

APPROVED MINUTES
BROOKFIELD INLAND WETLANDS COMMISSION
SPECIAL MEETING: SHOW CAUSE HEARING
Wednesday, May 23, 2012 3:00 PM
TOWN HALL MEETING ROOM #133

1. Convene Meeting

Chairman J. Vulcano called the meeting to order at 3:05 PM and established a quorum of members:

Present: Chairman J. Vulcano, Vice Chair L. Miller, Secretary S. Fox

Also Present: Wetlands Enforcement Officer K. Daniel, Recording Secretary E. Cole

Absent: G. Hunton, M. Downey

Chairman Vulcano noted that every member is a voting member at this meeting.

2. 1 High Ridge Road #201200432: Show Cause Hearing

a. Cease and Correct Order dated 05/22/12 Re: 1 High Ridge Road #201200432

b. Memo to the Inland Wetlands Commission dated 05/17/12 Re: 1 High Ridge Road and 22 Beech Tree Site Inspection Report

Dr. Samir Zaky, current property owner of 1 High Ridge Road, was present.

Gregory Cava of The Cava Law Firm LLC was also present.

Alan Harrison, previous property owner of 22 Beech Tree Road, was also present.

Matthew Marciniak, current property owner of 22 Beech Tree Road, was present.

WEO K. Daniel stated that the cease and correct order is regarding a blockage in a pipe that conducts a stream which goes beneath the properties of 22 Beech Tree and 1 High Ridge Road. WEO Daniel reviewed a map of the 22 Beech Tree Road property with the Commission and indicated the location of an 18" pipe which conducts the stream out to High Ridge Road. WEO Daniel noted the location of the catch basin with the Commission. She also showed a picture of the catch basin dated October 1, 2009. L. Miller noted that the location of the catch basin was on the south side of the property. WEO K. Daniel showed a picture of the catch basins in both the 18" and the twelve inch pipe and a picture into the catch basin showing the two eighteen inch RCPs. WEO Daniel noted that in the cease and correct file, there is a picture dated May 17, 2012 of that catch basin with the inlet obstructed by a brick wall, which is causing water in the swamp to the south of 22 Beech Tree Road to back up. WEO K. Daniel stated that this constitutes work within the upland review area of the open watercourse on 1 High Ridge Road, and is regulated activity; WEO K. Daniel also noted that there is no permit for this work. Secretary Fox clarified that this work looks like it is located within a watercourse. WEO K. Daniel agreed, but noted that it is debatable whether the pipe that begins with a watercourse and ends with a watercourse is itself a watercourse and she would contend that it is. She stated that this work is causing damage to wetlands and watercourses beyond the scope of this property, causing damage to the 22 Beech Tree Road property. L. Miller clarified the location of the catch basin with WEO K. Daniel that the water is backing up along the pipe and starting to accumulate at the headwall. WEO K. Daniel noted that the water is entering the ditch, which is intended to drain the water away from

the septic system via the curtain drain, and now the septic system on 22 Beech Tree Road is becoming compromised.

Chairman Vulcano noted that the property owner was present and stated that the reason for the show cause hearing was for the property owner to have the opportunity to discuss with the Commission why this cease and correct order should not remain in effect or be upheld. Dr. Samir Zaky gave his name and address (2A Topstone Drive, Bethel, CT) for the record. Dr. Zaky showed a map that was printed from the national Wetlands inventory on May 16, 2012 that shows the map of the conditions prior to the building of 1 High Ridge Road which shows a stream in the middle of the property. Dr. Zaky also showed a picture from the same website that does not show a picture of the stream going through the middle of the property. Dr. Zaky stated that work has been done to move that stream to the eastern side of the property and a ditch was dug out by men to move the water into it. Dr. Zaky stated that his point with the two maps was that the wetlands maps have not been updated to show current conditions.

Chairman Vulcano asked Dr. Zaky to speak to the catch basin in question. Dr. Zaky stated that the catch basin in question shown on an as built plan submitted by Alan Harrison on November 14, 2002 is shown on a map that Dr. Zaky referenced. Dr. Zaky showed the Commission a copy of the deed which Alan Harrison sold him the property with; Dr. Zaky stated that the only rights that Alan Harrison has to the property is to a brook and the conditions on a map, which is also shown on an as-built map that was approved by the Zoning Enforcement Officer on November 18, 2010. Vice Chair L. Miller confirmed with Dr. Zaky that it was Bill Schappert who signed the approved as-built map. Dr. Zaky showed an engineering study that was submitted with the wetlands application for construction at 1 High Ridge Road, and Dr. Zaky stated that this shows that the pipe does not convey more than two percent of all the water that goes onto the property.

Chairman Vulcano asked Dr. Zaky if he installed block on the pipe.

Dr. Zaky showed a copy of the application from the Inland Wetlands file, and stated that it was a permit that was approved by the Inland Wetlands Commission that allowed him to remove the eighteen inch pipe and restore the flow to the non-functioning drainage swale. Dr. Zaky also presented a letter from the engineer stating that there is no way that blocking the pipe will affect his property or his septic system that appears on this map, and there is no as-built that exists with that file. Dr. Zaky stated that his point was that whatever was done to block the pipe has actually surcharged the swale, and has actually benefitted wetlands, and has no effect or negative impact on wetlands. Dr. Zaky stated that the failure to maintain the brook and the drainage swale to allow the water to go through it is allowing the ponding on his property and is not anything of what [Dr. Zaky] has done because Dr. Zaky stated that that is the natural flow of the water.

Secretary Fox asked Dr. Zaky if he acknowledges that he did install some bricks to block the southerly side of the catch basin. Dr. Zaky responded that he has a permit to remove the entire pipe. Secretary Fox asked to see the wording of the approval. Dr. Zaky and Secretary Fox reviewed the Inland Wetlands application. WEO K. Daniel clarified that there is an approved plan that came with a stipulated construction sequence. Dr. Zaky stated that he has been trying to protect his property from flooding. Dr. Zaky stated that he had complained about flooding on the property in the past and nobody did a thing, and when [the neighbor] complains about a property, everyone catches up with [the neighbor]. Dr. Zaky stated that drainage was not a wetlands issue, but rather a zoning issue. Dr. Zaky stated that he surcharged the swale that was not working and now it is working in the correct direction per the map and the deed of his property. WEO K. Daniel stated that there was still not an answer to Secretary Fox's earlier question about whether Dr. Zaky had installed the bricks to block the water. Dr. Zaky replied that the answer is that he has a permit to remove an 18" RCP feeding catch basins, restoration of the flow to the non-functioning drainage swale. Secretary Fox asked if he was in agreement that there the pipes are blocked off; the RCP is still in place but there are blocks that [Dr. Zaky] installed. Dr. Zaky agreed in the positive to Secretary Fox's question. WEO K. Daniel showed the approved plan to the Commission that showed the improvements of the drainage swale which were to be improved first so flow would move from the south to the north to a swale that would then continue to a new catch basin in the eighteen inch pipe, and another catch basin would be abandoned. Dr. Zaky stated that he has a permit to remove the pipe, and there is pending litigation involving drainage on the property. Secretary Fox recommended that the Commission look at the approval, and stated that there is a difference between removing the pipe and blocking the pipe. Vice Chair L. Miller read the engineering report presented by Dr. Zaky. Chairman Vulcano noted that the application that Dr. Zaky stated was a permit is a wetlands application. Secretary Fox read the original approval letter dated March 26, 2012 for the Commission. Secretary Fox read the modification to the original approval dated April 9, 2012 for the Commission. Secretary Fox stated that there is nothing in the approval letters about removing an RCP and there is nothing about installing brick in that location.

Chairman Vulcano made a motion to uphold the cease and correct order because the work that has been done – the block on the pipe – is not approved, and is not included in the permit. Vice Chair L. Miller seconded the motion, and it carried unanimously, 3-0.

3. Adjourn

Chairman Vulcano made a motion to adjourn at 3:24 PM. Vice Chair L. Miller seconded the motion, and it carried unanimously, 3-0.