

Town of Andover Connecticut
Inland Wetlands & Watercourses Commission
August 3, 2020 7:00 P.M.
VIRTUAL MEETING VIA ZOOM WEBSITE PLATFORM

Regular Meeting Minutes

Members Present: Vice Chairman George Elliott, Jed Larson, Ed Smith, Jim Hallisey

Members Absent: Chair Meghan Lally and Wayne Thorpe (Alternate)

Others Present: Wetlands Agent Joseph Wagner, Recording Secretary Linda McDonald, Bill Phillips, Donna Phillips, Megan Phillips, Herpetologist Hank Gruner, Ruby Puerto, Jeff Polhemus, John Benda, Janice Benda, Kevin Arnesen, Gerry Hardisty P.E., L.S. of Civil Engineering Services, Andrew Bushnell P.E. from Bushnell Associates, and Sandra Nichols

1. CALL TO ORDER: Vice Chairman G. Elliott called the regular meeting to order at 7:00 p.m.
2. ROLL CALL/SEATING OF ALTERNATES: No alternates were present to seat.
3. ADDITIONS/CHANGES IN ORDER TO AGENDA: No changes or additions to the agenda were presented.
4. PUBLIC COMMENT: None.
5. APPROVAL OF MINUTES:

5.a July 14, 2020 Regular Meeting Minutes:

The July 14, 2020 regular meeting minutes were amended as follows:

- Add William Phillips and Donna Phillips to "Others Present"
- Page 3: "In his letter to the commission dated June 21, ~~020~~ **2020**, he wrote "The primary ecological value associated with the watercourse on the parcel is likely it's potential role as an ecological corridor. Although narrow, this forested corridor may play a role in facilitating the dispersal of animals across the larger landscape, providing connectivity between Warner Swamp, Burnap Brook and the Daly Swamp system to the south of the parcel."

J. Hallisey MOVED to approve the July 14, 2020 regular meeting minutes as amended. E. Smith SECONDED. By roll call vote, MOTION CARRIED 4:0:0.

6. Administrative Approvals: None.

7. PERMIT APPLICATIONS

7.a IWWC20-21: Manuel Correia and Gerry Hardisty, 12 Webster Lane (Bolton, CT), subdivision and new residential construction in an upland review area:

G. Hardisty said the development plan is the same as the subdivision plan that will be submitted to PZC and includes an Erosion and Sediment Control (E&S) plan. Silt fence has been extended between the disturbed area and the wetlands as requested. He explained the plan shows the primary septic system is now farther from the wetlands, having been switched with reserve septic system. He commented he would prefer to have primary closer to wetlands because the soils are better. G. Hardisty said the driveway is no closer to the wetlands. G. Hardisty concluded he thinks this one-lot development can be done with virtually no impact on the wetlands at all.

J. Larson asked G. Hardisty about the comment at the prior meeting to look at repositioning the house to the southwest so that it would be outside the upland review area.

G. Hardisty responded said he wanted to leave the house in the current location as he thinks this is the best location for the house so that the back-property line is not crowded and getting nearer to the neighbors. The house on the drawing is only a potential house, there are no house plans. He said it could be moved further back and farther from the wetlands with the plot plan that would have to be submitted before any kind of building approval.

J. Hallisey noted, from a zoning perspective, the rear setback is 50 feet and would preclude the house being moved much further back. He noted the map shows an incorrect setback of 20 feet.

J. Larson noted that one of the requirements is to see what alternate, less invasive options so that the Commission can make the proper decision. He pointed out that both Mr. Gruner and the Town's engineer talked about moving the house out of the upland review area. He said, if there is an option that moves the house out of the upland review area, and having the wrong setback on the map might preclude the Commission from being able to see that, the members owe it to themselves to be able to see what those options are. J. Larson said one of the things the applicant is supposed to do in the plan is provide the rationale for why they chose not to pursue those options. The commission only has the opportunity to look at what the applicant believes to be the worst-case scenario.

G. Hardisty responded if the Commission believes there should be 85 feet of clearance, rather than 75 feet, they could make that a condition of approval. His position is that the house and the development of the house would have no impact on this wetlands.

J. Larson said he was expecting an alternative site proposal for the house. G. Hardisty responded it could be done but feels the current proposal is a responsible design.

Discussion followed on acting on the application with additional conditions at this meeting or deferring action to the next meeting. It was noted that the next regular meeting in September is beyond the 90-day executive order extension for approval. J. Larson commented the applicant can request a 65-day extension beyond the 90-day extension provided for by executive order. A special IWWC meeting could also be scheduled by the Commission before the 90-day extension expires.

J. Hallisey MOVED to table action on IWWC20-21: Manuel Correia and Gerry Hardisty, 12 Webster Lane (Bolton, CT), for a subdivision and new residential construction in an upland review area and to ask the applicant to provide the alternatives spelled out in the regulations and to ask the Wetlands Agent to prepare a draft approval with recommendations that would accompany the summary ruling. J. Larson SECONDED. By roll call vote, MOTION CARRIED 4:0:0.

7.b IWWC20-23: William R. and Donna J. Phillips, 57 Hendee Road, new residential construction in an upland review area, modification of a floodplain:

A. Bushnell said an updated plan has been submitted to the Commission and engineer Brandon Handfield. He believes all the requests from B. Handfield were covered on the plan. A. Bushnell said he spoke today with Engineer Brandon Handfield of Yantic River Consultants (YRC), who asked for a written response on his three comments in his review.

A. Bushnell said he and B. Handfield discussed filling the floodplain by taking the fill from the elevated part of the property and how to potentially reduce the impact to the wetlands on the western side of the property. He said they came to the conclusion that they only needed to fill to the front of the flood elevation. That would reduce the amount of fill taken from the property from 600 to 400 yards of fill needed to fill to flood elevation and another 200 yards from offsite. A. Bushnell estimates this would result in approximately one third less disturbance on the westerly side of the property where the fill be removed from.

The revised plan dated 7/30/2020 was reviewed. The new driveway will not be done on the existing path. J. Larson noted the commission does not have the written review from YRC on the updated plan dated 7/30/2020. The amount of fill to be taken out is a substantial amount and needs the review of YRC. G. Elliott concurred.

J. Larson moved to table further discussion on the application reflected in tonight's discussion application until the engineering review of the updated plan from YRC is received. J. Hallisey SECONDED. By roll call vote, MOTION CARRIED 4:0:0.

7.c IWWC20-25: Jeff Polhemus of Skip's Wastewater Services (J. & J. Benda), 157 Lakeside Drive, new septic installation in an upland review area:

J. Polhemus said the plan was presented at the July 14, 2020 IWWC meeting and no requests for revisions to the plan were made by the commission. The plan has received Eastern Highland Health District (EHHD) approval.

J. Hallisey MOVED to approve application IWWC20-25: Jeff Polhemus of Skip's Wastewater Services (J. & J. Benda), 157 Lakeside Drive for a new septic installation in an upland review area. All standard conditions of approval will apply. J. Larson SECONDED. By roll call vote, MOTION CARRIED 4:0:0.

8. VIOLATIONS/ ENFORCEMENT ACTIONS:

8.a Hector Rivera, 27 Hendee Road: Complaint regarding violation of permit conditions including unauthorized development in an upland review area/floodplain (i.e. gravel driveway, parking area) and failure to install/maintain proper erosion and sediment controls:

Agent Wagner said he has no update on this violation and will try to contact Mr. Rivera. He said he will provide a report at the September meeting. G. Elliott said the Commission will need the report in order to determine whether any action needs to be taken.

8.b Ruby A. Miralda de Puerto, 129 Hebron Road, Cease and Desist Order re: removal and deposition of material into a wetland without a permit:

Agent Wagner said per conversations with R. Puerto, she is working with her engineer to re-submit a new permit. With the help of the engineer, she plans to put all the proposed activities on the site under one permit, including all the activities listed under the cease and desist order. She also plans to submit drawings for a new fence in the wetland area. Agent Wagner said he would expect to see a permit application for the next meeting.

8.c Kurt Boehm and Sandra Nichols, 41 Route 87, Order to Remediate deposition of material into a wetland without a permit:

Agent Wagner said the IWWC Chair received a letter dated July 27, 2020 from the attorney representing the Nichols. The attorney said the Nichols are still waiting for Mr. Boehm to provide a contractor's license and proof of insurance before they allowed him to start the remediation work on the property.

Agent Wagner said the attorney's letter was sent to Mark Branse, who said the Commission could hold an informal vote to decide whether they want the Wetlands Agent to start legal action through the Supreme Court.

G. Elliott noted the attorney, in his letter, states "Mr. Boehm has continued to clear and add debris to the pile within other parts of the designated wetlands area, which clearing is showing Mr. Boehm's disdain and disobedience of the Inland Wetlands Commission's Order(s)."

G. Elliott commented there have not been any recent updates on this activity.

Agent Wagner responded he has not visited the property and would have to go with J. Hallisey as he does not have any contacts. G. Elliott requested that J. Hallisey assist Agent Wagner, in determining what has transpired since the beginning.

S. Nichols expressed concern that this has been going on since February and K. Boehm has filled a new pathway further down and there has been no action taken against him. She has concern with the flood waters that happen because of the brook and the elevation of her yard. She said that is why she had the attorney draft the letter requesting from the IWWC, a written timeline to effectuate the Order to Remediate.

G. Elliott said he understands her concern and the Commission is trying to address this difficult situation. He noted this request comes at an awkward time with the Commission's enforcement arm undergoing a retirement, a short-term and then an interim agent. He is hopeful Agent Wagner will be able to move on this.

G. Elliott said what the Commission can assure is at the next meeting the Commission will have a resolution on this. There will be an opportunity for the Wetlands Agent for a site walk with at least J. Hallisey and E. Smith, particularly in respect to any further activity in the wetlands.

G. Elliott said the Commission can construct a timeline in terms of the legal requirement, if the Commission needs, to move to the next step. The Town would have to start an enforcement action, would have to seek damages, and would have to work with the Town's attorney if the Commission does not get any action. G. Elliott said he wants to hear from the Wetlands Agent before the Commission proceeds and wants to investigate this claim of further disturbance and activity in the wetlands.

S. Nichols asked how she would get a message that she would like a conversation with the Town's Attorney. G. Elliott responded that is beyond the scope of this discussion.

8.d Kurt Boehm, 33 Route 87, Order to Remediate construction in an upland review area and deposition of material into a wetland without a permit:

Discussion on this agenda item was taken up in agenda item 8.c.

8.e Matthew Haggerty, Townsend Rd. 27/21/16A, complaint re: logging in a wetland:

Agent Wagner reported he drove by the property this morning and said there are no culverts yet. There is still a temporary bridge for the equipment. The wetland is dry, and he said from what he could see, there is no standing water. There are hay bales along the entrance to the temporary bridge and two shipping containers with some equipment between the wetland and the road.

G. Elliott noted the permit was approved for a driveway and then the complaint was received for logging activity and the Commission was assured it was lot clearing and now there is a temporary driveway and construction activities and this doesn't match up with the permit issued.

Hank Gruner said he visited the site with J. Hallisey at the request of the Chair when the complaint was made. He raised the concern at that time that the removal of the trees that were felled would cause more damage to the wetlands than leaving them at that point, given the seasonality. He said when he visited the site, his concern with the temporary driveway is with hydrological connectivity. He said it is one thing to have the approvals for the culverts that would allow flow through there, but absent that, it is a very temporary situation. He is concerned, given the timing of this project leading down the road, there may be alterations to the hydrology of that wetland.

G. Elliott said the permit has to be adhered to. J. Hallisey said a building permit has been pulled and building is imminent. Discussion followed. H. Gruner suggested the project be monitored. The members questioned why the driveway has not been put in over the culverts as required by the IWWC permit. J. Larson said there was no discussion to put in a temporary driveway during the permit application. Agent Wagner will contact M. Haggerty to check on the construction sequence and monitor activity.

G. Elliott said there is no permit to do a corduroy road or for activity in the wetlands. Enforcement action might have to be taken.

8.f Matthew Grant, 28 Shoddy Mill Rd., Notice of Violation re: disturbance to a wetland:

J. Hallisey said the activity has ceased. Agent Wagner will follow-up.

9. AGENT REPORT:

Agent Wagner explained he has more investigation to perform regarding the Town connectivity project and the Route 6 gravel pit operation. He has no report at this time.

H. Gruner reported he has monitored the gravel pit operation and recommended Agent Wagner keep checking on the erosion control fencing and to concentrate on the removal of silt fencing during the

restoration phase. H. Gruner suggested Agent Wagner follow-up with the project manager and offered to introduce Agent Wagner to the property owner. Agent Wagner will obtain the construction timeline from construction manager.

Agent Wagner said he researched how other towns in the area expedite permits for some Town activities. He reported several towns utilize administrative approvals, not an actual municipal permit. G. Elliott said the Commission would have to discuss board policy on what levels of activity to authorize to the Agent. Agent Wagner is working on presenting a summary of his findings to the Commission.

10. OTHER BUSINESS:

10.a Alternate Candidate Applications Update:

- i. Gabrielle Anderson
- ii. Elisabeth Miano
- iii. William Munroe

Discussion followed on the procedures in filling vacancies and how to address members moving out of town and becoming ineligible to serve. Members will look at possibly amending the bylaws to address this. No action was taken.

10.b 2020 Bylaws Review:

Discussion followed on sections of the proposed revisions from the Chair. G. Elliott noted the bylaws were revised in May 2019. J. Hallisey proposed addressing the process to allow for a hybrid meeting model in the revised by-laws review. No action taken.

11. NEXT MEETING: Tuesday, September 15, 2020 at 7:00 p.m.

J. Hallisey MOVED to schedule a special meeting for August 31, 2020 at 7:00 pm. J. Larson SECONDED. By roll call vote, MOTION CARRIED 4:0:0.

12. ADJOURNMENT:

E. Smith MOVED to adjourn the regular meeting at 9:54 p.m. J. Larson SECONDED. MOTION CARRIED 4:0:0.

Respectfully submitted by Linda H. McDonald

Linda H. McDonald

Please see the minutes of subsequent meetings for the approval of these minutes and any corrections hereto.