. D. Sherwood stated that the order from the Commission was to propose a remediation plan for any negative impacts that the unpermitted activity has caused. D. Sherwood asked S. Choate if she was claiming that this significant erosion issue up-gradient from the wetlands would not have any effects below. S. Choate said that was not what she was saying; the concern of the Commission should be the violations that have occurred, and the erosion from the outfall is a separate issue. D. Sherwood stated that the next step in this process is to decide what should be done to meet the satisfaction of the Commission. G. Logan wrote in his report that until the erosion issue is resolved, there can be no definitive solution to the lower part of the property as it is effected on a daily basis. D. Sherwood added that they have a video of the events occurring during a storm in 2021. G. Logan stated that remediation of the wetlands would be premature to addressing the erosion.

Commissioner Towers stated that when she was on site, she does see how there is a significant amount of erosion and could see why this would need to be addressed. D. Sherwood stated that they are not claiming that the Town caused the wetland violations, but activity took place to alleviate the erosion and this issue needs to be accounted for when determining what the remediation would entail. Commissioner Towers agreed.

*** Commissioner DeCarlo left the meeting.

Skip Alford, P.E., L.S. from Alford Associates, narrated a video of water discharged from the outfall and sedimentation throughout the property.

Commissioner Cote asked if the rainfall accumulation was recorded for this storm event. S. Alford stated that he did not, but this information can be found. S. Alford stated that regardless of how much water, this storm caused a large hole to form in a particular area. Commissioner Cote said this would still determine whether or not this storm event was typical or significant; regardless both can still cause erosion. S. Alford stated that these are not 100-year or 25-year storms causing this issue.

Commissioner Stearns asked when Mr. DeFranzo purchased this portion of the property and if the Town was responsible for the entirety of the stream's path. D. Sherwood stated that he believes the Town is responsible for the culvert and outfall infrastructure. D. Sherwood added that Mr. DeFranzo will certainly cooperate in the solution, but the goal is to bring the water down to a level grade without any erosion.

S. Alford noted the part of the video that showed the clean water coming from the outfall, but then becomes discolored after reaching the area of erodible soils.

Chairman Fraysier reviewed the unpermitted activity stated in the Cease and Correct, and stated that the Commission was tasked with providing evidence that a violation has occurred. D. Sherwood stated that they this video demonstrates that there is a significant likelihood that part of the filling of wetlands can be attributed to the water discharged from the culvert. Mr. DeFranzo has been accused of filling wetlands and creating ponds, and we certainly acknowledge that he has been digging ponds, but his activities are at least prompted by the water coming out of that pipe. G. Logan's report identifies that as a very significant factor with respect to what possible remediation avenues there are that the Commission could order, making this relevant. G. Logan stated that the storm on August 19th, 2021 had 2.14 inches of rainfall.

W.A. Thompson noted that since 2010, she indicated that there has been over 12,000ft² of wetlands filled, and asked S. Alford and G. Logan how much of that area do they believe was filled as a cause of this erosion, rather than unpermitted filling or other activities. G. Logan stated that he cannot determine that. W.A. Thompson asked if they were claiming the fill containing gravel and asphalt millings came from Merriman Road. D. Sherwood stated that they don't have a way to determine where the fill came from; some of this could have come from Mr. DeFranzo excavating the ponds or from the eroded slopes but they don't have a way to determine the source of the material. W.A. Thompson stated that there are additional sources of hydrography on the site other than the outfall on Merriman Road; the northern stream is fed by water from ground water seep. G. Logan stated W.A. Thompson was correct and he compiled his own information using LiDAR and topography data produced or distributed by CT ECO and in his experience it is quite accurate. G. Logan identified two streams that were fill and indicated this in his report in figure 5. This figure also shows the existing pond is larger than the wetland that was there before. Evidence of the pre-existing streams was also found during the site visit with the Commission as previously mentioned. There is a wide spectrum of soil disturbance across the property, and he wouldn't be able to effectively estimate the "age" of the soils, or provide a date of when the soils were deposited either from the erosion or from Mr. DeFranzo's activity.

Chairman Fraysier stated that there appears to be two separate pieces of the Cease & Correct Order; the construction of the shed, and the disturbances of the wetlands, watercourses and surrounding areas in the upland review area. One of the questions at hand is whether or not the new shed is within an area that was once a wetland as show on the 1995 site plan. The other issue is, it's clear that changes have occurred on the property even if only the aerial imagery was compared, however the effect of erosion from the outfall has likely been a factor in these changes, of which is difficult or impossible to substantiate. Chairman Fraysier asked for feedback from the Commission.

Vice Chairman Elder stated that it doesn't sound like the second component Chairman Fraysier mentioned, but regardless of where the fill came from, unpermitted activity has occurred. Chairman Fraysier agreed, and stated that he doesn't believes it will be difficult to determine remediation for the activity given the influencing erosion issue. Vice Chairman Elder agreed.

D. Sherwood acknowledges unpermitted activity has taken place, but they feel the agricultural use and sedimentation is important because the Commission has to determine whether or not Mr. DeFranzo's actions have adversely impacted the wetlands in order to uphold the Cease and Correct Order. The other issue the Commission has to consider is the remedial action that would be prescribed to Mr. DeFranzo. D. Sherwood stated for example, if the Commission were to order the ponds be filled in there is a question as to whether or not that would resolve the issue, as G. Logan stated in his report that he does not believe this is a viable solution. D. Sherwood stated that everyone's time is being wasted trying to determine if Mr. DeFranzo deposited fill or not; they are acknowledging that Mr. DeFranzo did place some fill and did excavate some wetlands areas. The question is whether or not this resulted in a negative impact, and G. Logan stated in the report that there was no negative impact on the wetlands. D. Sherwood asked, if the Commission does find that there has been a negative impact, what would the recommend the remediation for this be? G. Logan stated that remediation efforts would just be undermined by the ongoing erosion issue. D. Sherwood stated that the irrigation pump could certainly be

removed, and the additional structures could also be removed. The newly constructed shed could also be removed, but he doesn't believe it has any negative impact.

Chairman Fraysier stated that the Cease and Correct wasn't issued solely on the basis that a negative impact had occurred, it was because of the unpermitted activity. D. Sherwood recommended having a conversation with G. Logan to determine what the remediation would be. D. Sherwood asked that while they disagree, if it was assumed that W.A. Thompson was correct about where and what type of activity she believes took place, what would the Commission want Mr. DeFranzo to do to remedy the activity? One solution would be to return the property to the existing conditions in 1995, but that wouldn't resolve the erosion issue.

Chairman Fraysier asked G. Logan to explain his opinion on the impact of the unpermitted activity. G. Logan stated that the construction of the ponds were a source of temporary impact. G. Logan stated that there has been a net enhancement of wetland functions and values, partially due to the control of sedimentation and creation of aquatic habitat. G. Logan added that there are additional efforts that can further the enhancement of functions and values, however the erosion needs to be addressed first.

Vice Chairman Elder stated there may be an issue with timing, as armoring the entire slope for example may take a long time to plan and implement. There is also a question of whether or not the Commission allows the regular cleaning of ponds to remove sediment. S. Alford stated that there is an issue with determining where to put the excavated material when cleaning ponds that fill with sediment. D. Sherwood asked S. Alford where this material is typically put when cleaning out ponds. S. Alford stated that it is typically hauled off-site. Vice Chairman Elder added that the material may just end up back in the water or elsewhere if it remains on site. Commissioner Cote recommended that the excavated material be removed from the site as to not impact the wetlands.

Commissioner Cote stated that in regard to the new shed placed in a wetland as shown on the 1995 site plan, if the need to regularly dredge the pond is driven by the need to protect that shed, perhaps the shed should not be in that location. Commissioner Cote stated that the reasoning for the ponding below the carriage house could be due to the elevation change and there is not enough water pushing through that elevation, so you're trying to stop the sedimentation from reaching the Farmington, but the channels not properly dug deep enough and is still seeping into the into the groundwater near the carriage house. S. Alford stated that if they out the channel all of the sediment would go into the Farmington River. Commissioner Cote asked if the ponds were engineered with the intent to protect the wetlands and watercourses, or if they were just simply created by digging a hole. D. Sherwood stated that the ponds were not engineered. S. Alford stated that the shed is outside of the area where the sediment is accumulating and is unaffected by such. D. Sherwood asked if the sediment could be deposited on the southern portion of the stream. S. Alford stated that this could be an option, but the area is quite steep and heavily wooded. S. Alford added that he believes it would be unreasonable to burden Mr. DeFranzo with removing the sediment from the property entirely.

Chairman Fraysier asked the Commission if they felt as though they could uphold the Cease and Correct with the information they have now, if they needed additional information or if this should be continued to the next meeting. Commission Stearns asked if the Town was responsible for controlling the erosion. W.A. Thompson stated that the Town, will typically have an easement

over an area of land that would allow for maintenance of stormwater infrastructure, which is usually area of about 20 to 25 feet from the outfall; on this property, the Town does not currently have an easement. D. Sherwood stated that he believes Mr. DeFranzo has offered the Town an easement, so that will not be an issue. Commissioner Stearns asked who would be responsible for this if there isn't an easement. Commissioners Elder, Elkins and Cote replied that this is the property owner's responsibility. Commissioner Stearns stated that it appears no efforts to control the erosion at the source have been attempted. D. Sherwood stated that erosion control efforts have been implemented downslope. Commissioner Stearns stated that at the eroding slope itself there are a number of potential solutions as G. Logan alluded to previously.

Chairman Fraysier suggested the Commission focus on the question of whether or not to continue the hearing to the next meeting. W.A. Thompson suggested that one reason to continue the hearing would be to find more information on the wetland delineation on the 1995 plans. Commissioner Cote agreed. D. Sherwood asked even if the 1995 delineation is substantiated, what would the Commission order Mr. DeFranzo to do, excavate the wetlands and fill in the ponds? Commissioner Cote stated that this would provide further evidence that the shed was constructed in a wetland. Chairman Fraysier stated that he believes the 1995 delineation is most relevant to the location of the shed. D. Sherwood stated that G. Logan's opinion is that the shed does not have any adverse impacts on the wetlands or watercourses therefore it shouldn't be the subject of a corrective order. Commissioner Cote stated that the impact would be that it was placed within a wetland regardless of the level of quality in regard to functions and values. D. Sherwood stated that the filling of a wetland is assumed to be evidence of an adverse impact; this is to be evaluated by a qualified wetland or soil scientist and their soil scientist is stating that the shed has not caused an adverse impact. D. Sherwood added that it certainly isn't the case that the area was filled so the shed could be constructed. Commissioner Stearns stated that it is irrelevant whether or not the filling occurred to allow the shed to be constructed or not as the area is now filled. Commissioner Stearns asked W.A. Thompson to display the aerial imagery showing the disturbed soils in this area and if it was possible to determine exactly where that occurred. W.A. Thompson showed the 2019 oblique (slightly angled side view) imagery of recently disturbed soils and tire tracks and stated that positioning the exact location with this type of imagery is difficult, but indicated where about this was on the 2019 vertical imagery.

Commissioner Cote noted that earlier it was discussed that sediment and erosion from the roadway was not impacting an area near the shed, and this is where we are seeing additional sedimentation, i.e. disturbance of a wetland. D. Sherwood stated that when the barn was approved in 1997, there was also a fenced in paddock area approved. W.A. Thompson recalled that this approval had a condition that no further clearing occur to establish the paddock. S. Alford stated that the paddock area was proposed in the location of the newly constructed shed.

Chairman Fraysier noted that the 1995 site plans are very old, and if there were a new application submitted with a delineation of this age, the Commission would require the wetlands be redelineated. There are newer delineations (2010) showing that the shed is not in a location that was a wetland. Chairman Fraysier stated that he's unsure whether or not we're able to get information proving whether or not this was deliberately filled. W.A. Thompson stated that without an evaluation of where fill has been deposited either naturally or otherwise, it is difficult to measure the total impact and changes to the wetlands. For example, during the site visit, one of the test pits showed evidence of a stream being filled entirely. G. Logan asked if this

information was already included in figure 5 of his report. W.A. Thompson highlighted a section of her memo in regard to the site visit observations, where she recommended further investigation of the soil profile to map the areas where fill has been deposited; key observations were not compiled into a report and were not properly documented. G. Logan stated that it would be very difficult to determine the exactly how long the soils were in place. G. Logan stated that we can instead defer to the 2010 wetland delineation that he completed, and the shed is not in an area that was identified as a wetland in 2010. W.A. Thompson stated that one of her comments in response to the isolated 2010 delineation was that the lines do not correspond to what was compiled for the 2021 site plan to the north and north east of the shed; there was a change in the wetland line without it being referenced on any of the submitted plans. G. Logan stated that the delineation from 2010 has individual flags noted on the site plans to show which part of the property was evaluated at that time. W.A. Thompson stated that she understood that, but the line doesn't correspond to the 1995 site plans or this "snapshot" of the partial delineation, and suggested perhaps this delineation included an extension of the line that was not acknowledged and did not have numbered boundary flags. It appears there was additional information collected on the hydrography as well, as the details differ from 1995 and were not identified as being a part of the 2010 delineation. G. Logan said perhaps S. Alford would have more information on this as he was the one who surveyed and compiled this information. D. Sherwood stated that if this was not identified as a wetland in 2010 or 2024, it still does not appear that the shed has any adverse impacts. W.A. Thompson stated that she was not specifically commenting on adverse impacts or not, but simply explaining a comment she had about confusing details of the wetland boundaries adjacent to the shed. D. Sherwood stated that no adverse impacts of the shed have been demonstrated. D. Sherwood stated that there are some things that he agrees can be removed such as the trap rock by the Farmington River and the irrigation pump.

W.A. Thompson noted that the wetlands and stream to north are not associated with the erosion and sedimentation in the southern stream, and the site observations revealed buried wetland soils and stream adjacent to the stream. Given this information, filling of this area adjacent to the shed would not be associated with, or a reasonable cause of the erosion and sedimentation within the disconnected southern stream. D. Sherwood stated that this land was farmed for 50 years and has been suffering from sedimentation and erosion since at least 1990. Mr. DeFranzo has acknowledged that he has excavated ponds and has probably filled wetlands. G. Logan stated that as the shed exists today, it has no adverse impact on wetlands. G. Logan stated that there are some structures around it that we can discuss, such as the fence which is to the north behind the shed that may serve as a buffer to the wetlands, which also does not have an impact. Vice Chairman Elder suggested one option would be to remove the deposited material and remove the shed.

Commissioner Cote noted the discussion on how difficult it is to calculate the exact disturbance area to wetlands through decades of disturbance, and suggested expanding the wetlands associated with the northern stream to compensate for some of the loss of wetland habitat. G. Logan asked if Commissioner Cote was suggesting to expand the ponds into upland areas. Commissioner Cote stated that the functions and values could be improved in the wetland areas and ponds that have been created by the property area. G. Logan stated that he doesn't disagree with that and pointed to a few areas where he had ideas of improvements that could be made. There are two ponded areas around RES-A10 and RES-A7 that have invasive Phragmites beginning to establish. G. Logan added that while it is the southern stream that experiences the most

erosion, there is additional erosion coming from off-site that effects the wetlands to the north as well.

D. Sherwood stated that Mr. DeFranzo would agree to move the shed to a location that is undisputed uplands, enhance the two ponds as G. Logan described, remove the trap rock along the Farmington River, the pump diverting water, the shipping container and would remove the fence if the Commission thought it was necessary to lift the Cease and Correct Order. Hopefully then, they could collectively work to address the erosion from the outfall at Merriman Road.

Chairman Fraysier asked for comments from the Commissioners. Commissioner Cote said she feels as though this is acceptable; there may also be additional conditions to place regarding the enhancement areas. W.A. Thompson added that this would also resolve the issue of needing to act on the shed application today; this application could be withdrawn and resubmitted with the modifications to avoid breaching the maximum allowed time for considering an application. Commissioner Towers and Chairman Fraysier agreed. Vice Chairman Elder stated that Commissioner DeCarlo mentioned other items earlier, but he has left the meeting. Chairman Fraysier asked if a sketch or updated plans would be required to lift the Cease and Correct. W.A. Thompson stated that in regard to lifting the Cease and Correct, or closing the hearing, she would suggest that this be continued to the next meeting. D. Sherwood stated that was acceptable and they would be able to make recommendations on the wetland enhancements, a proposed location for the shed and a timeline for the activity to take place. D. Sherwood stated that in regard to the application, they would submit a modification if the Commission would consider lifting the Cease and Correct with the completion of the remedial efforts discussed. If the Commission doesn't act on the application, then they have the right to bring the application to DEEP for consideration. W.A. Thompson asked D. Sherwood if they would agree to withdraw the application and resubmitting, as this would restart the allotted time for the consideration of such; she is unsure if a simple modification of a permit would extend the time period. D. Sherwood stated that if they resubmit as a new application, then they would have to return for another two meetings for an approval. Chairman Fraysier stated that they would need to see the modification or new application before the Order could be lifted. D. Sherwood stated that this will be provided in preparation for the next meeting. W.A. Thompson stated that the next meeting is on July 2nd with a deadline to submit materials by June 26th at noon. D. Sherwood stated this was acceptable. W.A. Thompson stated she was uncomfortable with not acting on the application tonight, even though the Commission is expecting a modification. D. Sherwood stated that they would withdraw the application.

Vice Chairman Elder made a **motion to continue the show cause hearing to the following meeting for Violation 23-115: 4 Walters Way, Thomas DeFranzo – Feb. 6, 2024 Cease & Correct Order.**

Commissioner Towers seconded the motion. **Vote 6-0-0**

5. VIOLATIONS

- Violation 24-123: 851 Marshall Phelps Rd, Eric Atanga & Dynamic Distribution LLC. – Cease & Correct Order

W.A. Thompson stated that the property owner has contracted Fuss & O’Neill to conduct an environmental analysis of the site, and they are working towards gaining permission from the neighboring property for access to do the testing of the basin that was requested. W.A. Thompson stated that she visited the site and did not see any open containers or improperly stored materials; it didn’t appear that any vehicles were being maintained either, even though they are still being stored in the parking lot. The property owner stated that all of the immediate actions as ordered by the Commission were addressed and resolved.

- Violation 23-122: 364 Addison Road, Mark Scott – Cease & Desist Order

W.A. Thompson stated that she received correspondence from Brian Denno, the property owner’s land surveyor, stating that their soil scientists from SSES was conducting an additional survey on site to evaluate the impacts and will be providing the requested materials in the next few weeks.

6. AGENT ACTION

W.A. Thompson approved the following applications since the previous meeting:

- AA24-205: 54 Glenwood Drive – 10’ x 14’ Shed
- AA24-206: 839 Palisado Ave – 12’ x 16’ Shed

7. AGENT REPORTS

8. PETITIONS FROM COMMISSIONERS

9. ADJOURNMENT

Commissioner Elkins made a motion to adjourn at 10:07 p.m. Vice Chairman Elder seconded the motion. Vote 6-0-0

I certify that these minutes were approved on

Marlene Towers, Secretary
Inland Wetlands and Watercourses Commission



Memorandum

To: IWWC
cc: Thomas DeFranzo, Alford Associates, George Logan & Skip Alford

From: Chloe Thompson, Inland Wetland Agent

Subject: Site Visit – 5/29/24

Date: June 3, 2024

On May 29th, 2024 a site visit was conducted with the following attendees:

DeFranzo Party:

Thomas DeFranzo – Property Owner
Skip Alford – P.E.
George Logan – Soil Scientist

IWWC:

Keegan Elder
Marlene Towers
Brad Stearns
Jeff Adamson

Town of Windsor Staff:

Jenna Zinky – Project Engineer
Suzanne Choate – Town Engineer
Chloe Thompson – Wetland Agent
Tim Fitzgerald – Town Attorney

During this site visit, soil borings or test pits were taken from several locations throughout the property. The following is a list of my notes on some of the observational test pits:

1. Test pit #1- 20 feet south of flag RES-A12 revealed that there was roughly 10 inches of fill.
2. Test pit #2 – 15 feet south of RES-A13, consisted of disturbed wetland soils, with fill to the north and west.
3. Test pit #3 – 20 feet north of RES-1A2, just south of the trailer, gravel and asphalt millings were deposited along with roughly 4 inches of fill. George Logan stated this soil may or may not have contained hydric indicators.
4. Test pit #5 (Two parts) – Roughly 10 feet from RES-A17, there were upland soils and skunk cabbage (wetland obligate species).
5. Test pit #6 – 20 feet north of RES-6A-12 had soil deposits.
6. Test pit #7 – Adjacent to RES-A29, George Logan stated it was a naturally buried wetland.
7. Test pit #8 – West of the newly constructed shed, 4 inches of fill was above 9 inches of topsoil with wetland soils around 36 inches deep. This test pit had a lot of ground water present and some natural gravel, indicating there may have been a stream nearby in the past.

Other site observations:

8. In the wetland area north of RES-3A-9, a berm was constructed within the wetlands. While this may have wetland soils, this deposition of material is still considered a wetland impact. The materials submitted thus far do not sufficiently discuss this impact. There may be other areas on the property with a direct wetland impact, as this is simply indicated as a wetland on the site plans.
9. In this same general location, George Logan stated that this southern stream was previously located further south toward the line of evergreen trees. Evidence of such was present with a swale and some presence of water.
10. Behind the partially constructed shed, there was a berm of soil created along the wetland boundary, and a pile of metal and debris partially buried. (IMG 1)
11. In the southern stream there were tires partially buried.
12. A tree had fallen across the stream, which was cut and left in a perpendicular position, which may be obstructing flow. (IMG 2)
13. In the pond directly east of the road crossing to the vineyard, there was a large water pump. Mr. DeFranzo stated that this was being used to pump water for irrigation. (IMG 3)
14. A catch basin adjacent to Mr. DeFranzo's driveway was full of debris and vegetation was beginning to establish. This needs to be cleaned out so it can operate as intended; it is privately owned by this subdivision. (IMG 4)

Given these observations, especially those of buried wetland soils, it is my recommendation that further investigation is warranted to determine where wetlands and streams have been filled, and/or diverted in any area showing signs of disturbance. This investigation should be compiled into a report with pictures of the test pits and notes on the soil characteristics.

All wetland impacts need to be properly accounted for; fill deposited into wetlands that have developed hydric characteristics is still considered filling of a wetland.

Water diversion intended for irrigation of crops was not reviewed by the Commission as part of an approval or of a jurisdictional ruling for agricultural use and is therefore an additional violation of the regulations. Discussion of this activity being a violation without a permit or jurisdictional ruling with Mr. DeFranzo took place on the October 5th 2021 IWWC meeting regarding the Cease & Desist from 2021. At this meeting, Mr. DeFranzo stated that he removed the irrigation hoses once he realized this was considered a violation. Please note that water diversion over a specific daily volume may require a permit from CT DEEP. A copy of these minutes can be provided if necessary.

IMG 1



IMG 2



IMG 3



IMG 4

