



TOWN OF ESSEX
Inland Wetlands and Watercourses Commission

Executive Committee
Fred Szufnarowski Chairman
Andre Roussel, Vice Chair

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Regular Members
Daniel Lapman
Ernest Cook
Jim Leo

Alternate Members
David Kirsch
Michael Furgueson

Unapproved

Minutes – April 13, 2021 Regular Meeting

1. Call to Order and Seating of Members

The Essex IWWC conducted their regularly scheduled meeting on April 13, 2021 at 7:00 p.m. Meeting made available to the public via Zoom platform.

***** [Executive Order 7i grants 90 additional days to all applications that are in process during the current designated emergency. Executive Order 7J states such applications shall not lapse during the State of Emergency:]**

EIWWC Chairman Fred Szufnarowski welcomed members of the public to the March 9, 2021 Essex Inland Wetlands and Watercourse Commission public access meeting, which was conducted remotely. The Inland Wetlands and Watercourse Commission members and attendees announced themselves. The audio attendees were advised to mute themselves during the meeting except during public comment. Attendees were asked to please identify themselves for the record prior to making any comments.

Attending Members:

Fred Szufnarowski, P.E.
Andre Roussel
Michael Furgueson, Alternate seated for D Lapman
David Kirsch, Alternate seated for Jim Leo
Ernest Cook arrived at 7:39 pm

Absent Members:

Jim Leo
Dan Lapman

Staff -

Carey Duques, Zoning Official
Stella A Caione, Recording Clerk
Robert Doane, P.E., Enforcement Officer
Sylvia Rutkowska, Esq., Attorney for IWWC



Audience - Audience members were Robert Nussbaum, Keith Ainsworth, Michael Whalen, Dwight Merriam, Esq.

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

Seated for the meeting were F Szufnarowski, A Roussel, M Furgueson, D Kirsch.

MOTION by A Roussel to revise the agenda under Old Business to add, 32 Birch Mill Trail; **SECONDED** by M Furgueson; **Voting In Favor:** F Szufnarowski, A Roussel, M Furgueson, D Kirsch; **Opposed:** None; **Abstaining:** None; **Approved:** 4/0/0. **Discussion:** No further discussion.

F Szufnarowski stated that Jim Leo has tendered his resignation from the IWWC, effective May 2021. F Szufnarowski noted that Mr. Leo has been a member since July 2012 when he came on board to the IWWC as an alternate, and in March 2015 he was sworn in as a regular member. F Szufnarowski stated that Mr. Leo has been a stalwart of the IWWC.

MOTION by M Furgueson to recognize the valuable service Jim Leo provided to the IWWC and to the Town. Mr. Leo was a valuable participant and always brought his best work; **SECONDED** by A Roussel; **Voting In Favor:** F Szufnarowski, A Roussel, M Furgueson, D Kirsch; **Opposed:** None; **Abstaining:** None; **Approved:** 4/0/0. **Discussion:** No further discussion.

2. **Approval of Minutes**

- **March 9, 2021 regular meeting minutes**

MOTION made by M Furgueson to approve the March 9, 2021 regular meeting Minutes with the following amendments; 1) Page 3, 3rd paragraph, to read: "*Michael Whalen* stated that the work seems to have substantial"; 2) Page 4, 4th paragraph, correct spelling of, "*Dustin Aliano*", and to be corrected throughout the Minutes; **SECONDED** by D Kirsch; **Voting In Favor:** F Szufnarowski, A Roussel, M Furgueson, D Kirsch; **Opposed:** None; **Abstaining:** None; **Approved:** 4/0/0. **Discussion:** No Discussion.

3. **Public Comment**

Michael Whalen 10 Fife Court, stated that his attorney Keith Ainsworth recently sent a letter to the IWWC Chair with issues related to one of the trees that was felled, and was found across the stream at 11 Fife Court, and which is still in place. Mr. Whalen stated that he is not sure if the felled tree is a natural occurrence and that there is no way to know without doing an onsite inspection. M Whalen stated that George Logan could not go onto the property to better determine if the tree was uprooted, however he took some pictures and it appears that the tree was cut down. M Whalen stated that he would be amenable if Mr. Johnson were willing to remove the topping of the tree. M Whalen stated that the second issue is that the storm water runoff from the roof of the proposed garage (which was permitted) at 11 Fife Court, was never determined on any plans, or



resolved from a drainage issue perspective. M Whalen stated that the third issue is the exposed rock and the wood chips, and he noted that there was to be a revised landscape plan because of the rocky area. M Whalen asked if the revised landscape plan has been submitted.

F Szufnarowski confirmed receipt of Attorney Ainsworth's letter and the two photos that were attached. F Szufnarowski stated that he did not see the impact to the wetland from the felled tree, noting that it is above the intermittent drainage stream. Bob Doane previously stated that there is enough gradient to the watercourse, so there is no danger in backing up to Mr. Whalen's property.

Mr. Whalen stated that there is quite a bit of large tree topping that is almost abutting, and he believes it is within the 100-foot setback of the wetlands.

A Roussel questioned why the Commission is re-adjudicating this approved permit and concerns about a tree that has been felled. A Roussel stated that the two options previously presented were to leave the trees in place as they are, or haul-off the wood in a way that does not disturb the surface. A Roussel recommended to deal with this onsite and move forward with the agenda.

F Szufnarowski stated that he does not see how that tree has impact on the intermittent watercourse. R Doane stated that the tree is outside of the watercourse, and separated from the watercourse by boulders, and it is 3 or 4 feet above the watercourse. R Doane stated that he went out to the site today and took another look at it, and there is no reason for this tree to be removed. This tree is a product from a cut tree, and Mr. Johnson never claimed that it was from a fallen tree, and there is no reason to remove it from the woods. Regarding drainage, the garage is still in process of construction. Regarding plantings, there is not another planting plan coming in, however Mr. Doane stated that he will be speaking with the subject property landscape architect, and he will address the Knotweed removal and plantings against the rocks as we move forward with this permit.

Keith Ainsworth stated that the original reason of cease and desist surrounded the clearing of trees in the wetlands and this tree was cut after the fact. This is within the purview of the IWWC as it is in the original wetland review area.

Fred Szufnarowski stated that he does not see an impact to the resource.

R Doane stated that when he became the wetlands enforcement agent, the tree was down and he became involved with the administering of the permit, which is what he and C Duques are doing. The tree was down after the permit was issued.

There was no further comment, and there was no one in the waiting room.

4. Public Hearing

No public hearing scheduled.



5. Regular Meeting

6. Receipt of New Applications

Application 21-7 – Millrace Preserve, Ivoryton. Proposal for general maintenance activities within 100 feet of wetlands at Essex Land trust Property Millrace Preserve.

Robert Nussbaum who presented stated that the Millrace Preserve is the most historical of the land trust preserves and part of the site of the Comstock Cheney factory, and what is left of the mill race from the factory. There are a series of historical signs along the trail, and this preserve enters from Ivory Street, and enters from Walnut Street, and is the Essex Land Trust (ELT) anchor preserve in Ivoryton. It is also the most challenging stewardship property with a big issue of invasives, and dying Ash trees, brush growing in the rip rap, and runoff from Town drains, along with many issues for the ELT to deal with, including occasional spring flooding. In addition to regular stewardship activities, the ELT is working on making the preserve more attractive. Their objective is to do all of the stewardship activities with the IWWC oversight, and streamline the process. R Nussbaum provide a list to C Duques and R Doane of items to be accomplished in 2021. R Nussbaum stated that the ELT is looking for suggestions from the IWWC on how to proceed.

A Roussel questioned the location of the proposed bog walks.

R Nussbaum stated that 60 plants of riparian buffer were installed in the area coming in from Ivory Street. R Nussbaum noted that he would like to install one last 200-foot section of bog walk that would be to the west of the riparian buffer.

A Roussel stated that the bogwalks can be a barrier to wildlife coming out of the brook and he suggested that they be placed where needed to avoid installing in higher elevations. It was noted that when clearing brush on the Walnut Street side, leaving some brush has benefit to the habitat as opposed to clear cutting the area.

MOTION by M Furgueson to find **Application No. 21-7** is substantially complete on behalf of the **Essex Land Trust**, for a proposal for general maintenance activities within 100 feet of wetlands at Essex Land trust property at **Millrace Preserve** with the following conditions to be met by the applicant in time for the scheduled May 11, 2021 IWWC meeting: 1) Related to any type of construction activity, lawn mowing, etc. it would be helpful to contact the land use office and advise as to the dates, and description of the activity, so it is on record; 2) The property owner will speak with R Doane regarding any potential need for installation of erosion and sedimentation measures, so it is on record; **SECONDED** by A Roussel; **Voting In Favor:** F Szufnarowski, A Roussel, M Furgueson, D Kirsch; **Opposed:** None; **Abstaining:** None; **Approved:** 4/0/0. **Discussion:** The Town fees for this permit will be waived.

MOTION by A Roussel to schedule **Application 21-7, Essex Land Trust** for the May 11, 2021 regular meeting. Per section 8.1a of the Inland Wetlands and Watercourses regulations, 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, and does not appear to have a significant impact or major effect, as defined in Section 2.2 of the regulations on a wetlands or watercourse; **SECONDED** by M Furgueson; **Voting In Favor:** F Szufnarowski, A Roussel, M Furgueson, D Kirsch; **Opposed:** None; **Abstaining:** None; **Approved:** 4/0/0. **Discussion:** No further discussion.

7. Old Business

- **Application No. 21-2 – John and Maria Bogaert, 16 Meadow Woods Road, Essex.** Proposal to build a 20' x 20' shed/barn on piers, place fill around the piers and re-grade area to establish lawn within 100 feet of a wetlands.

R Doane who presented on behalf of the applicant stated that subsequent to the March IWWC meeting, he has revised the plan with a revision date of April 2, 2021. The most significant item being the trees as shown. J Bogaert did receive a permit to cut those trees, however, he cut the trees down well after the 2007 permit.

R Snarski visited the site, made recommendations for the buffer area and provided a planting scheme for embankment adjacent to wetland area. R Snarski proposed 5 trees on the upper bank to include Shadblow and Grey Dogwood, which tolerate a dryer soil and are shade tolerant plants. On the lower bank, the proposed trees will be comprised of Winterberry and Red Dogwood. R Doane stated that all of the proposed plants are flowering and should be an attractive planting which does not require earthwork for a planting bed, once the area is stabilized.

R Doane addressed the storage of hazardous waste in the shed and a previous recommendation was to consider placing a collection area under the shed. J Bogaert feels that due to the close proximity of the well, he would rather reserve the containment to the inside of the shed. R Doane suggested a u-line containment pallet on which gas and oils will be placed to sit on top of that pallet. There was a question related to the number of trees cut and R Doane noted that there were 3 large trees cut. There was a large area of downed trees as a result of storm Isiah. As related to the tree removal, J Bogaert will be cutting with chain saw, splitting by hand and removing the trees with a wheelbarrow.

A Roussel recognized that J Bogaert cut down the trees without the benefit of permit, however Mr. Roussel noted that the IWWC did not ask for remediation or restitution for the trees that were previously removed.

Commissioners discussed possible conditions of approval to include, removal of trees to be done manually; Hazardous chemicals to be stored in an indoor containment so that any spill will not seep into the ground; and all hazardous materials will be stored indoors, in a suitable container to capture any leaks and placed in an inside containment.



MOTION made by A Roussel to approve and issue a Permit on behalf **Application No. 21-2 – John and Maria Bogaert, 16 Meadow Woods Road, Essex.** Proposal to build a 20' x 20' shed/barn on piers, place fill around the piers and re-grade area to establish lawn within 100 feet of a wetlands. 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 10.10, 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. Trees in the wetlands that are already to ground will be removed manually without any equipment in wetlands, other than by hand and wheelbarrow.
6. Planting plan to be completed per revised site plan dated April 2, 2021.
7. Any hazardous materials may be stored in a suitable containment device which is to be situated inside the shed.

SECONDED by M Furgueson; **Voting In Favor:** F Szufnarowski, A Roussel, M Furgueson, D Kirsch; **Opposed:** None; **Abstaining:** None; **Approved:** 4/0/0. **Discussion:** No further discussion.

- **Application #20-1 – 15 Cedar Grove Terrace, Essex.** After-the-fact application for tree removal, chipping of fallen trees, and spreading of topsoil within 100 feet of a wetlands. Cease and Desist issued November 18, 2020; Show Cause Hearing was held November 24, 2021, continued at the December, January and February 2021 meetings.

R Doane stated that he spoke with the property owner today who indicated that they would be at this evening's meeting. R Doane stated that the site is stable and the wood chip berm was installed. R Doane stated that the yard needs to be reseeded.



F Szufnarowski asked if the application reflects the proposed work.

C Duques stated that the application reflects the cut trees and silt fencing relined with a wood chip berm. The reseeded of the yard was not included in the application. There is no mention of top soil and seeding in the current application. At this time, the IWWC requires a complete application describing the proposed work.

Attorney Sylvia Rutkowska stated that further discussion related to enforcement of this proposal would occur in executive session.

R Doane will write to the homeowner outlining what is missing from the application, noting that their attendance at the May 11, 2021 meeting is required.

F Szufnarowski stated that a progression for action on this property is to document what has been done, and there is to be no further work in the wetland area. To affirm the Cease and Desist Order, and a Show Cause hearing is then conducted, and a lien will be placed on the property records, which will prohibit clear title in future sale of the property.

MOTION made by A Roussel to continue **Application #20-1 – 15 Cedar Grove Terrace, Essex**. An after-the-fact application for tree removal, chipping of fallen trees, and spreading of topsoil within 100 feet of a wetlands, to the May 11, 2021 regularly scheduled meeting; The Land Use Department staff will be in contact with property owner seeking an updated plan and looking for information of any further development that is planned within the wetlands; **SECONDED** by D Kirsch; **Voting In Favor:** F Szufnarowski, A Roussel, M Furgueson, D Kirsch; **Opposed:** None; **Abstaining:** None; **Approved:** 4/0/0. **Discussion:** No discussion.

Update of 32 BirchMill Trail

S Rutkowska stated that the summon and complaint against property owners has been finalized and service of the same will occur this week. S Rutkowska will provide the Commission with monthly updates re litigation.

F Szufnarowski informed members that they can call an executive session to discuss strategy and to answer questions.

8. Other Business

- Land Use Official Comments

C Duques reported on receipt of Application **#21-5 for property located at 95 Book Hill Road** for work within 100 feet of the wetlands. This proposal will be before the ZBA on Tuesday, April 20th where a decision will be rendered. There is no potential impact to the wetland.



A Roussel noted that the IWWC should discuss where the line is to be drawn between issuance of administrative permit vs issuance of a full permit. A Roussel asked C Duques and R Doane to outline what the characteristics of an administrative permit would be.

9. Section 11 Approvals

- **Application #21-3, 76 Main Street, Ivoryton;** C Duques reported that this is a request for installation of a carport on existing concrete pad.
- **Application #21-4, 8 Rachel Lane, Ivoryton;** C Duques reported this is a request for a carport on the existing house.
- **Application 21-6, 10 Main Street, Centerbrook;** C Duques reported that this is a request for an addition to the house with a garage 67 feet off of the wetland. This is an interior lot and the subject property is located behind the Witch Hazel property. C Duques stated that the property owner was asked to install silt fence, and there will be no impact to the resource area as a result of the proposed activity.

MOTION by A Roussel to allow the Wetlands Agent and Land Use official to handle an Administrative Permit for property located **10 Main Street, Centerbrook**; **SECONDED** by M Furgueson; **Voting In Favor:** F Szufnarowski, A Roussel, M Furgueson, D Kirsch; **Opposed:** None; **Abstaining:** None; **Approved:** 4/0/0. **Discussion:** No further discussion.

- **Application #21-8, 21 Grove Street, Essex;** C Duques reported that she visited the property and met with the property owner, Michael Picard, and his contractor. Silt fencing has been installed and C Duques stated that she saw no issues. The property owner proposes expansion of the leaching field and relocation of barn on the property, which was previously approved. C Duques stated that M. Picard is no longer interested in building that barn.

C Duques stated that moving forward, she will publish notice in the newspaper of administrative approvals.

10. Correspondence and Invoices

There was no correspondence.

Invoice from Dzialo, Pickett and Allen in the amount of \$2,719.50.

MOTION by M Furgueson to authorize payment of the Dzialo, Pickett & Allen invoice in the amount of \$2,719.50; **SECONDED** by A Roussel; **Voting In Favor:** F Szufnarowski, A Roussel, M Furgueson, D Kirsch; **Opposed:** None; **Abstaining:** None; **Approved:** 4/0/0. **Discussion:** No further discussion.

11. Reports:



A. Wetlands Official
- Update on Open Permits

R Doane stated that he provided the Commission with a report earlier in the meeting.

C Duques will reach out to Essex Meadows re updates on the previously issued permit.

B. Chairperson

- F Szufnarowski thanked the commissioners for approving invoices via email and asked if they wished to continue the review and approval via email. Members agreed to review future invoices via email to ensure prompt payment to vendors.
- A Roussel attended the Course, Civics 2.0 - Ins and Outs of serving on a Town Inland Wetlands Agency which was facilitated by Attorney Janet Brooks, ad sponsored by CT River Coastal Conservation District. Referenced documents: 2002 Soil & Erosion Control Manual;

The following are Mr. Roussel's notes from the meeting:

Overview: The 2-night course was offered to aspiring members of Inland Wetlands and Watercourses Commissions. It was attended by roughly 16 members of the public, including a few existing commission members from across the State. Topics included roles and experiences of commission members, the intent and practice under the State laws delegated to town commissions, as well as some guidance on how commissions can best operate. The bullets that follow are from A Roussel's personal notes during the two sessions. Mr. Roussel recommended this session to Commission members, should they have the opportunity.

1. Re: Process for receipt and approvals ... waiting period is required. Some towns, for efficiency, do noy review to accept, but rather accept through Staff and then review/authorize/reject for further action in one meeting. Two meetings are the best practice.
2. Permits should not be a replacement for Orders to Restore when a violation has occurred. Because permits are "owned" by the applicant, the applicant has too much control over timing and content.
3. Do not use a permitting/application process for property owners who want to remove a tree or two from their wetlands, it's not what the laws were intended to manage
 - a. Unlike US statutes that seek to maximize protection of the resources, the CT Statutes dictate that economic interests be balanced with environmental ones
 - b. Commissions are established for 3 reasons:
 - i. Permitting
 - ii. Assessing non-regulated exceptions (not setting law, but following CT)
 - iii. Enforcement of statutes
4. Use the CT State statutes as your guide ... have them handy. The statutes don't provide for local interpretation or modification of requirements set in law



5. Exceptions to Regulated Activity on a property don't establish exceptions to all activity on that property. Non-regulated farming doesn't establish a free-for-all on any other regulated activities on that property, for example. Those require permits.
6. Specific to a hypothetical question on structures near wetlands, we're in our right to set usage requirements restricting chemical storage or transfer within a structure where clear risk is seen.

One of the guest speakers was Josh Wilson, Vice Chair of the East Hampton IWWC. Josh is a professional soils scientist and is a career environmental consultant. As with Atty Brooks, he has decades of experience in this space, and is 18 years on a commission. A Roussel asked if he saw value in commissions joining in non-application discussion over best practices, and J Wilson agreed. A Roussel noted that given that our only lens on practices across the state is what we learn through various experts testifying on Essex applications, we should consider connecting with a few other town's IWWC for an informal discussion on approaches, always tuned to the CT Statutes as Atty Brooks guided.

- F Szufnarowski asked members if they were in favor of relying on staff to deem if an application is substantially correct, before it comes before the IWWC.

A Roussel stated that if there is a complex application before the IWWC, having some discussion and review at the first meeting, would be helpful.

C Duques suggested that members conduct minimal conversation at the first (of 2) meeting(s) to determine if there is a need for a site inspection.

C Duques stated that she would like to obtain more information related to a coastal site plan review (Coastal Area Management) which is outside of the wetlands purview, however it is within the parameters of zoning review. C Duques stated that she would like to speak with towns that are situated along the CT River to determine if the wetland agencies deal with CAM review.

12. Adjournment

MOTION made by M Furgueson to adjourn at 9:12 p.m. to the next regularly scheduled IWWC meeting to be held on Tuesday, May 11, 2021 at the Essex Town Hall, 2nd Floor Conference Room A, 29 West Avenue (alternate location by teleconference); **SECONDED** by A Roussel; **Voting In Favor:** F Szufnarowski, A Roussel, M Furgueson, D Kirsch; **Opposed:** None; **Abstaining:** None; **Approved:** 4/0/0. **Discussion:** No further discussion.

Respectfully submitted,

Stella A Caione, Recording Clerk

