

REGULAR MEETING MINUTES
WINDSOR INLAND WETLANDS & WATERCOURSES COMMISSION
TUESDAY JUNE 1, 2021 7:00PM

Meeting Location: Online webinar, to join via computer please go to the link below
<https://us02web.zoom.us/j/85435818689>

Chairman Morando called the meeting to order at 7:05 PM.

I. Roll Call:

Present: Chairman L. Morando, Secretary Towers, Commissioners, A. Schibley, S. Fraysier, and D. DeCarlo.

Also present was Assistant Town Planner and Acting Inland Wetlands Agent, Todd Sealy, Town Planner, Eric Barz and Inland Wetlands Agent, Chloe Thompson.

II. Public Communications: (3-minute limit on items other than Public Hearings)

Public communications opened at 7:07 PM.

No Attendees

Public communications closed at 7:08 PM.

III. Business Meeting:

• **Minutes:**

Commissioner Towers made a **motion to postpone the acceptance of the minutes from May 4 at the next regular meeting.** Commissioner Schibley seconded the motion. **Vote 5-0-0**

• **New Business:**

- **Application 21-250_105 Baker Hollow Road – Applicant: Alford Associates – Warehouse**

Christian Alford, Professional Engineer and Land Surveyor, and Jeff O’Neill, applicant, were present and addressed the Commission. Mr. Alford stated that they are looking to acquire a wetland permit for a distribution warehouse and gave a brief overview of the site history and the current abutters. Mr. Alford stated the site was surveyed by a soil scientist in 2016 finding 2 acres of forested area along the western boundary along Old Poquonock Road containing roughly 0.5 acres of wetlands, and an intermittent stream flowing off-site. Mr. Alford further explained the attributes of the proposed building and paved areas including the parking lot and detailed the drainage plan for the site run-off. The drainage for the parking lot and the building will be piped under the access road and into two drainage basins adjacent to the current wetlands, with the majority of the water draining to the southern basin.

Mr. Alford outlined the erosion and sedimentation control plans.

Commissioner Fraysier asked why two construction entrances were needed. Mr. Alford explained that there needs to be two entrances because the existing road belongs exclusively to the bus company that is directly south of the site. This existing road would only be used when constructing the retention basins on the western side of the site.

Commissioner Fraysier asked for clarification about item 17 on the Septic System Site Plans, "Provide an equal area for future expansion of sanitary system as indicated on the plans." Mr. Alford replied by stating that it is a provision of the health code, to prepare for possible failure on construction plans so it can be constructed elsewhere if needed.

Commissioner Fraysier asked why the wetland delineation in 2016 has not been updated, to which Mr. Alford replied that the technical engineer conducted boring samples, and there shouldn't be any major changes to the wetlands, and that a portion of the flagging on site was still present.

Commissioner Fraysier asked if there were any vernal pools in the area, Mr. Alford assured that there are not any present.

Commissioner Schibley asked if it were possible to increase the size of the northern basin, to be able to reduce the size of the smaller basin, which is in the upland review area and would require trees and vegetation to be removed. Mr. Alford explained that would not be possible as the northern basin is higher in elevation and the topography of the site wouldn't allow for this. Commissioner Schibley asked if the southeastern corner of the site would be an option to relocate the southern basin. Mr. Alford and Mr. O'Neill both stated that this would not be feasible due to the dramatic slope and an existing road in this area of the property. Mr. Alford also added that the basin is as close to the road and as far from the wetlands as the property will allow.

Commissioner Towers asked if any area of the property was identified in the Natural Diversity Database (NDDB). Mr. Alford replied by directing to Sheet 9.0 of the plans which include a letter from DEEP's Wildlife biologist detailing a list and protocol for the protected species expected to occur on the site which are *Cicindela Formosa generosa* (big sand tiger beetle), *Euxoa violaris* (violet dart moth), and *Terrapene carolina carolina* (Eastern box turtle), all of which are of special concern in the State of Connecticut. Mr. Alford stated that this letter was not included on the original plans sent out, and that an updated version would be sent to be distributed to the commission.

Commissioner Towers questioned the level of traffic of large trucks moving in and out of the facility in regards to automobile fuel or oil leakage into storm basins. Mr. O'Neill replied that the building is being designed to encompass many different uses as far as

tenants, as they do not have any prospective tenants at this time, and therefore are unsure about the level of traffic this site is to endure once the building is fully rented. Mr. Alford and Mr. O'Neill assured the commission that the catch basins are designed to filter this pollutant and such basins would be maintained year-round to avoid contamination into wetlands.

Chairman Morando stated it appears these are best choices to minimize impact on the wetlands and therefore would be appropriate to delegate this application to the agent. Commissioner Fraysier agreed. Commissioner Schibley expressed concern with the state listed species, and recommended the agent emphasize this when listing the conditions of permit. Commissioner Fraysier agreed.

Commissioner Schibley made **a motion to accept application 21-250_105 Baker Hollow Road – Applicant: Alford Associates – Warehouse** and delegate to the agent as this activity will not have a significant impact to a wetland or watercourse. Commissioner Towers seconded the motion.
Vote 5-0-0

- **Application 21-255_28 Cook Hill Road – Applicant: CT Valley Real Estate, LLC. – Subdivision in a forested area**

Will Walters, P.E. from Alfred Benesch & Co. of Glastonbury was present and addressed the Commission as the Project Engineer and applicant for this project Mr. Walters introduced soil scientist, Martin Brogie. Mr. Walters presented the plans for the subdivision, and general attributes of the site location and surrounding resources. Mr. Walters indicated that the plans presented are different from the plans the Commission was sent in preparation for this meeting. Mr. Walters explained the proposed conservation easement per agent request, at thirty feet from all wetland boundaries with the exception of lot ten which has 15 feet due to space constraints. The plans meet or exceed this requirement Mr. Walters explained the drainage and septic system plans for the lots. Sidewalks will be placed along Cook Hill Road and connect to the existing sidewalk on Capen Street. Mr. Walters explained the plans for sanitary sewers are still being drafted and he is awaiting a meeting with the Town Engineering Department to finalize them. Mr. Walters described the report from his soil scientist, and believes the proposed plans will have minimal impact on the wetlands.

Commissioner Schibley asked Mr. Walters to confirm that the only modification expected would be to the lower left lot (4) split into two lots, and plans within the wetlands or upland review area are not expected to be altered from what is being presented. Commissioner Schibley expressed concern in delegating an application to the agent while changes are expected to occur.

Mr. Walters replied that the prospective additional lot will be in the upland review area.

Commissioner Fraysier asked if any resources were being allocated to the subdivision through the area closest to and within the wetland areas. Mr. Walters explained that the electric, and water lines will not be placed in the wetland areas.

Commissioner Fraysier expressed concern with property owners upholding the regulations of the conservation easement and asked if there were any plans to be proactive about the protection of wetlands on the lots containing conservation easement areas. Mr. Walters said that the conservation easement will go on the plot plan and sometimes there is a note that goes to the property owner, or prospective buyers. Martin Brogie, Soil Scientist, suggested adding small metal signs to trees around the perimeter to identify the boundaries of the easement. Commissioner Fraysier expressed concern in the lifespan of signs. Commissioner Schibley added that the easement will be listed on land records, which will notify those searching for the property title.

Chairman Morando asked if they can accept this application with expected changes. Mr. Walters said that any changes to the plans will be outside of the upland review area.

Chairman Morando asked what the status was with these plans and MDC approval. Mr. Walters said that they are looking for him to get feedback from the town first, then they will review his application.

Commissioner DeCarlo asked for clarification on the extension of the sewer main. Mr. Walters explained that there is a proposed extension going through an easement on two or more lots.

Eric Barz, Town Planner, noted that the application is received automatically at a regularly scheduled meeting of the Commission, unless the Commission has reason to believe it is incomplete.

Todd Sealy, Assistant Town Planner, brought a conversation in the chat window to the attention of the Commission. Commissioner DeCarlo stated that he does know the applicant, but that he has no personal incentives concerning this application.

Commissioner Schibley made a **motion to accept application 21-255_28 Cook Hill Road – Applicant: CT Valley Real Estate, LLC. – Subdivision in a forested area**, and that the item be placed on the agenda for the next regular meeting. Commissioner Towers seconded the motion. **Vote 5-0-0**

- **Pre Application Review: 9 Shelley Ave – Potential Applicant: Mark Thomas, Bank stabilization and re-grading**

Inland Wetlands Agent, Chloe Thompson, described the property owner's concerns about eroding slopes in their backyard, requesting guidance on the level of detail needed in an application to add rip rap, or concrete blocks to the bank of a stream flowing through the property directly adjacent to a driveway and a house. She explained that the Engineering Department is scheduled to repair a culvert in this area, which may resolve the erosion issue. Commissioner Fraysier said that it sounds like the issue is becoming an emergency repair. Commissioner Schibley recommended just a short form application might be appropriate if it is not an emergency, and there wasn't a need for large equipment, and the wetland would not be filled. Chairman Morando agreed with Commissioner Schibley, that as long as the applicant is trying to stabilize the bank, a short form application would be sufficient.

Commissioner Towers recommended looking at old records on a similar situation in the Strawberry Hills area.

- **New Wetlands Mapping**

Chairman Morando requested this matter be tabled until the next regular meeting. The Commission agreed.

- **Old Business:**
 - **Application 21-240_50 Huckleberry Road – Applicant: Town of Windsor Landfill – Subsurface piping and catch basin creation.**

Chairman Morando asked if there were any changes to the application since the last meeting. Assistant Town Planner, Todd Sealy, described alterations to the plans in regard to the storage of material in a flood zone Commissioner Fraysier brought to the applicant's attention at the previous meeting. This has been moved so it is no longer in the flood zone.

Assistant Town Planner Todd Sealy, stated that the hearing for this application will have to be delayed as the abutting property owners were not notified in time for this meeting.

Commissioner Schibley made a **motion to postpone the public hearing for application 21-240_50 Huckleberry Road– Applicant: Town of Windsor Landfill – Subsurface piping and catch basin creation**, to June 22 at 7:00pm. Commissioner Fraysier seconded the motion. **Vote 5-0-0**

- **Application 21-229_4 Walters Way – Applicant: Thomas DeFranzo – Agricultural Exemption for a fish pond and vineyard**

Asst. Town Planner Sealy stated that the applicant withdrew the application. Commissioner Schibley stated that the applicant would need to pay the fees again should they reapply. Assistant Town Planner, Todd Sealy, stated that the applicant was looking for a waiver upon reapplication. Commissioner Schibley said that this must be decided upon at the time of reapplication according to the regulations.

IV. Discussion – None

V. Hearings

- **220 Kennedy Road, Tameka Hewitt – 37 Canterbury Lane, Hartford Audubon**

Tameka Hewitt identified herself as the property owner at 220 Kennedy Road to the Commission, and introduced TJ Barresi, Professional Engineer; George Logan, Professional Wetland Scientist (PWS); and his associate, Sigrun Gadwa. Ms. Hewitt described a conversation she had with the previous Inland Wetland Agent, Emily Perko concerning her property boundaries and wetlands in regard to placing a gazebo on her property. Ms. Hewitt stated that previous Inland Wetland Agent, Emily Perko emailed her a map of her property boundaries and the wetland boundary. Ms. Hewitt described further conversation with the previous agent, who confirmed that mowing the grass on her property was not an issue. Ms. Hewitt stated that upon receiving this feedback, a family owner mowed the grass on what she thought was within her property boundaries. Ms. Hewitt further described the timeline following the mowing, including a site visit on April 29th with Inland Wetlands Agent, Chloe Thompson; Asst. Town Planner, Todd Sealy; Audubon President, Sarah Faulkner, and receipt of a cease and desist order on May 6th. Ms. Hewitt stated that the violation was unintentional, and formally apologized for the activity conducted on Audubon property.

TJ Barresi addressed the Commission as a professional engineer and land surveyor working for Ms. Hewitt to mark the boundaries of her property. Mr. Barresi described the property attributes and the history of the Audubon property at 37T Canterbury Lane, as part of the Canterbury Lane subdivision. Mr. Barresi referred to letters from the Town Planning Department and the Audubon Society when Mr. Barresi stated the following claims and interpretations of definitions and regulations:

1. This land has been designated as public open space to comply with planning and zoning regulations for subdivisions since the Canterbury Lane subdivision. It is because of this that Ms. Hewitt was not “unlawfully” on land of others.
2. Ms. Hewitt did not “clear” land because the vegetation was mowed, and not uprooted or removed.

3. Mowing is a type of landscaping, therefore should be considered a “permitted use as of right”, as listed in the Inland Wetland and Watercourses Regulations in section 4.1d.

George Logan addressed the commission as a PWS and soil scientist, speaking on behalf of Ms. Hewitt as her consultant. He also introduced his associate Sigrun Gadwa, PWS and soil scientist. Mr. Logan presented a map detailing Ms. Hewitt’s property boundaries, the wetland boundary, the edge of dense invasive species *Phragmites australis*, and the area where mowing took place. Mr. Logan described the growth pattern of *Phragmites*, where the mowed material was from the previous growing season, and new shoots emerge each year growing upwards as tall as 13 feet in some areas. Mr. Logan claimed the grass was moderately-high to high in regard to height of the grass, and such cutting has resulted in a higher level of light reaching the ground and allowed for other vegetation to emerge. The majority of the material cut was *Phragmites*, with a few native shrubs, such as spicebush and silky dogwood. Mr. Logan said that Ms. Hewitt would be willing to plant shrubs to replace those removed to help native colonizing species establish. Mr. Logan stated due to the time of year mowing took place, there was likely minimal impact on birds, herptiles and other wildlife. The material was not removed, and therefore can still be used as nesting material by birds and other nesting wildlife. Invertebrates and rodents are now more exposed for avian predators. The resident bobcat family present prior to mowing may also have better access to smaller prey without the dense vegetation. Mr. Logan expressed concern for the recommended use of herbicide by the Audubon Society as it will have a massive impact on the wetland including the soil microbiology. Mr. Logan stated he believes that the large volume of herbicide this site would require, would become a public health and safety hazard. Mr. Logan described a portion of the property closest to Kennedy road as brush storage created by the previous occupant at 220 Kennedy Road, and proposed this be one of the locations where native shrubs be placed. Mr. Logan stated his professional opinion of the activity as “at worst a temporary impact, and at best a habitat enhancement”. Mr. Logan presented and described historical imagery. The site has a marsh likely comprised of *Phragmites* dating back as early as 1965. Mr. Logan then presented a series of current pictures showing the regrowth of vegetation since the mowing.

Sigrun Gadwa introduced herself to the Commission, stating her education background and experience with invasive species management.

Sarah Faulkner introduced herself to the Commission as the previous President of the Hartford Audubon. Ms. Faulkner confirmed the status of the property at 37T Canterbury Lane as public open space and nature preserve. Ms. Faulkner presented a series of photographs to show the site conditions prior to the mowing in March 2021. A photo posted by SmartMLS, Inc. in 2020 showed the vegetation of the area to include a mixture of shrubs and *Phragmites*. Ms. Faulkner explained how this introduced disturbance will allow for the spread of *Phragmites* into areas previously occupied by shrubs. Ms. Faulkner

described the cutting and mowed areas, showing previous locations of removed shrubs toward Kennedy Road. Ms. Faulkner added that the date of this mowing event occurred closer to April 1st and continued on the 28th. Ms. Faulkner stated that a garden had been placed on the Audubon property after May 1st, and showed an image of such. A series of images presented by Ms. Faulkner showed the regrowth of vegetation, and leftover vegetative debris such as large wood stems and tree stumps. Ms. Faulkner then described how this disturbance will allow for the *Phragmites* population to expand beyond its' previous bounds. This area is for 'the enjoyment and protection of birds and birding habitat'.

Anthony Zemba introduced himself to the Commission as a certified ecologist, working in natural resource management for over 32 years. Mr. Zemba identified the shrub area against Ms. Hewitt's property boundary toward Kennedy Road as one of the highest valued areas on their parcel because of the low *Phragmites* density. Mr. Zemba explained that *Phragmites*, while an invasive species, has a lot of value to several wildlife species as habitat, in addition to serving as sound and visual barrier reducing edge effects for species within the wetland. Mr. Zemba listed wildlife dependent on the services provided by the shrub and vine dominated area. Mr. Zemba said he disagreed with Mr. Logan, and that there has been impact to the bird and insect populations. Mr. Zemba agreed with Mr. Logan that planting of shrubs is a necessary step for restoration. The *Phragmites* will now be growing with more vigor than the previous shrubs, and will likely outcompete any seedlings therefore woody plantings will be necessary to ensure establishment. This area has numerous values to the wetland ecosystem and wildlife habitat, which is the mission statement of this preserve.

Ms. Faulkner asked Mr. Zemba to provide a statement about the use of herbicides to control the *Phragmites*. Mr. Zemba replied that herbicide is just one tool to be used in conjunction with or in place of alternative methods, and that the final protocol has not yet been determined.

Attorney Keith Ainsworth introduced himself to the Commission as an environmental attorney. Atty. Ainsworth disputed claims stated above by Mr. Barresi, and described his interpretations of the regulations concerning regulated activity and permitted uses as of right in the Inland Wetlands and Watercourses Regulations. Exemptions only apply if a party brings the matter to the Commission, to achieve an appropriate designation prior to the commencement of activity. Mr. Ainsworth described the mowing activity as trespassing. Mr. Ainsworth clarified the status of the Audubon property as no longer a portion of the subdivision. Mr. Ainsworth stated that the Hartford Audubon would like the Commission to state that the area should be fully and completely restored as quickly as possible.

Chairman Morando asked if there were any additional comments.

Ms. Hewitt addressed comments concerning inorganic debris and brush deposited by previous property owners, which she had removed from the property in the location described by Mr. Zemba and Ms. Faulkner as a shrub and vine dominated region. This might have been overlooked as Audubon staff had not been to the site in recent times prior to this incident.

Mr. Logan commented on statements from Mr. Zemba, expressing a need for qualitative site observations of the species mentioned, rather than that the species are known to benefit from the preexisting species. Mr. Logan also requested there be more evidence provided for the expected success of restoration methods proposed by the Audubon Society. Mr. Logan proposed a collaborative on-site qualitative evaluation between himself, Ms. Gadwa, and Mr. Zemba to determine a feasible plan for restoration agreed upon by both parties.

Ms. Faulkner expressed concern for restoration efforts.

Ms. Gadwa commented that most of the shrubs will re-sprout, and they should be identified and maintained as part of the restoration plan as the well-established root system is still intact. This could be more efficient than a newly planted shrub concerning the expected competition from colonizing *Phragmites*.

Mr. Barresi stated that this open space is still part of the Canterbury Lane subdivision as it was a requirement for the establishment of the subdivision.

Mr. Barresi stated he believes all of the activity conducted was simply mowing, and this is not encompassed by the “regulated activity” definition in the regulations, and that Ms. Hewitt is only guilty of trespassing and mowing vegetation that did not belong to her. Commissioner Schibley responded to Mr. Barresi, referring to the definition of “clearing”, and ask Mr. Barresi why he believes the activity cannot be categorized as such. Mr. Barresi replied that “clearing” involves the uprooting of vegetation. Town Planner, Eric Barz described uprooting as “grubbing”.

Town Planner, Eric Barz, proposed that because *Phragmites* expansion occurs through aggressive rhizomes, this root system could be used to identify the boundaries of the population prior to mowing. Mr. Zemba said this type of investigation would not reveal the areas he believes were previously occupied by native species. Town Planner, Eric Barz restated that this would still reveal the bounds of the *Phragmites*, to which Mr. Zemba and Mr. Logan agreed. Ms. Faulkner added that the mowing activity is likely to promote the expansion of *Phragmites*, therefore there is potential for the boundary to have moved during this growing season. Town Planner, Eric Barz added that this may then be used to identify how much of the population has expanded, if any, as result of the mowing.

Town Planner, Eric Barz suggested to the Commission that ecologists from both parties collectively survey and document the on-site conditions with the goal of delivering a feasible restoration plan to which the Commission can vote upon and require fulfillment by Ms. Hewitt. Chairman Morando agreed, and requested Mr. Zemba and Mr. Logan each present a report from a collective on-site investigation to the Commission at the next meeting to occur on June 22nd. Mr. Zemba replied that he will have to consult with Ms. Faulkner and Mr. Ainsworth. Ms. Faulkner stated that the Audubon Society is eager to see this resolved, and sees no impediment to Mr. Logan and Mr. Zemba meeting on-site.

Town Planner, Eric Barz requested that Mr. Barresi and Mr. Ainsworth compile comments regarding trespassing and open space in a memo for the town attorney to provide comment on for the Commission. Town attorney, Tim Fitzgerald stated that that would not be necessary.

Chairman Morando requested a motion to continue this hearing during the Special Meeting on June 22nd. Mr. Logan stated that Ms. Gadwa will have to speak on his behalf as he cannot be present.

Commissioner Towers made a **motion for a continuation of the hearing to June 22, concerning the violations occurring at 220 Kennedy Road and 37T Canterbury Lane**. Commissioner Fraysier seconded the motion. **Vote 5-0-0**

VI. Authorized Agent Actions

- AA-21-244_ 141 Hayden Station Rd – Applicant: John Danos – Construction of 1.5 story garage
- AA-21-245_ 41 Brentwood Ln – Applicant: Michael Grillo – Removal of deck, construct 18'x20' 3 season room
- AA-21-246_ 155 Alcott Drive – Applicant: Al Harris Jr. – 24' Above ground pool installation
- AA-21-247_ 25 Sage Park Road – Applicant TOW/Adam Kessler Assist Town Eng. – Athletic field improvements
- AA-21-248_ 125 Tunxis St – Applicant: TLC Energy/Richard Johnson Jr. – Install two generators and add two (120g) propane tanks
- AA-21-249_ 10 Glenwood Rd – Applicant: Edward Plunge – Construct 24' x 16' Deck
- AA-21-250_ 26 Sawka Cr – Applicant: Samantha Forley – Install 21' round above ground pool
- AA-21-251_ 9 Jay Circle – Applicant: Peter Daws – Install above ground pool

- AA-21-252_337 Merriman Rd – Applicant: Juan Pinto – Replacing & upgrading current above ground pool
- AA-21-254_4 Batchelder Rd, Loomis Chaffee School – Applicant: Newfield Construction – Masonry dugouts for softball fields

Inland Wetlands Agent Thompson explained the Agent Actions to the Commission.

Commissioner Towers asked if the masonry dugouts in application AA-21-254 were within the floodplain. Environmental Planner Thompson replied that they are not, and this is for the fields on the western side of the campus.

VII. Agent Report

VIII. Petitions from Commissioners:

Commissioner Towers asked about electing a vice chair. Environmental Planner Thompson said she would gather more information on how to go about this.

IX. Adjournment:

Commissioner Schibley made a Motion to adjourn at 10:31pm, Commissioner DeCarlo seconded and it passed 5-0-0.

I certify that these minutes were approved on

Marlene Towers, Secretary
Inland Wetlands and Watercourses Commission