

REGULAR MEETING MINUTES
WINDSOR INLAND WETLANDS & WATERCOURSES COMMISSION
WEDNESDAY NOVEMBER 3RD, 2021 7:00PM

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 7:00 PM.

I. ROLL CALL

Present: Chairman L. Morando, Secretary M. Towers, Commissioners; A. Schibley, S. Fraysier, K. Washington, K. Elder and R. Williams.

Also present was Environmental Planner, Chloe Thompson.

II. PUBLIC COMMUNICATIONS (3-minute limit on items other than Public Hearings)

- a. Sarah Faulkner addressed the Commission, and explained she observed wetland violations occurring on 220 Kennedy Road in the wetland area and upland review area. Ms. Faulkner claimed that a pool was being installed and vegetation was removed without proper permits. Ms. Faulkner asked the Commission to take action on the wetland violations observed.

III. BUSINESS MEETING

a. MINUTES:

Commissioner Schibley made a **motion to approve the minutes for September 21, 2021**. Commissioner Fraysier seconded the motion. **Vote 7-0-0**

Commissioner Schibley made a **motion to approve the minutes for October 5, 2021 as amended**. Commissioner Fraysier seconded the motion. **Vote 7-0-0**

b. NEW BUSINESS

i. New Commissioner: Keegan Elder

The Commission introduced new Commissioner, Keegan Elder.

ii. 2021 MDC Clearing Project, Town-wide

Jason Waterbury introduced himself to the Commission as the applicant representing the MDC. Env. Planner provided her comment on the background information; she has been consulting with the applicant for the last few months on this project.

Mr. Waterbury explained that this is a repeat project, with the first phase approved by the Commission in 2018. Mark Lavoie is the Contractor for the clearing, also present. Mr. Waterbury explained the background information on the sewer system, the reason for the project, and the scope and sequence for the clearing work. Mr. Waterbury explained that the clearing is expected to begin in the winter months, most likely in February of 2022.

Chairman Morando asked Mr. Waterbury if there was a sequence as to how each area would be cleared. Mr. Waterbury stated that the sequence will heavily rely on the NDDB survey once they receive a response from the state.

Commissioner Schibley expressed concern with the timing between clearing and stabilization of areas within regulated wetland areas and upland review areas. Commissioner Schibley requested that there be more attention delegated to areas that could be considered environmentally sensitive areas (ex. steep slopes, NDDB) to minimize the impact and reduce the time in which the area is left destabilized. Commissioner Schibley also requested that if protected species are reported in the NDDB, that the contractor is trained on proper treatment and protocol should protected individuals be found on-site. Mr. Waterbury said that this information, once they receive it, will be directly given to inspectors and the contractor. Mr. Waterbury added that if there was anything else found on-site that they were not expecting, they would then bring the matter to the Commission as a separate project.

Chairman Morando asked why the different types of sewer was significant in regard to this application. Mr. Waterbury said it is not significant, it just indicates the condition of pipes and the level of concern the MDC has with maintenance.

Commissioner Elder asked if a larger clearing area would be needed for larger trees. Mark Lavoie, contractor for the MDC, stated that tree climbers will remove trees in sections, where the land clearing material will be used to create wildlife habitat. Mr. Lavoie added to the concerns with erosion above, stating that in areas where erosion is a concern, vegetation is removed above ground and root structures are preserved to the best of their ability to reduce erosion potential which is followed with hay and seed.

Commissioner Fraysier asked if the application will include site plans, removal sequences more detail in general. Mr. Waterbury said that his staff has been working with Env. Planner Thompson on site plans to be submitted. Mr. Waterbury stated that an overall sequence is not currently part of the application, but there is a sequence for typical easement areas. Mr. Waterbury said that he will add the note about reducing the time in which wetland areas are exposed without stabilization post clearing. Mr. Waterbury displayed what a typical map will look like in the application, with a scale of 1in=200ft.

iii. Application 21-285: 99 Lamberton Rd, CBRE – Site Improvements

Chairman Morando asked Env. Planner Thompson if she had any comments on the application. Env. Planner Thompson said that she sees the impact as very minimal, and a lot (if not all) of the activity listed is within areas that have already been developed.

John Wagenblatt introduced himself to the Commission as applicant and the Principal for LRC Group in Cromwell, CT. Mr. Wagenblatt explained the details of the three major components to the

application to the Commission. Mr. Wagenblatt stated that the wetland areas were surveyed by Martin Brogie.

Patrick Peltier introduced himself to the Commission representing CBRE, and outlined the goals of the project and why site improvements are necessary. Mr. Wagenblatt explained the plans for erosion and sediment control throughout the construction time period.

Commissioner Elder asked where the stockpile will be located and what the plans were for erosion control. This is referring to note 4 on the DN-1 plan, regarding excavated material. Mr. Wagenblatt explained that roughly where the pile would be, and said that this can be added to the plans in preparation for the next wetland meeting. Commissioner Schibley stated that he had a similar question about excavated material and the storage of such.

Commissioner Schibley made a motion to accept application 21-285: 99 Lambert Rd, CBRE – Site Improvements. Commissioner Towers seconded the motion. Vote 7-0-0

c. OLD BUSINESS

i. Amazon Site Sedimentation – Langan Site Observation Report

Env. Planner Thompson explained to the Commission that a status report, and corrective action details had been received since the last meeting in October. A final report of the emergency corrective actions conducted this fall will be presented to the Commission in the December meeting by Thomas Cody and those within the Amazon party.

Env. Planner Thompson stated that there has been additional complications with basins and associated outfalls ‘E’ and ‘D’, and the town is awaiting update from Langan and RC Anderson in regard to these complications.

Commissioner Towers asked if the Engineering Department expressed concern with the initial design of these basins and outfalls. Env. Planner Thompson said that approval was given to this, but specific details of such is something she would look to the Engineering Department to provide. Env. Planner Thompson added that all of the failure events were not solely caused by storms alone.

Env. Planner Thompson stated that she has been on-site and conducting site visits periodically, and will update the Commission of any new information as it comes about concerning recent failures as well as any information involving the emergency corrective action.

ii. Application 21-272: 2100 Day Hill Rd, Great Pond Improvement District – Subdivision and infrastructure plan

Jim Petropulos introduced himself to the Commission as a Civil Engineer from Hayner Swanson in Nashua, New Hampshire representing the Great Pond Improvement District. Accompanying him was Linda Costanzo and Wetland Consultant Denis Lowry from AE Com. Mr. Petropulos explained the details of the application that was initially presented at the last regular meeting. Mr. Petropulos

explained that the buffer impact has since increased, which was explained previously, to allow for the multi-use bridge and path along Day Hill Road. There are no direct wetland impacts as part of this application.

Commissioner Fraysier asked Mr. Petropulos where the open space would be on-site. Mr. Petropulos explained that there are three different areas being proposed and described each. Mr. Petropulos added that there was a minimum requirement of about 190 acres, but they are proposing roughly 250 acres of land dedicated to open space.

Commissioner Fraysier asked Mr. Petropulos about the abutments for the bridge adjacent to Day Hill Road and the proximity to wetlands. Mr. Petropulos said that the abutments will be roughly 25 feet from the wetland boundary as the wetland/watercourse is only about 4 to 5 feet in width at this location. The bridge will be 12 feet wide, with rails along each side.

Commissioner Fraysier asked if there was a better option for the layout of the outlet and bridge area, as the rip rap meets the wetland boundary. Mr. Petropulos explained that this was the most feasible option for this design.

Commissioner Schibley asked about the size of the emergency overflow pipe was chosen in “Upland Review Impact area D”. Mr. Petropulos explained that the pipes are designed to reduce the velocity of water, and that decisions were made in an attempt to account for the intense storms this area has been experiencing in the last few years, especially this past summer.

Commissioner Fraysier asked if the rip rap was intermediate or moderate. Mr. Petropulos said he believes it is intermediate, the flows are smaller so this would be most appropriate. Commissioner Fraysier expressed concern with high flows and standard rip rap so close to the wetland boundary, and agreed intermediate is appropriate.

Commissioner Schibley made a motion to approve application 21-272: 2100 Day Hill Rd, Great Pond Improvement District – Subdivision and infrastructure plan. Commissioner Fraysier seconded the motion. Vote 7-0-0

IV. HEARINGS

a. 4 Walters Way (Previously 130 Merriman Road) – Thomas DeFranzo

Env. Planner Thompson pointed the Commission to the memo from Adam Kessler, and stated that she thought the most important part to note was that the topographical lines on the plan submitted by Alford Associates were both incomplete and inaccurate specifically in regard to the berms along the southern property boundary.

Skip Alford addressed the Commission as an engineer representing Thomas DeFranzo.

Chairman Morando stated that this property owner has had a history of conducting regulated activity without a permit on this specific piece of property dating as far back as 2003. Chairman Morando added the Commission sees issue with the repeated violations, and seeking permission to conduct activity that has already been conducted. Chairman Morando stated that there were a significant number of trees removed from the property, and now the restoration plan is proposing fruit trees, instead of those similar to the ones removed, which doesn't seem like a fitting restitution.

Commissioner Schibley asked Mr. Alford to explain the map containing the restoration plan to the Commission.

Mr. Alford explained that the only addition to this map was the inclusion of 7 fruit trees along the southern border of the wetland boundary. Mr. Alford claimed that there was no impact to the wetland areas as a result of Mr. DeFranzo's activity on the property.

Commissioner Schibley asked Mr. DeFranzo to explain why there was erosion of sediment into the boat launch parking lot earlier in the summer as discussed in previous meetings. Mr. DeFranzo said that the erosion was a result of truck spinning tires. Mr. DeFranzo claimed that the runoff from the road does not reach the berms and is instead channeled alongside the road. Env. Planner Thompson said that the temporary silt fence may be what has somewhat reduced the likelihood for further erosion, and this may become a larger issue once this fence is removed.

Commissioner Schibley stated that he heard Mr. DeFranzo mention that he had seeded grass throughout his property, yet at the last meeting, the Commission granted him permission to seed anywhere outside of a 50 foot buffer from the wetland area. Mr. DeFranzo said that there was no grass seed added to this area. Mr. Alford showed the Commission pictures of the property, and the boat launch parking lot.

Mr. Alford asked that if there was no impact to the wetlands themselves, why a restoration or corrective action would be necessary. Commissioner Schibley responded and said that regulations encompass not only the wetlands, but the upland review areas around wetlands. Commissioner Schibley added that we are not to judge the ecological impacts of the activity that was conducted as no one in this meeting is acting as an ecologist that has conducted a survey of the property. The Commission cannot say that as long as no erosion has occurred, that no damage has been done, and therefore a remediation plan is not required. Mr. Alford stated that he disagreed with this and that the regulations regulate the soil. Commissioner Schibley said "No, wetlands are in-part defined by the soil". Commissioner Schibley added that the soil gives us the area (i.e. wetland boundaries) that is regulated in addition to the buffer area from the wetland boundary which is also regulated.

Mr. Alford stated that the wetlands in this area of the property is a well-defined stream, and about 50 feet of area around them has not been altered. Mr. Alford stated that the integrity, function and value of the wetlands has not been altered. Commissioner Schibley asked if Mr. Alford was an Ecologist. Mr. Alford said he wrote the model regulations for the State of Connecticut. Commissioner Schibley asked Mr. Alford if he was an Ecologist. Mr. Alford said he had, "been doing it for 35 years and he wrote the model regulations, so that's a 'Yes' ". Mr. Alford said he "was respected enough 35 years ago to be asked to write the model regulations".

Env. Planner Thompson stated that as supported by the town's Assistant Engineer, Adam Kessler in the email provided to the Commission, the berms pose risk of further erosion of sediment into the Farmington River. Commissioner Schibley stated that because the berms are outside of the 150 foot buffer, there would need to be direct reason as to how they would impact the wetlands or watercourses nearby. Env. Planner Thompson presented photos where erosion and deposition of sediment occurred on multiple dates throughout the summer months, and that sediment had in fact reached the Farmington River as a result of the berms.

Commissioner Fraysier and Commissioner Schibley stated that most of their concerns on the property involve the area where clear-cutting occurred, to the north of the berms. Commissioner Schibley suggested this be something that could be monitored to determine if it will be an issue in the future.

Commissioner Schibley stated that the simple addition of 7 fruit trees and sod or grass does not appear to mimic the natural conditions most likely present in this location prior to the activity conducted. Commissioner Schibley added that perhaps the fruit trees could be one part of a more detailed restoration plan which includes native plantings. Commissioner Fraysier stated that he doesn't have a preference to what type of trees are planted. Commissioner Schibley pointed out the fact that they do not have an accounting of what types of trees were removed. Env. Planner Thompson suggested using the forests south of the boat launch road to infer what types of trees or what the area looked like prior to clear-cutting to determine which species could be planted as this is a common practice in ecological restoration. Commissioner Schibley stated that if new information is introduced to the decision making process, that he feels the property owner should have a chance to comment.

Commissioner Schibley stated that the area that was clear-cut was within the 150 foot upland review area, and it is within the Commission's capabilities to require the property owner to restore the land back to its previous condition, but this may not be necessary and giving the wetland areas a little more than the 50 foot forested area it has now, might be the best course of action; roughly 10 to 15 feet.

Env. Planner Thompson stated that a possibility for the restoration plan could be to establish an area where the cutting or removal of vegetation is prohibited, and allow the area to go through natural succession of plant species and growth pattern. This, accompanied with maintenance and selective removal of non-native or invasive species would allow the area to naturally regrow. This is a methodology used in an ongoing town project. Commissioner Schibley stated that he would be in favor of a 10 foot no-mow area along the dirt and gravel drive, with the exception of the access road needed to bring equipment across the stream to the farming area. The fruit trees could mark the edge of the no-mow area. Commissioner Schibley added that there would need to be clear, long-term markers placed in this area for monitoring to occur. These markers would need to be every 10 feet along the boundary. Mr. Alford asked if invasive and non-native species could be removed in this area. Commissioner Schibley agreed, and said that he would like the Commission to order the removal of this type of plant, only to be done so after the wetland agent has inspected, identified and approved of the removal of the plants.

The Commission discussed how long they felt monitoring of the restoration efforts should span, and decided that the agent should conduct a survey of the area every three months for the next year to determine if continued monitoring is necessary. In addition to this, an ecologist will conduct a final investigation of the area to determine if the goals of the no-mow area have been met. This final inspection will occur roughly 18 months into this process, in June of 2023. The ecologist will compile a report and present such to the Commission at the meeting following the inspection in June 2023.

The Commission decided that July 1st, 2022 was an appropriate date to have the fruit trees planted by given the timing of the "wet season" and growing season.

Commissioner Schibley asked Mr. Alford and Mr. DeFranzo if there was any part of their proposals they found issue with. Mr. Alford said that his only concern was with their ability to remove invasive plants.

Commissioner Fraysier made a **motion approve the restoration plan for 4 Walter's Way (previously 130 Merriman Road) with the following additions:**

1. **10 foot no-mow area south of the dirt and gravel drive shall be established and visibly identifiable with long-term markers spaced no greater than 10 feet apart;**
2. **7 Fruit trees shall be planted outside of the no-mow area no later than July 1, 2022 which shall have a 1 year warranty for survival after planting;**
3. **Invasive species in disturbed areas shall be removed once the wetland agent has been notified and has visibly identified and approved the removal of plants;**
4. **Grass shall be established outside of the no-mow area in disturbed areas within 50 feet of wetland boundaries;**
5. **Wetlands agent shall inspect the restoration areas every three months to monitor growth and establishment, with a final inspection of the restoration efforts conducted by a certified ecologist in June 2023.**

Commissioner Towers seconded the motion. **Vote 6-0-0**

Commissioner Towers asked if the Commission is to now lift the Cease and Desist Order. Commissioner Schibley suggested that the order remain in effect to ensure compliance with the restoration plan. Env. Planner Thompson said that she believes the Cease and Desist Order can be lifted, as non-compliance with the restoration plan would constitute a violation of the regulations and actions ordered by the Commission, to which another enforcement action can be issued.

Commissioner Schibley made a motion to lift the Cease and Desist Order issued to Thomas & Patricia DeFranzo, dated June 21st, 2021 subject to the remediation ordered by the Commission. Commissioner Towers seconded the motion. Vote 6-0-0.

V. AUTHORIZED AGENT ACTIONS

Chairman Morando asked Env. Planner how many of the listed agent actions were within the upland review area. Env. Planner Thompson said all of the permits granted in this list were in the upland review. Chairman Morando stated that this is the standard practice for applications that are entirely within the upland review area, posing minimal impact to wetlands and watercourses.

Chairman Morando asked Env. Planner Thompson if any part of the in-ground pool in ([application 21-273](#)) was touching or within the wetlands on the property. Env. Planner Thompson said, "No". Commissioner Schibley asked Env. Planner Thompson if there were proper and sufficient measures in place on-site for sediment and erosion control. Env. Planner Thompson said that silt fencing was present prior to excavation, but she requested from the project manager to extend the fencing to be proactive given the proximity to wetlands. Commissioner Schibley asked Env. Planner Thompson if, assuming the project manager complied with this, that she saw any reason for this activity to have direct or significant impact on the wetland areas. Env. Planner Thompson replied, "No, I do not". Commissioner Schibley said that he credits these responses, they make sense to him, and he finds them to be believable and trustworthy. Commissioner Fraysier asked if there was any clearing included in the application. Env. Planner Thompson said there was not, it was only for the construction of the in-ground pool. Commissioner Schibley asked if sediment was stored on-site. Env. Planner Thompson said there was a short period of time where excavated soil was placed on the property, but it was surrounded by silt fencing, and removed once excavation was complete. Commissioner Schibley asked

if there was any formal appeal of agent action permit approvals. Env. Planner Thompson said that she did not receive any appeals, and the 15 day period in which appeals must be submitted has since expired for this application.

Env. Planner Thompson stated that she would like the Commission's opinion on considering propane tank and generator installations activities that are "as of right" as they appear to generally be incidental to the enjoyment and maintenance of residential property, which is how the wetland regulations describe. Commissioner Schibley stated that if the area of these installations is above ground, adjacent to existing structures, and of a reasonably small area then he doesn't see an issue with this being an "as of right activity". Commissioner Fraysier asked to clarify what "adjacent" would mean. Env. Planner Thompson said that generators and propane tanks must be within a certain distance of the structure they are powering or providing resource to, to be functional, and by saying "adjacent", the agent can make judgment on a case-by-case basis to determine if the activity is significant enough to require a permit.

VI. AGENT REPORTS

a. 220 Kennedy Road – Agent Observations

Env. Planner Thompson described the observations noted during an on-site investigation conducted on October 20th, 2021. The report included in the Commissioner's packet was also sent to HAS, REMA and Ms. Hewitt. Env. Planner Thompson said she discussed the report as well as the recommendations with REMA and Ms. Hewitt, to which they said they would implement as they sought necessary. Env. Planner Thompson reminded the Commission that Ms. Hewitt's restoration plan required an 80% survival rate at the end of the monitoring period. Env. Planner Thompson said that the planting plan was not very accurate to the planting on-site, and was a little difficult to follow in regard to identifying individual plants however, on-site markers for the plants was very clear. Commissioner Schibley stated that proper flagging will only help Ms. Hewitt in this process, therefore it is recommended to Ms. Hewitt that flagging and mapping of plants be as direct and easy to follow as possible. Commissioner Towers asked Env. Planner Thompson to expand on the note about orange and blue flagging. Env. Planner Thompson explained that this was flagging placed by REMA during their initial investigations of invasive species, and she recommended it be removed to avoid confusion. Commissioner Fraysier asked if REMA planned on taking the listed recommendations. Env. Planner Thompson said REMA planned on taking action on the recommendations.

The Commission addressed the comments from Sarah Faulkner to the Commission during the Public Communications section of the meeting.

Env. Planner Thompson stated that she viewed the activity in question as maintenance of existing landscape. Env. Planner Thompson presented maps, and site photos to the Commission. Some of the concerns brought to the Commission involved the removal of remaining vegetation surrounding path mowed by HAS, which was conducted without a permit at the time activity was conducted. Ms. Hewitt removed the scraps of vegetation impacted by this mowing which Env. Planner Thompson defined as "maintenance of existing landscaping" as it was necessary for the enjoyment of residential property. All of this activity was outside of the wetland area, and entirely within the upland review area. On-site investigation of this activity determined that this did not constitute a violation of the regulations for

the reasons listed above. Grassed areas that were impacted by the equipment used for the pool excavation was a relatively small area closest to the road (Canterbury Lane), that has historically been maintained by the property owner at 220 Kennedy Road, which can be seen on imagery dating back as far as 2006 resolution permitting. Given this information, Env. Planner Thompson saw that this area will most reasonable return to a grassed area once the pool installation has been completed. Env. Planner Thompson asked the Commission if there were any other questions or concerns about the matter. The Commission did not have any further comment.

Chairman Morando stated that the Commission has decided that the Cease and Desist Order was reconciled through the ordered restoration plan, and there is no modification to that original order. Commissioner Towers stated that Ms. Hewitt has complied with all that the Commission has ordered and requested. Commissioner Schibley recommended to Env. Planner Thompson that she return to the property to ensure the project has completed.

VII. PETITIONS FROM COMMISSIONERS

VIII. ADJOURNMENT

Commissioner Schibley made a Motion to adjourn at 10:55pm. Commissioner Towers seconded and it passed 6-0-0.

I certify that these minutes were approved on

Marlene Towers, Secretary
Inland Wetlands and Watercourses Commission