



TOWN OF OLD SAYBROOK
**Inland Wetlands & Watercourses
Commission**

*J. Colin Heffernan, Chairman
Charles W. Savage, Vice Chairman
Alex Bertan
Peter DeLisa (Conservation)
Mark Caldarella (Zoning)
Paula Kay (Planning)
Sandra Roberts (Economic Development)*

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Alternate Members
*Elizabeth D. Steffen, Secretary
Jay Kulowiec
Marcia Wilcox*

MINUTES
SPECIAL MEETING
Thursday, November 30, 2023
Via Hybrid Meeting
Town Hall 1st floor conference room
302 Main Street, Old Saybrook

I. CALL TO ORDER

Chairman C. Heffernan called the meeting to order at 7:00 pm.

II. ROLL CALL

Members Present: C. Heffernan, C. Savage, A. Bertan (remote), P. DeLisa, M. Caldarella, P. Kay, S. Roberts, E. Steffen, J. Kulowiec, M. Wilcox

Members Absent: None

Staff Present: L. Wacker, Assistant Town Planner; C. Maharbiz, Recording Clerk

Audience Present: 1 in person, 4 remote

III. NEW BUSINESS

A. “Atlas Construction” Show Cause Hearing

Cease & Desist Order issued on November 20, 2023

Unauthorized regulated activity within 100’ upland review area.

0 Middlesex Turnpike (Map 41/Lot 1 and Map 42/Lor 3)

Owner: 0 Middlesex Turnpike, LLC

L. Wacker explained the timeline of events leading to the Cease & Desist Order. She described what she saw when she visited the site with Christina Costa, Town Planner & Zoning Enforcement Officer, on November 20, 2023. She stated that what they saw was clearly outside the limits of what had been permitted. The Cease-and-Desist Order was issued on the same day. On November 21, she visited the site to take more pictures and described what she saw that day as well as her conversations with neighboring residents. She also reported that Mr. Ott arrived during her visit and stated that he was getting someone to install a silt fence and he was there to flag where it should go. L. Wacker further reported that C. Costa received a call on November 22nd informing her that police had been called because a neighbor, Mrs. Swain, saw someone on her property. She stated that Geoffrey Jacobson, consulting engineer for the Town, visited the site and prepared visuals, and that the Town also retained a soil scientist who could not be present at the meeting.

C. Heffernan asked if the large pile of materials deposited behind the fence were within the 100' upland review area. L. Wacker stated that nothing was flagged in the field so it was hard to tell exactly where anything was located, but gaging from the site plan and where the houses are located, it appeared to be within the upland review area. She further stated that the area where the road widens partially falls within the upland review area. C. Heffernan also asked about the cleared trees and vegetation. L. Wacker stated that in most places it is clear from the application submitted that did have the wetlands flagged and the 100' upland review area shown that a lot of activity took place within those areas.

P. DeLisa commented that at the prior meeting for this application he had asked that the applicant pay attention to sizable trees and suggested leaving in place those that were 12 inches in diameter or greater. C. Heffernan asked if L. Wacker noticed whether any trees larger than what was discussed at prior meetings had been cut down. She stated that it did appear that way from the stumps.

Consulting town engineer Geoffrey Jacobson then presented and stated that he was asked to inspect the site and relate what was approved by the Commission with what currently exists. He showed an aerial image of the site to which he added the boundary survey map submitted with the application, superimposed the approved plan and showed the wetland areas. He explained that he related the photos to existing locations on the ground. He then explained all the photos and showed where there had been clearing within inland wetland areas. Mr. Jacobson concluded by stating that it is evident that the entire wetlands setback area has been cleared, including clearing into state property and clearing at least some distance into the wetlands.

J. Kulowiec asked when the permit was issued, which L. Wacker responded was on September 21. He also asked if she received notice when work began, which she stated that she did not.

Attorney for the applicant Marjorie Shansky responded and stated that what occurred was due to unfortunate, unsupervised work that exceeded the scope of the permit. She asked the engineer for the applicant, Michael Ott, to discuss the wetland limits of disturbance and soil erosion and sediment controls installed. Mr. Ott reviewed his prior presentation of the project. He stated that the wetlands boundary was marked, but the sediment control barrier along the limits of disturbance was never installed. He then described what he saw when he went to the site on November 20, which was that all the clearing had taken place and there were downed trees. He reported being unable to see the area where the limits of disturbance were supposed to be because it was covered with downed trees. He further stated that some silt fencing had been installed but not in accordance with the plan, and that some silt fence was installed within the inland wetlands and was incomplete.

J. Kulowiec asked Mr. Ott if he was given notice of when construction started, which Mr. Ott responded he was not. He also asked if he was given authority to do periodic inspections for this site. Mr. Ott responded that his services were permitting-phase services not construction-phase services. J. Kulowiec further asked if Atlas Construction used its own workers or contracted out for the clearing work, to which Mr. Ott stated that he believed the work was contracted. He then asked if Mr. Ott knew whether a contract was executed for the work, which Mr. Ott did not know.

Attorney Shansky stated that all the requirements contained in the Cease-and-Desist order have been done, including stopping work, installing erosion and sediment controls, and attending the show cause hearing. She reported that Eric Davison and botanist Aubree Keurajian visited the site and

made certain recommendations. She requested that the hearing be continued so that an application can be submitted for restoration with appropriate plantings to correct what was done.

C. Heffernan asked Attorney Shansky for clarification about this being “unfortunately, unsupervised work.” Ms. Shansky responded that the work was not done by Atlas Construction and that she did not know the specifics of the onsite work. She further stated that it was explained to her that had the owner been paying attention, he would not have permitted that kind of excess. C. Heffernan then asked why the work was not supervised and pointed out that the tree company did not go out on its own and cut trees, that someone told them where to cut. Ms. Shansky stated that she could not speak about the nature or level of instruction given but was present to remedy the situation.

C. Heffernan expressed his opinion that the Cease-and-Desist order remain in place during any continuance granted. Town attorney Matt Willis confirmed that the Cease-and-Desist Order will stay in place and with only the show cause hearing continued to permit Atlas Construction to submit an application for the work that has been done and for the restoration. Ms. Shansky confirmed that no further work will be done and agreed not to remove any stumps.

P. Kay stated that given that the activity has exceeded wetlands flagging, it is important to know where the wetlands are on both sides. Mr. Jacobson said that he does not know and that he can only rely on the town GIS soil survey, which indicates the wetlands; only a wetlands scientist can confirm.

L. Wacker asked to confirm that the Cease-and-Desist Order for 0 Middlesex Turnpike encompasses state, town, and neighboring properties. Ms. Shansky stated that there will be no activity against Old Saybrook wetlands while the matter is continued. The Commission then discussed the approach to take regarding removal of downed trees. Attorney Willis suggested continuing the hearing to allow Atlas Construction’s experts and Town consultants to see the site and then take a bifurcated approach: (1) submit an application to remove the existing wood that has been cut and then (2) deal with the restoration thereafter. Commission members then discussed a site walk and scheduled the continuation to December 14, 2023.

M. Caldarella asked Mr. Jacobson what percentage of the site was cleared. Mr. Jacobson pointed out the cleared sections on the aerial image; he could not give a percentage but agreed that it was double the proposed activity. M. Caldarella pointed out that this was not a small mistake, but very significant.

MOTION to continue the Cease-and-Desist Hearing until December 14, 2023 at 7 p.m. in the First Floor Conference Room, Old Saybrook Town Hall; **MADE:** by C. Heffernan; **SECONDED:** by M. Caldarella; **VOTING IN FAVOR:** C. Heffernan, C. Savage, A. Bertan, P. DeLisa, M. Caldarella, P. Kay, S. Roberts; **OPPOSED:** P. Kay; **ABSTAINING:** None; **APPROVED:** 7-0-0.

IV. ADJOURNMENT

MOTION to adjourn the meeting at 8:06 p.m. to the next special meeting on December 14, 2023, 7 p.m. Old Saybrook Town Hall, 302 Main Street, 1st Floor Conference Room and via Zoom; **MADE:** by C. Heffernan; **SECONDED:** by M. Caldarella; **VOTING IN FAVOR:** C. Heffernan, C. Savage, A. Bertan, P. DeLisa, M. Caldarella, P. Kay, S. Roberts; **OPPOSED:** None; **ABSTAINING:** None; **APPROVED:** 7-0-0.

Respectfully Submitted,
Carolina Maharbiz, Recording Clerk