

APPROVED MINUTES
BROOKFIELD INLAND WETLANDS COMMISSION
Monday, August 13, 2012 – 7:00 p.m.
TOWN HALL MEETING ROOM # 133

1. Convene Meeting

Chairman J. Vulcano convened the meeting at 7:03 p.m. and established a quorum of members.

2. Roll Call and Designation of Alternates

Present: Chairman J. Vulcano, Secretary S. Fox, M. Downey (arrived at 7:06 p.m.), Alternate and Voting Member G. Hunton

Absent: Vice Chairman L. Miller

Also Present: Wetlands Enforcement Officer K. Daniel, Recording Secretary D. Cioffi

3. Wetlands Enforcement

a. Enforcement Officer's Report

WEO K. Daniel shared the most recent enforcement report, (modified 8/13/12) with the Commissioners.

533 Federal Road, #201100251 – A Request for Temporary Injunction has been filed by Town Counsel J. Buchsbaum, and a hearing has been scheduled for September 4, 2012.

1 High Ridge Road, #201200432 - A Cease and Correct Order was issued on May 22, 2012 for the construction of a masonry wall in an 18" pipe. This Order was upheld on May 23, 2012. WEO Daniel noted that the wall was not part of the approved plan. She reviewed the work done without a permit which resulted in enforcement action that compelled the property owner to file an application. The application was approved in two parts: 1) the work that was already done (excavation of a trench, a fish pond, the paving of the driveway, the filling of the excavated trench, the completion of the patio, grading and paving to the east of the garage), with the stipulation that the property owner would submit an as-built showing this work as well as any water piping that had been installed; and 2) activity in wetlands on his property, also approved on 3/26/2012; with a construction sequence outlined in detail on approval. WEO Daniel reviewed that on April 10, 2012, the applicant asked for a revision of construction sequence, to allow garages to be installed prior to drainage improvements. The sequence was outlined in the approval of that date.

Commissioner M. Downey arrived at 7:06 p.m.

On May 22, 2012, the filling of the pipe and the masonry wall were discovered, and a Show Cause Hearing was held. At that hearing, the applicant stated that the permit included these activities. Secretary Fox advised the applicant that the permit did *not* include those activities. The IWC upheld Cease and Correct Order, and the property owner appealed the decision to the Superior Court. WEO Daniel read from Count II of Dr. Zaky's Citation.

WEO Daniel advised that on July 16, 2012, another Cease and Correct Order was issued for the deposition of soil material within upland review area. Dr. Zaky contends that all of the aforementioned activity falls under the purview of the approved permit. Chairman Vulcano noted that the permit clearly spelled out the allowed activity.

WEO Daniel noted that the property to the south of 1 High Ridge Road, (22 Beech Tree Road) is experiencing drainage problems. She received an email with photos today. *Attorney Cava was present, on behalf of the Harrisons and Marciniaks*, and submitted ten larger copies of the photographs for the file (#201200069). The photographs show the depth of the water, up to six feet deep. *M. Marciniak was present*, and reviewed the conditions in detail. Attorney Cava advised that the trench from his clients' septic system is getting backed up and this may cause failure. He urged the Commission to revoke the permit.

WEO Daniel read the conditions under which a permit can be revoked. She indicated that the Commission provided notice to Dr. Zaky via a letter containing the language of the last meeting's motion sent by facsimile, and his receipt was confirmed.

Dr. Zaky was not present.

WEO Daniel has spoken with the Town Attorney regarding how to proceed with revocation; and he recommended revocation if the Commission sees fit.

Attorney Cava submitted a notice to intervene on behalf of Mr. Harrison, per C.G.S. Sec. 22a-19. This communication was accepted.

Chairman Vulcano moved to revoke the permit for 1 High Ridge Road, #201200069, as amended, based on this evening's discussion as well as that of last meeting, specifically: because the property owner has worked outside of the language of the permit, including the blocking of the 18" pipe, the deposition of the fill on the property, and excavation and the installation of the footing along the southwest side of the property, with re-bar; and based on the history of this property, because there have been Cease and Correct Orders; the property owner has attended meetings and provided incorrect information, and the property owner did receive notice of the potential revocation, via the fax, and was invited to appear, per the regulations, to explain why the Commission should not revoke the permit.

Chairman Vulcano discussed the need to get the 18" pipe cleared. WEO Daniel advised that Special Town Counsel P. Olson is aware that there is concrete plugging the pipe. There was discussion regarding the existing conditions being a safety and health hazard. WEO Daniel indicated that Attorney Olson has also spoken with the State's Attorney and an arrest warrant has been prepared.

Secretary Fox seconded the motion. Motion carried unanimously.

WEO Daniel reviewed the enforcement action for the failure to obtain a permit to deposit soil material, or to excavate and pour concrete within the upland review area. This relates to file #2012000616.

Chairman Vulcano reiterated the immediate need to diligently pursue getting the pipe cleared.

Attorney Cava pointed out that the contractors that performed the filling could be held liable under C.G.S. Sec. 22a-44, and suggested that Cease and Desist Orders be issued to them. The file contains the names and photographs of these contractors. This has been discussed with Attorney Olson. WEO Daniel will speak with Attorney Olson, and if recommended by him, she will compile a list of the contractors involved in the pipe obstruction for the next meeting.

b. Site Inspection Reports

540 Federal Road

- **Letter from S. Hayden of the Northwest Conservation District dated 07/31/12**

540 Federal Road (Water Storage Tank)

- **Letter from S. Hayden of the Northwest Conservation District dated 07/16/12**
- **Letter from S. Hayden of the Northwest Conservation District dated 07/24/12**
- **Letter from S. Hayden of the Northwest Conservation District dated 07/31/12**

84-140 Federal Road

- **Letter from S. Hayden of the Northwest Conservation District dated 07/24/12**
- **Letter from S. Hayden of the Northwest Conservation District dated 07/31/12**

101 Obtuse Hill Road

With the exception of the August 9, 2012 report re: 84-140 Federal Road, all of the inspection reports were satisfactory.

84-140 Federal Road – WEO Daniel shared photographs taken on August 10, 2012, after the large rain event, demonstrating the site's inability to adequately contain sediment. She noted that the catch basin in the Kohl's parking lot has been a consistent issue during events of this nature. S. Hayden had recommended gravel berms, but they are not working. WEO Daniel recommended that if another rain event results in sediment leaving the site, a citation needs to be issued. She advised contractors of this and told them she would be recommending that fines be issued. The photograph

of the sediment she observed was submitted for the file. This has been a problem area since the beginning of the construction. Notice of Violations have been sent in the past, the problems have been rectified, but continue to return.

Secretary Fox moved to issue a Citation to the property owner of 84-140 Federal Road, for failure to maintain soil and erosion controls on August 10, 2012, as evidenced by a photograph dated August 10, 2012, in the amount of \$1,000.00. Commissioner Downey seconded the motion, and it carried unanimously.

Secretary Fox inquired regarding the status of Mr. Cowen's agreement. WEO Daniel advised that an agreement is reached and the contract has been signed. Chairman Vulcano indicated that Mr. Cowen will be providing oversight and reports on the property to the Commission.

There was brief discussion regarding the installation of the southern water line. WEO Daniel will inspect the site.

No additional comments per site inspection reports.

4. Old Business:

a. 40, 57 & 64 Laurel Hill Road #201200552: Incentive Housing Development

(dec date 08/29/12)

1. Revised Plans received in the Land Use Office on 08/02/12:

- Sheet C2 – Grading and Drainage Plan prepared by CCA, LLC dated 06/06/12; revised through 08/02/12
- Sheet C4 – Landscape Plan prepared by CCA, LLC dated 06/06/12; revised through 08/02/12
- Sheet C4a – Landscape Plan Enlargement prepared by CCA, LLC dated 06/06/12; revised through 08/02/12
- Sheet C4b – Landscape Plan Enlargement prepared by CCA, LLC dated 06/06/12; revised through 08/02/12

2. Letter from D. Virbickas of Artel Engineering dated 07/25/12 Re: Proposed Incentive Housing Development 57 Laurel Hill Road

3. Letter from D. Virbickas of Artel Engineering dated 07/25/12 Re: Proposed Incentive Housing Development 40 and 64 Laurel Hill Road

Chairman Vulcano noted a letter from A. Adams, dated August 13, 2012, requesting that this item be tabled.

Chairman Vulcano moved to continue 40, 57 & 64 Laurel Hill Road, to the next regularly scheduled meeting. Commissioner Hunton seconded the motion, and it carried unanimously.

b. 3 Cobblestone Court #201200637: Septic Fields *(dec date 09/26/12)*

R. Marsh, 3 Cobblestone Court, was present. Chairman Vulcano indicated that he inspected the site today. Upon inquiry, Mr. Marsh explained that the existing "stairs" are not stairs, but bluestone. The location of a patio and pavers were noted. Mr. Marsh confirmed that the new pool will be close to where the old pool was. Secretary Fox inquired regarding the backwash plan for the pool. Mr. Marsh will ask the pool contractor for the protocol of backwashing this particular pool. The Commission found the proposal for silt fence acceptable. Mr. Marsh indicated that if approved, the pool will be constructed this year.

WEO Daniel inquired of the property owner if he plans on installing an additional deck or patio, and Mr. Marsh advised it may occur next year. WEO Daniel advised it could be an amendment to the current permit.

Secretary Fox moved to approve the application for 3 Cobblestone Court, #201200637, installation of a pool and relocation of the septic system, per a plan dated July 11, 2012, with the traditional stipulations, including 1) calling the Land Use Office when the soil and erosion controls are installed, before construction starts; and 2) that the

property owner will provide, by August 30, 2012, documentation that any backwash from the pool will not enter any of the upland review areas. Commissioner Hunton seconded the motion, and it carried unanimously.

5. **New Business:**

a. **101 Obtuse Hill Road #201200680: 6-lot subdivision – “Whispering Glen Section II”**

1. Letter from P. Young to the Brookfield Wetlands Commission dated 08/01/12 Re: Whispering Glen Section II Cross Pond Drive Lots 1, 5 & 6, Tree Farm Lane Lots 7, 9 & 11 Wetlands Application

2. Abutting Land Owner Information for Whispering Glen Section II received in the Land Use Office on 08/02/12

3. Plans received in the Land Use Office on 08/02/12:

- Final Subdivision Map for Whispering Glen Section Two prepared by CJOJ, LLC dated 10/19/11
- Drawing No. 08024-SP-2-R4 – Supplemental Map (Lots 5, 6 & 7) dated 02/27/12; revised through 05/21/12
- Drawing No. 08024-SP-3-R4 – Supplemental Map (Lots 9,11 & 12) prepared by R.J. Gallagher Jr. & Associates dated 02/27/12; revised through 05/21/12
- Drawing No. 08024-SP-4-R1 – Supplemental Map Open Space A & B prepared by R. J. Gallagher Jr. & Associates dated 02/27/12; revised through 05/07/12
- Drawing No. 08024-SP-5-R1 – Supplemental Map Portion of Open Space A & B prepared by R.J. Gallagher Jr. & Associates dated 02/27/12; revised through 05/07/12
- Drawing No. 08024-PP-R4 – Road Plan and Profile [Driveways for Lots 5-7] prepared by R.J. Gallagher Jr. & Associates dated 01/31/12; revised through 05/21/12
- Sheet No. 7 of 7 – 400 Scale Vicinity Map of Whispering Glen – Section Two prepared by CJOJ, LLC dated 10/19/11

P. Young, Finmark Custom Homes, LLC, was present. He noted that the plan is for six lots, with no change in configuration, but an updated stormwater management plan. He further advised that Mr. Virbickas will have the drainage analysis submitted before the next meeting, so that Mr. DiVesta can review it for the Commission.

Secretary Fox moved to set a Public Hearing for August 27, 2012, for #201200680, a/k/a 101 Obtuse Hill Road, for 8:00 p.m. on August 27, 2012. Commissioner Hunton seconded the motion, and it carried unanimously.

b. **52 Obtuse Road South #201200700: Two-Lot Re-Subdivision – Ferry Farm**

1. Letter from M. R. Chase dated 07/16/12

2. Letter from S. Myles of Arthur Howland & Associates, P.C. to Ms. Daniel Re: Wetlands Soils Delineation for Ferry Farm Subdivision, 52 Obtuse Road South, Brookfield, CT

3. Information submitted as part of the application received in the Land Use Office on 08/07/12:

- Existing Conditions Map prepared for Ferry Farm Living Trust Obtuse Road South dated 05/30/12
- Web Soil Survey National Cooperative Soil Survey dated 04/20/12
- Map Unit Legend dated 04/20/12
- Flood Zone Map
- Subregional Drainage Basin Map
- Local Drainage Basin Map
- Natural Diversity Data Base Areas dated June 2012

4. Site Development Plan for Proposed Resubdivision of Property at 52 Obtuse Road South, Brookfield, CT received in the Land Use Office on 08/07/12:

- Sheet C.1 – Cover Sheet – prepared by Arthur H. Howland & Associates, P.C. dated 07/31/12
- Existing Conditions Survey Map prepared by PAH, Inc. dated 05/30/12
- Subdivision Map prepared by PAH, Inc. dated 08/02/12
- Sheet SD.1 – Subdivision Site Development Plan prepared by Arthur H. Howland & Associates, P.C. dated 07/31/12
- Sheet SD.2 – Lot 2 Site Development Plan prepared by Arthur H. Howland & Associates, P.C. dated 07/31/12
- Sheet SES.1 – Proposed Sedimentation & Erosion Control Details prepared by Arthur H. Howland & Associates, P.C. dated 07/31/12
- Sheet AREA – 1,000 Foot Area Map prepared by Arthur H. Howland & Associates, P.C. dated 07/31/12

Ms. Bonnie Bevins and Mr. Clayton Ferry were present. A letter of authorization submitted for the record. The location of the property was clarified. The proposal does not include new construction; only the division of the site, to sell the property. Any potential buyer will have to come in with a proposal. WEO Daniel reviewed that the application includes grading within 75 feet of wetland, and that the Planning Commission will require a report from the IWC. The plans were presented for review. Ms. Bevins inquired if a Public Hearing would be necessary, and Chairman Vulcano advised that it would not. The Commissioners will inspect the site individually, and it was requested that the potential locations for house and septic be staked. Mr. Ferry will stake the approximate locations. Telephone pole numbers on the plans will be used for reference.

Secretary Fox moved to continue 52 Obtuse Road South until the next meeting on August 27, 2012, with the understanding that the Commission members will inspect the property. Commissioner Hunton seconded the motion, and it carried unanimously.

6. Tabled Items: None.

7. Correspondence:

- a. Minutes of Other Boards & Commissions: 07/19/12, 08/02/12 Planning; 07/26/12 Zoning & Planning special; 08/06/12 Zoning Board of Appeals;
- b. The Habitat Volume 24 Number 2 dated Summer 2012
- c. Citation dated 07/27/12 Affiliated Realty, LLC vs. Brookfield Zoning Commission; Brookfield Zoning Board of Appeals; Brookfield Inland Wetland Commission; Alice Dew, Zoning Enforcement Officer; Katherine Daniel, Wetland Enforcement Officer; Brianna Marciniak; Matthew Marciniak
- d. Proposed Changes to Fee Schedule from the Land Use Office

WEO Daniel discussed the changes to the proposed fee schedule. She reviewed the Town of New Milford's model, which charges fees for upland review disturbance, and wetland and watercourse disturbances. WEO Daniel's goal is that the fees should reflect the activity that the applicant is proposing, relative to the effort and involvement of the Town in its review of the application.

Secretary Fox moved to set a Public Hearing for the purpose of discussion a change in the Inland Wetlands fee schedule, for August 27, 2012, to be the second public hearing following the initial public hearing starting at 8:00 p.m. Commissioner Hunton seconded the motion, and it carried unanimously.

There was additional discussion regarding fees for modification to permits, and the need for modifications to go to the Commission, similarly to the process that the Zoning Commission uses. Chairman Vulcano noted that if the change is large enough, a new application would be warranted.

8. Review Minutes of Previous Meetings: 07/23/12 – Secretary Fox noted the following corrections: on Page 2, in the fourth full paragraph, to change “could” to “would”; and on Page 4, last paragraph, to change the start of the first sentence from “The Commission”, to “Chairman Vulcano”. Secretary Fox moved to approve the Minutes of the July 23, 2012 meeting, with the two aforementioned changes. Commissioner Hunton seconded the motion, and it carried unanimously.

9. Informal Discussion: None.

10. Adjourn Commissioner Hunton moved to adjourn the meeting at 8:30 p.m. Commissioner Downey seconded the motion, and it carried unanimously.

Next regular meeting scheduled for August 27, 2012