



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

*J. Colin Heffernan, Chairman
 Charles A Wehrly, III, Vice Chairman
 Charles W. Savage*

www.oldsaybrookct.gov

*Richard J. Esty (Conservation)
 Madeleine B. Fish (Zoning)
 Paula S. Kay (Planning)
 Vacancy (Economic Development)*

Alternate Members
*Elizabeth D. Steffen, Secretary
 Janis L. Esty
 Alyse Y. Oziolor*

MINUTES
 REGULAR MEETING
 Thursday, October 17, 2019 at 7:00 P.M.
 Town Hall, 1st Floor Conference Room
 302 Main Street, Old Saybrook

I. CALL TO ORDER

The Chairman called the regular meeting to order at 7:06 p.m.

II. ROLL CALL

Members Present and Seated: C. Heffernan, C. Wehrly, R. Esty, P. Kay, A. Oziolor, E. Steffen, J. Esty

Members Absent: C. Savage, M. Fish

Staff Present: P. Hegge, Environmental Enforcement Officer, L. Wacker, Recording Clerk

III. NEW BUSINESS

19-009 **“Fowler” Application to Conduct a Regulated Activity**

9 Kitteridge Hill Rd. (Map 50/Lot 63-6)

Applicant/Owner: Michael Fowler

Action: To determine if action should be handled administratively

Mr. Fowler explained that the pool and deck, which existed on the property when he purchased it 11 years ago, were built 35 years ago without a permit. He would like to remove the existing above-ground pool, install a new above-ground pool, and extend the deck 15 feet. C. Heffernan asked if anything else is proposed. Mr. Fowler replied that they are not planning anything additional. A. Oziolor asked whether a stream runs through the property. Mr. Fowler stated that the stream is not on his property, it is across Beaver Dam Trail, and there is no wetland vegetation in the area of the deck. C. Heffernan explained that wetlands are determined by soils. P. Kay stated that she does not see that the proposed work would harm the wetland in any way. C. Wehrly stated that he does not see the proposal having an impact on the wetland. R. Esty also stated that he felt the proposal would not further impact the wetland. C. Heffernan asked where the applicant would be discharging the pool water. Mr. Fowler stated that they have not had to discharge the pool water other than the vacuum waste, but it would be discharged away from the wetland area. C. Heffernan asked whether the applicant added the shed to the property. Mr. Fowler stated it was there previously, he just added on to it and consulted with the Land Use office on that. A. Oziolor noted that the delineation of the wetlands was done by someone who is not a soil scientist. P. Hegge stated he was unable to obtain the soil support for that delineation. All members felt the application could be handled administratively.

MOTION to move the application 19-009 “Fowler” Regulated Activity; 9 Kitteridge Hill Rd. (Map 50/Lot 63-6) to the current administrative procedural structure; **MADE** by C. Heffernan; **SECONDED** by E. Steffen; **VOTING IN FAVOR:** C. Heffernan, C. Wehrly, R. Esty, E. Steffen, P. Kay, J. Esty, A. Oziolor; **OPPOSED:** None; **ABSTAINING:** None; **APPROVED** 7-0-0.

IV. SHOW CAUSE HEARING

“Bagnati” Violation: Mowing over wetland vegetation

72 Bokum Rd. (Map 57/Lot 19-2)

Owner: Benjamin Bagnati Agent: Atty. William McCoy

Atty. William McCoy, of 736 Norwich New London Tpke., Uncasville, CT, stated that it is their position, borne out by both state statutes and town regulations, that mowing in or near a wetland is specifically not a regulated activity, it is an activity as-of-right. C. Heffernan stated that it is not as-of-right if it constitutes the removal of substantial material, both organic and inorganic. Atty. McCoy agreed. Atty. McCoy read aloud portions of the law and there was a discussion about the interpretation of the law, as well as a discussion of the state of the wetland area in question. C. Heffernan asked how many times Mr. Bagnati has mowed that lawn and whether he intends to continue mowing that lawn. Mr. Bagnati stated that the property has been mowed for three seasons of the year for 35 years, and that he intends to continue mowing that lawn. C. Heffernan asked if Mr. Bagnati has taken steps to identify what kinds of plants he is mowing. Mr. Bagnati stated that he does identify what he is mowing so that he does not mow things other than grass, such as sticks, rocks, plants or shrubs. Mr. Bagnati stated that he uses a walk-behind mower. Atty. McCoy stated that if the Commission intends to find that a violation has occurred, they need to first find evidence of an alleged violation. C. Heffernan stated that occurred in the previous meeting. Atty. McCoy stated that he and his client were not at that meeting. C. Heffernan asked whether Mr. Bagnati has mowed over the wetland flags. Mr. Bagnati responded that he sometimes mows when it is dark and may have run over the wetland flags with the mower or may have hit them with the weedwhacker. He also stated that he has mowed beyond the flags into the wetland area. Atty. McCoy agreed that Mr. Bagnati stated he mowed inside the wetlands, but the question remains whether mowing within the wetlands constitutes the removal of a substantial amount of material. C. Heffernan stated that they have established the evidential predicate that Mr. Bagnati mowed inside the wetlands. C. Heffernan stated that the question now becomes whether or not mowing inside the wetlands can constitute a substantial removal of material. Atty. McCoy agreed that is one question, and that the other question is whether or not this is simply the incidental enjoyment of a residential property, and whether or not that removal constitutes a substantial amount of material as defined by the statutes. There was further discussion of the definitions in the statutes. Atty. McCoy stated that there is a concept of selective enforcement when the complainant does the same thing that brought Mr. Bagnati here today. Further discussion of the interpretation of the law took place. R. Esty stated that mowing at night prevents Mr. Bagnati from doing due diligence in identifying wetland vegetation, and he would need to have some education as to identifying wetland species, and in addition, regular mowing during the growing

season prevents the wetland vegetation from growing. Further discussion took place. Atty. McCoy stated that he could not present anything more in this case other than the statutes of the regulations and what they say in common sense terms. C. Heffernan asked P. Hegge what the next step would be if the Commission was to find a violation in this case. P. Hegge stated that Mr. Bagnati would need to submit an acceptable restoration plan by the next meeting, otherwise civil penalties would be imposed.

MOTION to find that the mowing over wetland vegetation at 72 Bokum Rd. (Map 57/Lot 19-2) constitutes a violation: **MADE** by C. Heffernan; **SECONDED** by R. Esty; **No vote was taken. After a discussion, C. Heffernan withdrew the motion.**

C. Wehrly stated that he would like to get the opinion of the Commission's attorney on the matter. Photos showing the area of Mr. Bagnati's property that is being mowed were passed around. C. Heffernan asked Atty. McCoy if they would accept a cease and desist order to stop mowing within the flagged wetlands. Atty. McCoy suggested the IWWC consult with their attorney as to whether they have jurisdiction in the matter. After a short conference with his client, Atty. McCoy stated that Mr. Bagnati would like some sense that if he ceases to mow the wetland proper, he will still have the right to conduct regular maintenance of his property in the wetland area. C. Heffernan offered to have Atty. McCoy draft language outlining an agreement for the maintenance of the property that Mr. Bagnati would be comfortable with, to be presented at the next meeting.

MOTION to continue the matter "Bagnati", 72 Bokum Rd. (Map 57/Lot 19-2) Mowing over wetland vegetation, to the next regularly scheduled meeting of November 21, 2019, affording Atty. McCoy the opportunity to draft proposed settlement language; **MADE** by C. Heffernan; **SECONDED** by E. Steffen; **VOTING IN FAVOR:** C. Heffernan, C. Wehrly, R. Esty, E. Steffen, P. Kay, J. Esty, A. Oziolor; **OPPOSED:** None; **ABSTAINING:** None; **APPROVED 7-0-0.**

V. REGULAR BUSINESS

A. Meeting Minutes: September 19, 2019

It was noted that the roll call should have listed M. Fish as present and seated, and E. Steffen as present not seated.

MOTION to accept the regular meeting minutes of September 19, 2019 as amended; **MADE** by C. Heffernan; **SECONDED** by E. Steffen; **VOTING IN FAVOR:** C. Heffernan, C. Wehrly, R. Esty, E. Steffen, J. Esty, P. Kay, A. Oziolor; **OPPOSED:** None; **ABSTAINING:** None; **APPROVED:** 7-0-0.

B. Correspondence & Announcements

MOTION to pay Siegel, O'Connor, O'Donnell & Beck, P.C., invoice #163411, in the amount of \$1,280.00; **MADE** by C. Heffernan; **SECONDED** by E. Steffen; **VOTING IN FAVOR:** C. Heffernan, C. Wehrly, R. Esty, E. Steffen, J. Esty, P. Kay, A. Oziolor; **OPPOSED:** None; **APPROVED:** 7-0-0.

C. **Committee, Representative & Staff Reports**

14 Dogwood Lane (Map 007/Lot 041) Permit # 18-016 - P. Hegge reported that J. Wren contacted him to ask whether modifications to the approved application, which includes a smaller footprint moved further from the wetlands, could be handled administratively or if they would need to submit a new application. C. Heffernan asked if there was an urgency to this matter, because due to a substantial amount of turnover on the Commission, P. Hegge, C. Costa and the Commission's atty. will be sitting down to better define what should be handled administratively and what should be handled by the IWWC, in order to give more concrete guidance to staff. C. Heffernan would like to table all administrative matters until they can have that conversation. The consensus was that the 14 Dogwood Lane proposal could be handled administratively. P. Kay would like to allow P. Hegge to continue to handle administratively any projects that clearly have no impact, while the guidelines are being discussed. P. Hegge will continue to bring proposals that aren't clearly administrative to the Commission.

6 Trails End (Map 016/Lot 068-0004) - P. Hegge reported that there was a complaint about the filling in of wetlands on this property. P. Hegge observed trucks dumping fill into what appeared to be a wetland area. DEEP, who has primary jurisdiction over the issue, is currently overseeing the property. DEEP has not yet made a determination as to whether they want to decline jurisdiction and may be turning it over to IWWC. The IWWC will wait for the DEEP's determination.

210 Essex Road (Map 058/Lot 053) Permit #12-016 – P. Hegge reported that the Tougas permit has been signed off on.

D. **2020 Aquifer Protection Agency Calendar**

The IWWC could not vote on this matter since the APA was not officially meeting.

VI. **ADJOURNMENT**

MOTION to adjourn the meeting at 8:35 p.m. to November 21, 2019 at 7:00 p.m., Town Hall, 302 Main Street; **MADE** by C. Heffernan; **SECONDED** by R. Esty; **VOTING IN FAVOR:** C. Heffernan, C. Wehrly, R. Esty, P. Kay, J. Esty, E. Steffen, A. Oziolor; **ABSTAINING:** None; **APPROVED:** 7-0-0.

Respectfully Submitted,

Lynette Wacker
Recording Clerk