

September 30, 2004

Citation Hearing

Fowler/138 Nichols Hill Road/Excavation, Filling, Clearing in Wetlands

Present: Atty. Powers, Mr. Ajello, Mr. Picton, Atty. Kelly, Mr. Fowler, Mrs. J. Hill, Mrs. D. Hill, Mr. Bedini, Mrs. Korzenko

Atty. Powers called the Citation Hearing to order at 7:04 p.m. and administered an oath to those who would be providing testimony.

Atty. Powers stated Atty. Kelly had sent him a position paper regarding the reasons why he did not think the citation should be upheld. These reasons were noted for the record and discussed in detail.

1. The citation was invalid because Mr. Ajello, Wetlands Enforcement Officer, did not have the authority to issue the citation: Mr. Ajello presented a letter dated 11/7/03 from Mrs. Luckey, former First Selectman, which assigned the citation officer duties to him. He also noted he had been sworn in by the Town Clerk. Atty. Kelly argued that Mr. Ajello could not have been appointed before the effective date of the Ordinance, which he claimed was 11/10/03, but it was pointed out the Ordinance was effective 11/1/03.
2. The citation was invalid because the Ordinance failed to comply with CGS 22a-42g because a) it created a schedule of fines rather than a single fine and b) it failed to protect the due process rights of property owners: Atty. Powers dismissed this argument because it was not under his jurisdiction as Hearing Officer to rule on the validity of the Ordinance on constitutional grounds. He noted Ct. Superior Court was the proper venue to consider this argument.
3. The citation was invalid because it was issued before there was a determination that the Regulations would apply and
4. The citation and the record failed to state any findings of facts or to give notice as to a finding of a violation of any regulation or to identify the regulation claimed to be violated: and
5. The citation ignored evidence presented at the Show Cause Hearing and/or relied on evidence that the WEO and Commission failed to present at the Show Cause Hearing, which violates Mr. Fowler's right to due process. Arguments #3, #4, and #5 were considered together at length. Atty. Kelly argued Mr. Fowler could not be cited for an activity, which was not regulated by the Inland Wetlands Commission, and so would not have been in violation if he had applied for an exemption. He also stated it was not fair to his client that the section number of the regulation violated had not been noted for the record so that Mr. Fowler could adequately prepare his defense. It was noted that the 6/1/04 citation listed the violation as excavation, filling, and clearing in wetlands and watercourses, although the number of the regulation violated had not been included. Mr. Picton, Chairman, and Mr. Ajello explained they did not consider the above activity to be as of right because the scope of the work was significant (use of machinery in wetlands) and had the potential for adverse impact and damage to the wetlands.

Atty. Powers stated he disagreed with Mr. Kelly's arguments that Mr. Fowler was denied due process, and also disagreed that the citation order did not provide enough specific information as to the exact description of the violation. He therefore upheld the citation order and noted his decision could be appealed to Ct. Superior Court. He adjourned the hearing at 8:25 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill
Land Use Coordinator