

**TOWN OF SOMERS**  
**Conservation Commission**  
**600 Main Street**

**REGULAR MEETING**  
**WEDNESDAY, DECEMBER 4, 2024**  
**7:00 PM TOWN HALL**  
**MINUTES**

I. CALL TO ORDER

Chairperson Joan Formeister called the meeting to order at 7:03 P.M. Commissioners in attendance were Dan Fraro, Lise Wood, Drew Kukucka, Candace Aleks, and Sydney Flowers. Joanna Shapiro, the Town of Somers Wetlands Agent, was also present, as was Carl Landolina, the town attorney.

Chairperson Formeister seated Lise Wood for Pat Pio.

II. OLD BUSINESS

**None**

III. NEW BUSINESS

1. **SHOW CAUSE HEARING - ORDER TO CEASE VIOLATION. 183 King Road. Wednesday, December 4, 7:00PM.** Somers Town Hall, Lower-Level Meeting Room.

THE FOLLOWING SHOW CAUSE HEARING WILL BE HELD BY THE COMMISSION IN CONNECTION WITH THE CEASE-AND-DESIST ORDER ISSUED IN ACCORDANCE WITH THE INLAND WETLANDS AND WATERCOURSES REGULATIONS OF THE TOWN OF SOMERS AND THE CONNECTICUT GENERAL STATUTES. A COPY OF THE CEASE-AND-DESIST ORDER IS ON FILE IN THE SOMERS LAND USE OFFICE:

Nicholas Turnberg, 183 King Road, regulated activity within 100 feet of a wetland or watercourse.

The town attorney suggested Joanna Shapiro explain what has happened to date. Joanna started by saying that she received inquiries from concerned citizens regarding the activity occurring on 183 King Road. Joanna explained that the property has a new owner this year, Nicholas Turnberg. She contacted him about a week before the September 2024 Conservation Commission meeting and reported that contact had been made with him then. She tried a few more times after the September meeting to set up a time to visit the site to set up parameters to continue the activities and what would be needed from him regarding a wetland application. She sent emails and left a voicemail. On November 12, 2024, Joanna sent the owner a notice of violation via regular mail. By November 26, 2024, no response had been received from the owner, and she then sent a cease-and-desist letter by certified mail, regular mail, and email. The owner responded to the email at that point, and agreed to come to the meeting tonight. Carl then explained the nature of the violation and that Joanna had not yet been granted access to the property.

At this time, Joanna has aerial photographs from various resources and pictures emailed to her by a property neighbor. Joanna stated that based on these pictures, a lot of soil and woody materials are being moved around, and there are large piles of soil and wood chips in about a 5-acre area. Joanna pointed out that the Scantic River runs along the eastern side of the property, there is another stream that runs through the property, and a large portion of the property appears to be wetlands. Joanna stated that she believes that there is activity happening within 100 feet of the wetlands, and it seems that there is activity in the wetland itself, but it is difficult for her to determine without visiting the site. The town attorney confirmed with Joanna that there was initial contact in August/September 2024, and there has been no response to her communication attempts until the November 26 cease-and-desist letter/email was sent. Joanna stated that was true, and the owner promptly responded to the email sent on November 26 stating that he had not had access to his mail. Joanna pointed out that the town's zoning commission has also raised concerns with the property owner. The town attorney asked Joanna if the letters were sent by certified mail, and she confirmed that the cease and desist was, but that the green confirmation card had not been returned.

Joanna Shapiro then presented four sets of map and photo documentation, and the town attorney recommended that we label them as exhibits. Therefore, the following four sets were labeled as follows. Exhibit 1 (1a, 1b, 1c, 1d) includes an aerial view of the property, a close-up of a field where activity has been reported, a wetland layer, and a floodplain layer. These maps came from the Town of Somers' GIS website. Joanna stated that the property used to have a Public Act 490 classification, but she believes that expired in October 2024. She said that for the land to remain classified as Public Act 490, the new owner must reapply and update the permit when purchasing the land, which based on a conversation with the town assessor, did not occur in time.

Exhibit 2 (2a, 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j) is a series of higher-resolution aeriels of the property from 2016 through October 2024. Joanna noted that the October 2024 map shows recent activities, piles, and wet areas. These maps came from the Nearmap website, which the town subscribes to. Drew Kukucka asked what the land was currently zoned as, and Joan Formeister believed it was agriculture. Joanna is going to confirm the zoning. Drew Kukucka asked what type of work was being done. Joanna stated that from early conversations, the property owner indicated that he is an arborist and may use the property for his business. The town attorney said we should wait to ask the owner directly. Joanna confirmed using the town GIS that the property is zoned A-1, which is a residential zone. The town attorney explained that agriculture is allowed in all zones.

Exhibit 3 (3a, 3b, 3c, 3d, 3e, 3f, 3g) are additional aeriels at different scales and may be redundant. These maps came from the Nearmap website. Joanna estimated that the closest pile to the stream was about 88 feet using the Nearmap measuring tool.

Exhibit 4 (4a, 4b, 4c, 4d, 4e, 4f, 4g) is a set of pictures sent to Joanna via email from a property neighbor. The photos show the material piles, equipment, and culvert debris.

In addition to the four exhibits of maps and photos, Exhibit 5 is the original Notice of Violation letter, dated November 12, 2024, and Exhibit 6 is the Cease and Desist letter, dated November 26, 2024.

Town Attorney Carl Landolina stated that we will now hear from the property owner, who is in attendance. He said that we should provide him with a copy of the documents that were reviewed tonight and that we will likely continue this at a future date. He stated that at the next meeting, we should have a set of materials for each person in attendance, including the property owner. He also recommended presenting the property assessor card and deed at the next meeting.

The property owner, Nicholas Turnberg, introduced himself to the Commission, and the town attorney formally introduced himself to Nicholas. The town attorney informed Nicholas that a violation of wetlands could result in civil penalties and violations, and there could be a \$1000 fine per violation. He also stated that the violations can increase quickly because each day that passes, each violation is a new fine, which could be something like \$1000 per day. The town attorney then informed Nicholas that the general status of wetlands violations could be a criminal offense involving fines and imprisonment. The attorney informed Nicholas that he is here on his own accord, can ask for discontinuance, and could have a lawyer present. Nicholas shook his head, saying that he understood. He then presented a picture he brought with him and pointed out that the piles were more than 100' from the brook. Nicholas also stated that he had installed wattles to prevent the piles from eroding and seeded a portion of the land between the piles and the stream. Carl Landolina, town attorney, then said that he also represents the zoning commission in town and that they also have concerns. Carl asked Nicholas if he had been bringing soil in from offsite, and Nicholas said he had not. Nicholas stated that he processed logs and woodchips with timber brought in from offsite. Nicholas noted that they grind up the logs to make mulch and that he eventually wants to log the land and tap the maple trees for sap. Carl asked if he had removed any topsoil and put down gravel, and Nicholas said he had removed about 4 to 6 inches of topsoil and piled it so he could process woodchips and other wood products on firmer ground. Nicholas stated that gravel had been put down in this area, but some activities are happening off the gravel area. Nicholas estimated that the field was approximately 5 acres, and that the gravel area was approximately 1 acre. The town attorney informed Nicholas that the Conservation Commission can have jurisdiction even if the activity is more than 100 feet from the wetland because there may still be a wetland impact. Carl asked Nicholas what type of preventative measure had been put in place between the activities that happened and the stream. Nicholas stated that wattles had been staked in and Joanna Shapiro mentioned it appears that these were just recently installed.

Joanna Shapiro went on to inform Nicholas that she had requested to meet with him before these activities started so that she could further inform him of the wetland rules and how they are different from what he knows from Massachusetts. She informed Nicholas that Connecticut determines wetlands based on soil types. Joanna told him that she wanted to visually see what was going on to help him understand what would be considered an agricultural exemption and what would be needed to maintain that. However, now that the land had been disturbed drastically, it would be challenging for her to estimate wetland boundaries on-site. Joanna stated that based on the aerial and topographic mapping presented, she believes that at least a portion of the field that has been disturbed likely contains wetland soils. That field where the site work has occurred, south of the watercourse that divides the two fields, is lower in elevation and darker/wetter in appearance than the upper field, and it contains a persistent wet pocket in all of the aerial photos from over the years, until the most recent October 2024 aerial which shows large stockpiles throughout the recently disturbed field. She stated that despite Nicholas' efforts to place piles 100' from the watercourse and wooded wetland, actual wetland soils within the field were likely disturbed. Nicholas pointed out the soil is sand, and the town attorney asked if he was a wetland or soil scientist, and he responded he was not, but he served on the Conservation

Commission in East Longmeadow, MA. The town attorney reiterated that the soil has not been tested and that he can't determine if it is a wetland based on assumption.

Carl then asked Nicholas if Joanna Shapiro could meet with him on the property, and he said yes if they scheduled a time in advance to do so. Carl then mentioned that the zoning commission also needed to visit the site, and it may make sense to schedule those visits simultaneously. Nicholas stated he wanted them separately because they are two different issues. Drew Kukucka stated that he would like to see the wetlands delineated at this property and understand what activities will be happening there. Candace Aleks asked if he should walk the property with Joanna Shapiro to determine the wetland boundary. The town attorney advised that we do not do that and that only a soil scientist should be doing that. Joanna Shapiro stated that the town did not have any record of a prior wetland determination, although it's possible that NRCS might have done a determination for the property owner, which would likely be based on federal definitions of wetlands, not state. The town attorney informed Nicholas that he had put himself at a significant disadvantage by not communicating with the Commission before. Candace Aleks stated it would be good to know exactly where the wetlands are on his land, and Joanna Shapiro also said it would be helpful if he wanted to build on this property in the future. Joan Formeister also pointed out that logging is not necessarily exempt, and Nicholas stated that he understood.

Carl Landolina informed Nicholas that the cease-and-desist order remains in effect until the Commission officially closes the hearing and potentially modifies the order. Carl informed the Commission that we can now set parameters on the cease-and-desist. Carl asked Nicholas how often he and his crew work on this site. Nicholas stated the crew could be there up to five days a week making mulch, firewood, and logs. Joanna Shapiro asked if they were screening soil on site, and Nicholas stated that they were not currently screening materials. Joan Formeister asked Nicholas how the trucks were getting to the site on the property, and Nicholas stated they were using a preexisting driveway and farm road. Nicholas asked what he could do at this time besides hiring a soil scientist. Joanna Shapiro then read the order from the cease-and-desist letter to him and agreed that now might not be the best timing to remove materials. The town attorney then told Nicholas there are two types of violations: misunderstandings/ignorance and willful. He stated to Nicholas that if he continues his activities at this time, he could be committing a willful violation because he was made aware that it appears he is doing work in regulated areas. Carl told Nicholas that the first thing that would happen if this occurred was that we would go to court, and he may have to reimburse the town for expenses. Drew Kukucka said that all activities should stop, no materials should come or go from the site, and a wetland delineation may be needed, but this may not be realistic for our next January 8<sup>th</sup> meeting. Carl stated we can't order a soil delineation, but we can suggest it.

Joan Formeister questioned if the equipment used is coming in and out on the existing driveway and just staying on the gravel, why should we order them to stop activities? She expressed concern that his employees will be out of work. Carl stated that it appeared that much of the activity is happening off the gravel, and he asked Nicholas to confirm this. Nicholas agreed. Joan Formeister recommended that Joanna Shapiro meet with him on-site as soon as possible to see what problems may currently exist and what activities can continue until this is resolved with the proper preventative measures in place. Nicholas proposed that he would pursue hiring a soil scientist to delineate wetlands on the site, and also meet Joanna on-site. Joanna and Nicholas will find a time to meet after the meeting, and Joanna will then reach out to the Commission to find out if a special meeting can occur before January 8.

Drew Kuckucka made a motion for the cease-and-desist order issued in accordance with the inland wetlands and watercourses regulations of the town of Somers and the Connecticut general status to Nicholas Turnberg of 183 King Road to remain in effect, with a stay on the portion of the order that requires him to remove the material, and amended to allow activities that do occur onsite to only be permitted on the existing gravel areas. Lise Wood seconded. All were in favor, and the motion carried.

2. **Modification: Application #770:** 44 Broadway Road. Construction of new house and driveway within Upland Review Area and Wetland; modification to include deck, shed, and footing drain outlet in Upland Review Area. Jason Hackett.

Joanna Shapiro explained that this property was given a permit in 2022 but work has occurred beyond what was shown on the plans that were approved when the permit was issued. Joanna introduced Mark Peterson of Gardner & Peterson Associates, LLC. Mark then explained that they would like to modify the existing permit for the house to include the existing deck, footing drain, and shed in the upland review area. Jason and Michelle Hackett were also present at the meeting. Mark Peterson said he came on board about a month and a half ago with this project. He noted that the house was built as planned, but the pool has been moved and is now entirely located in the Upland Review Area, a deck was built along the back of the house, a shed was installed about 40 feet from the wetland, and a footing drain with outlet was installed. Joanna Shapiro stated she could have issued a minimal impact permit for the shed alone, but since there were several discrepancies from the original plans, they had to return to request a modification anyway.

Joanna stated that in addition to the additional structures, some original permit conditions were not met. Some of the permanent wetland markers had not been installed where they should have been. Joanna and Mark worked on an outline together to fix the issues that have come up. Joanna Shapiro mentioned that the 2022 approval required supplemental plantings to occur, which had not been done, but now, further additional planting is needed because the clearing was more extensive than approved. Mark mentioned there are currently stockpiles of materials that will be removed later. Joanna Shapiro noted that the area in the front of the house and where the pool was installed needs to be stabilized, and the supplemental plantings from the 2022 permit still need to occur. Mark read the scope of work that was provided, which included relocating wetland posts to the drip edge per the wetland permit and adding an 8th post near the twin 15" tree per the permit; furnishing and installing supplemental plantings in WL 82 (species and quantity to be coordinated with Gardner & Peterson Associates); removing and disposing of soil, rocks, and boulders not required for final grading; stabilizing currently disturbed areas on the property; regrading slope downgrade of shed to make less steep, loaming, and seeding.

Candace Aleks made a motion to modify application 770, 44 Broadway Road. Construction of new house and driveway within Upland Review Area and Wetland; modification to include deck, shed, and footing drain outlet in Upland Review Area with the conditions that the five items outlined on the proposed scope of work from Fontaine Bros. dated 11/22/2024 be completed, along with a sixth item for additional plantings, to be approved by wetland agent, to occur between WL 75 and WL 85 in the spring of 2025. A bond will be posted for \$6185 until the completion of work. Lise Wood seconded. All in favor.

At this time, Joanna Shapiro left to make copies of exhibits presented for the King Road violation upon the request of the property owner, Nicholas Turnberg.

### 3. Proposed 2025 Meeting Dates

Joan Formeister asked the Commission member if the following 2025 dates were okay with everyone. Everyone said yes.

January 8  
February 5  
March 5  
April 2  
May 7  
June 4  
July 2  
August 6  
September 3  
October 1  
November 5  
December 3

Drew Kukucka moved to approve the proposed 2025 meeting dates as listed above. Joan Formeister seconded. All were in favor.

#### IV. AUDIENCE PARTICIPATION

n/a, no audience in attendance

Drew Kukucka made a motion to move the Staff Report part of the agenda to follow the Correspondence and Bills section. Lise Wood seconded. All in favor.

#### V. STAFF REPORT

- Minimum impact permit issued for 24 White Birch Circle to replace a shed further from the wetland than it is currently.
- The manure pit that was being planned for 122 Watchaug Road has withdrawn its application. They want to create a new driveway entrance that does not go through the Jarmoc's property. A soil scientist said it's not within 100' of a wetland, but Joanna Shapiro had a few follow-up questions and wants to visit the site but has not heard back.
- A resident reached out to Joanna to inquire about a dead tree along the mill pond behind Somers Hill Circle. The state has been made aware of this since it is on their land.

Lise Wood moved to approve the Staff Report. Candace Aleks seconded. All were in favor.

#### VI. CORRESPONDENCE AND BILLS

- CACIWC - \$65 CACIWC Dues, \$85 annual symposium attendance for Chair.

Lise Wood moved to pay the \$65 CACIWC Dues and the \$85 annual symposium attendance fee for the Chair. Candace Aleks seconded. All were in favor, and the motion carried.

- CT Bar Association Land Use Law webinar on Saturday March 22, all day.
- Solar project on Route 83 may be coming back. There will be a public hearing on January 30.

VII. MINUTES APPROVAL: September 4, 2024

There were no meetings held in October 2024 and November 2024.

Lise Wood moved to approve the September 04, 2024, minutes. Dan Fraro seconded. All were in favor, and the motion carried.

VIII. ADJOURNMENT

Candace Aleks moved to adjourn the December 04, 2024 meeting, and Dan Fraro seconded. All were in favor, and the motion carried. The meeting was adjourned at 9:30 p.m.

Respectfully Submitted, Commissioner Sydney Flowers, Secretary  
MINUTES ARE NOT OFFICIAL UNTIL APPROVED AT A SUBSEQUENT MEETING