

TOWN OF ESSEX  
Inland Wetlands and Watercourses Commission

**Executive Board**  
*Fred Szufnarowski Chairman*  
*Daniel Lapman, Vice Chair*

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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 - Special Meeting**  
**Tuesday, January 10, 2017**

**Call to Order and Seating of Members**

The regularly scheduled meeting of the Essex IWWC was conducted on January 10, 2017 in Conference Room A, of the Essex Town Hall at 6:30 p.m.

**Attending Members:**

Fred Szufnarowski  
Dan Lapman  
Jim Hill  
Steve Knauth  
Jim Leo  
Jeff Lovelace  
Andre Roussel, Alternate  
Bill Cook, Alternate

**Absent Members:**

**Staff:**

Stella Beaudoin, Recording Clerk  
Joseph Budrow, Wetlands Enforcement Agent

**1. Call to Order and Seating of Members**

F. Szufnarowski called the special meeting to order at 6:30 p.m.

**2. New Business**

- Presentation by Attorney Suzanna McCauley on the Application and Decision Making Process and to provide clarification to the following:

- I. The definition of “Date of Receipt”
- II. No public hearing except under three circumstances. Timing of decisions with or without hearings.
- III. What constitutes a valid petition for a public hearing
- IV. Administrative approvals by Inland Wetlands and Watercourses Enforcement Officer
- V. Intervener status and the public’s right to participate in the review process
- I. The definition of “Date of Receipt”

As per S. McCauley’s January 5, 2017 memorandum:

“Date of Receipt” is a specific defined land use term. This term is defined in both Connecticut General Statutes (“CGS”) and the Essex Inland Wetlands and Watercourses Regulations (“Essex Regulations”). CGS section 8-7d( c ) defines an application’s “date of receipt” as “...the day of the next regularly scheduled meeting of...[the commission]...immediately following the day of submission to such commission...or thirty-five (35) days after such submission, whichever is sooner.” Similarly, the Essex Regulations defines “date of receipt” as “...the day of the next regularly scheduled meeting of the Commission after submission ***provided that such meeting is no earlier than five (5) business days after submission*** or thirty-five (35) days after such submission, whichever is sooner.” Although the definition of “date of receipt” in the Essex Regulations is substantially similar to the statutory definition, the Essex Regulations do vary from the statutory definition. As a general matter, regulations that vary from the statutes are not invalid if they provide a more restrictive requirement as is the case with the Essex Regulations’ definition.

A possible source of past confusion may be based on the fact that the terms “file”, “submit” and “receive” appear often times interchangeably in the Essex Regulations. To be clear, submission of an application occurs when the applicant files the application at the Commission’s office. It is my understanding that the Commission staff date stamps an application on the day that the application is received in the office. This, however, is not the application’s “date of receipt”. The application’s date of receipt would be the date of the Commission’s next regularly scheduled meeting after the date of submission *provided that such meeting is no earlier than five (5) business days after submission* or thirty-five (35) days after such submission, whichever is sooner.

By way of example, if an application is submitted on Tuesday, December 6, 2016, and the next regularly scheduled meeting of the Commission is on Tuesday, December 13, 2016, then the date of receipt of said application cannot be December 13 since the December 13 meeting is sooner than five (5) business days from December 6 (the five intervening business days are Wednesday 12/7, Thursday 12/8, Friday 12/9, Monday 12/12 and Tuesday 12/13).

The Commission shall not hold a public hearing on such application unless:

- 1) the Commission determines that the proposed activity may have a significant impact on wetlands or watercourses,
- 2) a petition signed by at least twenty-five persons who are eighteen years of age or older and who reside in the municipality in which the regulated activity is proposed, requesting a hearing is filed with the Commission not later than fourteen days after the date of receipt of such application, or
- 3) the agency finds that a public hearing regarding such application would be in the public interest.

The Commission may issue a permit without a public hearing provided no petition requesting a public hearing is filed with the Commission on or before the fourteenth (14<sup>th</sup>) day after the date of receipt of the application. A petition requesting a hearing can be filed anytime before or on the 14<sup>th</sup> day following an application's date of receipt. If the Commission does not hold a public hearing, it must decide the application within 65 days after it is received. The Commission is **not** required to publish notice of its intent to not hold a public hearing or the Commission's tentative decision on such application.

Public hearings on applications to the Commission for regulated activities permits shall be held in accordance with the provisions of CGS section 8-7d. Public hearings must commence within 65 days after the date of receipt of the application. Hearings must be completed within 35 days and the agency must decide the application within 35 days after the hearing is completed. The Commission may request one or more extensions of the time periods from the applicant but such extension(s) may not exceed a total of 65 days. If the Commission fails to act within the prescribed time frames, the applicant may file such application with the Commissioner of Energy and Environmental Protection who shall review and act on such application in accordance with CGS section 22a-42a.

### III. What constitutes a valid petition for a public hearing

A valid petition to hold a public hearing on an Inland Wetlands and Watercourses application to conduct regulated activities is a petition signed by at least twenty-five persons who are eighteen years of age or older and who reside in the municipality in which the regulated activity is proposed. Said petition must be filed with the Commission not later than fourteen days after the date of receipt of such application.

### IV. Administrative approvals by Inland Wetlands and Watercourses Enforcement Officer

Permits from the Commission may, under limited circumstances, be granted without full Commission review by the Inland Wetlands and Watercourses Enforcement Agent pursuant to CGS section 22a-42a(c)(2). Said section provides that the Commission may delegate to its duly

authorized agent the authority to approve or extend an activity that is not located in a wetland or watercourse when such agent finds that the conduct of such activity would result in no greater than a minimal impact on any wetland or watercourse provided such agent has completed the comprehensive training program developed by the commissioner pursuant to the Inland Wetlands and Watercourses Act. Notwithstanding the provisions for receipt and processing applications prescribed in the Essex Regulations as outlined above, such agent may approve or extend such an activity at any time. Any person receiving such approval from such agent shall, within ten days of the date of such approval, publish, at the applicant's expense, notice of the approval in a newspaper having a general circulation in the town wherein the activity is located or will have an effect. Any person may appeal such decision of such agent to the Commission within fifteen days after the publication date of the notice and the Commission shall consider such appeal at its next regularly scheduled meeting provided such meeting is no earlier than three business days after receipt by such agency or its agent of such appeal. The Commission shall, at its discretion, sustain, alter or reject the decision of its agent or require an application for a permit in accordance with CGS section 22a-42a( c )(1).

V. Intervenor status and the public's right to participate in the review process

CGS section 22a-19 allows any person the right to intervene in any administrative proceeding by filing a verified pleading or petition asserting that the proceeding involves conduct which has, or is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state. The petition must state the nature of the alleged improper environmental impact sufficient for the reviewing authority to determine from the petition whether the intervention implicates an issue within the reviewing authority's jurisdiction. Intervention is allowed as a matter of right once a verified petition is filed whether or not the allegations are ultimately unfounded.

Intervenors need not be residents or property owners in the municipality in which the proposed regulated activity will occur. Under General Statutes § 22a-19, intervenors must be provided notice of all proceedings and decisions as an interested party. In addition, intervenors must be given an opportunity to testify and present evidence before the agency on the basis of their environmental claim. Evidence and testimony presented by an intervenor is limited to the environmental issues raised. The statute allows persons who ordinarily could not prove aggrievement to raise environmental issues.

The filing of an intervention petition requires the agency to make findings, in addition to its decision on the application itself, whether or not the activity resulting from the approval of the application is reasonably likely to unreasonably adversely affect the public trust in the water or natural resource involved.

- Application timelines, notices and hearings and Q & A

S. McCauley stated that the receipt of applications and statutory time limits are as prescribed by Statute and by regulation. The IWWC is created by Statute 22a of the CT General Statutes. The DEEP creates model regulations which are used as a basis for the various wetlands commissions to adopt their regulations. The IWWC act is basis for all rules and regulations and that act refers to Title 8 which is the Zoning Board of Appeals' Statute, which overlays and intertwines with the IWWC regulations. With the application process, the form application is completed and submitted to the Land Use Office. The submission of the application to the office is the first step and depending on when that application is handed over to the office for submission and is received, there is a time frame which must be adhered to. The statute specifically defines date of receipt which means the day of the regularly scheduled meeting after the date the application is submitted. By Statute, the next regularly scheduled IWWC meeting is the date of the receipt. The date of receipt in the IWWC regulations providing there are 5 intervening business days between the date of submission and the date of the meeting. The date of receipt is the pivotal day as to when the clock starts running.

S McCauley stated that the effective date of the CGS related to this protocol was October 1, 2012. The Regulations provide this petitioning process. S McCauley referenced Section 8, page 22 of the IWWC regulations.

Date of receipt is a specifically defined land use term in both the CT General Statutes and the Essex Inland Wetlands and Watercourses Regulations. CGS 8-7(d) defines an application's date of receipt as the day of the next regularly scheduled meeting immediately following the day of the submission to such Commission, or thirty-five days after such submission, whichever is sooner. The Essex Regulations define date of receipt as the day of the next regularly scheduled meeting of the Commission, after submission, or thirty five-days after such submission,

S McCauley indicated that an unqualified petition does not meet the requirements of the regulations and as such, it does not have to be received. Date of receipt is extremely important as this is when the clock starts running. The Commission must wait 14 days after hearing the petition before the it can make a final decision.

S McCauley stated that before the IWWC even hears an application, there is a 14-day notice period. On administrative permits, 10 days to publish and 15 days for the public to appeal an administrative decision.

S McCauley commented on Intervenor's status and the public's right to participate. Intervenor's status typically provides an individual with applicant level process in that they are entitled to notice and entitled to present and receive testimony. Their participation is limited solely to environmental issues. Intervenor status would have standing to appeal the decision. An intervenor does not have to be a resident. That process begins with a verified petition or a pleading that alleges certain information. The petition is submitted to the agency by virtue of submission to the Wetlands Enforcement Officer.

S. McCauley recapped her presentation at this noting that the time frame for rendering a decision with no public hearing is 65 days from the receipt of the application. If there is a public hearing – 65 days to commence the public hearing and the public hearing shall be completed within 35 days, and all decisions shall be rendered not more than 35 days after the public hearing.

S. McCauley referenced Title 8 section 8-7d in accordance with the Essex Zoning regulations. The CT General Statutes (CGS) related to the IWWC are referenced in Section 22a, which overlap with the Zoning regulations.

F Szufnarowski stated that the Commission will soon revise the IWWC regulations, however it will be up to the Wetlands Enforcement Agent to clarify receipt of applications and the associated time line.

S McCauley stated that the public has the right to comment on the application process or the regulations and clarification of the same. The issue with permitting public participation with specific application is that there are specific notice requirements that must be met which provide the interested parties with an opportunity to comment at the public meeting.

### **3. Adjournment**

**MOTION** made by D. Lapman to adjourn the Special Meeting at 7:00 p.m. to the regularly scheduled IWWC meeting; **MOTION SECONDED** by J. Leo; **Voting In Favor:** D. Lapman, J. Hill, S. Knauth, J. Leo, F. Szufnarowski, J. Lovelace; **Opposed:** None; **Abstaining:** None; **Approved:** 6/0/0.

Respectfully submitted,

Stella C. Beaudoin  
Recording Secretary