

**TOWN OF MONTVILLE  
INLAND WETLANDS COMMISSION  
310 NORWICH-NEW LONDON TURNPIKE  
UNCASVILLE, CONNECTICUT 06382  
TELEPHONE: (860) 848-6779 – FAX: (860) 848-2354**

**REGULAR MEETING MINUTES**

**Thursday, November 17, 2016 – 7:00 P.M.**

**LOCATION: MONTVILLE TOWN HALL, Council Chambers**

**A. Call to order**

Chairman Douglas Brush called the meeting to order at 7:00 p.m.

**B. Roll call**

Present were Chairman Douglas Brush, Secretary Philip Houk, Commissioners Sandra Berardy, Jeffrey Greiner, Charles O’Bday III, and Howard V. Riske, Jr. Also present was Zoning and Wetlands Enforcement Officer (ZWEO) Liz Burdick.

**C. Minutes. Approve the Minutes of the October 20, 2016 Regular Meeting.**

Motion made by Commissioner O’Bday, seconded by Commissioner Houk, to approve the minutes with the following amendments:

Page 3, 2<sup>nd</sup> Paragraph, 1<sup>st</sup> Sentence:

Chairman Brush requested the submission of a plan, generated by a *licensed* Engineer, showing where ...

Page 4, Old Business, Item 2, 1<sup>st</sup> Sentence:

ZWEO Burdick reviewed the application to replace the top portion of an existing retaining wall and repair/rebuild an existing ~~Boat~~ *Boat* Shed as presented ...

**Discussion: None. Voice vote, 5-0-1, all in favor. Voting in Favor: Commissioners Brush, Houk, Greiner, O’Bday, and Riske. Voting in Opposition: None. Voting in Abstention: Commissioner Berardy. Motion carried.**

**D. Public Hearings – none**

**E. Show Cause Hearing(s):**

**1. Route 85** (Map 5, Lot 29) – Double Down, LLC/Matthew T. Kobyluck – Show Cause Hearing for Cease & Desist Order - Unauthorized Activities in Regulated Areas.

ZWEO Burdick presented a brief Staff Report, including information regarding the property, its history, a summary and history of the enforcement actions that have taken place to date, and photographs reflecting the activities and resulting disturbance to the property. The site, which has approximately 8,990 SF of regulated inland wetlands, is located in the Light Industrial (LI) Zoning District. It is estimated that approximately 14 of

the property's 18.4 acres has been disturbed due to the activities. After observing construction activities taking place on the site, the ZWO spoke with the property owner, the work, which request he disregarded. As the result, a Cease & Desist Order was issued on November 15, 2016 and a Show Cause Hearing was scheduled. The ZWEO requests that the Commission uphold the Order, which includes the following Required Corrective Actions:

1. Immediately stop all work at the site.
2. Immediately install and maintain in good working order, erosion & sediment controls in the form of a silt fence backed with staked hay bales at limits of the delineated wetlands and at the limits of the 50' upland review area.
3. Immediately engage a professional engineer, land surveyor and soil scientist to prepare a plan to address remediation of the wetland and both interim and permanent stabilization of all disturbed soils on the site.
4. The remediation plan shall be submitted to the Montville Inland Wetlands & Watercourses Commission ("Commission") no later than thirty (30) days from receipt of this Order. The Commission will review the remediation plan for completeness at its following regularly scheduled meeting date and notify you if the plan is approved to remediate the violation or if additional corrective measures are required to be included in the remediation plan.
5. Implement completely, to the full satisfaction of the Commission, all restoration and mitigation activities proposed and conditioned by the deadlines prescribed within such approved Corrective Action Remediation Plan.

ZWO stated that, because she was not aware of the existence of any wetlands delineations at that time of the July 2016 Cease & Desist Order, which was also disregarded, she included a request for the owner to provide the delineation of the inland wetlands areas or an official document generated by a Soil Scientist stating that there are no inland wetlands located on the property.

Property Owner Matthew Kobyluck presented his timeline of events and communications he has had with the ZWO, stating that she has been aware of and allowed the activities that have been taking place on the site. Since the 1970s or prior, the property has been a gravel pit. As part of the stormwater management of the site, a sedimentation basin was constructed on the property. It is this sedimentation basin that is being referred to by the ZWO as the inland wetlands area. He clarified that there was no construction activity taking place on the property, but land clearing activity, which the ZWO was aware of and approved. The activity included the removal of entire trees with heavy equipment resulting in the July 2016 Cease & Desist Order. The work was continued for approximately two (2) days following the issuance of the Order until the clearing was completed and no further

land clearing activity has taken place since this time. In addition, in order to access the property, he must drive on the paved entrance, which is located within five (5) feet of the sedimentation basin. There are no tributaries feeding into the basin and the basin is used to merely collect and process the stormwater that is collected on the site. He is aware of the Regulations, has been communicating with the Staff, and has not graded, removed any earth, or excavated the property in any way. He has hired the services of a Land Surveyor, Engineer, and Soil Scientist who are working on the proposed plans for the site.

Most recently, he imported approximately 300 mafia blocks to the site using an excavator. He also moved an eight to ten inch rock sitting on the surface in the center of the driveway with a bucket loader so that vehicles would not drive over it. It is at this time that the ZWO approached him and verbally requested that he stop work because he was conducting grading activities within 50' of the upland review zone. It is this action that resulted in the Cease & Desist Order and this evening's Show Cause Hearing.

He recited an email he wrote to the ZWO disagreeing with her findings and expressing his dismay with her and the Department's unprofessional, disrespectful, and harassing conduct. There was no excavation or grading activities being conducted on the site and he was not building a retaining wall, as the Order claims; nor was the activity, i.e., the storage of the mafia blocks, occurring within the upland review zone. At the request of the ZWO, the perimeter of the basin has been rimmed with wood chips as it was not conducive to install a silt fence due to a berm that was constructed as part of the basin on the north and west sides and the existence of a huge slope located along the east side. This particular activity was inspected and approved by the ZWO. He reiterated that there is no activity being conducted on the site that is violating any of the Town's Regulations and requested that both the July 2016 and November 2016 Cease & Desist Orders be withdrawn.

Chairman Brush clarified that a permit for a gravel pit operation has not been issued for the property and stated that the clear-cutting activity is not permitted under their Regulations. He also stated and Mr. Kobyluck agreed that the sedimentation basin, though man-made, is considered a watercourse. It was explained that the appearance of work that has begun prior to the issuance of the proper permits has resulted in the necessity of the Cease & Desist Order. Contrary to Mr. Kobyluck, Chairman Brush stated that, according to the Town's Regulations, the clear-cutting of a site is not allowed without a permit, thus constituting a violation. The proper paperwork will need to be submitted and, until such items are received, reviewed, approved, and a permit is issued, the Cease & Desist Order must stay in effect.

Mr. Kobyluck stated that his ultimate goal is to excavate the property and establish a crushing operation at this location and is currently working with a Land Surveyor, Engineer, and Soil Scientist to submit and apply for an Inland Wetlands Permit within the

next two to three weeks and submit and apply for Planning & Zoning approval immediately following that approval.

ZWO Burdick stated that the site was heavily wood as the result of a number of years of inactivity, according their records. Prior to and following Mr. Kobyluck's purchase of the property, correspondence and discussions indicate that he was informed and was aware that both Inland Wetlands and Planning & Zoning permit(s) would be required before any activity took place on the property. She reiterated the witnessed activities and conversations and correspondence that took place in relation to these activities for which no permits were issued or erosion/sediment controls submitted/installed. Though he is aware that he is required to obtain the proper permits prior to conducting any work on the property, he has, nevertheless, continued to conduct work on the property and disturb the soil. In her opinion, Mr. Kobyluck has conducted grading activities right up to the wetlands area, clearly disturbing the soil that can potentially impact the wetlands. She reiterated her request to uphold the Order to avoid any further impact until his requests are submitted and approved by the Inland Wetlands and Planning & Zoning Departments. The site, which was once overgrown and stable, is no longer stable.

Mr. Kobyluck refuted the Town's records, which indicate that there has been no activity on the property since 1985, stating that Tilcon, from whom he purchased the property, imported and exported materials to and from the site and was screening material at the site as recently as last year. Prior to the clearing, the entrance to the site was home to invasive species and opened up to a clear area where the activities were being conducted. He requests that the Order be withdrawn as the activities stated on the Order are not a true reflection of the actual activity that took place. He reiterated that he feels that he is being discriminated against, harassed, and targeted in comparison to those who are conducting similar activities without the proper permits for merely driving on to his property.

Chairman Brush stated that because a watercourse currently exists on the property, a permit is required for any activity being performed on that property. Any activity prior to the present is not relevant to the discussion at this time.

Referring to item 2 of the Required Corrective Actions of the Cease & Desist Order, Mr. Kobyluck argued his need to drive by the sedimentation basin, which is located within 50' of the upland review area, in order to access the property, and added that sedimentation controls are already in place. ZWEO Burdick felt that the placement of hay bales would provide an additional barrier to the sedimentation basin and should not pose an issue as the Order does not block access to the property. As previously stated to Mr. Kobyluck, she agrees with and approves of any test pits, test holes, etc. that are required for the issuance of any permits.

Because the Commission is unable to modify the decision on the placement of silt fence backed with hay bales without having personally viewed the property, Chairman Brush recommended that the Commission uphold the Cease & Desist Order as written and schedule a site walk.

**Motion made by Commissioner Houk, seconded by Commissioner Greiner, to uphold the Cease & Desist Order, as written. Discussion: Any modifications will be made at the next regular meeting following the site walk. Voice vote, 6-0, all in favor. Motion carried.**

**Motion made by Commissioner Greiner, seconded by Commissioner Riske, to schedule a site walk for Saturday, November 26, 2016 at 10:00 a.m. at Route 85 (Map 5, Lot 29), Oakdale, CT. Discussion: None. Voice vote, 6-0, all in favor. Motion carried.**

**F. Remarks from the public not relating to items on the agenda – *None.***

**G. Old Business:**

- 1. 314 Route 163** (Map 82, Lot 62) – Donny Jacobowitz – Update ongoing enforcement action - Cease and Desist Order – Unauthorized Activities in Regulated Areas (Tabled from the 10/20/2016 Meeting).

ZWO Burdick provided an updated report on the Order, stating that no work has been conducted to correct the violations. When contacted, the owner stated that the tree company that created the violation has not responded to his repeated requests to remove the felled trees from the site and he does not have adequate funds to hire another company to complete the work before the deadline. Having spoken with the owner today, she was informed that the trees would be removed over the weekend. Though the deadline has passed, she is hopeful that the trees will be removed. Because the Land Surveyor and Engineer are unable to review the area until the trees are moved, the site plans will not be completed. As such, she recommended that:

1. The Cease & Desist Order remain in place.
2. That proper erosion & sediment controls be installed and maintained in good working order until the site is permanently stabilized and that the controls be monitored by a qualified professional hired by the property owner on a weekly basis and after storm events to insure same.
3. The property owner or his representative provide the Commission with a monthly status report until such time as corrective actions have been completed.
4. That a passbook bond for the site stabilization in the amount of \$2,500.00 be posted with the Town of Montville on or before November 30, 2016 and remain until such time as corrective actions have been completed.

Chairman Brush expressed his concerns regarding the steep slope where erosion might occur into the wetlands area, which would require him pulling it back which would be costly. It is hoped that the bond will expedite the process and controls will be in place in case the erosion controls result in failure.

**Motion made by Commissioner Berardy, seconded by Commissioner Greiner, to leave the Cease & Desist Order as Upheld at the November 17, 2016 meeting. Discussion: None. Voice vote 6-0, all in favor. Motion carried.**

2. **216IWC14 – 441 Fire Street** (Map 44, Lot 6), Oakdale, CT – Applicants/Owners: Mark Desrosiers & Alexandra Cortes – Construction of New Single-Family Residence & Associated Site Improvements. (Tabled from the 10/20/2016 Meeting - Decision Required Date 12-23-2016).

Chairman Brush stated that Commissioners Houk, O’Bday, and he attended the Site Walk of the property. Commissioner Houk noted that he resides on Fire Street and felt that he would be able to provide an objective decision.

ZWO Burdick reviewed and provided an update of the application. She recommended tabling the item until the Commission’s December meeting to provide the Applicant with sufficient time to submit a revised site plan reflecting the following:

1. the planting plan for a dense stand of native shrubs and trees as close to the relocated house location and revised proposed clearing limits to reduce lawn area, per Soil Scientist recommendation

*This item was revised as the Owner did not wish to relocate the home and septic system a minimum distance of 50’ from Deep Hollow Brook.*

2. note the date of wetlands & watercourse delineation by certified Soil Scientist
3. proposed retaining wall construction detail

*The Owner/Applicant stated that he is willing to forgo the retaining wall. Should he opt not to construct the retaining wall, he will need to provide a grading plan, which might have more impact on the wetlands. Staff recommended the retaining wall remain.*

4. driveway surface and detail
5. sight line from proposed driveway location
6. riprap splash pad at footing drain outlet
7. show distances of proposed dwelling unit to side boundary lines
8. Submit letter from Uncas Health District approving proposed septic system location

*Mr. Desrosiers stated that the Uncas Health District has observed the deep test pits and conducted a percolation test. He has not yet applied for the permit.*

Chairman Brush stated that, having viewed the property, he felt that, due to the existing limitations of the site, the placement of the proposed home is reasonable.

Applicant/Owner Mark Desrosiers provided a verbal and written agreement to extend the Commission's decision until the following month.

**Motion made by Commissioner Greiner, seconded by Commissioner Riske, to table application #216IWC14 – 441 Fire Street, Oakdale, CT, to the December 15, 2016 Regular Meeting. Discussion: None. Voice vote, 6-0, all in favor. Motion carried.**

#### H. New Business:

1. **216IWC15 – 669 Route 163** (Map 286, Lot 384), Montville, CT – Applicant/Property Owner, Town of Montville – Phase I: Reconstruct the upper transfer station area to provide improved entrance and exit to provide better sightlines and more vehicle stacking and to provide improved drainage system and water quality treatment. (Decision Required Date January 20, 2017).

Soil Scientist & Town Engineer Bob Russo, CLA engineers, provided a brief summary of the application, stating that the Town has received a State Grant to fund Phase I of the rehabilitation of the Town's Transfer Station, improving both its function and egress. The project will entail two phases. Phase I of the project will involve improvements in the area surrounding the entrance and exit of the site. A plan of the existing conditions and plot plan were reviewed. Access into the facility will be located away from Chesterfield Road and the exit out of the facility will be located at Chesterfield Road, creating a four-way intersection. The area of work being proposed is currently occupied by pavement, sheds, and recycling bins. He indicated the location of the wetlands surrounding the site, including Wheeler Pond, an existing native soil berm separating the recycling and transfer facility, a stream, and wooded swamps as well as a paved swale allowing surface water run-off to travel into the Pond. One of the major improvements being proposed includes a new drainage system to collect the stormwater and a temporary basin to be located at the far end of the site for the treatment of the stormwater. In addition, some work will be conducted in the 50' upland review zone, including the replacement of the existing paving and placement of the recycling bins. Phase II will involve the area closer to Wheeler Pond. Phase I of the Project will not involve any direct wetlands impact and will involve upgrades to the stormwater management system. He welcomed a site walk of the property and stated that both he and Engineer Ellen Bartlett will also be present at their next meeting for further discussion. The Town is in the process of receiving a second Grant for Phase II of the project.

In response to Chairman Brush, Soil Scientist Russo stated that a previous plan to move the entrance ramp was not executed as the opportunity to obtain the grant was presented. Phase I of the project will include the completion of one of three stormwater treatment basins and check dams for the swale. Phase II will include the completion of the remaining two basins

and the catch basins and piping that will collect the stormwater from the site and deposited into the treatment basins. As such, Phase I includes temporary measures for the management of the stormwater. A temporary stockpile enclosed with a silt fence on top of the landfill will be installed during Phase II of the project.

In response to Commissioner O’Bday, the 20’ sewer easement is an existing easement. One of the considerations included the capping of the landfill. Any proposed disturbance to the cap will need to be applied through the DEEP (Department of Energy and Environmental Protection). As such, the proposed activity indicated for Phase II of the Project for brush and leaf composting will take place above the existing cap and access to the area will involve a long looping route so as ensure that the cap will not be disturbed.

**Motion made by Commissioner Houk, seconded by Commissioner O’Bday, to table application #216IWC15 – 669 Route 163 (Map 286, Lot 384), Montville, CT, to the December 15, 2016 Regular Meeting. Discussion: None. Voice vote, 6-0, all in favor. Motion carried.**

2. **216IWC16 - 16 Fielding Drive** (Map 87, Lot 85), Uncasville, CT – Applicant, Anthony Payette – Property Owner, Patricia Kruszewski – Construction of 12’ x 12’ Deck in Regulated Area. (Decision Required Date January 20, 2017).

*The Application was withdrawn.*

3. **216IWC17 – 1650 Route 85** (Map 11, Lot 2A), Oakdale, CT – Applicants/Property Owners, Roger & Linda Phillips – Regulated Activities for Construction of Mini Golf Course. (Decision Required Date January 20, 2017).

On behalf of the Applicants/Owners, Certified Soil Scientist Demien Sorrentino, Boundaries, LLC, presented the application to the Commission. Located on the property is palustrine forested wetlands, a splash pad, and a brook. The portion of the property in discussion includes an approximately 0.5 acre area located in the area of the ice cream shop, septic systems for the ice cream dipper and snack bar, and splash pad. The pieces of the golf course will involve pre-cast and cast-in-place concrete panels that are assembled and carpeted over; obstacles and other attributes of the golf course will be constructed on the site. The property is primarily landscaped with crushed stone and, in addition to the amenities, will include a river stone around the property. The holes will have false bottoms and, underlain with crushed stone, the stormwater generated from the impervious surfaces of the property will be infiltrated back into the ground in the area below the golf course. Weather permitting, the Applicants/Owners plan to conduct the grading and filling activity and construction of the retaining wall during the winter months and begin construction of the golf course in early Spring. No smoking, food or beverages will be allowed on the course. The Applicant/Owner will be present at the next meeting.

The Project Narrative was reviewed and an e-mail stating the approval of the proposed grading in the area of the existing septic system by Michael J. Kirby, Registered Sanitarian, Uncas Health District, was read into the record. The regulated proposed activities include:

1. install erosion and sediment controls;  
*This activity includes the installation of a 6' wide wood chip berm to protect the wetlands area from the grading activity.*
2. clear existing vegetation, remove stumps, and dispose of all excess material off-site;
3. remove topsoil and stockpile for use during site restoration, install sediment fence or wood chip berm around base of stockpile;
4. re-grade the subject area  
*The area will be graded with an approximately 5% slope leading to the wetlands and utilize an estimated 800 cubic yards of fill. The deepest area of fill will be approximately 3' in the center and 5' along the edge. The fill will contain gravel material located on the site.*
5. install boulder retaining wall;
6. install temporary erosion control blanket;
7. mulch all disturbed areas for temporary stabilization.

**Motion made by Commissioner O'Bday, seconded by Commissioner Greiner, to table application #216IWC17 – 1650 Route 85 (Map 11, Lot 2A), Oakdale, CT, to the December 15, 2016 Regular Meeting. Discussion: None. Voice vote, 6-0, all in favor. Motion carried.**

**4. Approval of the 2017 Meeting Schedule.**

**Motion made by Commissioner O'Bday, seconded by Commissioner Riske, to approve the 2017 Meeting Schedule. Discussion: It was noted that the December meeting will be held on the second Thursday of the month due to the Christmas holiday. Voice vote, 6-0, all in favor. Motion carried.**

**I. Correspondence.**

The latest issue of *The Habitat* was provided to the Commission. In addition, ZWO Burdick reported that she attended the Connecticut Association of Conservation & Inland Wetlands Commission's 39<sup>th</sup> Annual Meeting & Environmental Conference and is in the process of obtaining some of the handouts that were distributed at the workshops for the Commission, including model regulations for conservation & environmental cluster subdivisions and wetlands exemptions.

**J. Other Business** – *none*

**K. Executive Session** – *none*

**L. Adjournment.**

Motion made by Commissioner O’Bday, seconded by Commissioner Riske, to adjourn the meeting at 9:09 p.m. Voice vote, 6-0, all in favor. Meeting adjourned.

Respectfully Submitted by:

Agnes Miyuki, Recording Secretary for the Town of Montville

**AN AUDIO RECORD OF THE MEETING IS ON FILE IN THE MONTVILLE TOWN  
CLERK’S OFFICE**