

**TOWN OF EAST WINDSOR
CONSERVATION COMMISSION
INLAND/WETLANDS WATERCOURSE AGENCY**

**Regular Meeting
February 3, 2010**

CALL TO ORDER: Chairman Ceppetelli called the Meeting to order at 7:00 p.m. in the Town Hall Meeting Room, 11 Rye Street, Broad Brook, CT.

ESTABLISHMENT OF QUORUM:

Present: Regular Members Michael Ceppetelli (Chairman), Michael Koczera, John Malin, Richard Osborn, Michael Sawka, Ron Savaria, Robert Slate, and Alternate Members Alan Baker, Ronald Hocutt and Kathryn Roloff.

Unable to Attend: All Regular and Alternate Members present.

Chairman Ceppetelli noted the establishment of a quorum with seven (7) Regular Members and three (3) Alternate members. Chairman Ceppetelli reported all Regular Members will serve on the Violation Hearings this evening unless someone steps down; Alternate Members will not participate in discussion of the Violation Hearings. Also present was Wetlands Agent Newton.

LET THE RECORD SHOW Selectman Richard Pippin, the Board of Selectmen's liaison to this Commission, Town Planner Whitten, and Town Engineer Norton were also present.

AGENDA ADDITIONS:

MOTION: To ACCEPT the following ADDED AGENDA ITEMS: NEW APPLICATIONS TO BE RECEIVED/1) 86 Winkler Road – Application of G-III Holdings, LLC for the construction of a Single Family Home and shed located within the 150' upland review area. Total parcel consists of 3.08 acres. Assessor's Map #15, Block #17, Lot #19-5. This property is located in the west side of Winkler Street nearest intersection being Newberry Road. This property will be served by public water and sewer; AND PERMIT EXTENSION REQUESTS/1) Newberry Village Active Adult Development (Newberry Road) – Newberry Village, LLC is requesting an extension of their Inland Wetland Watercourses Permit #1351 & #1358 for the construction of an active adult community. This development is located on the north side of Newberry Road at the intersection of Winkler Road. This development is served by public water and sewer. Assessor's Map #15, Block #17, Lot #19, 20 & 21; AND PERMIT EXTENSION REQUESTS/2) Mansions at Canyon Ridge (North Road) – The Mansions at Canyon Ridge, LLC is requesting an extension of their Inland Wetland Watercourse Permit #1360 to conduct regulated activities associated with the construction of a 220 unit apartment development. This development is located on the north side

of North Road nearest intersection being Yosky Road. This development is served by public water and sewer. Assessor's Map #9, Block #36, Lot #46.

Osborn moved/Slate seconded/

VOTE: In Favor: Unanimous (Ceppetelli/Koczera/Malin/Osborn/Savaria/Sawka/Slate)

APPROVAL OF MINUTES – 1/6/2010:

MOTION: To ACCEPT the Minutes of Regular Meeting dated January 6, 2010 as written.

Savaria moved/Osborn seconded/

VOTE: In Favor: Ceppetelli/Osborn/Savaria/Slate

Opposed: No one Abstained: Koczera/Malin/Sawka

NEW PUBLIC HEARING (on Inland Wetlands applications/1): None

NEW BUSINESS: None.

Chairman Ceppetelli requested the Commission consider going out of order with regard to consideration of Agenda Items and take the **VIOLATIONS** at this time.

MOTION: To TAKE THE AGENDA ITEMS OUT OF ORDER TO CONSIDER **VIOLATIONS (FOR ACTION OR SHOW-CAUSE HEARING)/1. 68 Newberry Road – Revocation of Permit No. 1406 – Installation of a Farm Road (show-cause hearing), AND, 2) 68 Newberry Road – Correction Order – Work in Regulated Area Without Permit (for action on conditions of Order).**

Slate moved/Osborn seconded/

VOTE: In Favor: Unanimous (Ceppetelli/Koczera/Malin/Osborn/Savaria/Sawka/Slate)

VIOLATIONS (FOR ACTION OR SHOW-CAUSE HEARING)/1. 68 Newberry Road – Revocation of Permit No. 1406 – Installation of a Farm Road (show-cause hearing); AND, 2) 68 Newberry Road – Correction Order – Work in Regulated Area Without Permit (for action on conditions of Order):

Chairman Ceppetelli read the descriptions of both Items of Business. Appearing to represent the Applicant was Attorney Timothy Brignole; assisting him was his associate, Janet Brooks. The Applicant, Steve Dearborn, was present in the audience.

Chairman Ceppetelli questioned Attorney Brignole if he would like to present information regarding this violation? Attorney Brignole suggested he felt the burden was on the Commission to establish certain factors with regard to a Show-Cause Hearing; they (the Applicant's representatives) would then establish a Show-Cause why those aren't violations. Chairman Ceppetelli requested Wetlands Agent Newton give background on the issue. Attorney Brignole objected to the reference of "background"; he felt the information is not background but is rather criteria the Commission must meet.

Wetlands Agent Newton submitted to the Commission a memo dated 2/2/2010 from herself to IWWA Members, and a copy of Revocation Order. Wetlands Agent Newton READ FOR THE RECORD memo dated 2/2/2010 to the IWWA Members regarding procedures for Action Hearing and Show Cause Hearing. She noted the revocation of Permit was discussed at the Commission's 12/2009 Meeting for a Show Cause Hearing; the revocation was issued on 12/28/2009 and served by sheriff for Permit #1406 - installation of farm road, dated 4/2/2008 for property located at 68 Newberry Road, East Windsor. The Town of East Windsor and the Wetlands Agency voted at the December 2009 Meeting to revoke the Permit for the installation of the farm road at 68 Newberry Road and required the removal of the fill and for the area to be regraded back to its original topographical grade. The reasons for the revocation included:

- * non-compliance with Permit conditions, specifically Town Staff was not notified and was not present for the removal of the lower portion of the farm road that needed to be approved. Town Staff didn't approve the material as being acceptable to be used in a wetland area - Condition #17 of Permit #1406.

- * non-compliance with Permit conditions, specifically additional work completed in a regulatory area which requires the filing of a new or modified Inland/Wetlands Application - Condition #11 of Permit #1406.

- * non-compliance with Permit conditions, specifically the timeframe required under Permit #1406 has expired. A request for an extension was not obtained. All extensions granted expired October, 2009.

- * non-compliance with Permit conditions, specifically, additional work completed beyond the scope of the approved Permit and associated site plan, Permit #1406, site plan named "Compilation Survey, prepared for Newberry Road Enterprises, LLC, 68 Newberry Road, East Windsor by Landmark Surveys, dated 1/18/08, with revisions dated 2/16/08, 4/2/08, and 4/8/08."

- * Specifically asphalt millings have been placed on the northern portion of the farm road outside the scope of the approved site plan and Permit.

Wetlands Agent Newton stated those are the allegations set forth in the Revocation.

Chairman Ceppetelli questioned if Attorney Brignole had any comments. Attorney Brignole suggested he was waiting for proof of the allegations; he felt it is up to the Zoning Enforcement Officer to prove those allegations in accordance with State Statutes and the criteria required. Attorney Brignole suggested if the Zoning Enforcement Officer was prepared to do that then they are prepared to address them.

Wetlands Agent Newton reiterated, very specifically, Town Staff was never notified nor was present for the removal of the lower portion of the farm road; our office was not notified or was present, the lower portion of the farm road is partially removed; non-compliance with Permit conditions; additional work completed in a regulated area, which requires the filing of a modified or new Wetlands Application; additional fill was placed on the farm outside of the area that was approved on the plan. Wetlands Agent Newton submitted photos of the site. Wetlands Agent Newton continued, non-compliance with Permit conditions specifically the timeframe under Permit #1406 to complete the regulated work has expired, Mr. Dearborn asked for an extension at our July Meeting until October 2009, and was granted same; he never asked for an extension beyond that time, therefore the Permit has expired. Non-compliance with Permit conditions, asphalt millings

have been placed on the northern portion of the farm road which was outside the scope of the approved site plan and Permit. Wetlands Agent Newton reported she didn't take photos of the millings, but other Staff, whom were present with her during the site walk, are present this evening. Wetlands Agent Newton reported others included in the site walk were Mr. Dearborn, the ACOE (Army Corp of Engineers) Rachel Dearborn (staff for Mr. Dearborn) and East Windsor Town Planner Laurie Whitten. Wetlands Agent Newton requested Town Planner Whitten to report on what she saw.

Town Planner Whitten introduced herself and indicated that during that site walk she personally witnessed millings placed on the upland area and beyond; those millings were causing drainage issues. Town Planner Whitten suggested the drainage issues sort of began the review of the site conditions. Town Planner Whitten apologized but didn't recall the specific date of the site walk. Wetlands Agent Newton reported the site walk occurred in November. Wetlands Agent Newton reported the area being discussed was the northern portion of the farm road which has the millings on it. The area which she referred to before that was removed without presence of Town Staff, which was a Permit condition placed on that Permit by this Board and accepted by the Applicant at the time, refers to the lower portion of the farm road where it says "existing road should be removed and restored to the existing grade." Town Planner Whitten indicated "this" portion of the road has been removed, "this" portion remains, and she believes it still remains today. She also referenced the area where the asphalt millings remain.

Wetlands Agent Newton reported that when she began employment in East Windsor last November she was asked to attend a site visit with Town Planner Whitten and Steven Dearborn; at that time the lower portion of the road had been removed without the knowledge of Town Staff. Wetlands Agent Newton reported documentation of the 11/17/08 site visit has been made part of the record. Attorney Brignole questioned if the documentation being referred to by Wetlands Agent Newton for the site visit is the document titled "N.F. Pierson Development Co.?" Wetlands Agent Newton replied affirmatively, noting that was her photocopy; she had written notes and the date on the document for the record. Wetlands Agent Newton submitted photos of the farm road as it appeared when it was being installed as an original violation and then as a Permit activity by the Board.

Wetlands Agent Newton requested a five minute break to return to the Planning Office for copies of the latest photos

MOTION: To TAKE A FIVE MINUTE BREAK at 7:16 p.m.

Savaria moved/Koczera seconded/

VOTE: In Favor: Unanimous (Ceppetelli/Koczera/Malin/Osborn/Savaria/Sawka/Slate)

The Commission RECESSED at 7:16 p.m. and RECONVENED at 7:24 p.m.

MOTION: To CALL THE MEETING BACK TO ORDER AT 7:24 p.m.

Osborn moved/Slate seconded/

VOTE: In Favor: Unanimous (Ceppetelli/Koczera/Malin/Osborn/Savaria/Sawka/Slate)

Wetlands Agent Newton submitted the following photos:

- 1) One sheet of multiple pictures. Wetlands Agent Newton suggested these various photos show where the farm road stops in relation to the abutting neighbor's fence; there is a 4' to 5' space in between. Wetlands Agent Newton compared those photos to:
- 2) Photo from the perspective of Wetlands Agent Newton standing directly at the fence line on Mr. Dearborn's property; she noted there is no swale left there.
- 3) Photo from perspective of Wetlands Agent Newton standing at the north corner of the fence line to the abutting 50 Newberry Road property, looking down at the property south to the farm pond.
- 4) Wetlands Agent Newton reported she discussed earlier that millings had been placed on the northern part of the farm road. This photo shows millings being placed on property in the area of the farm road.
- 5) Wetlands Agent Newton reported this picture is looking further out; the millings came further down and over. This is the way they exist today on the property.

Chairman Ceppetelli noted that in addition to the evidence presented at this meeting the evidence presented at the December Meeting has been incorporated into the record as evidence for this meeting as well.

Chairman Ceppetelli queried if Attorney Brignole had any evidence to present?

Attorney Brignole questioned if Wetlands Agent Newton had an investigative report regarding the millings or the construction of the farm road? Wetlands Agent Newton reported that the construction of the farm road occurred as a violation prior to her tenure in East Windsor and then commenced into a Permit. Attorney Brignole queried again if Wetlands Agent Newton had an investigative report which was specific as to exactly how the road was constructed or if the file contained any diagram or as-built? Wetlands Agent Newton indicated that information had been asked for but it was never provided. Attorney Brignole indicated that wasn't his question; the question is do you have that? Wetlands Agent Newton reiterated no; it was never provided. Attorney Brignole questioned if Wetlands Agent Newton had any field notes as to what she found out there as far as violations? Wetlands Agent Newton indicated the field notes were documented in the Revocation. Attorney Brignole questioned if Wetlands Agent Newton had anything besides what is in that? Wetlands Agent Newton reported her field notes were documented in a Notice of Violation beginning and dated 11/17/2008. Attorney Brignole suggested those findings are allegations; he questioned if Wetlands Agent Newton had the field notes in regard to the investigation out at the site? Wetlands Agent Newton reported her field notes were sitting on the table. Attorney Brignole indicated FOR THE RECORD, that would be the NF Pierson Development Co. document? Wetlands Agent Newton replied "yes". Attorney Brignole questioned if there were any other persons, other than Town Planner Whitten, who visited the site? Wetlands Agent Newton reported those people are not present this evening.

Attorney Brignole addressed photo referenced 0710-2; he questioned if Wetlands Agent Newton took that photo, or if she had personal knowledge of that photo, or knew when it was taken, and did she know what it depicted? Wetlands Agent Newton reported she did not have personal knowledge of that photo but it depicted the construction of the farm road. Attorney Brignole

questioned, as depicted, is the farm road in the proper area? Wetlands Agent Newton suggested it looks to be.

Attorney Brignole addressed a second photo, also referenced 0710-2; he questioned if that was also of the construction of the farm road? Wetlands Agent Newton replied affirmatively. Attorney Brignole questioned if Wetlands Agent Newton took that photo, or did she know when it was taken? Wetlands Agent Newton reported that was a photo of the farm road. She did not take that photo, and didn't know when the photo was taken, but reported there is Staff here that was present when it was taken. Attorney Brignole questioned that this photo identifies the location of the bed of the road where it was supposed to be located? Wetlands Agent Newton reported to the best of her knowledge.

Attorney Brignole then suggested that based on these 2 photographs there was no violation yet. Wetlands Agent Newton suggested that was the violation. Attorney Brignole then suggested Mr. Dearborn had a Permit for that work. Wetlands Agent Newton reported no, he didn't have a Permit at the time the photos were taken; he got the Permit after the photos were taken. Attorney Brignole queried that the location was permitted at the time when Mr. Dearborn received the Permit? Wetlands Agent Newton replied affirmatively, noting with the exception of the lower portion of the road. Attorney Brignole questioned, as it is depicted in this photo, does this photo depict the lower portion of the road or any portion of the road? Wetlands Agent Newton reported any portion of the road. Attorney Brignole then suggested that as far as this Hearing is concerned these 2 photos are irrelevant. Wetlands Agent Newton indicated perhaps they were to Attorney Brignole.

Attorney Brignole addressed photo #3, which he noted has no date, but it appears to be dirt in the middle of the road bed after it was dug out. He questioned if Wetlands Agent Newton took that photo? Wetlands Agent Newton reported she did not personally take that photo. Attorney Brignole queried if Wetlands Agent Newton knew when this material was placed in there, before the Permit or after the Permit? Wetlands Agent Newton indicated she didn't know. Attorney Brignole questioned what the photo depicted? Wetlands Agent Newton suggested the photo was looking out from the farm road into the farm area where the fill was being placed. Attorney Brignole questioned if it identified any violation after the Permit was granted? Wetlands Agent Newton suggested not that she's aware of.

Attorney Brignole then referenced "these 4 photos are together"; he questioned that Wetlands Agent Newton identified these photos as millings? Wetlands Agent Newton clarified they were asphalt millings. Attorney Brignole then referenced "these cinderblocks"; Wetlands Agent Newton clarified they were jersey barriers. Attorney Brignole questioned if the jersey barriers identified the boundary of the wetlands? Wetlands Agent Newton replied affirmatively, but noted they were moved. Attorney Brignole questioned if they identified the boundary of the wetlands "in this photo"? Wetlands Agent Newton replied she didn't know; they were waiting for verification of that information. Attorney Brignole questioned that Wetlands Agent Newton didn't know where the boundary of the wetlands was with regard to "this photograph"? Wetlands Agent Newton replied negatively, noting the jersey barriers had been removed, and then replaced. Attorney Brignole questioned that in "this photo" Wetlands Agent Newton couldn't tell if the millings were in the wetlands or not? Wetlands Agent Newton replied that in "that photo" they are not yet around the corner in the wetlands, noting she had not been allowed back out to the site to take pictures of the

millings. Attorney Brignole questioned that “this photo” didn’t identify any violation? Wetlands Agent Newton replied, yes, if you look at that photo you can clearly tell that the farm road has been extended over to the fence line. Attorney Brignole questioned the distance of that grass area from the road to the bottom of the fence line from this photo; is it an 8’ or 6’ fence? Wetlands Agent Newton suggested it’s a 6’ fence. Attorney Brignole suggested the photo shows only the top 3’ of the fence; he queried Wetlands Agent Newton if she could tell him the distance of the grass area between that roadway and the bottom of the fence? Wetlands Agent Newton reported it should have been 5’. Attorney Brignole questioned if Wetlands Agent Newton could tell him, from her field notes, or any of her documentation, exactly how much of a violation it is? Wetlands Agent Newton replied, yes, there’s 4’ from where the farm road was originally constructed to the fence line that was filled in. Attorney Brignole queried if that was shown in “this photograph”? Wetlands Agent Newton replied in “this” photo, and that’s the length of the farm road. Attorney Brignole suggested the record is clear; the photograph doesn’t identify the lack of distance between the road and the abutting fence line. Wetlands Agent Newton agreed it did not, noting she was standing on the fence line when taking the photograph. The photo is looking down the road to the end of the property.

Attorney Brignole suggested this is a revoked Permit. Wetlands Agent Newton clarified this is Hearing to consider Revocation of the Permit. Attorney Brignole questioned that the Permit was revoked in October 2009? Wetlands Agent Newton suggested the Permit expired, and the Commission did not go forward with any violations because of the involvement of the Army Corp of Engineers. Wetlands Agent Newton advised that once she was able to speak with the Army Corp of Engineers, and get their permission to go forward in the areas the Army of Engineers currently had violations, the Commission went ahead. Attorney Brignole suggested the Permit had expired; the Commission can’t revoke an expired Permit.

Attorney Brignole then began to address the Show Cause Hearing for the Correction Order. Chairman Ceppetelli clarified that the Commission wanted to address the Revocation of Permit #1406 first; he questioned if Attorney Brignole had completed his presentation?

Attorney Brignole reported he had not finished. Attorney Brignole wanted to PUT ON THE RECORD that once the Permit expired whether the Commission revoked it or not is mute, but it doesn’t give the Commission any authority or power to order a change or a correction out at the site without a proper Hearing. Whether the Commission revokes the Permit or not doesn’t mean anything with regard to what has to happen out there. Secondly, with regard to this issue, Attorney Brignole didn’t believe the Commission had met the necessary burdens; he didn’t believe the Commission had established one, except that the plan has been provided. Attorney Brignole suggested he would wait to hear the proof.

Chairman Ceppetelli queried Wetlands Agent Newton regarding her intentions to continue to revoke Permit #1406? Wetlands Agent Newton recommended – for the Revocation of the Permit – to set a date next to hold a Special Meeting specifically for the decision on this matter so the Commission can review the information given to them and make the decision. Wetlands Agent Newton suggested holding the Special Meeting next Wednesday, February 10th at 6:00 o’clock here at the Town Hall Meeting Room. She noted there is another meeting scheduled for 7:00 p.m., which would be this Commission’s regular meeting time.

MOTION: To RECONVENE/HOLD A SPECIAL MEETING ON VIOLATIONS (FOR ACTION OR SHOW-CAUSE HEARING)/1. 68 Newberry Road – Revocation of Permit No. 1406 – Installation of a Farm Road (show-cause hearing) ON FEBRUARY 10, 2010 AT 6:00 P.M. IN THE TOWN HALL MEETING ROOM, 11 RYE STREET, BROAD BROOK, CT.

Osborn moved/Slate seconded/

VOTE: In Favor: Unanimous (Ceppetelli/Koczera/Malin/Osborn/Savaria/Sawka/Slate)
No opposition, no abstentions

MOTION: To TAKE A TEN MINUTE BREAK at 7:37 p.m.

Slate moved/Savaria seconded/

VOTE: In Favor: Unanimous (Ceppetelli/Koczera/Malin/Osborn/Savaria/Sawka/Slate)

MOTION: To CALL THE MEETING BACK TO ORDER AT 7:45 p.m.

Osborn moved/Slate seconded/

VOTE: In Favor: Unanimous (Ceppetelli/Koczera/Malin/Osborn/Savaria/Sawka/Slate)

VIOLATIONS (FOR ACTION OR SHOW-CAUSE HEARING)/2) 68 Newberry Road – Correction Order – Work in Regulated Area Without Permit (for action on conditions of Order):

Chairman Ceppetelli read the description of this Item of Business – a Correction Order for work in a regulated area without Permit for actions on conditions of order. Appearing to represent the Applicant was Attorney Timothy Brignole; assisting him was his associate, Janet Brooks. The Applicant, Steve Dearborn, was present in the audience.

Chairman Ceppetelli requested Wetlands Agent Newton summarize this violation for the Commission.

Wetlands Agent Newton READ FOR THE RECORD from her memo dated 2/2/2010 to the IWWA Board Members. She noted they had in front of them a Correction Order dated 12/28/2009, again, served by a marshal, concerning the Commission's Cease & Desist Order of 7/27/2009. Wetlands Agent Newton noted the Show Cause Hearing - for filling of the wetlands north of the farm pond at 68 Newberry Road - had been held on 8/5/2009. Wetlands Agent Newton noted the Commission held the Cease & Desist Order in affect, and did not issue a Correction Order at the time, so the Commission could work with the Army Corp of Engineers to work out the dual violation in that area. Wetlands Agent Newton reported that subsequently the Commission issued a Correction Order, with conditions, at the December (2009) Meeting. Wetlands Agent Newton noted everyone is present this evening to hear how the property owner intends to comply with the Correction Order.

Chairman Ceppetelli queried the property owner, or staff for the property owner, how they plan to comply with the Correction Order that was issued?

Attorney Brignole began by noting he wanted to start with a procedural issue. Chairman Ceppetelli requested Attorney Brignole identify his team FOR THE RECORD. Attorney Brignole indicated his name was Tim Brignole; with him was Janet Brooks. Attorney Brignole reported they represent Mr. Dearborn.

Attorney Brignole suggested he didn't know to what extent the Commission has been provided with regard to your Minutes, but he suggested if the Commission would look at the "December 28th Meeting" there is no Cease & Desist Order that's ever been entered by this Board. Attorney Brignole suggested the Commission's own Minutes don't identify a Cease & Desist Hearing, with necessary evidence, was administered or provided to you, nor did the Commission vote on a Cease & Desist Order. Attorney Brignole suggested there is no Cease & Desist Order, other than what the young lady there is claiming. Attorney Brignole suggested that if the Commission would read the letter it says that on July 27th they were issued a Cease & Desist Order, at which point in time there should have been a Hearing. Attorney Brignole indicated that at that point in time his client did show up, and there was evidence taken, and, the Commission continued the Hearing until August 5th. Attorney Brignole reported that at that Hearing the Army Corp of Engineers became involved. Attorney Brignole indicated that the Commission met in September of 2009; no evidence was heard, and the Commission did not issue a Cease & Desist Order.

Attorney Brignole advised the Commission the Army Corp of Engineers has been out to the property and is currently working with the Applicant. Attorney Brignole indicated they are currently working with the Army Corp of Engineers to correct the issues in this particular area in accordance with the Federal Regulations, which are much more stringent than local Regulations.

Attorney Brignole then asked if someone would identify the date of the Hearing. Attorney Brignole noted this was set down for a Hearing in January, for a Cease & Desist Order; he asked for a continuance, which was granted until today. Attorney Brignole indicated he assumed that he was coming in for another Cease & Desist Order with regard to this area. Attorney Brignole didn't feel today's Notice identified the area being discussed, but he was aware, from the last Commission Meeting, of the area of interest to the north of the pond. Attorney Brignole suggested he fully expected to see some evidence in regard to a Cease & Desist Order and have a Hearing on that. Attorney Brignole suggested that he has reviewed the Commission's files and has not seen a Cease & Desist Order in the file.

Chairman Ceppetelli questioned if Attorney Brignole had anything more to say with regard to what the Commission recommended at its December Meeting? Attorney Brignole suggested the Commission could recommend all it wanted, but in order to recommend something it has to have a dully called Meeting, and to have a vote on its actions.

Chairman Ceppetelli questioned if Attorney Brignole was then set? Attorney Brignole indicated his question to the Board is where is your Cease & Desist Order, with specific requirements and the basis and foundation for it. Attorney Brignole advised the Commission that without a Cease & Desist Order their recommendations aren't going to survive an appeal to the Superior Court. Attorney Brignole suggested a recommendation isn't an order from your Commission; a recommendation is a recommendation.

Chairman Ceppetelli clarified that it is an Order being discussed. Attorney Brignole questioned that the Commission was giving an Order based on no Cease & Desist Order, without a Hearing? He questioned if this is a Hearing tonight on the Cease & Desist Order for the area north of the pond? He questioned where the evidence for that was?

Wetlands Agent Newton requested to speak. Wetlands Agent Newton reported the Commission had already held a Show Cause Hearing for the Cease & Desist Order for the fill located to the north of the pond. Attorney Brignole suggested it was continued, he cited the date of July 27th. Wetlands Agent Newton suggested Attorney Brignole's facts were incorrect. Wetlands Agent Newton clarified that on July 27th, 2009 a Cease & Desist Order was issued by Certified Mail. On August 5th the Commission held a Hearing, and upheld the Cease & Desist Order. Wetlands Agent Newton noted the Commission refrained from issuing any type of correction until such time as they could work out a compromise with the Army Corp of Engineers considering there were dual violations on the property. Wetlands Agent Newton indicated there will be no evidence presented tonight because it was done in the past. The Commission held a Show Cause Hearing; Attorney Brignole's client was present along with his client's staff, Rachel Dearborn, his surveyor at the time. Wetlands Agent Newton reported there was a vote to keep the Cease & Desist Order in place; the Commission did not vote on a Correction Order at the time because they wanted to work out something with the Army Corp of Engineers so that they weren't pursuing something that Mr. Dearborn couldn't do on his property due to the dual violations out there.

Attorney Brignole noted that at some point they were in communication with the Army Corp of Engineers; he suggested he didn't know to what extent the Army Corp has made any input to the Commission's recommendations. Wetlands Agent Newton reported she had an e-mail document from the Army Corp. Wetlands Agent Newton reported she had personally made photocopies of the e-mail for Attorney Brignole. Attorney Brignole indicated they were working with the Army Corp, who had requested from the Applicant further information with regard to the location to the baseline of the wetlands. Attorney Brignole suggested no one has that information; not the Commission for this recommendation, nor was that information in the Cease & Desist Order. Wetlands Agent Newton noted the Show Cause Hearing has already been held on the Cease & Desist Order; an Order which was upheld. Everyone is present tonight to discuss the Correction Order. Wetlands Agent Newton suggested if the Applicant, or his representatives, have a plan, or conditions you'd like to discuss concerning that matter, the Commission would be more than happy to discuss that.

Attorney Brignole indicated the only plan that he would identify for the Commission is for them to be allowed to meet with the Army Corp of Engineers to establish a plan based on Federal Regulations. Chairman Ceppetelli requested Wetlands Agent Newton to discuss her e-mail with the Army Corp of Engineers. Wetlands Agent Newton noted she has an e-mail, which she photocopied last week for Attorney Brignole, in which Wetlands Agent Newton communicated with Cori M. Rose of the U.S. Army Corp of Engineers. Wetlands Agent Newton reported she advised Ms. Rose that she was currently working local Wetlands Board to address local issues on Mr. Dearborn's property located at 68 Newberry Road. Wetlands Agent Newton noted that after some discussion the Commission had spoken locally about requiring the farm road and fill located to the north of the farm pond to be removed and regraded and returned to its original topographical

grade. Wetlands Agent Newton advised Ms. Rose that the local Board knew Mr. Dearborn had a Cease & Desist Order from the Army Corp of Engineers as well as the Town. Wetlands Agent Newton asked if the Army Corp of Engineers would be adverse to allowing Mr. Dearborn to remove the farm road and fill that are currently located in the wetland area that are the cause of the violation from the Town?" Wetlands Agent Newton indicated the response was: "Hi, Robin; this would be acceptable to the Corp." Wetlands Agent Newton noted that the issue had been discussed with the Corp, and that discussion had been documented.

Chairman Ceppetelli queried Wetlands Agent Newton regarding the status of the dates established by the Commission. Wetlands Agent Newton referenced the Correction Order, noting the work was to commence by February 15th and be completed by April 15th. She suggested the Commission is still within the timeframe established.

Chairman Ceppetelli questioned if there was any further discussion? Attorney Brignole indicated another point for him was that he had reviewed the Commission's August 2009 Minutes and there was no vote; the Show Cause Hearing was continued at that Meeting. Attorney Brignole wanted to PUT ON THE RECORD that the Commission's own Minutes don't identify that the Commission entered a Cease & Desist Order. Additionally, Attorney Brignole noted that they have a compliance date with the Army Corp of Engineers to provide the Army Corp - by the end of February - with documentation similar to what the Commission has asked for. Attorney Brignole noted the first date established by the Commission is February 15th; he queried if the Commission would allow them to begin work some time in April? Chairman Ceppetelli requested Attorney Brignole specify his request. Attorney Brignole noted the Commission's first recommendation is for work to commence February 15th 2010. Attorney Brignole noted it's still his position that there is no Cease & Desist Order; he didn't want his recommendation to appear as if he was acquiescent to that issue, and, he had just referenced the Commission's Minutes from August. Chairman Ceppetelli questioned what the dates would be that are being requested by Attorney Brignole? Attorney Brignole suggested his recommendation would be that any date the Commission has should begin after April 15th so they can deal with the issues of the Federal Government.

Chairman Ceppetelli opened discussion to the Board. He noted the Commission had established dates for work to commence by February 15th, and to be completed by April 15th. He questioned if the Board wanted to maintain those dates, which had been recommended by Staff.

Diane Whitney requested to speak. Attorney Whitney noted FOR THE RECORD that her name is Diane Whitney; she represents the Commission. For purposes of clarification, Attorney Whitney questioned Attorney Brignole if it is his plan to present to this Commission the same information that he will present to the Army Corp? Attorney Brignole reported he couldn't tell her that. Attorney Whitney questioned if there is any reason Attorney Brignole would not do that? Attorney Brignole reported he couldn't tell her that either. Attorney Brignole indicated that the only thing he could tell Attorney Whitney at this point is if there is an Order received. Attorney Brignole suggested the Commission is making a recommendation, which he felt was completely different than an Order. Attorney Brignole gave the example of a recommendation being "I recommend we buy Mercedes Benzes and not, you know, Chevy Cavaliers". Chairman Ceppetelli clarified that this action is a Correction Order. Discussion continued regarding the use

of the phrase recommendation vs. correction order.

Attorney Whitney reiterated, her question to Attorney Brignole was, if the same information that Attorney Brignole is going to present to the Army Corp to solve the Federal violations will resolve the issues of concerns of the Commission why would you not provide the same information about what you plan to do with this property to the Commission? Attorney Brignole suggested he had already offered to provide the Town, after dealing with the Army Corp of Engineers, all of the information that they have, and they will comply with whatever issues the Army Corp of Engineers requirements were. Attorney Whitney reiterated that her question was will you give this Commission the information you're providing to the Army Corp of Engineers? Attorney Brignole suggested he had already offered that once this evening. Attorney Brignole offered some comparisons of the Federal Regulations vs. local Regulations, citing his concerns lie more with the Army Corp than this local Board. Attorney Brignole indicated to the Town that he would abide by whatever the Army Corp is willing to do; he would then have it be formally entered into this case. Attorney Brignole reiterated he is willing to work with Army Corp in an expeditious fashion to address all of the area to the north of the pond. Attorney Brignole suggested they had already started it; they have hired experts as required by the Army Corp; the Army Corp has given them mandates on what they need to establish for the Army Corp. Attorney Brignole indicated they are preparing to go forward with that, and will stand behind and do whatever the Army Corp wants them to do. Attorney Brignole reiterated he is not concerned with this Board; his concern is with the Army Corp, as their regulations are much more restrictive. Attorney Brignole indicated he will comply with the Army Corp and will then present all of that to this Board.

Attorney Whitney questioned if Attorney Brignole had reviewed the violations that are alleged by this Board and had determined that their compliance with the Army Corp will also heal those issues? Attorney Brignole reported the Army Corp met with Town Staff, and they went out there and evaluated the site together and they came up with what Town Staff believes "is" the same issues. Attorney Brignole suggested the Army Corp's issues and the Town's issues are mirror issues.

Attorney Brignole cautioned the Commission that the one issue he had with regard to the area north of the pond was he felt that the Commission should not go forward with the Order today because he's going to have to appeal it so he can deal with the Army Corp. He felt the Town and the Army Corp might have different requirements, and the Applicant could be required to do different work for each agency. Attorney Brignole also suggested the Commission review its files; he indicated he felt the Commission didn't have a Cease & Desist Order on this property because it was continued at the August Meeting to a future date for further information from the Army Corp of Engineers.

Chairman Ceppetelli thanked Mr. Dearborn's representatives for their presentation. Wetlands Agent Newton questioned Attorney Brignole when he anticipated getting the information from the Army Corp of Engineers? Attorney Brignole indicated they've been given a list of things they need to do; they met with an expert today who was unable to make information available for submission during this Meeting. Attorney Brignole thought the expert wouldn't be able to provide information for another week, as he's inundated. Attorney Brignole suggested the Commission continue this Item of Business for another month.

Chairman Ceppetelli queried the Commission if they wanted to participate in additional discussion, or were they ready to make a motion to continue this issue as suggested by Attorney Brignole?

MOTION: To CONTINUE THE VIOLATION (FOR ACTION OR SHOW-CAUSE HEARING)/2) 68 Newberry Road – Correction Order – Work in Regulated Area Without Permit (for action on conditions of Order) TO THE COMMISSION’S REGULARLY SCHEDULED MARCH 3, 2010 MEETING AT 7:00 P.M. IN THE TOWN HALL MEETING ROOM, 11 RYE STREET, BROAD BROOK, CT.

Osborn moved/Slate seconded/

DISCUSSION: Commissioner Slate questioned if the Commission would want to combine the two (continuation of the Correction Order with the Special Meeting on the Revocation of permit #1406). Chairman Ceppetelli felt the Commission wanted to keep those items of business separate.

VOTE: In Favor: Unanimous (Ceppetelli/Koczera/Malin/Osborn/Savaria/Sawka/Slate)
No opposition, no abstentions

Attorney Brignole requested, for clarification, what records were the Commission continuing? Chairman Ceppetelli indicated that would be the Correction Order. Chairman Ceppetelli noted the continuation will extend past the start date that was originally outlined but the Commission can amend the dates at a later time if necessary. Chairman Ceppetelli noted the Commission will give the Applicant time to get input from the Army Corp of Engineers as well.

Attorney Brignole thanked the Commission.

MOTION: To GO BACK INTO THE AGENDA ORDER AS POSTED TO HEAR OTHER ITEMS OF BUSINESS.

Slate moved/Koczera seconded/

VOTE: In Favor: Unanimous (Ceppetelli/Koczera/Malin/Osborn/Savaria/Sawka/Slate)

NEW APPLICATIONS TO BE RECEIVED/1) 86 Winkler Road – Application of G-III Holdings, LLC for the construction of a Single Family Home and shed located within the 150’ upland review area. Total parcel consists of 3.08 acres. Assessor’s Map #15, Block #17, Lot #19-5. This property is located in the west side of Winkler Street nearest intersection being Newberry Road. This property will be served by public water and sewer:

Wetlands Agent Newton noted this is a new application to be received; a formal presentation on this Application will be made at the Commission’s next meeting. Wetlands Agent Newton recalled that the Commission had decided at a previous meeting to review the documentation at receipt of the application to offer suggestions/recommendations in order to expedite the application process.

Wetlands Agent Newton reported this proposal is for a single family home and shed, both of which

are completely located in the upland review area. The lot is served by public water and sewer. Erosion control measures are in place and are shown on the plan. Sheet 2 of the plan set includes alternate locations (A and B) for the dwelling – one location is slightly more forward on the lot. There is little difference in the lot sizes; Alternate A contains 18,000 square feet, while Alternate B contains 22,000 square feet. The lot is located in an A-1 Zone, abutting Newberry Village and south of the railroad tracks. Wetlands Agent Newton reported there is no wetlands impact associated with either proposal.

Commissioner Savaria questioned if they were looking to have one of the locations approved over the other? Wetlands Agent Newton indicated she didn't know at this point; that would be a question for the formal presentation. She indicated she didn't favor one over the other; the dwelling location further to the front cuts down on the road length a bit.

MOTION: To ACCEPT THE RECEIPT OF NEW APPLICATION) 86 Winkler Road – Application of G-III Holdings, LLC for the construction of a Single Family Home and shed located within the 150' upland review area. Total parcel consists of 3.08 acres. Assessor's Map #15, Block #17, Lot #19-5. This property is located in the west side of Winkler Street nearest intersection being Newberry Road. This property will be served by public water and sewer.

Slate moved/Osborn moved/

VOTE: In Favor: Unanimous (Ceppetelli/Koczera/Malin/Osborn/Savaria/Sawka/Slate)

MISCELLANEOUS:

Chairman Ceppetelli announced a retirement party is being Friday, February 19th for Town Clerk Karen Gaudreau. Anyone wishing to attend should contact the Town Clerk's Office.

AGENT DECISIONS: None.

STATUS REPORTS/1) Newberry Village – Permit Extension:

See discussion **under NEW APPLICATIONS TO BE RECEIVED/PERMIT EXTENSION REQUESTS/1) Newberry Village Active Adult Development (Newberry Road).**

NEW APPLICATIONS TO BE RECEIVED/PERMIT EXTENSION REQUESTS/1)

Newberry Village Active Adult Development (Newberry Road) – Newberry Village, LLC is requesting an extension of their Inland Wetland Watercourses Permit #1351 & #1358 for the construction of an active adult community. This development is located on the north side of Newberry Road at the intersection of Winkler Road. This development is served by public water and sewer. Assessor's Map #15, Block #17, Lot #19, 20 & 21:

Wetlands Agent Newton reported the Applicant's of both extension requests were not aware action could be taken the same evening. They have not prepared information for presentation this evening. Wetlands Agent Newton noted both requests are for Permit Extensions without modifications; no new conditions can be added.

With regard to Newberry Village, Wetlands Agent Newton reported she visits this site consistently; there are many erosion issues but this is a difficult site. She reported the site has improved significantly over the past 4 months as one person is now designated to handle site improvements. Issues are often addressed the same day.

Wetlands Agent Newton advised the Commission she has spoken to the developer regarding what's to be done during the Spring. George Logan, Soil Scientist for the developer, has been reminded a report is due in May. He has also been advised of the conditions of the site. Both the developer and staff are aware this year can't be a repeat of what happened last year.

The Commission considered possible alternative actions, including the length of Permit extensions.

MOTION: To ACCEPT THE RECEIPT OF NEW APPLICATIONS TO BE RECEIVED/PERMIT EXTENSION REQUESTS/1) Newberry Village Active Adult Development (Newberry Road) – Newberry Village, LLC is requesting an extension of their Inland Wetland Watercourses Permit #1351 & #1358 for the construction of an active adult community. This development is located on the north side of Newberry Road at the intersection of Winkler Road. This development is served by public water and sewer. Assessor's Map #15, Block #17, Lot #19, 20 & 21.

Osborn moved/Slate seconded/

VOTE: In Favor: Unanimous (Ceppetelli/Koczera/Malin/Osborn/Savaria/Sawka/Slate)

NEW APPLICATIONS TO BE RECEIVED/ PERMIT EXTENSION REQUESTS/2) Mansions at Canyon Ridge (North Road) – The Mansions at Canyon Ridge, LLC is requesting an extension of their Inland Wetland Watercourse Permit #1360 to conduct regulated activities associated with the construction of a 220 unit apartment development. This development is located on the north side of North Road nearest intersection being Yosky Road. This development is served by public water and sewer. Assessor's Map #9, Block #36, Lot #46:

Wetlands Agent Newton reiterated her comment that the Applicant's of both extension requests were not aware action could be taken the same evening. They have not prepared information for presentation this evening. Wetlands Agent Newton noted both requests are for Permit Extensions without modifications; no new conditions can be added.

Wetlands Agent Newton reported she visits this site approximately every 2 weeks. The site is well stabilized; there are no issues with this project.

MOTION: To ACCEPT THE RECEIPT OF NEW APPLICATIONS TO BE RECEIVED/ PERMIT EXTENSION REQUESTS/2) Mansions at Canyon Ridge (North Road) – The Mansions at Canyon Ridge, LLC is requesting an extension of their Inland Wetland Watercourse Permit #1360 to conduct regulated activities associated with the construction of a 220 unit apartment development. This development is located on the north side of North Road nearest intersection being Yosky Road. This development is served by public water and sewer. Assessor's Map #9, Block #36, Lot #46.

Osborn moved/Slate seconded/

VOTE: In Favor: Unanimous (Ceppetelli/Koczera/Malin/Osborn/Savaria/Sawka/Slate)

CONFERENCES/SEIMNARS/TRAINING/1) CT. Farm Bureau Association Seminar on Farming and its Relationship to Wetlands:

Wetland Agent Newton reported this seminar is available for Commission members; very little funding is available through the Planning Department to fund the cost for Commissioners. The following members expressed interest in attending: Koczera, Savaria, Baker, Roloff.

CORRESPONDENCE: None.

GENERAL BOARD DISCUSSION:

1) Members of New Conservation Commission:

Wetlands Agent Newton reported she brought the Ordinance to split the Conservation Commission and the Inland/Wetlands Agency to the Board of Selectmen after review by the Town Attorney. Other towns have smaller boards; the Board of Selectmen is looking to reduce the number of members on this Board over the next 3 years. Wetlands Agent Newton was asked to confer with Commission Members regarding which Board they would like to serve on; it is possible to serve on both Boards. Commissioner Roloff expressed interest in joining the Conservation Commission and Commissioner Baker would like to serve on both Boards. Commissioner Slate already serves on the Natural Resources Preservation Commission, which will become the Conservation Commission; he would like to continue to serve on this Board as well.

2) Cost Saving Measure-Commission Members to Pick Up Packets:

Wetlands Agent Newton reported the Planning Office has been asked to come in with a zero tax increase budget. Part of the effort to accomplish that goal was to cut the postage line from the budget as the cost of mailing packets can range from \$1.25 to \$5. Commissioners are being asked to come in and pick up their packets the Thursday prior to the monthly Commission Meeting.

Some of the Commissioners questioned if the material could be sent electronically? Wetlands Agent Newton reported the department hasn't the ability to send maps – which are a large part of application review – electronically.

Wetlands Agent Newton noted the Town Hall Offices are open until 7:00 p.m. on Thursdays.

ADJOURNMENT:

MOTION: To ADJOURN this Meeting at 8:28 p.m.

Sawka moved/Slate seconded/VOTE: In Favor: Unanimous

Respectfully submitted,

Peg Hoffman, Recording Secretary, Conservation Commission/Inland Wetland Watercourse
Agency