

# WINDHAM INLAND WETLANDS & WATERCOURSES COMMISSION MINUTES

Thursday June 12, 2008

## I. Call to Order

The meeting was called to order at 7:08 P.M. at the Windham Town Hall, 979 Main St., Willimantic, CT Members present were Chair Susan Johnson, Martin Brogie, and Joseph Wagner. Also present were Town Planner James Finger and Recorder Kathleen Wright.

## II. New Business – DISCUSSION/POSSIBLE ACTION

1. **Continuation of Public Hearing - Windham TSC, LLC - 476 Boston Post Road, North Windham** application for wetlands permit for activities in upland of Wetland/Bog  
Chair Johnson asked those who wished to speak to come forward.

First Selectman Jean DeSmet thanked Joshua's Trust for retaining a national expert. She said she has all confidence that IWWC will do everything possible to protect the bog as well as try to help our economic development.

Attorney Leonard Jacobs said that since the last meeting, Joshua's Trust and Windham TSC, LLC have reached an agreement. All new information has been provided. Copies of the agreement will be submitted. He asked that the agreement not to be incorporated into the IWWC decision because of ongoing small changes. He highlighted points in the agreement:

- All work will be done as shown on our plan.
- An acknowledgement that reports and information that Joshua's Trust asked for were provided.
  1. Subsurface sewer discharge based on a 10-Year storm.
  2. Mounding analysis
  3. Nutrient loading analysis
- WTSC will install a water level measuring device and will take baseline samples. If analysis indicates a reversal of a flow gradient, WTSC would install 3 monitoring wells at locations indicated. If reports show adverse changes, WTSC will prepare a laboratory report, will prepare a remediation plan, and if they are the cause of the problem, they will act.
- No toxic materials except propane will be displayed or stored outside roofed structure areas.

There was a discussion of waste oil collection receptacle and procedure, and Mr. D'Addabbo said Tractor Supply has offered oil collection as a courtesy since 1987. The receptacle is locked and on wheels, the oil is handled by employees and picked up by a licensed recycling company. Attorney Jacobs said all necessary licensing would be in place.

Town Engineer Gardner described DEP requirements for the collection of waste oil, all covered under a permit with DEP.

Mr. Brogie said he does not believe a permit is necessary to store waste oil; the haulers will test for PCB's, etc. He was concern with sloppy handling. He prefers to see it under a roof.

Mr. D'Addabbo said this could be a condition of approval, to keep it inside. There was a discussion of the advisability of having waste oil collection in the Town.

Attorney Jacobs enumerated conditions:

- There will be no maintenance of vehicles sold.
- A spill contingency plan is in place
- WTSC will submit a bond of \$10,000.
- A conservation easement is included in back area
- Joshua's Trust may access the property 4 times per year.
- WTSC will plant a vegetative shield by the bog.

Alan Carpenter, Engineer, listed revisions to the plans previously submitted:

- revised configuration of building to move it further away from the Bog
- removed the additional retail space of 4,500 ± sq. ft.
- revised configuration of outdoor display
- changed parking area permeability
- added trench for snow storage
- changed configuration of the storm water basin
- changed number of parking spaces, reduced impervious surfaces
- increased buffer
- reduced upland review impacted area
- divided storm water system
- provided bio-retention areas
- saved more trees
- agreed to dedicate a conservation easement over all the areas outside our limit of disturbance

There was a discussion of vegetation fence and lighting. Lights will be shielded. Mr. Brogie noted an error on page C6 regarding the fencing, and Mr. Carpenter said he will correct this.

Chair Johnson asked for clarification on the monitoring wells.

Mr. Carpenter said that some wells already in undisturbed areas could remain. The initial concern is to know in what direction the water is flowing. Mr. Carpenter said that Joshua's Trust and WTSC have agreed on what to test and how to test. Locations of wells with transducers that will provide ongoing monitoring are shown in maps provided. Some wells may need to be deeper. Initial wells were installed using test pits.

Mr. Brogie asked if Mr. Carpenter was familiar with DEP guidance on monitoring wells. Mr. Brogie asked to see ground water well installation methodology and documentation. Mr. Carpenter will provide.

Town Engineer Gardner said that a previous plan included a bypass. Mr. Carpenter said the current model of hydrodynamic separator has an internal bypass.

Attorney Jacobs thanked Joshua's Trust. He said the WTSC has demonstrated that they have looked at feasible and prudent alternatives.

Warren Church, President of Joshua's Trust, thanked WTSC and Mr. Pagini. He believed that the bog will be more protected by the new design. He said that Mr. Horsley concurred with the plan. He said they had second thoughts regarding having the oil recycling container outside. He formally withdrew the intervention petition.

Mr. Doug Fleming, Windham, said oil suppliers are required by law to provide recovery of waste oil. He noted that the development will provide more tax base.

Planner Finger said oil recovery is a good idea. He asked the Fire Marshal, who was present, if an oil recovery container is okay inside a public building. The Fire Marshal indicated that it is not a problem.

Mr. Aubrey, third party reviewer, said that the oil container should definitely be inside.

Chair Johnson asked for any other speakers. None came forward and she asked for a motion to close the public hearing.

Mr. Brogie made a motion to close the public hearing.

Mr. Wagner questioned ground water mounding analysis, whether it referred to 4 storms total or 4 storms within a certain period of time. Mr. Carpenter said it is 4 storms total no matter when they occur.

Mr. Church said we need data points, and 4 points is a good confirmation.

Mr. Wagner then seconded the motion to close the public hearing.

The vote to close the public hearing was unanimous, in favor.

Mr. Brogie made a motion to set a date for making a final decision at a Special Meeting on 7-2-08 at 7 PM. Mr. Wagner seconded the motion. The vote was unanimous, in favor.

### **III. Old Business-- DISCUSSION/POSSIBLE ACTION**

1. Wetland Violation Complaint re: 369 & 377 Scotland Rd. - review files and observations of site walks. Planner Finger asked the Commissioners to give observations of site walks. Chair Johnson gave her observations. She and Planner Finger went to the site of the complaint together and walked both properties. Chair Johnson said the Perkins family walked us down the long driveway and we reviewed the area where Mr. Fleming had made a pond. We saw plants that indicated wetlands. We also walked the Fleming property. On the Fleming property we saw the stream and a few items that could be picked up and carried away.

Mr. Brogie said we started our site walk on the Fleming property. He had a fairly recently drilled well. I noted a watercourse running east to west. A pile of stumps was in an area whose vegetation may indicate a wetland. There was also a pile of stone. I was not able to observe, from the edge of his property, any fill along the south side of the stream. There

were large boulders that looked like they were fairly recently placed. Except for some metal and a fence post, I didn't see any evidence of dumping or filling on the other side of that stream bank.

He went on to explain that Mr. Fleming said a pipe was placed under the Perkins family driveway that increased flows from the wetlands owned by the Bass Farm on the east side of the driveway. I did note a corrugated plastic pipe discharging from underneath the driveway into a wetland area on the east side of the Fleming property. There is a corresponding concrete pipe lining up with the plastic pipe. This told me the original drainage from the original driveway had been maintained and not blocked. I saw an embankment which showed, based on its slope and the materials I found there, such as asphalt and concrete, that the west side of the Perkins family driveway had at some point been filled. There was fill mounded up against an old maple tree on the west side of the driveway.

In looking at all the clues: the presence of the asphalt and concrete, the different kind of piping, the trees or lack thereof, other than the one where I saw the mounding of fill, it looked like there has been filling on that side of the driveway perhaps within the last ten or fifteen years or sooner. I don't know if there are wetland soils under that fill. The area appears to be well healed.

I also noted drainage coming off the road and from across the street, coming onto the wetland area on the west side of the Fleming property, going into the pond and a bermed area where there was a shallow well that previously served the Fleming residence before the deep well was dug. We looked at the outfall area of the pond. We saw another reinforced concrete pipe coming in from the east side draining from the Bass Farm direction, toward the watercourse that eventually bends west and heads along the back of the Fleming property. It looked like there was some erosion. I saw some wetland flags that appeared to be Mr. Ianni's.

Commissioner Brogie continued stating that Mr. Fleming had indicated there was some kind of dam at the outfall of the pond that had been removed by Perkins. There was a scoured channel but it was difficult to determine whether or not it was excavated. It was difficult to assess whether or not a dam had been removed. It appears that the drainage from offsite to the pond had been fairly well maintained. Walking on the Perkins property on the area that was previously remediated, subject of the previous complaint, there was a mounded area. I noticed asphalt and concrete pieces similar in size to that found among the fill on the west side of the driveway. I tended to gather that some offsite source of asphalt and concrete had been brought in. What affect that had on the well or pond is difficult to determine by the site walk. I saw evidence of filling on both properties.

Chair Johnson asked Mr. Brogie what changes might remediate the situation. Before commenting, Mr. Brogie was urged to provide his credentials: Certified soil scientist; member Soil Science Society of Southern New England; holding a Bachelors degree from UCONN in Natural Resource Management, with Masters coursework in groundwater hydrology; licensed environmental professional with State of CT, focusing on soil, groundwater, and surface water studies; involved in this work for the last 18 years.

Planner Finger then reported that the site walks took place on 4-30-08 and 5-6-08 or 5-7-08, and then proceeded to give some background information. He explained that this area had been developed about 1978. A subdivision had been approved for what is now the Fleming lot. Later they cut out lots on either side and at that time Howard Denslow, soil conservation person for Windham County, observed and made recommendations, and he indicated wetlands based on a soil survey, using a manual. The area of the little pond was not classified as wetland at that time. Marla Butts at DEP confirmed that the soil classification was not a wetland until the point they captured the storm water and created an impoundment, however that may have occurred. After that, the area would have to be treated as a wetland. But it has not been delineated.

Planner Finger described the areas of wetlands on relevant properties. He said runoff from the recently re-paved road showed scouring and erosion emanating from the runoff into a ditch along the highway (route 14). On the 1978 and 1981 subdivision plans, there was no mention of a culvert in this location, nor did Mr. Denslow mention it.

In 1986, Towne Engineering had prepared a topographic map showing the culvert, and indicated a 'dry bed', which later became the pond. The 1990 aerial photos do not indicate any pond. But, he added, that a pond appears on 1996 aerial photos. Mr. Fleming acquired his property in 1996 and reportedly dug out the pond area with the Perkins' permission. The fill from the basin was spread along their side of the driveway. The Perkins said they have done no recent filling. We have no documentation on widening the driveway.

Attorney Frank Bartlett of Cheshire represented the Perkins family. He addressed the area to the west of the Perkins driveway and the area in between the driveway. He said the Perkins did spread material from the dredging of the pond along the driveway back in 1996. Thereafter they did bring in some small amounts of fill. This was before the initial complaint of 2005. He asserted that a property owner may do appropriate landscaping and prevent erosion. The spreading of the fill is a non-regulated use. There are some little bits of debris on the back, or southern portion of the property, but no evidence of any fill. He then submitted 3 photos taken by the Perkins' from 2-20-06 that show debris throughout the Fleming property.

Mr. Fleming agreed that the photos represented his property.

Attorney Bartlett provided an excerpt from Mr. Fleming's court deposition that identified construction material in the debris. Attorney Bartlett noted (by pointing to Mr. Fleming's shirt) that Mr. Fleming is in the construction business, and he said that Mr. Fleming did strip shingles and re-roof the building on his property.

Chair Johnson asked Attorney Bartlett to move on from 2006 and address the current 2007 complaint as she felt that it was part of the previous complaint that had been closed.

Planner Finger said that 2006 would be after the 2005 resolution, so a 2006 photo might be relevant. There was a brief discussion, and the Chair directed Mr. Bartlett to proceed.

Next discussion focused on the wood in Mr. Fleming's yard. Mr. Fleming said that he uses it for fuel, and that he has taken out permits with the Town to repair his building that was damaged by a falling tree.

Attorney Bartlett argued that this material is consistent with the material that Mr. Fleming alleged the Perkins had dumped. A photo taken 2-28-06 shows a portion of lawn and the Perkins driveway after the Commission had lifted the original violation. That area was fully vegetated.

Mr. Fleming asked the board to look at the level and size of the pond in the photo.

Attorney Bartlett said back in 2005 the complaint was brought to the board and the Perkins worked with Mr. Ianni, and followed his plan, which met the board's approval. There was some discussion of the use of a silt fence. On 9-8-05, Mr. Bartlett continued, the board lifted the notice of violation. The Perkins did remediate their property and have not engaged in any activities since that date. Attorney Bartlett asked that the board dismiss complaint.

Mr. Brogie asked Mr. Ianni why there were no flags along the driveway. Mr. Ianni said the flagging was for the Jacobics, who bought the property (363 Scotland Rd.) - to the rear of the Fleming's. In 2005 he had looked at the area to the west of the Perkins driveway. There was 8" of topsoil and pond dredged sediments. It was stable. He did not go below the pond-dredged sediment.

There was a discussion on the pipes and the culverts and the dates of their appearance. Mr. Brogie asked about the location of the outlet, and Mr. Fleming said the location has changed.

Mr. Fleming questioned the testimony of Mr. Ianni regarding the west side of the Perkins driveway, he asked the board to please look at submitted photos, and he pointed out what he saw as discrepancies. He asked the board to stop the drainage of wetlands onto his property.

Mr. Brogie said he feels comfortable knowing there has been fill added and that drainage from the Bass Farm has been maintained.

Mr. Fleming described how drainage onto his property could be noted in photos of a bottle that, through time, has been swept along by the draining water.

Attorney Bartlett stated that the Perkins made no changes in the culverts since they purchased the property in 1988. He said the Perkins have never done anything to drain the pond. Mr. Ianni said he wondered if the pond was just bermed and an outlet eroded itself. Sediment may have accumulated.

Planner Finger read from a consultant status report prepared for Mr. Fleming submitted 3-12-08 to DEP, which said the consultant inspected Mr. Fleming's property March 4<sup>th</sup>, walked the property thoroughly. She observed: construction debris; wetlands disturbance; estimated 100 to 500 cubic yards waste buried, disposed of on property adjacent to Mr. Fleming's, in a state

of decomposition, and timeline of disposal cannot be determined. The consultant said it was clear that a violation existed in past, but that activity had ceased. Her recommendations included the proper removal of construction debris and stabilization of the direction of the flow of water through both properties. See this document for further details.

Mr. Fleming interrupted the recitation of the report, and said that the consultant didn't report what he asked her to look at. He urged the Board to direct the Perkins to clean up the construction debris, garbage; paint cans, asphalt, and clean up the silt fence. And please tell them to stop draining the wetlands onto my property.

Mr. Wagner said he did see a fair amount of debris, lumber, and cans towards the south. Mr. Fleming said it took 4 years for the IWWC to come to view his property. He asked to clean the debris, plug the outlet up, and let the pond come back.

Planner Finger said the dilemma is that both parties say they are not responsible. The discussion continued on the dumping, the timing of activities, the condition of the pond, sediment accumulation, appeals, permits, a video submitted by the Perkins, the timing of complaints, and photos.

Mr. Fleming asserted that his basement is flooded by the drainage problem, a condition that began 3 or 4 years ago.

Chair Johnson asked if Mr. Fleming had any evidence that the cause of his basement flooding was due to the Perkins' activities.

Mr. Fleming – said no – not proof, but that he had a lot of experience with concrete. He declared that the water floods from the floor underneath, not from cracks in sides, and the previous owners did not have that problem. There was further discussion on the dynamics of the water on the properties and on details regarding the complaints.

Chair Johnson said that due to the late hour, the Board will put this on the next meeting's agenda - one more time.

**Routine Business – DISCUSSION/POSSIBLE ACTION**

1. Approval of Minutes – the minutes of May 8, 2008 were ????????
2. Miscellaneous – there was no miscellaneous business
3. Correspondence - there was no other correspondence

**V. Adjourn**

Chair Johnson adjourned the meeting at 9:45 PM.

Respectfully submitted,

Kathleen Wright, Recording Clerk  
June 19, 2008