

Town of Andover
INLAND WETLANDS & WATERCOURSES COMMISSION
Monday, December 7th, 2020 - 7:00 P.M.
Virtual Meeting via Zoom Website Platform

PUBLIC HEARING & REGULAR MEETING MINUTES

PUBLIC HEARING (CONTINUATION) AGENDA – 7:00 P.M.

Members present: Vice Chairman George Elliott, Jed Larson, Jim Hallisey, William Munroe

Member absent: Chair Meghan Lally, Ed Smith

Others present: Joseph Wagner – Wetland Agent, Mindy Gosselin – Board Clerk, Ronald and Joan Churney, Kevin Shea, Brandon Handfield, Erik Loteczka, Jeff Miner, Helen Fogarty, John, George Correia, Nahin and Ruby Puerto, Cathy Shea, Sandy Nichols, Joan Foran, Joseph Theroux, Hank Gruner, Russell Heinz.

PUBLIC HEARING

1. **CALL TO ORDER:** Vice Chairman G. Elliott called the public hearing to order at 7:00 p.m.
2. **ROLL CALL/SEATING OF ALTERNATES:** W. Munroe was seated.
3. **IWWC Application #20-27:** Ruby and Nahin Puerto, 129 Hebron Road (Andover, CT), application to 1) erect a concrete/stone wall and fence, 2) install an inground pool and utility shed, and 3) construct a 2-car garage with accessory apartment within an upland review area.

G. Elliott stated that this application has been substantially modified since the last meeting.

J. Hallisey asked for clarification on the septic system and the approvals that are in place. Agent Wagner stated that the septic system needs to be considered on this application, it is on the submitted plan.

4. ADJOURNMENT

J. Hallisey MOVED to adjourn the public hearing at 7:04 p.m. J. Larson SECONDED. By roll call vote, MOTION CARRIED 4:0:0.

REGULAR MEETING AGENDA (To commence immediately after Public Hearing)

Members present: Vice Chairman George Elliott, Jed Larson, Jim Hallisey, William Munroe

Member absent: Chair Meghan Lally, Ed Smith

Others present: Joseph Wagner – Wetland Agent, Mindy Gosselin – Board Clerk, Ronald and Joan Churney, Kevin Shea, Brandon Handfield, Erik Loteczka, Jeff Miner, Helen Fogarty, John, George Correia, Nahin and Ruby Puerto, Cathy Shea, Sandy Nichols, Joan Foran, Joseph Theroux, Hank Gruner.

1. **CALL TO ORDER:** Vice Chairman G. Elliott called the regular meeting to order at 7:06p.m.
2. **ROLL CALL/SEATING OF ALTERNATES:** W. Munroe was seated.

3. ADDITIONS/CHANGES IN ORDER TO AGENDA

G. Elliott MOVED to add application IWWC #20-27, 129 Hebron Rd. as agenda Item 8a., J. Larson SECONDED. By roll call vote, MOTION CARRIED 4:0:0.

J. Larson MOVED to add application IWWC #20-36, 26 Old Farm Rd. as agenda Item 7b. J. Hallisey SECONDED. By roll call vote, MOTION CARRIED 4:0:0.

J. Larson MOVED to add the jurisdictional review of 344 Lake Road as agenda Item 6b. W. Munroe SECONDED. By roll call vote, MOTION CARRIED 4:0:0.

4. APPROVAL OF MINUTES

- a. November 2, 2020 Regular Meeting Minutes

The November 2, 2020 regular meeting minutes were amended as follows:

Agenda Item 7a. "The proposed activities include a timber harvest of **ash trees** dying of emerald ash borer and dying oak trees."

J. Larson MOVED to approve the November 2, 2020 Regular Meeting Minutes as amended. J. Hallisey SECONDED. By roll call vote, MOTION CARRIED 4:0:0.

- b. November 14, 2020 Special Meeting Minutes

J. Larson MOVED to approve the November 14, 2020 Special Meeting Minutes. J. Hallisey SECONDED. By roll call vote, MOTION CARRIED 4:0:0.

5. **PUBLIC COMMENT:** No one wished to speak.

6. NEW BUSINESS- JURISDICTIONAL REVIEW

- a. **IWWC 20-34JR:** Joseph Theroux (Agent) on behalf of Ronald and Joan Churney (Property Owners), **110 Cone Rd** (Andover, CT), Commission review of timber harvest and associated activities in a watercourse and associated URA.

Joseph Theroux (Agent) and the landowner Rod Churney were present.

Agent Wagner did not visit the site, he talked to J. Theroux who took pictures of the wetland crossing sites and the materials that will be used for the crossings. The project has not started yet.

J. Theroux explained that Christopher Lévesque is the logger and he has deposited both pieces of equipment on the property. There are two wetland crossings in Andover (WC1 and SC3). WC1 is at the town line and it will be used to access the western portion of the property. Several of the portable bridges will be laid there, at the completion of the operation they will be picked up. The sites would then be graded, mulched, and seeded. WC3 is similar, small timbers will be used.

This timber harvest is a management cut, a third of the timber will be removed. The project will take three weeks to a month depending on ground conditions. If conditions are muddy, the project will be shut down until conditions improve.

G. Elliott asked if these would be new crossings. Theroux she will be utilizing the old trails and existing crossing sites from a previous harvest.

J. Larson asked why seeding and mulching would be needed given there is no present vegetation at the site. Theroux stated that the skid trails on either side of the crossing would be bare minerals. Seeding and mulching will stabilize the soils and minimize disturbance during rain events. It is common practice.

J. Theroux referenced Section 4 of the regulations and the definition of forestry, silviculture and agriculture as of right.

G. Elliott stated that Town Attorney Branson advised that deposition of material in a wetland or watercourse is not as of right even though it may support an activity that is as of right.

Rod Churney, the landowner, stated that the property was logged in 1988 and a permit was not required at that time.

J. Hallisey asked if Agent Wagner could handle this permit. Agent Wagner stated the he can only handle activities in the Upland Review Area, not activity within a wetland or watercourse.

J. Larson MOVED the Commission does have jurisdiction and a permit is required for the wetlands crossing to support the logging activity associated with IWWC 20-34JR. J. Hallisey SECONDED. By roll call vote, MOTION CARRIED 4:0:0.

- b. **344 Lake Road** – Inquiry regarding a previously approved activity, Construction and clearing

Brandon Handfield was present.

Agent Wagner stated that this application/activity was approved by the commission a couple years ago. The activity never began and the new owners of the property

want to utilize the existing permit with some modifications.

B. Handfield shared the Andover IWWC minutes from April 17, 2018 to show that it was approved unanimously.

B. Handfield showed the previous plan presented which included a new large septic system to the East, an addition, and relocating the town drainage pipe. He then overlaid the new plan over the old plan to show the limits of disturbance and what is being modified. The new addition is smaller and does not connect the two structures anymore. It is within the previously proposed footprint. In addition, there is no longer a proposal to for a new septic system and or relocation of the town drainage pipe. The new plan scales back the silt fence and limits clearing limit lines, proposes a smaller addition, and uses the same temporary access drive. This proposal allows the use of the existing septic system.

G. Elliott stated that it needs to be determined if this modification requires a permit revision application. There is a new owner and proposed downsizing of the project parameters.

G. Elliott stated that Agent Wagner was advised that the provision in the regulations/conditions in the permit regarding non-transferability is considered non-enforceable. Agent Wagner confirmed.

J. Hallisey asked about the conditions and duration of the original approval. Some permits are 2 years and some are 5 years. There is a condition that states some permits are non-renewable. G. Elliott stated that this was a 5-year permit.

The previous permit and letter of approval cannot be located. J. Larson expressed concerned that since there isn't a permit on file, there won't be conditions to follow, etc.

J. Larson MOVED that the applicants need to reapply. J. Hallisey SECONDED.

This application was received more recently, some commissioners did not have time to review the materials (i.e. the old application).

J. Larson WITHDREW his previous motion and J. Hallisey WITHDREW his secondary.

J. Larson MOVED to defer further consideration of this application to the next regularly scheduled meeting. W. Munroe SECONDED. MOTION CARRIED 4:0:0.

7. NEW BUSINESS- PERMIT APPLICATIONS

- a. **IWWC #20-35:** Kevin and Catherine Shea, **436 Lake Rd**, Receipt of application to construct an approx. 2,200 sq ft house within the 200' Andover Lake Upland Review Area.

Kevin Shea and John (filling in for Jim Dutton) were present.

The application was received.

J. Larson stated that in paragraph 9 of application, proposed sediment and erosion control, it talks about minimizing pollution and environmental damage. It also references an attached sheet where there is no mention of what mitigation measures will be in place to minimize effect of the runoff. John stated that the attached sheet is the drawing/plan which shows the sediment and erosion control. He explained that he is filling in for Engineer Jim Dutton who could not attend tonight. Jim Dutton will be at the site walk.

J. Larson stated that providing time of construction, significant mitigation to storm water runoff (i.e. running the gutters from the house into a drywell), would be helpful.

John stated that the driveway drains toward the road and the gutters are directed to drain away from the lake. There's a grass swale along the driveway.

J. Larson said that even though water is directed toward the road (away from the lake) it will end up in the lake. Mitigation is something that the commission is looking for.

J. Larson MOVED to schedule a site walk on Saturday December 12, 2020 at 9am. J. Hallisey SECONDED. By roll call vote, MOTION CARRIED 4:0:0.

- b. **IWWC 20-36:** Eric Loteczka and George Correia, **26 Old Farms Rd**, application to construct a wetland crossing for a proposed driveway and new house construction.

Erik Loteczka and George Correia were present.

The application was received.

J. Hallisey asked if this is a significant activity that would require a public hearing. G. Elliott stated that he re-evaluated the regulations (Section 9.1) and they state that a public hearing shall be held only if it is deemed a significant activity. The regulations do not state that there must be a public hearing if the activity is deemed a significant impact. Being a significant impact is a necessary but not a sufficient condition for a hearing. J. Larson agreed.

J. Hallisey MOVED to schedule a site walk immediately following the 436 Lake Rd site walk this Saturday December 12, 2020. J. Larson SECONDED. By roll call vote, MOTION CARRIED 4:0:0.

J. Larson cited the regulations as for why the proposed activity is a significant activity. He read, "any activity involving disposition or removal of material which will or may have a major substantial effect or impact on regulated area." J. Larson stated that the proposed driveway is in a steep area of the property and would require a significant amount of fill. G. Elliott confirmed and added that there would also be concrete retaining walls to hold the fill.

J. Larson MOVED that this application be considered a significant activity. J. Hallisey SECONDED. By roll call vote, MOTION CARRIED 4:0:0.

8. PERMIT APPLICATIONS

- a. **IWWC 20-27:** Ruby and Nahin Puerto, 129 Hebron Road (Andover, CT), application to 1) erect a concrete/stone wall and fence, 2) install an inground pool and utility shed, and 3) construct a 2-car garage with accessory apartment within an upland review area.

Russell Heinz (agent) and Nahin & Ruby Puerto were present.

The application has been significantly revised.

R. Heinz explained the revisions. The pool, shed, and garage were moved away from the wetlands and still keep to the health code. The revised site plan dated 11.25.2020 was shared on the screen. The septic system was approved in 2017 by the health department. It has not been placed yet because of code.

G. Elliott stated that the fence now terminates outside of the regulated area. The pool and the garage have been moved closer to the existing structure, further from the wetlands.

J. Larson asked for clarification on the septic design and leech field. R. Heinz confirmed that it is pumping uphill.

J. Larson asked if Agent Wagner had any other conditions that he would recommend for this approval. Agent Wagner stated that he did not.

J. Larson MOVED to approve application IWWC #20-27, 129 Hebron Road with the standard conditions of approval. W. Munroe SECONDED. By roll call vote, MOTION CARRIED 4:0:0.

- b. **IWWC 20-30:** Patricia Klayman, **25 Cider Mill Road** (Andover, CT), application to construct a bridge across Staddle Brook and a install a French drain within the URA.

No additional materials were received since last meeting.

There has been communication with the town attorney and applicants. The site walk was conducted on November 14, 2020.

W. Munroe asked if the proposed bridge is a permanent structure. G. Elliott stated that it would be a permanent structure. W. Munroe stated that the brook has very high flow when there is a lot of rain. G. Elliott agreed and stated that a bridge at that level would interfere with the water when the river is high/flooding.

G. Elliott stated that there is not sufficient information on exact landings (east or west sides), bridge plans, site plan with topographic features, etc. More information is needed.

J. Hallisey asked if the approach on either side of the bridge would require fill or grading. He also asked if it would trigger a stream encroachment permit.

G. Elliott asked if any alternatives exist. They are not present on the application. There might be a way to access the property via an easement. J. Larson suggested the alternative of making the bridge a temporary bridge.

The applicants need direction moving forward. Agent Wagner will work with them.

Continued to next meeting.

- c. **IWWC 20-32:** Jeff Miner (Agent) on behalf of Richard Risley (Owner), 85 Lakeside Drive (Andover, CT), application to construct a new lake wall along Andover Lake.

Jeff Miner (Agent) was present.

The commission received notification of approval from ALMA.

J. Larson asked about the transportation of the rock, for the rock wall, down to the lake. J. Miner said they would use a skid steer. There will be bales of hay on site for heavy storms. Last year during a similar project, they did not have any issues with erosion and do not foresee any erosion issue on this project. G. Elliott asked about using a woodchip material, J. Miner stated that they could wash into the lake.

J. Larson MOVED to approve application IWWC #20-32, 85 Lakeside Drive with the standards condition of approval. J. Hallisey SECONDED. By roll call vote, MOTION CARRIED 4:0:0.

- d. **IWWC 20-33:** Jeff Miner, 97 Lakeside Drive (Andover, CT), application to reconstruct a seawall and remove a dock along Andover Lake, and to construct a patio in the Andover Lake Upland Review Area.

Jeff Miner was present.

No additional materials were received since last meeting. ALMA approval is still pending.

G. Elliott stated that there should be more detail on the plans for the wall and the patio (i.e. dimensions).

J. Larson requested there be further consideration of storm water mitigation measures (i.e. gutters draining to a dry well, etc.).

Continued to next meeting.

9. ENFORCEMENT ACTIONS

- a. Kurt Boehm / Sandra Nichols, **41 Route 87**, deposition of material into a wetland without a permit. Order to Remediate issued 2/24/2020; Show Cause Hearing held 3/2/2020.

Sandra Nichols was present.

Photos submitted by S. Nichols were shown on the screen. S. Nichols explained the context of her photos. She spoke to Mark Williams and he said that he was focusing on the land closer to the stakes, not the bank of the stream (that was not what he was contracted to do). S. Nichols took photos of the rocks and boulders on the stream bank because they are in the wetland/watercourse. She stated that they are directly affecting the brook and wetland area. Damming is a concern.

S. Nichols expressed frustration with the project timeline and continuous delays of action. Her property can be directly affected if action isn't taken.

G. Elliott explained the timeline thus far with finding a contractor, getting the shed approved, and starting work. He also explained that there is still a considerable amount of work to be done.

S. Nichols questioned the next steps regarding legal action.

G. Elliott stated that this application is Agent Wagner's highest priority. It is known what needs to be done (for remediation and relocation of the shed), it is a matter of getting Mr. Boehm to follow it and getting that work done.

J. Larson stated that last meeting there was discussion of requiring a remediation plan. He questioned if there was a set due date for the plan to be submitted. A due date needs to be set so that the Commission can be ready to take legal action.

S. Nichols stated that steps to be taken were stated in the September and October minutes but were not mentioned in the November meeting.

There was discussion on the shed application. Agent Wagner stated that the permit was issued and there was a 15-day appeal period that recently expired. He has not spoken to Mr. Boehm since then.

J. Larson asked if there was a remediation plan in place.

G. Elliott stated that there were engineering recommendations that have been communicated early on in the process. J. Larson stated that the Commission did not decide if those recommendations were sufficient.

S. Nichols stated that when she talked to the project contractor, Mark Williams, he indicated that he would be doing 4 of the 7 recommendations. Grading and slope would not be addressed. He would be removing and placing bales of hay.

G. Elliott acknowledged that the project contractor Mark Williams may be misinformed. He referenced past minutes and engineer Bushnell's recommendations.

G. Elliott asked Agent Wagner if he has the recommendations from Engineer Bushnell regarding remediation (removal of materials following the relocation of the shed). Agent Wagner stated that they were incorporated into the project re-application. G. Elliott stated that there is a plan for remediation in the re-application then.

S. Nichols liked the idea of a making a timeline.

J. Hallisey suggested that Agent Wagner should meet Mr. Boehm and the site contractor on site to discuss the parameters of work and the extent of work already completed.

S. Nichols stated that the work being done is not near the wetland/watercourse, which is of more concern than the location of where the work is currently being done.

G. Elliott stated that Agent Wagner should communicate the requirements to the site contractor. It would then be up to the commission to make a timeline for this property. It is uncertain how much work has been done and how much time the remaining work will take.

Agent Wagner stated that the permit is issued and right now it is up to Mr. Boehm and the site contractor to continue work. G. Elliott asked if Agent Wagner could communicate a sense of urgency to Mr. Boehm and the contractor, and let them know what legal action would like. Agent Wagner said yes.

Agent Wagner stated that the applicant has received permission from the abutter, and has been issued a permit. There is nothing else that should halt the progress of this activity. If nothing gets done, the next step should be legal action. There is a record of the previous steps in previous meetings/minutes.

J. Larson suggested that the project should be completed by the next meeting. G. Elliott said there should at least be substantial progress by next meeting.

J. Larson asked Agent Wagner to ask Mr. Boehm when he plans to be finished. Agent Wagner said he can ask him. G. Elliott told Agent Wagner to report the projected finish date back to the commission where they can decide if it is reasonable. Once a date is set, if it is not completed – legal action can more likely be taken.

J. Larson emphasized that this project needs to be complete, this application has already missed the ideal drought conditions.

G. Elliott stated that he would like to see this activity completed for next meeting with a report of what was done.

Continued to next meeting.

- b. Kurt Boehm, **33 Route 87**, construction in an upland review area and deposition of material into a wetland without a permit. Order to Remediate issued 2/24/2020; Show Cause Hearing held 3/2/2020.

The photos that were submitted (12/3/2020) were shared on screen. Agent Wagner stated that he has been in contact with Kurt Boehm regarding the work shown in the pictures. He has not visited the site himself. K. Boehm mentioned they were going to put straw and grass seed down to stabilize the area. The white painted line shows where the fill was removed.

G. Elliott stated that the approved contractor has engaged in the remediation efforts on the 41 Route 87 side of the watercourse. Agent Wagner has not visited the site to verify the scope of the work and whether it is adequate.

Continued to next meeting.

10. AGENT REPORT

J. Larson asked Agent Wagner if he had seen the temporary road at 422 Lake Rd. Agent Wagner stated that he visited the site with Jim Blair, but he has not been back to the site since work started. J. Larson expressed that he was surprised about the material that was used for the temporary road. He said that given the recent rains, it might have affected the lake. At the site visit, there was no discussion of a temporary road. G. Elliott stated that if it wasn't in the application, there is an issue.

G. Elliott stated that he did not see mention of a temporary road in the application (IWWC 20-20). J. Larson said that there could be silt fence on the property preventing the material from getting into the lake. He just witnessed the material used and was concerned. G. Elliott said that Agent Wagner should go and re-visit the site to see what it looks like. Agent Wagner recalled from his site visit that there is a lake front silt fence, tarps to cover the wall, and the temporary road will be removed. He will take another site visit to the property.

11. OTHER BUSINESS: No one wished to speak.

12. NEXT REGULAR MEETING: Monday, January 4, 2021 @ 7:00 p.m.

13. ADJOURNMENT

J. Larson MOVED to adjourn the regular meeting at 10:15 p.m. J. Hallisey SECONDED. By roll call vote, MOTION CARRIED 3:0:0 (W. Munroe was no longer on the call).

Respectfully submitted by Mindy Gosselin,

Mindy Gosselin

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