

**INLAND WETLANDS COMMISSION
REGULAR MEETING – MINUTES
WEDNESDAY, NOVEMBER 5, 2014 – 7:00PM
NEW HARTFORD TOWN HALL – 530 MAIN STREET**

PRESENT: Chairman James Hall, Anne Hall, Troy LaMere, Nancy Schroeder Perez, Wayne Ryznar, Lou Moscaritolo (7:30PM), Inland Wetlands Enforcement Officer Steve Sadlowski.

ALSO PRESENT: Inland Wetlands Commission Attorney Caleb Hamel of Branse & Willis, LLC.

ABSENT: James Chakulski.

Chairman James Hall called the meeting to order at 7:00PM. All regular members were seated for the meeting. The proceedings were recorded digitally, and copies are available in the Land Use Office in Town Hall.

MOTION: Ms. Hall, Ms. Schroeder Perez second, **to strike from the agenda the public hearing in the matter of Roger J. & Linda Schiffert – Map 30 Block 30 Lot 005-3 Town Hill Road – Driveway crossing watercourse for one single-family residential house, including installation of a culvert and placement of fill in wetlands. Area of wetlands disturbance less than 0.1 Acre. (continued from October 1, 2014 meeting).** It was noted that this public hearing had been closed at the October 1, 2014 meeting. **Unanimously approved.**

MOTION: Mr. LaMere, Mr. Ryznar second, **to add to agenda as “7B. Formal appointment of Mr. Steve Sadlowski as Wetlands Agent”;** **unanimously approved.**

1) PUBLIC HEARINGS:

None.

2) PENDING APPLICATIONS:

A. Roger J. & Linda Schiffert – Map 30 Block 30 Lot 005-3 Town Hill Road – Driveway crossing watercourse for one single-family residential house, including installation of a culvert and placement of fill in wetlands. Area of wetlands disturbance less than 0.1 Acre.

Mr. Hall directed commissioners to the opinion letter from their attorney, Caleb Hamel, on feasible and prudent analysis dated October 31, 2014. He read aloud from it a statement that he characterized as the gist of the correspondence, “...the ‘feasible and prudent alternative analysis’ does not require a wetlands commission to always and automatically deny an application if there is an allegation that an alternative exists that does not require construction in or near wetlands.”

Attorney Hamel addressed the commission and reminded them that at the last hearing, they were concerned with what they could and could not consider when applying the feasible and prudent analysis. He explained that the main thing a court would be examining as to how the analysis was applied is whether or not the commission accepted an expert’s testimony at face value and whether the commission pushed the applicant to minimize wetlands impact. Further, Attorney Hamel indicated that the feasible and prudent alternative analysis is not intended to require an applicant to present every possible design for what could be done on a property. Instead, what the analysis is intended to provide, according to Attorney Hamel, is as the commission goes through the review process, members should be questioning the expert testimony, bringing up new ideas, and looking at other possible alternatives.

MOTION: Ms. Schroeder Perez, Mr. LaMere second, to approve the application in the matter of Roger J. & Linda Schiffert – Map 30 Block 30 Lot 005-3 Town Hill Road – Driveway crossing watercourse for one single-family residential house, including installation of a culvert and placement of fill in wetlands. Area of wetlands disturbance less than 0.1 Acre after making the following findings based on the record before it:

1. On July 2, 2014, the Commission received the application for an inland wetlands and watercourses permit ("the Application") from Roger J. and Linda Schiffert ("the Applicants") for activities in the regulated area of property shown on Assessor's Map #30 Block #30 Lot 005-3 ("the Property").
2. The Filing/Application Fee of \$120 for regulated activities, which includes the \$60 fee for the State of Connecticut, was paid.
3. The Commission found the Application to have a significant impact on wetlands and watercourses at its July 2, 2014 regular meeting and held public hearings on the Application on August 6 and October 1, 2014.
4. The Application involves the proposed construction of a single-family dwelling on the Property, the driveway for which is in the upland review area of one wetland ("Wetland A") and crosses over an intermittent watercourse and its associated wetlands ("Wetland B").
5. The Applicant originally proposed approximately 3400 square feet of disturbance to wetlands, primarily due to the crossing of Wetland B which, as proposed, was approximately 150 feet wide and required approximately 300 cubic yards of fill.
6. The Applicant submitted revised plans showing 3,015 square feet of disturbance to wetlands, reducing the width of the wetlands crossing to approximately 50 feet and the amount of fill needed to approximately 212 cubic yards.
7. The Applicant submitted possible alternatives to the proposed crossing, showing wetlands crossings in other locations along the watercourse in Wetland B.
8. At the October 01, 2014 public hearing on the Application, the Commission received a verified notice of intervention pursuant to Conn. Gen. Stat. § 22a-19 from Atty. Jonathan Starble, representing himself and four others: Jennifer Starble, Gail Embry, Sherryll Levix, and, Edward Archacki, Jr ("the Interveners").
9. The Interveners presented written reports from Mr. Marc Goodin, P.E., of Meehan & Goodin, PC, but neither Mr. Goodin nor another representative from Meehan & Goodin, PC was present to offer oral testimony or respond to questions from the Commission, Applicant, or public. Mr. Goodin, while presenting experience with matters involving wetlands resources in his capacity as a civil engineer, is not qualified as a soil scientist or a wetlands and watercourses ecologist.
10. The written reports of Mr. Goodin were referred to its consulting engineer Roger Hurlbut, P.E., of Lenard Engineering, Inc., who noted that several concerns raised in the reports could be addressed by modifications and conditions of approval as set forth in his report of November 3, 2014.
11. In addition to the written reports from Mr. Goodin, the Commission has received testimony on behalf of the Applicants from Mr. David Whitney, P.E., of Consulting Engineers, LLC; Mr. Tom Pietras, Certified Professional Wetland Scientist of Pietras Environmental Group, Inc.; and Mr. Clint Webb, Environmental Planner and Wetland Ecologist of C. Webb & Associates, LLC.
12. In their testimony, all three experts for the Applicant confirmed that construction of a single-family dwelling on the eastern portion of the property was prudent because the

eastern portion of the property has better-draining soils for the septic system and gentler slopes that require fewer cut & fill operations and Webb, the expert qualified to evaluate wetlands and watercourse impacts, concluded that the proposed activities will have no or de minimis impact on the function of the wetlands resources on the Property.

13. The Commission, after evaluation of the evidence, finds the opinions of Whitney, Pietras and Webb credible and adopts their conclusions with respect to the functions and impacts to wetlands and watercourses resources.
14. In addition to the testimony offered on behalf of the Interveners and Applicant, the Commission has received testimony from Mr. Hurlbut, who recommended several modifications to the Application that would reduce wetlands impacts, and such modifications were included in revised plans.
15. The central claim of the Interveners is that a feasible and prudent alternative exists, namely, construction of the single-family dwelling on the western, rather than eastern, portion of the Property, obviating the need for a wetlands crossing.
16. The brook at the heart of Wetland B bisects the Property, and forbidding construction of any wetland crossing would effectively render a significant portion of the Property undevelopable for any purpose.
17. The Interveners have failed to prove that Applicants are proposing activities that are reasonably likely to unreasonably pollute, impair, or destroy the public trust in the air, water, or other natural resources of the State of Connecticut.
18. Even if the Interveners proved that the proposed activities will unreasonably pollute, impair or destroy the public trust in the air, water, or other natural resources of the State of Connecticut, they have failed to prove that requiring the Applicants to develop on the western portion of the property is a feasible and prudent alternative to the proposed activities.

WHEREFORE, upon reviewing the criteria of its regulations and the plans and reports from the Applicant, the Interveners, and its own staff and consultants, the Commission hereby finds that the Application meets those criteria and APPROVES the Application, subject to the following conditions and modifications:

1. The plans shall be revised to show a 10' maximum width for the travel portion of the driveway and a maximum 3' cleared shoulder area on each side of the travel portion with the exception of the required pull-out areas depicted.
2. Turf reinforcement mat shall be installed in the drainage swales subject to the approval of the Wetlands Enforcement Officer in consultation with the Town Engineer.
3. Intermediate rip-rap shall be installed at the outlets of the two eighteen-inch culverts in Wetland B subject to the approval of the Wetlands Enforcement Officer in consultation with the Town Engineer.
4. A rip-rap pad of size and type acceptable to the Wetlands Enforcement Officer and Town Engineer shall be installed at the outlet of the westernmost culvert on the site.
5. In order to ensure that the proposed swale discharges are sufficiently stabilized, the Applicants or their agent shall make monthly inspections of the discharges for a period of two years following the substantial completion of the driveway. A report shall be filed with the Wetlands Enforcement Officer at the end of this two-year period detailing any erosion or other destabilization of the discharges, and if any

such erosion or destabilization occurs, such conditions shall be remedied in accordance with the recommendations of the Wetlands Enforcement Officer and the Town Engineer.

6. During construction, the applicant shall establish safety fence and limits of clearing to the satisfaction of the Wetlands Enforcement Officer prior to cutting of any tree on the property.
7. All areas of the driveway west of Wetland B with a slope of 10% or more shall be paved.
8. All construction of the driveway and wetlands crossing shall be performed at a time of minimal or no flow through the wetland areas; the Applicant shall notify the Wetlands Enforcement Officer at least 24 hours prior to the proposed start of construction, who shall allow construction to proceed only if no heavy rains are expected during the time of disturbance.
9. The edges of the driveway shall be stabilized as soon after construction as possible, as determined by the Wetlands Enforcement Officer, in order to minimize erosion during construction.
10. If the Authorized Activity is not completed on or before five (5) years from the date of this Permit, said Activity shall cease, if not previously revoked, and unless specifically extended by the Commission after timely application by the Permittee, this Permit shall be null and void. However, once the activity authorized herein is initiated, it is to be completed within one (1) calendar year.
11. All work and all Regulated Activities conducted pursuant to this Authorization shall be consistent with the terms and conditions of this Permit. Any structures, excavation, fill, obstructions, encroachments, or Regulated Activities not specifically identified and authorized herein shall constitute violations of this Permit and may result in its modification, suspension, or revocation. Upon initiation of the Activities authorized herein, the Permittee hereby accepts and agrees to comply with the terms and conditions of this Permit.
12. In evaluating this Application, the Agency has relied upon information provided by the Applicant, and by Sources which it considers reliable, and if such information should subsequently prove false, deceptive, misleading, incomplete, or inaccurate, this Permit shall be reconsidered and modified, suspended, revoked, or otherwise dealt with as the Commission deems fitting.
13. The Permittee shall employ the best management practices, consistent with the terms and conditions of this Permit, to control storm water discharges and to prevent erosion and sedimentation and otherwise to prevent pollution of wetlands and watercourses; for information and technical assistance, contact the New Hartford Inland Wetlands and Watercourses Commission.
14. The Permittee shall immediately inform the Commission of any problems, breaches, failures to follow the stipulations, or anything detrimental to the wetlands or watercourses which may have developed in the course of or which are caused by the authorized work. In addition, the Permittee shall have a licensed engineer or wetlands ecologist inspect the work at regular intervals to ensure compliance.
15. No equipment or material, including without limitation, fill, construction materials, or debris, shall be deposited, placed, or stored in any wetland, watercourse, on or off site, unless specifically authorized by this Permit.

- 16. Timely implementation of Sedimentation and Erosion Control Measures are conditional to this Permit and must be maintained until all disturbed areas have been stabilized to the satisfaction of the Agency and so indicated by it in writing.**
- 17. Inland Wetlands Delineation Markers will be placed along Inland Wetland boundaries at 100 foot intervals at the expense of the applicant;**

Mr. Hall, Ms. Schroeder Perez, Ms. Hall, Mr. LaMere, and Mr. Ryznar voting in favor, Mr. Moscaritolo abstained: Motion carried.

Mr. Hall acknowledged the firm of Branse and Willis, LLC, and praised their assistance in this matter, and specifically noted the efforts of Attorney Hamel in particular. Attorney Hamel reminded the commission that the Planning and Zoning section of the Bar Association will be holding their all day seminar at Wesleyan University on March 21, 2015. Attorney Mark Branse will be one of the presenters at this biennial seminar that covers recent developments in the law and how to handle public hearings, according to Attorney Hamel.

3) NEW APPLICATIONS:

A. Martyn Sholtis – Map 04A Block 112 Lot 032 – 676 West Hill Road – Rebuild existing stone wall at waterfront and build a 40'x50' stone patio behind wall.

Norman Sholtis, brother of the applicant, addressed the commission regarding the application. The proposal is to repair 30-35 feet of stone wall at the water to address safety and erosion issues. Mr. Hall asked whether the wall work would be in the same location. Mr. Sholtis confirmed it would be. Mr. Hall asked what methods would be employed to perform work. Mr. Sholtis indicated that the applicant would be utilizing a mini excavator which would be kept on the property to repair this gravity retaining rock wall. In response to questions from Mr. LaMere, Mr. Sholtis replied that there would be neither piers nor any concrete footings for this wall.

Ms. Hall requested that the applicant's representative describe the stone patio in greater detail. Mr. Sholtis explained that the present topography slopes toward the lake and the applicant is seeking to level it off and install a flat, natural stone patio. Mr. Hall inquired as to the amount of excavation necessary for the patio. Mr. Sholtis indicated that it would be approximately one foot on the high side and zero on the flat side. Mr. Sadlowski confirmed that the location is relatively flat. Ms. Hall inquired as to whether the applicant would be seeking to perform the work while the water is drawn down. Mr. Sholtis confirmed.

MOTION: Mr. LaMere, Ms. Hall second, **to accept the application of Martyn Sholtis – Map 04A Block 112 Lot 032 – 676 West Hill Road – Rebuild existing stone wall at waterfront and build a 40'x50' stone patio behind wall and deem it as non-significant; unanimously approved.**

B. Hemlock Construction – Applicant/Nancy Wollenberg – Owner – Map 04a Block 112 Lot 026 – 652 West Hill Road – Foundation Replacement on Existing Footprint.

Mr. Tim Traub, Hemlock Construction, addressed the commission on behalf of the Applicant. He distributed copies of a site plan depicting the proximity to the lake, erosion controls, and the location of the stock piling of the soil during the work. He described the work as picking the house straight up, replacing the frost wall with a small crawl space underneath and replacing the foundation back in its present location. Further, Mr. Traub reported that the soil will be stockpiled on site. Ms. Hall inquired as to an estimate on the soil. He indicated about thirty yards. Ms. Schroeder Perez asked how deep the foundation would need to be. Mr. Traub indicated four feet for frost walls and that the intention is to just get below the frost line.

Mr. Hall pointed out to the commission that the existing house is about fifty feet from the lake. Mr. Sadlowski reported that the area is fairly flat down by the lake. Ms. Schroeder Perez confirmed that the closest Mr. Traub would need to be to the lake would be thirty feet. Mr. Traub agreed, indicating that there will be a ten to fifteen foot swath around the house.

MOTION: Ms. Schroeder Perez, Ms. Hall second, **to accept the application in the matter of Hemlock Construction – Applicant/Nancy Wollenberg – Owner – Map 04a Block 112 Lot 026 – 652 West Hill Road – Foundation Replacement on Existing Footprint and deem it as non-significant; unanimously approved.**

C. John & Linda Casey – Applicant/EMB Realty – Owner – Map 044 Block 137 Lot 20A – 170 Main Street – Replacement of Existing Storm Drain Pipe.

Mr. Sadlowski reminded the commission that in June of 2014, Mr. Casey had come in and discussed repairing an eroded area at the location of Main Stream Canoe on Main Street. As Mr. Sadlowski explained, the area was at the location at where the business either brings the boats down to the river or retrieves the boats from the river. Mr. Sadlowski indicated that at the time, the area was eroded with some very deep ruts and did indeed need to be addressed as it was getting worse as time passed. He further reminded the commission that Mr. Casey had appeared before the commission, the commission deemed the application as significant, and had set a public hearing. However, Mr. Casey subsequently withdrew his application.

Mr. Sadlowski also noted for the record that the application fee was received and accepted from Mr. Casey. The public hearing was advertised in a local publication at least once before Mr. Casey's withdrawal of it, according to Mr. Sadlowski.

Mr. Sadlowski continued that in the past month, as he was out on other routine business, he noticed that some work was done. He noted that a pipe was installed there, covered in top soil, and seeded. He provided the commission with photographs and opined that the work looked fine. While there was no permit secured for the work, Mr. Sadlowski reported that the water from the pipe does empty into the river.

Mr. John (Jack) Casey addressed the commission and provided a photograph of the finished, restored area. Mr. Casey acknowledged that Mr. Sadlowski is correct in his report and commented that without malice, there was confusion. Mr. Casey indicated that in his first application, he deemed it as a pre-existing repair of Storm Sandy and did not feel that a public hearing was required which as he explained is why he withdrew the application. Mr. Casey further indicated that installation of the pipe was performed by himself and Mr. Gary Brown. He also mentioned that he had tried to fix this damage from Storm Sandy in the spring of 2013 with the aid of Mountaintop and some rip rap. He reported that this remedial work blew out from a mini storm due to the velocity of the water.

Mr. Casey explained that he was appearing before the commission on behalf of the present owners, Mr. and Mrs. D'Amore, who could not be present and expressed an interest in returning to the commission at a later date when they could make it. He characterized the work as a misunderstanding. He indicated that with the low water table, he took advantage of the timing to make the repair.

Mr. LaMere opined that Mr. Casey should have come before the commission prior to the work being commenced. Ms. Schroeder Perez agreed. Mr. LaMere also indicated that the original application

was seeking steps to the river but that the work as performed has a pipe with no steps. He questioned what happened to the steps. Mr. LaMere further opined that Mr. Casey should have known better not to perform this work especially in his capacity on the Board of Selectman and that he is fully aware of how the process works.

Mr. LaMere also expressed dissatisfaction with Mr. Casey's discharge of water into the Farmington River. Mr. Casey responded that the town of New Hartford discharges water into the Farmington River in two locations behind the town hall area and that his business has been doing so for thirty-eight years. Mr. LaMere responded that the town has permits to do so. Mr. Casey indicated that he, too, must have permits from when the business began.

Mr. Hall called order and reminded the commission that the purpose of the meeting was to determine whether or not to accept the application for an existing storm drainage pipe and a path to the river for an existing commercial business and whether a public hearing is required.

MOTION: Mr. LaMere, Ms. Schroeder Perez second, **to accept the application in the matter of John & Linda Casey – Applicant/EMB Realty – Owner – Map 044 Block 137 Lot 20A – 170 Main Street – Replacement of Existing Storm Drain Pipe and deem it significant in the matter of public interest; unanimously approved.**

Mr. Casey was advised that a public hearing will now again be scheduled. Mr. Casey acknowledged and noted that he will send notice of public hearing to abutting land owners. In response to a question from Mr. Sadlowski regarding what the commission will be seeking from Mr. Casey in terms of information and plans, Mr. LaMere requested that the MDC visit the site and also have for review a copy of the existing map reflecting the pipe that was preexisting. Ms. Hall expressed her agreement to the requests made by Mr. LaMere.

D. Lepore and Sons LLC – Map 002 Block 002 Lot 11-2 – Ramstein Road – Permit Transfer from Castellani Family Real Estate Ventures, LLC. (Permit 14-11W).

Mr. Karl Nielson as a representative of the Castellani Family appeared before the commission and explained that the property on Ramstein Road has been sold to Lepore and Sons, LLC.

MOTION: Mr. LaMere, Mr. Moscaritolo second, **to transfer the permit from the Castellani Family Real Estate Ventures, LLC (Permit 14-11W) – Map 002 Block 002 Lot 11-2 – Ramstein Road to Lepore and Sons LLC; unanimously approved.**

4) MEETING MINUTES:

A. October 1, 2014 regular meeting.

MOTION: Ms. Schroeder Perez, Mr. LaMere second, **to approve the October 1, 2014 minutes; unanimously approved.**

5) INLAND WETLANDS OFFICER'S ENFORCEMENT REPORT.

Mr. Sadlowski reminded the commission of the 37th annual meeting and environmental conference of CACIWC (Connecticut Association of Conservation & Inland Wetlands Commission) is scheduled for Saturday, November 15, 2014 at the Villa Capri in Wallingford. Commissioners were invited and encouraged to attend. Ms. Schroeder Perez commented that she has attended previously and that the meetings are very informative. Mr. Hall agreed.

6) CORRESPONDENCE:

Mr. Hall noted receipt of a correspondence dated October 16, 2014 from Zoning Board of Appeals member Scott Goff. Mr. Goff's letter was addressed to New Hartford's Board of Selectmen regarding development at West Hill Pond, specifically his notice of small seasonal cottages converted to much larger, year-round homes. Mr. Goff expressed concern with water quality and impacts of recent revised health code standards on septic systems, now deemed as repairs for these newer larger homes.

Mr. Hall reminded commissioners that he has emailed each of them seeking input in response to a request from the Planning and Zoning Commission as that group updates the Plan of Conservation and Development (POCD). Mr. Hall noted that he has not received any response from fellow commissioners but opined that an issue relative to Mr. Goff's concern, protection of the watershed of West Hill Pond, is one to be brought forward with the POCD. He stressed that he would be putting forward personal concerns about how nitrates from septic systems in the lake area can ultimately affect the water quality.

7) OTHER BUSINESS PROPER TO COME BEFORE THE COMMISSION:

A. Douglas Roth – 135 Ratlum Road – Pre-Application meeting for and Accessory Structure.

Mr. Roth accompanied by his wife, Linda, and engineer, Tom Grimaldi, appeared before the commission with a preliminary plan to build an accessory structure at his home address of 135 Ratlum Road. An informal question and answer session followed regarding this preliminary plan.

B. Formal appointment of Mr. Steve Sadlowski as Wetlands Agent.

MOTION: Mr. LaMere, Ms. Hall second, **to appoint Mr. Steve Sadlowski as New Hartford's Inland Wetlands Agent; unanimously approved.**

MOTION: Ms. Schroeder Perez, Ms. Hall second, to adjourn at 8:31PM; unanimously approved.

Respectfully submitted,

**Pam Colombie
Recording Secretary**