

**TOWN OF SALEM
INLAND WETLANDS & CONSERVATION COMMISSION
REGULAR MEETING MINUTES
MONDAY, DECEMBER 9, 2019 – 7:00 P.M.
SALEM TOWN HALL – CONFERENCE ROOM 1**

1. Call to Order

Chairman Natoli called the meeting to order at 7:00 p.m.

2. Roll Call/Seating of Alternates

Present were Chairman Edward Natoli, Jr., Vice Chairperson Diba Khan-Bureau, Secretary Roger Phillips, Commissioners Kimberly Bradley and Jim Mulholland. Absent were Commissioners Gale Balavender and Linda Wildrick, Alternate Commissioners Frank Abetti, Lou Allen, Jr., and Larry Moore. Also present was Zoning & Wetlands Enforcement Officer (ZWEO) Matthew Allen.

3. Approval of Agenda

The following alterations were made to the Agenda:

Item 8(b), Violation at 76 Shingle Mill Road, was moved to precede Item 5, Public Comment.

Item 6(d), Election of Officers, was added to the Agenda

4. Approval of Minutes:

A. November 12, 2019

M/S/C: Khan-Bureau/Mulholland, to approve the Meeting Minutes of November 12, 2019. Discussion: None. Voice vote, 4-0-1. Voting in Favor: Commissioners Khan-Bureau, Mulholland, Natoli, and Phillips. Voting in Opposition: None. Voting in Abstention: Commissioner Bradley.

5. Old Business

B. Violation at 76 Shingle Mill Road

ZWEO Allen reported that a Notice of Violation and Cease and Desist Order were issued to the property owner(s) located at 76 Shingle Mill Road for work being conducted on their property. The owners attended the Commission's November Regular Meeting and it was determined that unpermitted regulated activity was conducted on the property. A Special Site Walk Meeting was scheduled at which no quorum was reached; those Commissioners who were present were permitted to view the site. The property owners have since retained the services of an environmental professional to begin the restoration process.

George Logan, REMA Ecological Services, LLC, introduced himself and provided his background and experience as a Certified Soil Scientist, Professional Wetland Scientist, Associate Wildlife Biologist, and Ecologist. He, along with one of his assistants, viewed the site to delineate the wetlands and review the inventory. Shingle Mill Brook, which travels

across the property and does not appear to be part of the Federal Wild & Scenic Watershed designation, is a fairly pristine perennial stream that is considered a Class A Watercourse by the USGS (United States Geological Survey) Stream Stats. A function and values assessment was conducted noting that the onsite wetlands area constitutes approximately 45 to 50 acres and is a highly functioning system. Due to the lack of time, he has not yet conducted a careful review of the stream to determine whether the work that was conducted has had an impact on the watercourse, itself. One positive aspect is that a silt fence was properly installed along all or most of the bank of the brook prior to the work being conducted. He estimates that 1.8 acres of the wetlands has been disturbed. The various disturbances include the partial removal of the overstory, complete denuding of the wooded understory, some smoothing or grading on certain parts of the land, and some filling of the wetlands. There was an effort to excavate the wetland top soil, which, luckily, still exists. In addition, an area of approximately 2,000 to 3,000 SF of new wetlands was created due to the removal of the topsoil which transformed those marginally upland areas into marginally wetland areas. A brief inventory from a previous report of its existing flora was provided. A more detailed inspection of the flora would be conducted as part of the restoration process.

The following preliminary plan, which includes three points, one of which is moderated, was presented to the Commission:

1. Adjust the weak areas of the silt fence
2. Seed the entire 1.8 acres with a seed mix. While the normal recommendation is to plant 20 pounds of seed per acre, due to the season, he is recommending that they plant 25 pounds of seed. The benefit of laying the seed following the first hard frost is that the freezing and thawing will help incorporate the seeds into the soil. With regards to one of the Commissioners recommendations regarding the application of straw, he recommended that, because the area is flat with some existing microtopography, they monitor the area and only straw the sensitive areas.
3. Depending upon how much the ground freezes by February, he recommended returning the topsoil to the newly created wetlands and seeding the area in an attempt to recreate the pre-existing topography. One of the benefits of returning the topsoil during the winter when the ground is frozen (most likely February) would be to minimize any disturbance to the wildlife in the area. He might also conduct a qualitative bio-survey above and below to better assess the area. Commissioner Khan-Bureau added that they also have some data they could provide in that respect.

The progress of the area would be reviewed and re-assessed and adjusted as necessary. The restoration will need to occur in stages due to the lack of complete knowledge of its pre-existing state.

Commissioner Bradley questioned whether a jurisdictional delineation should be conducted by the Army Corps of Engineers due to the waterway. Mr. Logan stated that there are jurisdictional wetlands in the area, but they are embedded within the delineation.

As such, it is inclusive. He estimates that approximately 90 to 95% of the wetlands he has delineated is jurisdictional. Jurisdictional wetlands refers to that which is subject to federal control and the soils located in jurisdictional wetlands have a slightly different criteria.

Commissioner Khan-Bureau expressed her concerns regarding the lack of hay bales and/or hay being laid out on the property in order to maintain the stability of the soil and preventing any (further) erosion and/or sedimentation as was previously recommended.

Based upon his experience, Commissioner Phillips agreed with Mr. Logan regarding the planting of the seeds prior to the laying down of the hay. Mr. Logan stated the seeding could take place at any time. The re-grading would occur later.

In response to Chairman Natoli, Mr. Logan stated that he would physically supervise the beginnings of the earthwork and return at key points of the process to ensure that the work is properly conducted. As far as the immediate action to be taken, he plans to walk the edge of the stream, identify the weak areas and lay hay bales to stabilize those areas of the property.

Discussion ensued regarding the necessity of involving the Army Corps of Engineers. Commissioner Bradley reiterated her concerns that the violation extends beyond the local level. Due to the time that it would take for the Army Corps to respond to the issue, Mr. Logan stated, and Commissioner Phillips agreed, with the importance of not further delaying the remediation process. Chairman Natoli stated that the Eightmile River Wild and Scenic Coordinating Committee has been made aware of the violation and confirmed that a recommend was made to notify the Army Corps for their evaluation. Commissioner Bradley agreed with the proposed remediation process, but felt that the violation should be properly handled and the appropriate process be followed. Chairman Natoli suggested the possibility of laying down the hay bales, seeding the area, and returning the dirt and requesting that the WEO inspect the property immediately following the actions. Meanwhile, he will draft a letter that includes a copy of the report to the Army Corps of Engineers to inform them of the violation and the actions which are being taken.

The Commissioners expressed their appreciation to Mr. Logan for providing such a comprehensive report in such a short period of time. Commissioner Bradley added that there may be a need for additional native plantings in the future to ensure that the functional values of the area are restored. It was clarified that the plan is an adaptive management strategy that will be completed in phases. In response to Chairman Natoli, the machinery that would be utilized was described by the property owner.

M/S/C: Khan-Bureau/Bradley, to require Certified Soil Scientist, Professional Wetland Scientist, Associate Wildlife Biologist, and ecologist George Logan to inspect the stream edge and lay down hay and/or hay bales in those areas deemed sensitive and plant the seeds within a two-week timeframe to stabilize the soils. ZWEO Matt Allen will be contacted upon completion and

will inspect the progress of the remediation at the property located on 76 Shingle Mill Road. Discussion: A letter will be drafted and mailed to the Army Corps of Engineers informing them of the violation and the immediate remediation that is taking place. Voice vote, 5-0, all in favor.

6. New Business:

A. IWCC #19-12 – 40 Lake View Avenue (004-000, 0.42 Acres) – Applicant & Owner John Diamantini, for home renovation work in the 75 ft. Upland Review Area.

Property Owner John Diamantini presented his request to tie in one of the gutters to an existing pipe from which water runoff is distributed into the yard and onto the surface of the Lake. Additional proposed activities include repairing the outside of the foundation facing the lakeside which has almost completely deteriorated. The activity would occur within the uplands review area. He provided a brief history of the work that was previously conducted on the property and the construction of the foundation.

In response to Commissioner Phillips, the pipe that the gutters tie in to is located approximately six feet from the residence and will direct the stormwater into the yard and onto the surface of the lake to avoid the land from further erosion. The existing silt fence will be solidified and remain while the work is taking place. WEO Allen stated that he has inspected the property and confirmed the existence of the double silt fence that extends across the area in question.

M/S/C: Phillips/Khan-Bureau, to approve the permit for Application IWCC #19-12 – 40 Lake View Avenue (004-000, 0.42 Acres) for home renovation work in the 75 ft. Upland Review Area as an as-of-right and to stabilize and maintain the double silt fence until the completion of the project. Discussion: None. Voice vote, 5-0, all in favor.

Commissioner Mulholland exited the meeting at 8:25 p.m.

6. Public Comment

Andrea Klein, 11 Fett Road, recited a letter with accompanying photographs, strongly urging the Commission to deny the request for a fence at 1 Fett Road. She felt that the installation of a natural wood fence in saturated ground would be impractical, unsafe, and would create a risk for termite infestation. Their home, which is located within 2.5 feet from the proposed fence, has already been plagued with termite infestation in the past, resulting in the rebuilding of many sections of the home. In addition, should the home become infested with termites, the use of pesticides would be utilized to remedy the infestation contaminating the area. The undue hardship the fence would cause should be discussed and seriously considered by the Commission. While she respects the owners' desire to delineate their property, she strongly urged them to deny their application and recommend the installation of bushes/shrubbery, as

was previously presented, that would be more conducive to the wetlands and the environment. The bushes/shrubbery would also aid in the restoration of the wetlands and help manage the water runoff by absorbing more water. She noted that the unpermitted fence that was installed and incited the issue(s) still exists. She formally and respectfully requested that the Commission require the removal of the fence and the installation of natural plants to delineate their property line.

6. New Business

B. Violation at 14 Fett Road

WEO Allen reported that significant erosion had taken place at the beach area that was cited earlier this year. The issue was reviewed and tabled by the Commission, without prejudice at that time. The erosion has since increased and the efforts that have been made to curtail the issue has not been successful. As such, he proceeded to cite the property owner(s) and requested they attend this evening's meeting to discuss the issue. He added that a complaint was received for a different property and, while he did not find a violation for that property, a violation was found at this neighboring property, i.e., 14 Fett Road.

Gardner Lake Heights Property Owners Association Treasurer Peter Litchfield presented photographs and stated that hay bales were placed in an effort to stop the water runoff which derives from Witter Road and travels through several properties on Fett Road and through part of the boat launch area and part of the Kleins' yard (11 Fett Road) and into the Lake. Because the water derives from a town road, he felt that the town was responsible for diverting the water runoff.

In response to Commissioner Bradley, the violation involves both the fill and erosion as it appears that there was also unpermitted fill that took place within 75 feet of the wetlands. Similarly, Chairman Natoli expressed his concerns with the disappearance of the grassy area. Mr. Litchfield stated that the Association rakes the sand back onto the beach every Spring in an attempt to avoid and save the beach.

WEO Allen stated that the conditions have grown much worse and the violation at the property is being maintained and, as requested earlier in the year, recommended the Association retain the services of a professional, i.e., Certified Engineer, to confirm the source of the stormwater, its rate of flow, and devise a method to control the stormwater erosion and sedimentation at the site. It is the property owner(s) responsibility to maintain the condition of their property, including any sedimentation and erosion that occurs.

Mr. Litchfield argued that the town has, in the past, installed curbing should a resident complain that water, deriving from a town road, is traveling onto and damaging their property; he questioned why the same situation does not apply in this case. He expressed his frustration regarding the receipt of the Violation Notice when the issue was previously discussed and the town should be taking steps to divert the runoff.

Commissioner Bradley recommended the Commission work together and support the Association as they search for a remedy. She recommended the Association reach out to the Eastern Connecticut Conservation District or the Connecticut Rivers Council for support.

Cecelia Grisafe, 1 Fett Road, a Member of the Association, stated that she has been monitoring the issue over the past year and has taken videos and photographs to document the flow of the water into the Lake, which she would be happy to share with the Commission. She added that the water that is creating the ruts on the Association's beach appears to be deriving from the Kleins' property and not a town road. Furthermore, the water that is flowing down the road is not flowing through any of the properties, as previously stated.

A gentleman who is also a member of the Association remarked, "with friends like that, who needs enemies?" and felt that the amount of water that flows down the road would not create such an erosion.

Andrea Klein stated that she felt that the issue is a personal vendetta against herself and her husband. She stated that, upon purchasing the home, a section of solid concrete was replaced with a permeable patio to help absorb the water and prevent erosion. She expressed her frustrations with the accusations.

Chairman Natoli stated that he would inquire with the First Selectman regarding the status of the project. He felt that the laying down of the hay is a good idea and should remain, especially in the winter, and requested that the Association seek out the services of a professional, adding that the issue will, most likely, be ongoing.

M/S/C: Phillips/Khan-Bureau, to table the violation at 14 Fett Road. Discussion: None. Voice vote, 4-0, all in favor.

C. 2020 Meeting Schedule

M/S/C: Khan-Bureau/Bradley, to approve the 2020 Inland Wetlands and Conservation Commission Meeting Dates as follows: January 13 (Tuesday), February 3, March 2, April 6, May 4, June 1, July 6, August 3, September 8 (Tuesday), October 5, November 2, December 7, and January 4. The meetings will be held on the first Mondays of the month at 7:00 p.m., with the exception of the months of January and September, at Salem Town Hall, Conference Room 1. Discussion: WEO Allen stated that all of the meetings, with the exception of the January meeting, that was scheduled the previous year, will be held on the first Monday of the month. The January and September dates would be held on the second and first Tuesday of the month due to their respective holidays. Voice vote, 4-0, all in favor.

D. Election of Officers

M/S/C: Bradley/Khan-Bureau, to maintain the same slate of officers. Discussion: None. Voice vote, 4-0, all in favor.

7. Public Hearing(s): *None*

8. Old Business

A. IWCC#19-11 – 1 Fett Rd. (22-023-000, 0.61 AC) – Applicants/Owners Bruce & Cecelia Grisafe, for a fence in a wetland

WEO Allen reported that an application to construct a fence in the wetlands at 1 Fett Road along with a satellite map indicating the location of the fence, was received. The fence would be located partially within the wetland and partially within the 75' upland review area. The Commission reviewed the application at their last meeting and requested that additional information be presented to the Commission. The required 15 days have passed and the Commission may make a decision should they wish to do so at this time. The site is also the site of the violation that was reviewed earlier in the year.

In response to Commissioner Khan-Bureau, WEO Allen stated that the restoration is taking place over two separate properties owned by the same individual(s). The proposed fence would be constructed on one of those two properties and located along the property delineated by Soil Scientist Richard Snarski. The fence that is currently located on the property is unpermitted and should have been de-installed. Commissioner Phillips felt that the red cedar rails would not negatively impact the wetlands; he felt that the Commission's aversion to the fence is due to the previous issues regarding the fence. Commissioners Bradley and Khan-Bureau disagreed, adding that the area has already been compromised. While she appreciates their interest in delineating the property, she agreed with the previous public comment regarding the need to seek alternative methods to delineate their property while enhancing the wildlife, habitat, and some of the loss function value that may have occurred in the wetlands.

Applicant Bruce Grisafe stated that the fence was installed due to the adversity they were receiving. The cedar posts consist of natural resins and oils that are toxic to termites. Commissioner Phillips agreed that termites would not be an issue.

Applicant Cecelia Grisafe stated that a (unpermitted) fence was installed prior to the Kleins' purchase of the property. The fence was de-installed while the Kleins' were working on their property, to provide easier access. The fence was later re-installed.

M: Phillips, to approve Application IWCC#19-11 – 1 Fett Rd. (22-023-000, 0.61 AC) – Applicants/Owners Bruce & Cecelia Grisafe, for a fence in a wetland.

M/S/C: Khan-Bureau/Natoli, to deny Application IWCC#19-11 – 1 Fett Rd. (22-023-000, 0.61 AC) – Applicants/Owners Bruce & Cecelia Grisafe, for a fence in a wetland. Discussion: Commissioner Phillips felt that denying the installation of the fence in an area that has already been so compromised, whether it is located in the wetlands area or not, is setting a bad precedent. Commissioner Bradley felt that the impact to the wetlands at such a high level should not be the precedent. Viewing the historic photos, it is clear that this is an important

wetlands area that protects the overall lakefront area. Chairman Natoli felt that the core of the issue is based upon a neighbor dispute and, because the wetlands are involved, those involved have chosen to carry the dispute through the Commission. He recommended that they find a way to get along and not constantly bring these issues to the Commission. Voice vote, 3-1. Voting in Favor: Commissioners Bradley, Khan-Bureau, and Natoli. Voting in Opposition: Commissioner Phillips.

9. Wetlands Enforcement Officer's Report – *none*

10. Correspondence – *none*

11. Plus Deltas – *none*

12. Adjournment

M/S/C: Phillips/Khan-Bureau, to adjourn the meeting at 9:17 p.m. Discussion: None. Voice vote, 4-0, all in favor. Meeting Adjourned.

Respectfully Submitted by:

Agnes T. Miyuki, Recording Secretary for the Town of Salem