

**INLAND WETLANDS COMMISSION
SPECIAL MEETING – MINUTES
MONDAY, DECEMBER 9, 2013 – 7:00PM
NEW HARTFORD TOWN HALL – 530 MAIN STREET**

PRESENT: Chairman James Hall, Anne Hall, Troy LaMere, Lou Moscaritolo, Wayne Ryznar, Nancy Schroeder Perez, Jack Trumbull; Inland Wetlands Enforcement Officer Rista Malanca.

ABSENT: None.

Chairman James Hall called the meeting to order at 7:00PM. All regular members were seated for the meeting. The proceedings were recorded digitally, and copies are available in the Land Use Office in Town Hall.

1) PENDING APPLICATIONS:

A. Jason Carrier , 109 Beeney Road – AFTER-THE-FACT – Remove Silt from Pond and Grading Work in the Regulated Area.

Ms. Malanca explained that she had visited the site prior to the November regular meeting, and while grading had been done within the regulated area, no work had been done in the pond at that point; only the grading portion of the permit would be after the fact. She noted that the area had been leveled and a row of stones had been installed. Ms. Malanca stated that Mr. Carrier had informed her that he had wanted to plant grass, and he had not realized that a permit was required for this work. Ms. Malanca said that she had told Mr. Carrier that any grading work within the regulated area required a permit; when he came in to the Land Use Office to file a permit, he added the pond maintenance proposal to the permit.

Ms. Malanca reminded the Commission that they had requested additional information from the applicant with regard to the amount of material being removed from the pond, the exact locations from which the material is being taken, and where onsite the material is being used. She said that the applicant and his contractor had agreed to provide this information at the November meeting. Ms. Malanca said that she had also sent an email to Mr. Carrier's contractor informing him of the date of the meeting and reiterating the need for additional information. However, the applicant and his representative were not present at this meeting and, to date, no information had been received.

The Commission then reviewed the street file for 109 Beeney Road. Mr. Hall reviewed with the Commission all previous Inland Wetlands permit applications, which included a permit issued in 2004 for construction of a house, driveway, and septic system. This had been applied for and approved prior to work commencing. Mr. Hall noted that this application did not appear to contain any proposed work with the pond, other than a culvert draining into the pond. The Site Development Plan and the As-Built Plan both clearly depicted a pond onsite, and there had been no change in ownership from when the house was first built. Mr. Hall noted that it appeared the culvert was the only water supply into the pond, and there did not appear to be an outlet. Mr. Hall also noted that the previous Zoning Enforcement Officer, Karl Nilsen, had issued Mr. Carrier a Cease and Desist in 2008 for which a Show Cause Hearing was held for placement of fill in the regulated area without a permit. Mr. Hall then reviewed with the Commission the minutes of the April 28, 2008 and May 19, 2008 meetings. In the minutes, it had been mentioned that Mr. Carrier was advised that any activity within 100 feet of the pond required a permit; the pond in the minutes had been referred to as a vernal pool. Mr. Hall noted that the Cease and Desist was ultimately released.

Mr. LaMere questioned whether the Commission could deny the application based on the fact that the applicant had a history of doing work without a permit. Mr. Trumbull noted that Mr. Carrier had been told previously not to do work without a permit, yet it now happened again; he asserted this appeared to be a lack of respect for the Commission and the Inland Wetlands Regulations. Mr. Ryznar questioned whether Mr. Carrier had been charged the after-the-fact application fee, and Ms. Malanca responded affirmatively. Mr. Ryznar expressed a desire for a soil scientist's report regarding whether the pond was in fact a vernal pool; Mr. Hall stated that the Commission had requested this information, but had never received it. Mr. Trumbull observed that his impression from the November meeting was that Mr. Carrier wanted to plant grass, remove some wetlands plantings, and keep a small pond; Ms. Hall concurred. However, Mr. Trumbull stated that Mr. Carrier had to know when he bought the property that a pond was onsite; just because he might wish to change the pond did not mean he was necessarily permitted to do so. Mr. Hall stated that a wet area was always present on that portion of the property, even before Mr. Carrier had built his home.

Ms. Malanca questioned whether the Commission, after having reviewed the application, now felt that this was a significant activity which required a public hearing and a determination of whether there were any feasible and prudent alternatives. She explained that, as the determination had been made at the November meeting that this was a nonsignificant activity, it would be hard to deny the application now based on the fact that it was a significant activity. Ms. Schroeder Perez stated that they really needed the soil scientist report that had not been received in order to make a proper determination of significance. Ms. Malanca said that the Commission could then decide to deny the application due to lack of information.

The Commission then discussed whether to deny the application due to lack of information or to change their determination on this matter to significant activity and schedule a public hearing. Several members expressed the preference for denying the application and having the applicant come in with a new, complete application for this work, which would likely be determined to be significant at that time. Ms. Malanca explained that, to date, she had only mailed a letter to Mr. Carrier requesting information about the activity and advised Mr. Carrier verbally of the need for him to cease activity and obtain a permit; a formal Cease and Desist Order had not been sent to Mr. Carrier. If the Commission chose to issue a formal Cease and Desist Order, a Show Cause Hearing would then have to be held within 10 days. Several members of the Commission expressed a desire to have Mr. Carrier stabilize the site as is, rather requiring him to remove the fill he had deposited, in order to avoid creating a worse situation.

MOTION Mr. Trumbull, second Ms. Schroeder Perez, to **DENY** the application in the matter of **Jason Carrier , 109 Beeney Road – AFTER-THE-FACT – Remove Silt from Pond and Grading Work in the Regulated Area** due to the lack of information that had been requested at the November 25, 2013 regular meeting of the Inland Wetlands Commission. All grading work that had been completed is to be stabilized immediately. No other work is to be done without an Inland Wetlands Permit.

The motion to deny this application was unanimously approved.

Mr. Hall stated that, if Mr. Carrier did come in with an application for work around the pond, he recommended that the Commission require a statement from a qualified wetlands biologist as to whether or not the pond is in fact a vernal pond, and if it is, a further statement regarding the impact of the proposed work on the vernal pool. Several members concurred.

MOTION Ms. Schroeder Perez, second Mr. LaMere, to adjourn at 7:28PM; unanimously approved.

Respectfully submitted,

Stacey M. Sefcik
Recording Secretary