TOWN OF SALEM
INLAND WETLANDS & CONSERVATION COMMISSION
REGULAR MEETING MINUTES
TUESDAY, SEPTEMBER 6, 2022 – 7:00 P.M.

The minutes submitted below have been filed in accordance with Section 1-225 of the CT General Statutes. They are subject to final approval with or without amendments by a vote of the Inland Wetlands & Conservation Commission. Approval and any such amendments will be detailed in subsequent minutes.

1. Call to Order
Chairperson Bradley called the meeting to order at 7:05 p.m.

2. Roll Call/Seating of Alternates
Present were Chairperson Kimberley Bradley, Vice-Chairperson Diba Khan-Bureau, Secretary Roger Phillips, and Commissioners Jennifer Messervy and Edward Natoli, Jr. Absent were Commissioners Jim Mulholland and Dean Wojcik and Alternate Commissioners Jim Miller, Larry Moore and Michael Smith. Also present was Wetlands Enforcement Officer (WEO) Matthew Allen.

3. Approval of Agenda
M/S/C: Messervy/Khan-Bureau, to approve the Inland Wetlands and Conservation Commission Agenda for Monday, September 6, 2022. Discussion: None. Voice vote, 5-0, all in favor.

4. Approval of Minutes
a. Regular Meeting Minutes of Monday, August 1, 2022

5. Public Comment – none

6. New Business
a. IWCC 22-03 – 25 Hagen Road – Gary Alligood, Owner/Applicant – As-of-Right Determination for an agricultural fence
Owner/Applicant Alligood provided a brief history of the property, currently known as Wheatfield Hill Farm, and located just south of Walden Preserve. A map of the property, created by the USDA NRCS (United States Department of Agriculture Natural Resources Conservation Service) depicting the plan for the farm, was distributed to the Commission. Two grants from the New England Farmers Micro-Grant for Regenerative Farming and a State of Connecticut Restoration Grant were
awarded to help fund the restoration of the property. The Commission reviewed the Restoration Plan developed by Consulting Conservation Scientist Kip Kolesinskas and Environmental Analyst Holly Lalime.

The Restoration Plan includes a request for an As-of-Right Determination to clear the brush and install perimeter fencing around various fields. The purpose of the fencing is to allow for the grazing of the property. The Plan also includes the installation of a geotextile stream crossing and a pipe. The crossing will allow the cows to cross the stream, keeping the cattle from accessing the pond connected to the stream, and the pipe will be installed on Field 12 where a pre-existing drainage swale is currently located.

Chairperson Bradley spoke favorably of the proposed plan.

Impact on Walden Preserve and location of proposed plan in relation to the Rapid Bio-Assessment Testing locations (Commissioner Khan-Bureau) – The property is located downstream from Walden Preserve and the stream crosses under the farm road and flows into Harris Brook. The activity should not impact the Preserve or conflict with the testing.

M/S/C: Khan-Bureau/Messervy, to approve Application IWCC 22-03 – 25 Hagen Road – Gary Alligood, Owner/Applicant – As-of-Right Determination for an agricultural fence. Discussion: Owner/Applicant Alligood will submit an application for the crossings at a later date; Commissioner Natoli informed him that he need not be present for the application. Voice vote, 5-0, all in favor.

b. IWCC 22-04 – 340 West Road – Salem Land Trust, Owner/Applicant – As-of-Right Determination for a non-regulated conservation use

Salem Land Trust (SLT) President Linda Schroeder presented the application for the installation of a Flexible Pond Leveler and Culvert Fence to help prevent the backing up of the culvert due to beaver debris. The Leveler measures approximately 40’ and travels from the culvert to the dam and into the wetlands. The activity obstructs a culvert located under the access road to the property, flooding the road and abutting properties. The SLT is also seeking approval to continue clearing this and another cement & corrugated pipe culvert that is located approximately 15’ downstream. The latter culvert accumulates silt due to the lack of water flow as a result of another, smaller beaver dam. The proposed solution is an environmentally conscious and safe method for beaver flooding mitigation. The SLT is in the process of seeking grants to help offset the costs. Should a grant(s) not be awarded, a Stewardship Fund is available to fund the project. A cost estimate of the installation and maintenance was also submitted to the Commission.

M/S/C: Khan-Bureau/Messervy, IWCC 22-04 – 340 West Road – Salem Land Trust, Owner/Applicant – As-of-Right Determination for a non-regulated conservation use. Discussion: Salem Land Trust President Schroeder
agreed to provide periodic updates on the project and stated that they are also planning to post photographs and updates on their website. Voice vote, 5-0, all in favor.

c. Request from Salem Land Trust for a Letter of Support for the Acquisition of 460 Old New London Road
SLT President Schroeder reported that the Salem Land Trust is seeking an Open Space and Watershed Land Acquisition Grant (OSWA) to fund the purchase of the Stahlschmidt property, located at 460 Old New London Road. The requirements for the Grant include approvals from the Inland Wetlands and Planning & Zoning Commissions and a Letter of Support from the First Selectman. The 47.53-acre property includes approximately 15 acres of critical forested wetlands, which drain into a stream that empties into Latimer Brook, an important headwater stream of the Niantic River Watershed. The property, which will be open to the public, contains approximately 899’ of frontage with room for a small parking lot. Located very close to the proposed entrance, the wetlands would be ADA-accessible. The property abuts an abandoned area, currently owned by the CT DOT (Connecticut Department of Transportation), that was proposed for the Route 11 Project. The Town’s 2012 Plan of Conservation and Development shows that the proposed property is slated for conservation and is not zoned commercial or industrial. In addition, a survey of the property indicating the flagged wetlands was also presented for review.

M/S/C: Khan-Bureau/Phillips, IWCC 22-04 – 340 West Road – Salem Land Trust, Owner/Applicant – As-of-Right Determination for a non-regulated conservation use. Discussion: Chairperson Bradley stated, because she resides on Fawn Run, she would be abstaining from voting on the motion and recommended that Vice-Chairperson Khan-Bureau sign the letter on behalf of the Commission. She also informed them that she is currently employed by CT DEEP (Connecticut Department of Energy and Environmental Protection) and will decline from reviewing the Grant Application should she be requested to do so. Voice vote, 4-0-1. Voting in Favor: Commissioner Khan-Bureau, Messervy, Natoli, and Phillips. Voting in Opposition: None. Voting in Abstention: Commissioner Bradley.

7. Public Hearing: none

8. Old Business
a. IWCC #22-02 – 18 Eden Park Drive – Wilson Family Trust, Owner; Joe Wren, Applicant – Permit to work in URA for a proposed residential accessory building
WEO Allen stated that the waiting period has passed and the Commission is free to decide on the Application this evening. Commissioner Natoli stated that, during their site walk, the Commissioners discovered a pipe that appeared to discharge groundwater
from the wetlands to the neighboring property and into Gardner Lake, constituting a wetland – the draining of water into the wetlands – and zoning violation – the piping which travels to the neighboring property. The latter is not under the Commission’s jurisdiction. Joe Wren, P.E., Principal, Indigo Land Design, LLC, explained that the piping is depicted on the plan and travels from the road, under the property, across the fence, and empties into Gardner Lake.

Extensive discussion ensued regarding the age of the piping and the history of the land. Owner Craig Wilson stated that the area originally housed a driveway to the neighboring property and the piping existed prior to the property’s original owner. P.E. Wren concurred, adding that, upon further investigation with Soil Scientist Rich Snarski, the piping, located approximately 40’ to 50’ from the Lake, appears to be at least 60 years of age and dry. The hillside is filled with sand and gravel and very minimal water travels through the pipe. It was noted that the wetlands previously connected directly to Gardner Lake and was filled to allow access for a driveway.

Commissioner Natoli expressed his concerns regarding the contamination of the Lake coming through the pipe. Applicant Wren disagreed, stating that the existence of the dry Fall leaves indicates that very little, if any, water flows through the pipe. WEO Allen stated that, should the piping be decades old, it would be out of their jurisdiction and would not constitute a violation. Commissioner Khan-Bureau questioned whether the Commission should require that any remedial action be taken. WEO Allen stated that they would not have the authority to impose a condition of approval on the proposed application. Because the issue is separate from the application, itself, Chairperson Bradley concurred, stating that the Commission should hear from the Applicant regarding the application at hand and deal with the piping at a later date.

P.E. (Professional Engineer) Wren provided a brief synopsis of the application and an overview of the property, which includes a slope that comes up to a ridge. Due to the utility and overhead power lines, the proposed barn cannot be located on the hill. The property includes a small gravel turnout exists with a 3’ x 8’ old root cellar that would be removed. The lower level of the proposed 24’ x 36’ garage will provide storage for a boat with a small workroom in the back and the upper level would include a studio and full bathroom. The soil testing indicated that the soils are well-draining sand and gravel, allowing for infiltration and absorption. He did not observe any erosion occurring in the area or watershed area feeding the wetlands. Trees will be removed and the building will not house a basement.

The Commissioners viewed the location of the proposed accessory building, clearing, flagged wetlands area, and the 75’ Upland Review Area. The owner has requested that the requested 8’ to 9’ retaining wall, supporting the elevation change, be pushed out and reduced to 3’ to 4’ for safety purposes. Located 45’ to 50’ from the wetlands, the proposed septic system would be installed within the 75’ Upland Review Area and
outside of the required distances from the wetlands, open body of water, and potable water source, per CT DPH (Connecticut Department of Health) requirements.

**Building Use** (Commissioners Phillips and Messervy) – The upper level will include a full bathroom, art studio, and office. The septic flow would be minimal. There are no plans to convert the building into a single-family residence. The lower level will include a garage, which would be used to store a boat and a woodworking shop.

**Type of Wetlands** (Chairperson Bradley) – Commissioner Bradley stated that the wetland on the property is similar to a vernal pool, providing habitat for, perhaps, wood frogs in a good year. The area is also home to wetlands vegetation. The remaining property has been filled and no active wetlands exist on the property, with the exception of this area. The owner stated that the area has always been mucky and would become very wet, especially when the pipe became clogged with debris.

*Marguerite Purnell, et al vs. Inland Wetlands and Watercourses Commission of the town of Washington, et al* – ZWO Allen informed the Commission of a recent case in which the Superior Court dismissed a Plaintiff’s appeal of a Commission’s decision to grant a permit to conduct certain regulated activities. It was observed by the Supreme Court that the “sine qua non of review of inland wetlands applications is a determination [of] whether the proposed activity will cause an adverse impact to the wetland or watercourse.” (River Bend Associates, Inc. v. Conservation & Inland Wetlands Commission, 269 Conn. 57, 74, 848 A.2d 395 (2004)) “Evidence of general environmental impacts, mere speculation, or general concerns” do not suffice. Id. 71. Rather, “[a]bsent evidence that identifies and specifies the actual harm resulting therefrom, a commission cannot find that the proposed activities will, or are likely to, adversely impact wetlands or watercourses.” Three Levels Corp. v. Conservation Commission, 148 Conn. App. 91, 112, 89 A.3d 3 (2014); see also River Bend Associates, Inc. v. Conservation & Inland Wetlands Commission, supra, 77–81 (proof of specific, actual harm required); Cornacchia v. Environmental Protection Commission, 109 Conn. App. 346, 359, 951 A.2d 704 (2008) (“[t]he impact on the wetlands and watercourses must be adverse and must be likely’’). As such, if there is no evidence of adverse impact, the activity must be approved.

Commissioner Natoli stated that no precedence has been set by the Commission to approve the construction of a building with a septic system in the Upland Review Area. He expressed his concerns regarding the location of the proposed building, which is on the side of the hill directly above the wetlands and would severely impact the adjacent property. Being the only wetlands in the area, it is a very vital resource, cleaning the runoff from the road and driveway and protecting the Lake, which, he added, is dying. He felt that it was their duty to protect the Lake.
Discussion ensued regarding the State of Connecticut’s Appellate Court’s decision and the application. The Owner stated that the goal is to maintain the wooded area, which provides a buffer between the two properties. Chairperson Bradley recommended that the Applicant explore the Gardner Lake Authority’s expectations regarding the septic system, if any, in terms of protecting the Lake for all of its residents. P.E. Wren reminded the Commission that 8’ to 9’ test holes, with no ledge, were dug and it was found that the soil was sandy and would allow for the water to be infiltrated and absorbed vertically into the earth rather than laterally into the Lake.


9. Wetlands Enforcement Officer’s Report
ZWEO Allen reported that an application was received today and will be included on next month’s Agenda.

10. Correspondence
The following workshops are available:
Forest Wetlands Soils Workshop, September 12, 14, or 16
The one-day workshops are sponsored by CT DEEP, UConn Extension, and the USDA.
Vernal Pool Education Workshop
The Eightmile Wild & Scenic River Watershed is gauging the interest of a Vernal Pool Education Workshop by Herpetologist Dennis Quinn. The presentation would be geared towards Inland Wetlands & Watercourses and Planning & Zoning Commission Members and would, most likely, be held on a Saturday.

Update from Atty. Steven Byrne regarding Marguerite Purnell, et al vs. Inland Wetlands and Watercourses Commission of the Town of Washington, et al – The decision on the case by the CT Appellate Court took place earlier this year. In the decision the higher court expressly defines elements included in the Inland Wetlands Act, including its purpose and jurisdiction. The Commission’s decisions must provide “evidence that identifies and specifies the actual harm”.

Discussion ensued regarding the case and its effect on the Commission, its discussions, and decisions. It was clarified that the Eightmile River Riparian Corridor Overlay Zone is a Zoning Regulation and would not be affected. While feasible alternatives can be suggested to the Applicant for consideration, the Commission should always keep in mind that they are the governing body, enforcing the laws, and such cases must be considered as they
discuss and act on the applications that are presented to them. Commissioner Khan-Bureau clarified that the case refers to an appeal of a prior decision by the Commission and recited the court’s statement that “an administrative agency cannot reverse a prior decision unless there has been change of conditions or other considerations have intervened which materially affect the merits of the matter decided.”

11. Critique/Announcements
Commissioner Phillips stated the importance of scheduling a site walk for applications that are presented to them, as evidenced by the 18 Eden Park Drive application. He also questioned the possibility of reviving their discussion regarding the delegation of authority to the Duly Authorized Agent. Chairperson Bradley reported that she has not had the opportunity to consult with the Town Attorney on the matter and was hoping that Commissioners Miller and Mulholland would be in attendance to join the discussion. She cited the Commission’s December 6, 2021 training session when the matter was discussed with Darcy Winther, Connecticut Department of Energy and Environmental Protection (CT DEEP), Land & Water Resources Division, Bureau of Water Protection and Land Reuse, and Land Use Attorney Michael Zizka (see video from 02:26:08 – 02:32:47). CT DEEP’s Winther stated that a Duly Authorized Agent can be delegated to do Upland Review Permits, issue Orders, and legwork for reviewing any jurisdictional determinations, including identifying whether an application is an As-of-Right Determination or a permitted activity, but cannot be delegated that authority. As such, Section 12 of the Town’s Inland Wetlands & Watercourses Regulations, which states that the Commission can provide the Duly Authorized Agent with the authority to make as-of-right determinations, opposes the CT General State Statutes and should be amended. She requested that an item to update the Regulations be placed on their next agenda with discussion to include this and any additional revisions and/or updates, including increasing the Upland Review Area from 75’ to 100’.

12. Adjournment
M/S/C: Khan-Bureau/Phillips, to adjourn the meeting at 8:57 p.m. Discussion: None. Voice vote, 5-0, all in favor. Meeting Adjourned.

Respectfully Submitted by: Agnes T. Miyuki, Recording Secretary for the Town of Salem

A VIDEO RECORD OF THE MEETING CAN BE FOUND ON THE TOWN’S WEBSITE UNDER BOARDS & COMMISSIONS – BOARD OF SELECTMEN – MEETING VIDEOS