

TOWN OF ESSEX
Inland Wetlands and Watercourses Commission

Executive Board
Fred Szufnarowski Chairman
Daniel Lapman, Vice Chair

29 West Avenue • Essex, Connecticut 06426
Telephone (860) 767-4340 • FAX (860) 767-8509

Regular Members

Jim Leo
Steve Knauth
Jeffrey Lovelace, Conservation Liaison
Jim Hill, Zoning Liaison
Vacancy, Planning Liaison

Alternate Members

Bill Cook
Andre Roussel

Unapproved

Minutes - Regular Meeting
Tuesday, April 11, 2017

1. Call to Order and Seating of Members

The regular Meeting of the Essex IWWC was conducted on April 11, 2017 in Conference Room A, of the Essex Town Hall at 7:00 p.m.

Attending Members:

Fred Szufnarowski
Dan Lapman
Jim Hill
Steve Knauth
Bill Cook, Alternate, seated

Absent Members:

Jeff Lovelace
Jim Leo
Andre Roussel

Staff:

Stella Beaudoin, Recording Clerk
Joseph Budrow, Wetlands Enforcement Agent

F. Szufnarowski called the meeting to order at 7:00 p.m.

MOTION made by J Leo to seat B Cook for J Lovelace; **SECONDED** by S Knauth; **Voting In Favor:** F. Szufnarowski, J Hill, D Lapman, S Knauth, B Cook; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0.

Approval of Minutes

- **March 22, 2017 special meeting**

MOTION made by D Lapman to approve the March 22, 2017 special meeting Minutes with the following amendments; 1) Page 6, 3rd paragraph, third line to read “this project will increase the size”; 2) Page 7, first paragraph, last sentence to read “C Smith stated this act exempts any activities”; 3) Page 8, first paragraph to read, “improvements in water treatment on a property of this size are important”; **SECONDED** by B. Cook ; **Voting In Favor:** F. Szufnarowski, J Hill, D Lapman, S Knauth, B Cook; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0.

- **March 21, 2017 Site Walk Minutes at Essex Boat Works property**

MOTION made by D Lapman to approve the March 21, 2017 Site Walk Minutes at Essex Boat Works property as presented: **SECONDED** by J Leo; **Voting In Favor:** F. Szufnarowski, J Hill, D Lapman, S Knauth, B Cook; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0.

2. Public Hearing

- No public hearing scheduled

3. Regular Meeting

- **Application No. 17-2 – Markham and Jody Rollins, 10 Meig’s Lane**

An application to allow a patio, fire pit and cooking station to a point 30 feet from South Cove.

Seated for this application were F. Szufnarowski, J Hill, D Lapman, S Knauth, B Cook.

Application #17-2 was received at the March 22, 2017 special meeting and at that meeting, the Commission determined that this proposal was complete for submission at this evening’s meeting.

This is an application to remove an existing deck and replace with a slightly larger one. Also to replace the existing patio and expand with a bluestone patio that would come to a point 16 feet from the head wall at the cove. As part of the patio, a fire pit and a cooking station is proposed. A storm water infiltration system will be installed to handle runoff from rain events.

Chad Frost, Landscape Architect presented on behalf of the applicant, noting that this project is a small expansion of an already developed backyard. C Frost stated that this proposal increases the impervious surface and as such a treatment system will be in place for stormwater run-off. Everything in the rear of the house, the roof, the existing pavement and the added bluestone will capture the first one-inch of rain through a couple of slot drains and then funneled through a filter and into a retention basin which outlets to the preexisting stone channel. The rainwater goes into pretreatment screen and into underground infiltrator.

C Frost stated that there are no changes in this proposal from last month’s presentation.

J Budrow stated that he has not had an opportunity to discuss the site plan to D Caroline, Essex Public Works Director. The Commission is seeking Mr. Caroline's input related to the outfall of the drainage into Middle Cove. C Frost stated they would comply with Mr. Caroline's recommendations to the extent possible.

MOTION by B Cook to approve a permit for **Application No. 17-2 – Markham and Jody Rollins, 10 Meig's Lane**; An application to allow a patio, fire pit and cooking station to a point 30 feet from South Cove. Based on the information presented in this application and the accompanying documents, and on the testimony given at this meeting, the Commission finds that the proposed activity is a regulated activity not involving significant impact or major effect upon the inland wetlands or watercourse which occur on the property, as defined in Section 2.2, and that few or no reasonable or prudent alternatives exist;

The Commission makes a Summary Ruling and grants a permit and permission for the applicant to proceed with proposed activity as stated on said application and as shown on plans accompanying the application, subject to the following conditions:

- a. In accordance with the Commission's Regulations, the activity pursuant to said permit shall be initiated within 2 years of the date of publication and shall be completed within one year of the date of initiation and will occur between March 15th and October 15th of the year of initiation.
- b. Should the applicant determine that the permitted activity will not be completed between March 14th and October 15th of the year of initiation, the applicant agrees to appear before the Commission and present a plan for the stabilization of the site during the non-permitted months.
- c. The applicant agrees to follow the advice and direction of the Town of Essex Enforcement Officer with regard to any field changes he deems necessary or may require for the protection of the inland wetlands and water course during the process.
- d. The Commission, through its Enforcement Officer, shall be notified in writing upon the initiation of the authorized activity and again upon completion of these activities.
- e. J Budrow will arrange a meeting with D Caroline to discuss the outfall of the drainage into Middle Cove.

SECONDED by D Lapman; **Voting In Favor:** F. Szufnarowski, J Hill, D Lapman, B Cook; **Opposed:** None; **Abstaining:** None; **Approved:** 4/0/0.

- **Application #17-5 Essex Boat Works, LLC, Main Street, Essex, Assessor's Map 47, Lot 21-1.** An application to construct a principal building with accessory site work all within 100 feet of North Cove.

Steve Knauth recused himself from this Application.

Seated for this application were: F. Szufnarowski, J Hill, D Lapman, B Cook.

Application #17-5 was received at the March 22, 2017 special meeting and at that meeting, the Commission determined that this proposal was complete for submission at this evening's meeting.

This is a proposal for the construction of a new building and accessory site work. The existing building will be demolished and this application proposes a restaurant on the first floor as accessory use to the office space on the second floor. This property abuts a tidal watercourse and there are no inland wetlands that are regulated under the State of CT IWWC act.

Attorney Chris Smith, Shipman and Goodwin, LLC presented with Tom Daley from Milone & MacBroom, Inc., Bill Root Wetland and Soil Scientist and Dianna Gregory.

C Smith stated that this is a proposal to construct a 7000 s.f building on the property that accesses Main street. The development of this property includes a principal structure that would have a marina office use with an accessory restaurant. Accessory to the building would be a septic system and storm water infiltrator system. These two systems would be on the opposite the side of the property from North Cove. The site will be landscaped and the parking lot will be gravel. C Smith stated that there are no inland wetlands or watercourses on the property or in the immediate vicinity. The river is tidal at this point, and there is no activity proposed that will adversely impact a wetland. C Smith presented a summary which was prepared by William A. Root, MS Senior Project Specialist, Environmental, Milone & MacBroom which summarizes his findings related to this proposal.

F Szufnarowski commented on the Commission's jurisdiction over tidal watercourses and he referenced a February 11, 2016 email from the Darcy Winther, Inland Wetlands Management Section, Bureau of Water Protection and Land Reuse, State of CT DEEP in which D Winther states that the IWWC has full jurisdiction including upland review areas, over tidal watercourses but not over tidal wetlands. The CT River counts as a watercourse under the DEEP's interpretation of the Inland Wetlands and Watercourses Act.

J Budrow commented on a memo from Joe Wren, Indigo Land Design to the CT River Museum noting items #8, #12 and #13.

Item #8 states "The applicant shall provide information regarding salt and flood tolerance of all proposed landscaping species". T Daley stated that all plants selected by landscape architect and are well suited for that environment.

Item #12 states "The proposed soil stockpile area appears inadequately sized for this project." T Daley stated that only a topsoil materials will be stockpiled. Any excavated material will be immediately loaded into a truck and removed from the site.

Item #13 states “There appears to be no erosion and sedimentation controls along the eastern property line. The applicant shall add E&S controls in this area and demonstrate how the 67 Main Street property will not be adversely affected during construction.” T Daley stated that erosion and sedimentation will be added to the plan and he will continue to work with Geomatrix. T Daley stated that he has been monitoring the ground water since mid-February and the ground water is steady. The septic is well above that ground water level.

In a letter dated March 2, 2017, the IWWC legal counsel, Suzanna McCauley, Esq., indicated that she has reviewed the email correspondence from D. Winther, DEEP who commented on the federal Watrous v Town of Preston (2011) case. Although there is no specific reference to tidal watercourses in the state’s Tidal Wetlands Act, the court found that the regulation of activities affecting a tidal watercourse, i.e., the cove, rests solely within the jurisdiction of the state DEEP. Since the court’s 2011 decision in Watrous, the case has not been cited in any other decision on this issue. Based on the strained and untested findings in this case Attorney McCauley concluded its precedential value is arguable. Further, Attorney McCauley noted that D Winthers confirmed that the DEEP in fact takes the opposite position in this matter despite the existence of the Watrous decision.

MOTION by B Cook to approve a permit for **Application #17-5 Essex Boat Works, LLC**, This is an application to construct a building with accessory site work all within 100 feet of North Cove; Based on the information presented in this application and the accompanying documents, the site walk, and on the testimony given at this meeting, the Commission finds that the proposed activity is a regulated activity not involving significant impact or major effect upon the inland wetlands or watercourse which occur on the property, as defined in Section 2.2, and that few or no reasonable or prudent alternatives exist;

The Commission makes a Summary Ruling and grants a permit and permission for the applicant to proceed with proposed activity as stated on said application and as shown on plans accompanying the application, subject to the following conditions:

- a. In accordance with the Commission’s Regulations, the activity pursuant to said permit shall be initiated within 2 years of the date of publication and shall be completed within one year of the date of initiation and will occur between March 15th and October 15th of the year of initiation.
- b. Should the applicant determine that the permitted activity will not be completed between March 14th and October 15th of the year of initiation, the applicant agrees to appear before the Commission and present a plan for the stabilization of the site during the non-permitted months.
- c. The applicant agrees to follow the advice and direction of the Town of Essex Enforcement Officer with regard to any field changes he deems necessary or may require for the protection of the inland wetlands and water course during the process.

- d. The Commission, through its Enforcement Officer, shall be notified in writing upon the initiation of the authorized activity and again upon completion of these activities.
- e. Silt fencing will be added along the eastern side of the proposed access driveway.

SECONDED by D Lapman; **Voting In Favor:** F. Szufnarowski, J Hill, D Lapman, B Cook; **Opposed:** None; **Abstaining:** None; **Approved:** 4/0/0.

4. Receipt of New Applications

- **Application No. 17-6** – **Geoffrey and Lisa Herter, 32 Ingham Hill Road, Map 91, Lot 7.** An application to install a septic system in the rear yard to a point within 20 feet of a pond.

Seated for this application were: F. Szufnarowski, J Hill, D Lapman, S Knauth, B Cook.

The property subject to this application which fronts Tiffany Pond and is comprised of a single-family dwelling and an in-ground swimming pool. The failing septic system which is located in the rear yard between the house and the pond. This is an application to approve the abandonment of the existing system and to replace with a new system which will be located in close proximity to the existing septic which is within 30 feet of the pond. There is no other location on the property on which to situate a new system. The site plan was reviewed by the sanitarian and Wind River Group LLC is in process of drafting a new plan that would move the septic tank further from the house and replace the double trench leach field with a single, longer leaching field further from the watercourse.

Don Morton, Wind River Group LLC presented on behalf of the applicant. This is a proposal to install a replacement septic on the existing lot. D Morton stated that silt fencing will be installed at the water's edge and will remain in place until the project is complete and there is active growth. D Morton stated that the tank will be moved away from the water and located closer to the house. The project should take 3-4 days to complete. D Morton stated that he is working with the sanitarian and he will present a site plan at the May 9th IWWC meeting which will reflect the Health Department approval.

MOTION by D Lapman to authorize J Budrow to administratively approve **Application No. 17-6** – **Geoffrey and Lisa Herter, 32 Ingham Hill Road, Map 91, Lot 7,** An application to install a septic system in the rear yard to a point within 20 feet of a pond, to be handled administratively by J. Budrow; **MOTION** seconded by S Knauth; **Voting In Favor:** F. Szufnarowski, D Lapman, B Cook, S Knauth J Hill; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0.

5. Section 11 Approvals

J Budrow reported on the following Section 11 Approval:

- **Application 17A-2 Essex Land Trust**

An Application to remove vegetation along the Falls River near the Ivory Street Bridges.

Steve Knauth recused himself from this Application.

Seated for this application were F. Szufnarowski, J Hill, D Lapman, B Cook.

J Budrow stated that the Essex Land Trust (ELT) is seeking approval to clear along the bank of the Falls River in conjunction with the replacement of the Ivory Street Bridge. There is a small area to the south, upstream where the ELT would like to clear and plant. J Budrow stated that he has authorized administrative approval for the Essex Land Trust to conduct minor brush clearing.

MOTION by D Lapman to authorize J Budrow to administratively approve **Application 17A-2 Essex Land Trust**; **MOTION** seconded by J Leo; **Voting In Favor:** F. Szufnarowski, D Lapman, B Cook, J Hill; **Opposed:** None; **Abstaining:** None; **Approved:** 4/0/0.

6. Other Business

- Regulating within 100 feet of tidal wetlands and watercourse question.

J Budrow stated that he has sent violation letters to 175 Saybrook Road for activities within 100 feet of the water line.

65 Main Street Ivoryton, Rivers Edge Condominium - To replace an existing yard drain and PVC pipe.

F Szufnarowski recused himself from the following proposal.

Seated for this proposal were J Hill, D Lapman, S Knauth, B Cook.

Robert Doane, P.E. presented. R Doane stated that River's Edge Condominium is repaving and would like to replace a culvert under the roadway. R Doane stated that he would like to replace the yard drain and place a 15" pipe under the roadway so that it can be maintained with a 5' x 5' rip rap plunge pool. R Doane stated that he will eliminate two trees in order to install the modified rip rap pad. R Doane stated that there will be activity within 100 feet of the Falls River which will be contained by the existing drainage structures.

J Budrow stated that he would like to issue an administrative approval for the proposed culvert replacement.

MOTION by D Lapman to authorize J Budrow to administratively approve **65 Main Street, Ivoryton, Rivers Edge Condo**, to replace an existing yard drain and PVC pipe; **MOTION** seconded by S Knauth; **Voting In Favor:** D Lapman, B Cook, J Hill, S Knauth; **Opposed:** None; **Abstaining:** None; **Approved:** 4/0/0.

7. Correspondence and Invoices

There was no correspondence or invoices

9. Reports:

a. Wetlands Official –

- J Budrow reported that he issued a violation to Ivory Key LLC to remove radiators which they deposited on Walnut Street side of the property, at the edge of the Falls River.
- J Budrow reported that M. Picard, 175 Saybrook Road is before the Zoning Board of Appeals to demolish the existing house and to replace with a larger home, with a request for eight associated variances and with a site development and coastal management plan for the April 18, 2017 ZBA meeting.

In a letter dated March 2, 2017, the IWWC legal counsel, Suzanna McCauley, Esq., indicated that she has reviewed the email correspondence from D. Winther, DEEP along with a letter from Attorney John Bennet including the copy of the federal Watrous v Town of Preston (2011) case, Attorney McCauley confirms the IWWC does have jurisdiction to regulate activity proposed within the upland review area from South Cove on the Picard property located at 175 Saybrook Road.

- J Budrow reported on the phragmite wetland area behind Centerbrook Post Office where there has been ATV activity and contractor trucks who are traversing through the wetlands. J Budrow stated that they are in process of deck repair.
- J Budrow reported that Centerbrook cemetery is blowing leaves into the drainage swale along Industrial Park Road. J Budrow will look into this.

b. Chairperson –

- F. Szufnarowski stated that he has been in touch with the Chair of the Planning Commission looking to fill the Planning Commission liaison vacancy on the IWWC. F Szufnarowski indicated that the IWWC will look to fill the vacancy with either a liaison from the Planning Commission or a with the appointment of another regular member.

c. Planning Commission Representative – Vacant. No report.

d. Conservation Commission Representative – J Lovelace. No report.

e. Zoning Commission Representative – J. Hill. No report.

10. Adjournment

MOTION made by D Lapman to adjourn at 8:10 p.m. to the next regularly scheduled IWWC meeting to be held on Tuesday, May 9, 2017 at the Essex Town Hall, 2nd Floor Conference Room A, 29 West Avenue; **MOTION SECONDED** by S Knauth **Voting In Favor:** D. Lapman, F. Szufnarowski, J Hill, B Cook; **Opposed:** None; **Abstaining:** None; **Approved:** 4/0/0.

Respectfully submitted,

Stella C. Beaudoin
Recording Secretary