



TOWN OF ESSEX
Inland Wetlands and Watercourses Commission

Officers
Michael Furgueson, Chairman
David Kirsch, Vice Chair

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Regular Members
Ernest Cook
Andre Roussel
Fred Szufnarowski

Alternate Members
Carolyn Field
Noreen Brennan-Rowe

Record of Vote – February 14, 2023

The Essex Inland Wetlands and Watercourses Commission (EIWWC) conducted their regularly scheduled meeting on Tuesday February 14, 2023 at 7:00 p.m. The meeting was held both in person and via Zoom (link was provided to the public on the Town of Essex website).

Members in attendance were Chairman Michael Furgueson, Vice Chairman David Kirsch, Fred Szufnarowski, Ernest Cook, Carolyn Field (alternate), Noreen Brennan-Rowe (alternate).

Members seated were Chairman Michael Furgueson, Vice Chairman David Kirsch, Fred Szufnarowski, Ernest Cook, Carolyn Field.

MOTION made by E Cook to approve the January 10, 2023 meeting minutes with the following amendments.

- Page 3:
 - Add existing before “original pipe”
 - Change train station to Valley Railroad
 - Change “emergencies” to “overflow”
 - Change first sentence in second to last paragraph to “J Clark went on to say that the 12-inch pipe that runs from Plains Road across his property was installed simply to drain the road.”
- Page 4:
 - Change 1st paragraph to “when asked to provide legal perspective on this issue and what the IWWC can require of an applicant in similar circumstances, S Rutkowska commented that the commission should focus on the word “feasible.” What is the feasibility of a proposed action/requirement. Will the applicant’s proposed project overwhelm a wetland and make it nonfunctioning?”
 - Add “as that area is outside of the 100-foot upland review area” to end of 7th paragraph
- Page 5:
 - 2 paragraphs down under application 22-21 change to “F Szufnarowski asked if there is anything that can be done to ensure the roof leaders drain to the footing drains.
- Page 6:
 - 1st paragraph 1st sentence add “later in the meeting” to end.
 - 2nd paragraph down under application 22-23 add “from original plan” after removed in last sentence.
 - 3rd paragraph down change “hoping” to “proposing”
- Page 7:
 - Add “proposed changes to fees” at the end of the paragraph under discussion on enforcement fees.

SECONDED by C Field; **Voting in Favor:** M Furgueson, E Cook, D Kirsch, C Field and F Szufnarowski;
Opposed: None; **Abstaining:** None; **Approved:** 5/0/0.

MOTION made by C Field to close the public hearing for application 22-20 49 Plains Road, Essex; **SECONDED** by E Cook; **Voting in Favor:** M Furgueson, E Cook, D Kirsch, C Field and F Szufnarowski; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0.

MOTION made by D Kirsch to grant permit on application IWWC 22-20 49 Plains Road, Essex based on the information presented in this application, the accompanying documents in the record, and on the testimony given at this meeting, the Commission finds that the proposed activity is a regulated activity not involving significant or major effect upon the inland wetlands or watercourse which occur on the property as defined in Section 2.2., and that no reasonable or prudent alternative exists to the proposed plans.

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

1. In accordance with the Commission's Regulations section 11.8, the activity pursuant to said permit shall be for a period of 5 years from the permit's effective date with allowed activity occurring between March 15th and October 15th of the year of initiation.
2. Should the applicant determine that the permitted activity will not be completed between March 15th and October 15th of the year of initiation, the applicant agrees to appear before the Commission prior to October 15th and present a plan for the stabilization of the site during the months of no activity.
3. The applicant agrees to follow the advice and direction of the Town of Essex Enforcement Officer with regard to any field changes she/he deems necessary or may require for the protection of the inland wetlands and water course during the process.
4. 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.
5. Preparation of as-built drawings for the stormwater management system and review of this information by the design engineer to confirm to the commission that either the state-storage-discharge relationship is consistent with the proposed design, or if not, the identification of appropriate system modifications necessary to do so.
6. Inspection by the design engineer following removal of the topsoil and B Horizon soils to confirm that all unsuitable soils have been removed from underneath the proposed stormwater infiltration system.
7. Source testing and in-place testing of the imported soil materials (following compaction) that is to be placed above the existing C Horizon soils to confirm that the proposed permeability rate of 8-feet per day is provided.
8. Annual stormwater management reports, showing regular cleaning of the catch basins and other recommended actions, shall be completed annually and kept on site and submitted every December 31, 2022 to the Town Land Use Office.

SECONDED by E Cook; **Voting in Favor:** M Furgueson, E Cook, D Kirsch, C Field, and N Brennan-Rowe; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0.

MOTION made by D Kirsch to grant a permit on Application #22-18 property located at 32 Birch Mill Trail Essex, CT, at the regularly scheduled meeting of the Essex IWWC on February 14, 2023 a Permit for limited activity as noted below was granted on behalf of Application #22-18, **property located at 32 Birch Mill Trail, Essex, CT, Map 90 Lot 1-39, owned by Terry Lynn McDonald and Dustin L. Aliano.** The Permit is to allow, after-the-fact, the upper patio/terrace as shown on the site plan (permitted activity), prepared by Indigo Land Design, LLC dated September 27, 2022, revised through November 1, 2022. The lower patio and associated walls, steps, walkways, boulders, conduit and other unpermitted infrastructure ("hardscapes") shall be removed; specific conditions are outlined below.

Based on the documents presented, public hearings held, the site inspection and on the testimony given at meetings on September 28, 2022, October 11, 2022, November 10, 2022, and December 13, 2022, the Commission finds that

the permitted activity, as stated above, is a regulated activity not involving significant or major effect upon the inland wetlands or watercourse which occur on the property as defined in Section 2.2 (j), and that no reasonable or prudent alternative exists to the now approved upper patio/terrace, as cited above.

The Commission makes a Summary Ruling and grants a permit and permission for the applicant to proceed with proposed activity as described in this permit and as shown on plans referenced above, subject to the following conditions:

1. The property owner shall remove all aspects of the lower patio including but not limited to the lower patio/terrace, lower retaining walls, all associated steps, walkways, boulders, conduit and other unpermitted infrastructure, excluding the upper patio.
2. The disturbed area shall be restored to its original grade; all grading should be conducted in a fashion so as to blend the area to match the surrounding topography aiming to recreate pre-construction conditions. The area should be seeded and given its proximity to the wetlands, stabilized with bio-degradable erosion control matting anchored into the slope. The use of photodegradable and/or welded plastic erosion controls is not permitted.
3. Hydroseed all areas of exposed soil within the regulated area, including but not limited to mulched areas near the walkway and the location where the Hardscapes Project features are to be removed, with New England Conservation/Wildlife Mix, New England Wildflower Mix and/or New England Showy Wildflower Mix from New England Wetland Plants or a comparable mix from a reputable seed distributor such as Ernst seeds.
4. Monitor exposed and/or restored areas in order to prevent establishment by non-native, invasive vegetation such as Japanese stiltgrass and Asiatic bittersweet and remove such invasive vegetation by hand for a period of three years.
5. Provide a report to the Essex Inland Wetlands and Watercourse Commission (EIWWC) at the end of each calendar year, for a period of three years, from an environmental professional, documenting invasive species monitoring and removal activities.
6. Cease any and all activities that may disrupt native vegetation within at least 20 feet of the shoreline so that the area can naturalize and the wetland buffer functions and values can be restored.
7. Install plantings as shown on the Defendants' site plan, prepared by Indigo Land Design, LLC, dated September 27, 2022, revised to October 6, 2022, or approved by the Wetlands Enforcement Officer (WEO).
8. Complete further mitigation for the dredging of Birch Mill Pond as follows:
 - a. Retain a licensed qualified aquatic herbicide application company, certified by the Connecticut Department of Energy and Environmental Protection and approved by the WEO, to treat for aquatic invasive vegetation within Birch Mill Pond for one season, including paying for any and all associated costs for any required permits. "Invasives", "invasive vegetation" and "invasive species" shall include any "invasive species" as defined or enumerated by the Connecticut Department of Energy and Environmental Protection.
 - b. Retain a qualified professional limnologist or other specialist, approved by the WEO, to develop a Pond Management Plan that can be used to guide management decisions for the Pond and conduct a bathymetric survey of the Pond. The Plan and Survey shall be provided to the WEO and filed in the Essex Land Use Office
9. Not conduct any further activity within the regulated area on the Property without benefit of an EIWWC permit, including but not limited to:
 - a. Any tree removal, including but not limited to clearcutting;
 - b. Herbicide application;
 - c. Excavation;
 - d. Filling;
 - e. Removal and/or deposit of material into the wetlands or regulated area;
 - f. Removal of large stones and/or boulders from the regulated area;
 - g. Dredging of and/or removal of material from Birch Mill Pond;
 - h. Deposition of material into Birch Mill Pond; and
 - i. Removal/blowing of leaves in the regulated area.

10. Obtain the necessary written authorizations from the Southwinds Association (the “Association”) for removal and/or restoration activities on the Association property and provide the WEO evidence of such authorizations.
11. Allow unimpeded access to the WEO or his agent(s) for inspection and confirmation of compliance.
12. Conditions of Removal/Restoration- the property owners shall abide by the following additional conditions of this permit:
 - a. No removal and/or restoration authorized herein shall occur before March 15, 2023 absent prior written approval from the EIWWC.
 - b. All removal and restoration authorized herein shall be completed by August 1, 2023.
 - c. All removal and/or restoration authorized herein shall be performed by a qualified, licensed and insured contractor, familiar with proper sedimentation and erosion control measures, construction best management practices, site stabilization and restoration methods; contractor to be approved by the WEO prior to work commencing.
 - d. All work authorized herein shall be done in accordance with the protection measures presented in NDDB Determination 202104876.
 - e. All silt fence/exclusionary barriers shall be toed into the slope a minimum of 6 inches so as to prohibit access by state-listed turtles or other sensitive species, into the work area.
 - f. Silt fence shall be placed upgradient, as far from the wetland boundary as possible. The use of secondary erosion control measures such as straw wattles and erosion control blankets shall also be considered, in consultation with the WEO.
 - g. All silt fences shall be removed once vegetation is established, as determined by the WEO.
 - h. The advice and direction of the WEO with regard to any field changes she/he deems necessary or may require for the protection of the inland wetlands and water course during the process shall be followed.
 - i. 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.
 - j. All work authorized herein shall be, including but not limited to removal of the hardscapes, shall be done by the least invasive measures possible so as to cause the least disturbance to the regulated area; removal shall be by hand truck where possible. The WEO shall that the sole authority to limit the method of removal.
 - k. The WEO shall be notified immediately if any questions and/or problems arise at any stage of the authorized work.
13. The property owners agree to pay the outstanding fees associated with the Wetlands Application in the total amount of \$3,170, itemized as follows:
 - a. \$10 Application Fee;
 - b. \$310 Public Hearing Fee;
 - c. \$2,850 Third Party Review Cost.
14. The property owners shall produce a bond or surety to the WEO/EIWWC in the amount of \$75,000 by March 1, 2023 to ensure the completion of the above referenced removal and restoration.

SECONDED by E Cook; **Voting in Favor:** M Furgueson, E Cook, D Kirsch, C Field and F Szufnarowski; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0.

MOTION made by D Kirsch for the Essex Inland Wetlands and Watercourses Commission to allow the wetlands agent to handle Application No. 23-1; **SECONDED** by E Cook; **Voting in Favor:** M Furgueson, E Cook, D Kirsch, C Field and F Szufnarowski; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0.

MOTION made by E Cook that the Essex Inland Wetlands and Watercourses Commission concurs with the decision of the wetlands agent with regard to Applications 22-22 and 22-23; **SECONDED** by C Field; **Voting in Favor:** M Furgueson, E Cook, D Kirsch, C Field and F Szufnarowski; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0.

MOTION made by E Cook to adjourn the meeting at 8:36 PM until the next regularly scheduled IWWC meeting to be held on Tuesday March 14, 2023 at the Essex Town Hall (alternate location via teleconference); **SECONDED**

M Furgueson; **Voting in Favor:** M Furgueson, E Cook, D Kirsch, C Field and F Szufnarowski; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0.

Respectfully Submitted,


Recording Clerk