

**REGULAR MEETING MINUTES**  
**WINDSOR INLAND WETLANDS & WATERCOURSES COMMISSION**  
**TUESDAY JULY 2<sup>ND</sup>, 2024 7:00PM**  
**HYBRID MEETING – COUNCIL CHAMBERS AND ONLINE**  
Online webinar: <https://us02web.zoom.us/j/85435818689>

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Vice Chairman Elder called the meeting to order at 7:02 p.m.

**1. ROLL CALL**

Vice Chairman Elder, Secretary Towers, and Commissioners C. Elkins, B. Stearns, alternate Commissioners J. Adamson and 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 7:03pm.

**3. BUSINESS MEETING**

○ **MINUTES**

Commissioner Adamson made a **motion to approve the minutes for June 4<sup>th</sup>, 2024**. Commissioner Elkins seconded the motion. **Vote 5-0-0**

**\*Commissioner Stearns was seated at 7:05pm**

○ **NEW BUSINESS**

- **Permit modification for M18-996: 775 Marshall Phelps Rd, Industrial VI Enterprises, LLC. – Warehouse Construction**

W.A. Thompson stated that this application was previously approved in 2018, but because of a public act, the application expiration date was extended. The site plan has been modified since the approval which is what the Commission is to consider tonight. The Town Engineer was able to review the materials produce comments for the Commission.

Chas Evans, P.E. from Bohler Engineering addressed the Commission as the representative for this application. C. Evans noted that there is an overall decrease in wetland and upland review area disturbance. C. Evans added that one of the comments from the Town Engineer is in regard to the replacement of a culvert headwall which he will explain further; this culvert is also going to be increased from a 30 inch pipe to a 48 inch pipe. C. Evans explained the details of the modifications and the previously approved application.

C. Evans explained that this modification includes the creation of habitats for the specific species listed in the Natural Diversity Database (NDDDB) results. C. Evans reviewed and briefly addressed the comments from the Town Engineer. C. Evans stated that he will be meeting with the Town Engineer to discuss the final details of the culvert and headwall replacement to ensure there is proper drainage without inadvertently depriving the wetlands of water.

Vice Chairman Elder asked how water would be handled during the construction of the culvert. C. Evans stated that because this involves widening this drive to accommodate the tractor trailers, further coordination is needed to determine if there will be a temporary pipe in place or if they will install the new pipe before closing the old one; flow will be continuous throughout construction. Vice Chairman Elder recommended this be stated in the plans.

Commissioner Towers asked if conditions were in place for the Eastern box turtle in the previous approval. C. Evans stated that he was unsure if there were specific notes, however their modified plans now have such for both during and post-construction which includes required turtle sweeps and reporting incorporated into a protection plan for this species specifically.

Vice Chairman Elder explained conditions he would like to place on the approval.

Commissioner Adamson made a **motion to approve the permit modification for M18-996: 775 Marshall Phelps Rd, Industrial VI Enterprises, LLC. – Warehouse Construction with the following conditions:**

- **Address all comments from the Engineering Department and,**
- **Show how water flow will be managed during construction on the site plans.**

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

#### 4. HEARINGS

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

W.A. Thompson stated that she distributed comments in preparation for this meeting dated June 28<sup>th</sup>, however, these do not include a review of the materials that were submitted on June 26<sup>th</sup>. New materials for the Commission also include a legal opinion from the Town Attorney, and the materials from T. DeFranzo's consultants. W.A. Thompson recommended that the Commission make a motion to require staff comments be replied to in writing, as there are outstanding comments from the May 24<sup>th</sup> memo. W.A. Thompson reminded the Commission to place time limits on the orders requesting actions or information to ensure progress is being made. W.A. Thompson stated that in her review of the restoration plan, she believes it is not comprehensive; comments in the June 26<sup>th</sup> memo suggest additional actions the Commission could take into consideration. W.A. Thompson added that she has a list of comments to be compiled in another memo in review of the recently submitted materials.

Attorney David Sherwood addressed the Commission as the representative for Mr. and Mrs. DeFranzo, property owners. Also present was George Logan, PWS, from REMA Ecological Services. D. Sherwood stated that he did receive a copy of the legal opinion from the Town

Vice Chairman Elder stated that there are outstanding comments that need to be addressed in order for them to proceed with hearing and consideration of the restoration plan.

Attorney, Tim Fitzgerald. D. Sherwood stated that this is a show cause hearing, not an application, and the IWWC is to decide if the Cease and Correct Order is to be upheld or withdrawn. At the previous meeting on June 4<sup>th</sup>, it was concluded that there was wetland filling and creation without a permit on the property. George Logan, wetland scientist prepared a report on the evaluation of the impact from this activity stating there had been no adverse impacts to the wetlands. D. Sherwood further explained the details of George Logan's report.

D. Sherwood stated that he believes the Commission was directing them to move forward with the corrective actions at the end of the June 4<sup>th</sup> meeting. Given the erosion issue associated with the southern stream, restoration efforts would be most appropriately be taken on the wetlands associated with the northern stream. D. Sherwood believed that if a restoration plan were developed to address the items they proposed in the previous meeting, the Commission would lift the Cease and Correct Order. D. Sherwood stated that the comments in W.A. Thompson's May 24<sup>th</sup> memo were discussed extensively in the previous meeting. D. Sherwood stated that W.A. Thompson's last memo dated May 26<sup>th</sup> ignores the discussion from the IWWC meeting, especially those proposing to improve ponds to be able to treat the water from the erosion and sedimentation. D. Sherwood stated it was his understanding that once these corrective measures were completed on the northern stream, they would begin to discuss corrective actions to address the erosion issue with the Commission and Town staff associated with the southern stream.

Vice Chairman Elder stated that he believes the next step would be to address the outstanding comments. D. Sherwood stated that this is a show cause hearing, there was no direction from the Commission to address the comments and the burden of proof is on the Commission to demonstrate a violation has occurred. D. Sherwood stated that the comments are of academic interest rather than progression toward a resolution, and the property owners have not disputed the claim that a violation has occurred; they are looking to resolve the issue. D. Sherwood stated that they are agreeable to some of the comments such as permanent markers of the wetland boundaries, and to avoid the use of heavy machinery adjacent to wetlands, but to review comments from May 24<sup>th</sup> doesn't seem to be contributing toward any progress. W.A. Thompson stated that there are several comments in the memo regarding the accuracy of the site plans that are supposed to reflect the existing conditions. There are several features present on the property that are not indicated, or have conflicting boundaries with aerial imagery and photos from previous site visits. For example, there is a gravel drive not depicted on the site plans that extends into the wetland boundary and the Farmington River. W.A. Thompson stated that this should be addressed on record and in writing for proper documentation. D. Sherwood stated that G. Logan addressed this in his report.

Vice Chairman Elder stated if there were comments addressed in the meeting, this should be submitted in writing; if there are comments that have not been addressed yet, the Commission would also like to see responses to those in writing. Vice Chairman Elder stated that he understands that some of them may already have been discussed in previous meetings, and even in those discussions, the removal of trap rock was agreed to. Vice Chairman Elder restated

that a formal response is what the Commission is seeking at this point to move forward. D. Sherwood asked if this hearing was going to be continued to the next meeting. Vice Chairman Elder stated that would be his recommendation to the rest of the Commission. W.A. Thompson stated that if it were helpful, she does have a few informal comments prepared on the submitted material that can be reviewed in this meeting.

D. Sherwood stated that he feels as though this is a “moving target” for his client, and while the comments can be addressed, there is concern that they will not have enough time to review the comments on the restoration plan in time for the following meeting. D. Sherwood noted that for the restoration actions to be the most successful, they need to begin before the end of the growing season which is approaching in a few months. D. Sherwood asked if the comments can be submitted to them promptly so they can take them into consideration and possibly have a meeting with staff to address any concerns ahead of the next meeting. W.A. Thompson stated that she can have the comments delivered to them by the end of the week.

D. Sherwood asked if the Commission would confirm that they would like to see the four actions listed previously in the restoration plan. Vice Chairman Elder confirmed this, and stated that there are also other recommendations from the Wetland Agent that would have to be considered. D. Sherwood stated that they will submit a reply to this in writing.

Commissioner Adamson asked if all of this correspondence could be delivered to the Commissioners in preparation for the next meeting to address this in the timeliest manner. D. Sherwood agreed, and stated that they will meet with Town staff to discuss this in more detail, then they will submit a reply to the Commission hopefully with the understanding that this will not result in another memo to which they would need to reply to.

W.A. Thompson stated that the intention is not to create a “moving target”, but is the violating party’s responsibility to propose a restoration plan that the Commission considers and comments on. Given the discussion in the previous meeting where the Commission was asked to suggest corrective actions, W.A. Thompson generated the June 26<sup>th</sup> memo which listed possible actions for the Commission to order.

G. Logan asked the Commission if they were able to review the proposed restoration plan. Several Commissioners affirmed they had. G. Logan asked if there were any questions about that from the Commission. Commissioner Adamson asked if the area where the erosion is the most significant, along the outfall and stream associated with the outfall from Merriman Road was separate from the restoration areas to address the violations. W.A. Thompson stated that they of course have some inevitable affiliations, however, these two issues must be addressed separately from each other as much as possible. D. Sherwood stated that in order to discuss this portion of the erosion issues on the property, we would need to have Town staff present. D. Sherwood stated that after this Cease and Correct is addressed, they hope to begin working on a resolution for this as it has been impacting Mr. and Mrs. DeFranzo for a very long time.

G. Logan noted that the optimal timeframe for completing the restoration work might be at risk as the end of the season approaches. Ideally, the work should begin in late summer or early fall; otherwise, it would need to be postponed until spring. Vice Chairman Elder stated that in his

experience, the typical date to have work completed by is October 15<sup>th</sup> depending on the weather.

Vice Chairman Elder proposed scheduling a special meeting in August or late July to finalize this. Other Commissioners agreed. W.A. Thompson proposed meeting on July 23<sup>rd</sup>. D. Sherwood stated that once they receive the comments, they will reply to them within about a week. W.A. Thompson stated she will have them submitted by the end of the week.

Vice Chairman Elder made a **motion to continue the show cause hearing to July 23<sup>rd</sup> at 7pm in the Council Chambers 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 will be following up with an estimated date by which the results will be submitted. W.A. Thompson stated that she had met with the property owner, and was informed that the trucks will be removed by July 12<sup>th</sup>.

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

W.A. Thompson stated that she has not received any further correspondence beyond what was reported prior to the previous meeting; Brian Denno, the property owner’s land surveyor, stated 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 application:

- AA24-207: 78 Three Rod Road – 27' Above ground pool

## 7. AGENT REPORTS

## 8. PETITIONS FROM COMMISSIONERS

Commissioner Towers stated that the development at the corner of Mack Street and Poquonock Avenue did not have proper sediment and erosion controls in place, and recalled an application coming before the Commission previously. W.A. Thompson stated that there were no mapped wetlands on the site, therefore the application was not considered by the IWWC. Commissioner Towers stated she remembered an application for this site a long time ago. W.A. Thompson stated that this recent development did not require an application based off of our Official Wetlands Map, and she didn’t recall the site showing any signs of wetlands being present. W.A. Thompson stated that the Engineering Department had a few corrective actions for this development just

recently, so they may be currently working toward compliance, but she will reach out the inspectors to ensure this is being addressed. Commissioner Towers added that there should also be silt sacks in the catch basins. W.A. Thompson stated that for Poquonock Ave, being a state road [state roads typically use swales on road shoulders], there may not be any but there very well could be catch basins on Mack St.

Commissioner Towers asked if the drainage and erosion issues at 425 Day Hill Road had been addressed. W.A. Thompson stated that in order for this development to receive the recent issuance of a Certificate of Occupancy, this had to be addressed or bonded for; she will provide the Commission with an update to this matter.

Commissioner Towers asked about the status of the violation on Palisado Avenue. W.A. Thompson stated that there has been a significant time lapse in the last correspondence with the property owner that would require a new letter, or enforcement order to be issued. W.A. Thompson has been several attempts to receive information from the property owner in the past, but has not received a response.

Commissioner Elkins asked about the status of the violation on Pleasant Court. W.A. Thompson stated that the property owner removed a lot of the topsoil from the slope, and stabilized the area with erosion control matting, seeding, silt fencing and riprap.

**9. ADJOURNMENT**

**Commissioner Elder made a motion to adjourn at 8:04 p.m. Vice Chairman Elkins seconded the motion. Vote 6-0-0**

I certify that these minutes were approved on

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Marlene Towers, Secretary  
Inland Wetlands and Watercourses Commission