



TOWN OF ESSEX  
Inland Wetlands and Watercourses Commission

**Executive Board**  
*Fred Szufnarowski, Chairman*  
*Andre Roussel, Vice Chair*

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**Regular Members**  
*Daniel Lapman*  
*Ernest Cook*  
*Jim Leo*

**Alternate Members**  
*Beth Currie*  
*Michael Furgueson*

**Unapproved**

**Minutes - Regular Meeting**  
**Tuesday, June 9, 2020**

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

The Essex IWWC conducted their regularly scheduled meeting on June 9, 2020 at 7:00 p.m. This meeting was made available to the public via Zoom at <https://us02web.zoom.us/j/87460669276?pwd=bFpOS3UwL0Y4Y0Nks3ZsVjBvNVR0UT09>. Meeting ID: 874 6066 9276

EIWWC Chairman Fred Szufnarowski welcomed everyone to the Essex Inland Wetlands and Watercourse Commission remote public access meeting, which was conducted remotely based on the Governor's suspension of the In Person Open Meeting Requirements.

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  
Andre Roussel  
Daniel Lapman  
Jim Leo  
Beth Currie, Alternate  
Michael Furgueson, Alternate

**Absent Members:**

Ernest Cook



**Staff** - Joseph Budrow, Wetlands Enforcement Officer  
Stella Caione, Recording Secretary  
Robert Doane, Town Engineer

**Audience** - Michael Whalen, 10 Fife Court, Keith Ainsworth, Esq. and Dwight Merriam, Esq., representing Michael Whalen, Matthew Johnson, George Logan Environmental Specialist for Michael Whalen, Maryann Dean, abutter to 11 Fife Court

F. Szufnarowski called the meeting to order at 7:01 p.m.

**MOTION** made by F Szufnarowski to seat B Currie for E Cook; **SECONDED** by A Roussel; **Voting In Favor:** F Szufnarowski, D Lapman, A Roussel J Leo, **Opposed:** None; **Abstaining:** None; **Approved:** 4/0/0. **Discussion:** No further discussion.

Seated for the meeting were F Szufnarowski, A Roussel, D Lapman, J Leo, M Furgueson, B Currie.

**2. Approval of Minutes**  
- **May 12, 2020 Meeting Minutes**

**MOTION** made A Roussel to approve the May 12, 2020 meeting Minutes as presented; **SECONDED** by B Currie; **Voting In Favor:** F Szufnarowski, A Roussel, D Lapman, J Leo, B Currie; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0. **Discussion:** No further discussion.

- **May 18 Special Meeting Minutes**

**MOTION** made by F Szufnarowski to approve the May 18, 2020 special meeting Minutes with following amendments: 1) Page 2, first full paragraph, 4<sup>th</sup> line, change “prefab wall” to prefab foundation”. 2) Page 2, first full paragraph, 5<sup>th</sup> line from bottom, change “pit was installed” to “foundation was placed”; **SECONDED** by D Lapman; **Voting In Favor:** F Szufnarowski, A Roussel, D Lapman, J Leo, B Currie; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0. **Discussion:** No further discussion.

- **May 21 Special Meeting Minutes**

**MOTION** made by D Lapman to approve the May 21, 2020 special meeting Minutes as presented; **SECONDED** by J Leo; **Voting In Favor:** F Szufnarowski, A Roussel, D Lapman, J Leo, B Currie; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0. **Discussion:** No further discussion.

**3. Public Comment**



Keith Ainsworth, Esq. representing Michael Whalen, 10 Fife Court asked for confirmation that he was not losing a speaking opportunity by passing on the Public Comment, portion of this meeting and F Szufnarowski confirmed. Maryann Dean (delayed public comment) stated that as an abutter to 11 Fife Court, she cannot see any downed trees from her property nor has any issues with the trees that were cut.

#### 4. Public Hearing

No Public Hearing scheduled.

#### 5. Regular Meeting

No applications scheduled for decision.

#### 6. Receipt of New Applications

- **Application No. 20-4 – Tony Silverio, 80 Plains Road.** An after-the-fact application to allow for various on-premises improvements, and to allow a relocation of an existing propane tank from a wetland area.

Joseph Budrow, Essex Wetlands Enforcement Agent noted that the applicant was not provided notice of application receipt discussion at the meeting, and asked that the Commission review against previously provided notes and Joe’s comments. The Commission agreed.

The Commission addressed those activities that have occurred without benefit of permit and discussed the installation of a propane tank.

J Budrow outlined the violations relevant to the site and noted that the applicant has not indicated a plan for remediation. J Budrow stated that the applicant is looking for the Commission to make recommendations. There is no part of this property that is outside of the 100-foot regulated area. J Budrow will provide the map at the July meeting. A. Roussel asked about drainage of the wetlands on the property, to which J Budrow noted that the western wetland is a low-value wetland that doesn’t drain across the surface to other wetlands. The eastern wetland drains to an off-property wetland that subsequently drains to the Mud River.

**MOTION** made by A Roussel to find **Application No. 20-4** is substantially complete for **Tony Silverio** for an after-the-fact application to allow for various on-premises improvements, and to allow a relocation of an existing propane tank from a wetland area for **property situated at 80 Plains Road, Essex, CT**. The applicant is to meet the following conditions in time for the scheduled July 14, 2020 meeting: 1) The upland review area will be added to the site plan; 2) The IWWC recognizes that the



owner is making steps toward remediation which will come into play as the application process progresses. The Commission further recognizes that details of the proposed work are not included but the Commission will work with the land-owner toward remediation; **SECONDED** by J Leo; **Voting In Favor:** F Szufnarowski, A Roussel, D Lapman, J Leo, B Currie; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0. **Discussion:** No further discussion.

**MOTION** made by A Roussel to schedule **Application No. 20-4** for the July 14, 2020 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 J Leo; **Voting In Favor:** F Szufnarowski, A Roussel, D Lapman, J Leo, B Currie; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0. **Discussion:** No further discussion.

- **Application No. 20-5 – Tony Silverio, 80 Plains Road.** To allow a 20' by 30' addition, to the rear of a commercial building, to a point 75 feet from a wetland area.

J Budrow stated that the applicant would like to add an addition onto the previously approved structure for additional garage / storage space with a door and an overhead door which will be 60 feet from the westerly wetland.

A Roussel recommended a site walk and then provide the applicant with another opportunity to directly address the Commission to discuss his plan. Included in the application must be a description of the use of the addition, and what materials may be stored within that enclosure.

J Budrow will request that the applicant provide two alternatives for each application and a description of the use of the addition.

**MOTION** by B Currie that **Application No. 20-5** is substantially complete for **Tony Silverio**. An application to allow a 20' by 30' addition, to the rear of a commercial building, to a point 75 feet from a wetland area for property situated at **80 Plains Road, Essex, CT**. The applicant is to meet the following conditions in time for the scheduled July 14, 2020 meeting: 1) show the upland review area on the site plan; 2) provide details of the purpose and what will be stored in the interior of proposed garage. The Commission will review risks based on this information; **SECONDED** by D Lapman; **Voting In Favor:** F Szufnarowski, D Lapman, B Currie, A Roussel, J Leo; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0. No further discussion.



**MOTION** made by A Roussel to schedule Application No. 20-5 for the July 14, 2020 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 J Leo; **Voting In Favor:** F Szufnarowski, A Roussel, D Lapman, J Leo, B Currie; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0. **Discussion:** No further discussion.

The Commission will conduct a site inspection for property located at 80 Plains Road, Essex on Wednesday, June 17, 2020 at 5:00 p.m.

F Szufnarowski stated that there is a resident who missed the public comment portion of the meeting, Maryann Dean, 7 Fife Court, abutter to the property situated at 11 Fife Court. F Szufnarowski re-opened the public comment portion of the meeting, with Commission agreement to doing so. Atty Ainsworth asked, again, if this was a time for rebuttal. F. Szufnarowski noted that as an intervenor, he would have sufficient opportunity to comment when the Fife Court property was discussed by the Commission later in the meeting.

M Dean stated that she does not notice any trees that have been cut down and does not have any issues with the property situated on 11 Fife Court.

## 7. Section 11 Approvals

J Budrow stated that he signed off on May 14, 2020, an administrative approval for Application No. 20A-1, for property situated at 21 Comstock Avenue to replace an existing patio. The edge of the patio was 75 feet from Falls river, and also a ground spout to a point 55 feet from the Falls River.

**MOTION** by B. Currie that the Essex Inland Wetlands and Watercourses Commission concurs with the decision of the wetlands agent with regard to Application No. 20-A-1. **SECONDED;** by J Leo; **Voting In Favor:** F Szufnarowski, A Roussel, D Lapman, J Leo, B Currie; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0. **Discussion:** No further discussion.

J Budrow reported that Essex Meadows has an application upcoming for installation of the beaver control device. J Budrow will have that information available at the July meeting, and that this is the same device informally presented by J Budrow at an earlier meeting. It is also of the same design as those previously approved by the Commission.

## 8. Other Business

### Update of Potential Amendments to the Inland Wetland and Watercourses Regulations.



IWWC Jurisdiction over Tidal Watercourses and Wetlands – a federal court decision several years ago ruled that the State has exclusive jurisdiction over tidal watercourses and wetlands. Although the IWWC’s counsel advised there were several potential problems with the court decision the Town acquiesced. Under provisions of State jurisdiction, the Zoning Commission has opportunity to review and comment on applications for projects involving tidal watercourses and wetlands. J Budrow is working with the Zoning Commission on a minor amendment to their regulations which would refer these types of applications to the IWWC for review and comment.

J Budrow stated that there is language in the regulations that focuses on upland review areas. However, in order to clarify the 100-foot review area you must reference “definitions” to confirm that the IWWC regulates the 100-foot review area, which must be clarified in the regulations. J Budrow stated that the final draft will be available at the July 14<sup>th</sup> IWWC meeting.

## **9. Correspondence and Invoices**

There was no correspondence and there were no invoices.

## **10. Reports**

### **a. Wetlands Official**

Joseph Budrow provided an update of previous topics:

F Szufnarowski stated that on May 21, 2020 the IWWC conducted a special meeting for a show cause hearing. Legal counsel for Mr. Michael Whalen, 10 Fife Court, filed for intervener status on that same day and the Commission found that the filing was not timely. The CT DEEP regulations require 5 days advance notification. F Szufnarowski stated that the 5 days have since passed and Mr. Whalen has attained intervener status.

F Szufnarowski stated that a site walk was scheduled for May 27, 2020. There were prior legal issues that prevented Mr. Whalen from participating in the site walk. The IWWC attempted to make an arrangement to have Mr. Whalen’s representative attend site walk. Mr. Whalen declined and stated that he would observe the site walk from his property. In the interest of full disclosure the Commission cancelled the site walk and arranged for R Doane, Town Engineer to visit the property and conduct an inspection of the property, and report his findings to the IWWC.

Under the CGS 22a-19 related to the info an intervenor presents, it is limited to specific factual allegations pertaining to unreasonable pollution, impairment or destruction of the public trust in air, water or other natural resources of the state. As related to concerns about zoning or property rights or other issues, the IWWC has no jurisdiction or enforcement capabilities.



J Budrow stated that he, Mr. Johnson and R Doane met on premises to look at the tree cutting area, the garage and the shed. R Doane reviewed the premises to determine if erosion and sedimentation (E&S) control measures are required to protect the watercourse, or are current conditions such that E&S would not be required. A cease and desist was ordered to stop cutting and removing trees; stop construction of a shed and stop working on garage without erosion control in place.

R Doane reported that E&S control is unnecessary. The proposed activity is the framing and construction of the garage and the completion of the shed. There is no proposed earth work. The existing row of vegetation is approximately 10' thick and it covers the top of the bank just off of the gravel driveway. When R Doane reviewed the tree line, he looked along the base and the ground and saw no signs of erosion. The leaf litter remained in place. The trees should be cut up and removed from the area by hand. There is to be no equipment brought in. Stumps shall be cut flush, and all the logs shall be cut to accommodate firewood length and removed by hand. There should not be any equipment from the gravel drive on the slope toward the watercourse. R Doane stated that he will need further information from the property owner if rain gutters are being installed on the garage and how the roof runoff will be addressed.

F Szufnarowski questioned the restoration of ground cover once the trees are removed. R Doane stated that he saw no signs of erosion. Perhaps once the trees are removed, it would be beneficial to view what natural vegetation is growing and reassess at that time to either reforest or plant with low vegetation. The slope varies. It is steeper where the Knotweed is situated, and a 1 to 2 slope, and 3 to 1 as you head down the hill before it flattens out at the watercourse. If equipment was to be used, A Roussel recommended it be limited to a boom truck to ensure is the downed trees are picked vertically and not dragging along the grade. R Doane stated that there is a surface on the gravel drive where the boom truck can be parked. Otherwise, the wood is to be cut into two-foot lengths and carried up the bank manually.

J Budrow stated that he did not think a boom truck would be successful gaining access to the property. Atty Ainsworth noted that heavy trucks must have used that drive when the homes were constructed.

Keith Ainsworth environmental attorney from New Haven, stated that he and Attorney Dwight Merriam represent Michael and Deborah Whalen, 10 Fife Court. Attorney Ainsworth stated that he did not know that 11 Fife Court would be discussed this evening and only discovered that this topic was to be covered, earlier in the day. K Ainsworth stated that fair and sufficient notice was not provided to Attorney Ainsworth nor was it provided to Mr. Whalen. K Ainsworth was informed by Attorney Suzanna McCauley that their intervenor application was deemed to be appropriate 5 days after it was filed. Attorney Ainsworth stated that he was informed that the site walk scheduled for May 27<sup>th</sup> was cancelled, however he was not informed of a reschedule. Notice of this meeting did not include the discussion of the 11 Fife Court report and there was no opportunity to view exhibits



in advance. K Ainsworth stated that the executive order related to Zoom meetings mandates that exhibits require advance online filing. Mr. and Mrs. Whalen never provided notice of reschedule of a site walk.

F Szufnarowski stated that Attorney Ainsworth is correct, and that he should have been made privy to the engineer's report prepared by R Doane.

K Ainsworth stated that testimony is being considered from an abutter and testimony and cross examination is being discussed. K Ainsworth stated that he received notice this morning that there was to be a report from J Budrow and from the Town Engineer and he had no ability to prepare for the presentation. This lack of notice has meaningful impact on Mr. and Mrs. Whalen. Proposed conditions for preliminary actions defining delineation of where the wetlands are situated. There needs to be a plan proposed by the applicant for the removal of the felled trees as well as a plan for how to go about reversing the situation. When you fell a canopy of trees, you expose the understory. There is Japanese Knotweed situated under the understory which is on the list of invasive species. Once trees are removed and exposed to sunlight, robust growth of this invasive species can be expected.

K Ainsworth stated that there was active use of a cement mixer on-site this past weekend without the benefit of E&S control measures. Attorney Ainsworth asked if consideration has been given of a repopulation of the area by invasive species and questioned if a soil scientist has been involved in assessing the area. Attorney Ainsworth asked the following questions: 1) How M Dean, abutter was notified of this meeting; 2) Was a permit issued to install the 10-foot-wide swath of gravel within the upland review area, and 3) K Ainsworth asked for R Doane to state his credentials.

F Szufnarowski stated that this is a regular meeting. Not a public hearing. Ms. Dean provided information during the public comment portion.

Attorney Ainsworth stated that this has in-fact evolved into a de facto public hearing.

R Doane stated that he is civil engineer and a licensed land surveyor and has worked in this field since 1966 and was licensed in the 80's. R Doane stated that he is not a soil scientist nor a wetland biologist. He has however worked for 40 years with soil scientists and done site development and he is very aware of sedimentation and erosion control, and site development. R Doane stated that he has extensive experience with site plans with sedimentation and erosion control narratives and he is an expert in site stabilization and site development.

Attorney Ainsworth stated that he submitted an affidavit regarding the cement mixer and Mr. Whalen confirmed that the validity of the affidavit is to the best of his knowledge and his belief.





Joe Budrow stated that since October 2019, the WEO report provided at the IWWC meetings has been a running list of activities and 11 Fife Court was reported in April and became a topic at the May meeting as well as at a special meeting on May 21. The intent was to hear Mr. Johnson and for the IWWC to make a decision to have applications submitted associated with the tree-felling and the shed.

The visit to the site by J Budrow and R Doane was directly related to item 3a of the intervention.

George Logan, certified soil scientist and wetlands scientist who presented on behalf of Michael and Deborah Whalen noted that he visited the site at 11 Fife Court and he suggested that the owner of the subject property provide a written restoration and planting and monitoring plan, noting that the proposed activity presents a short term and long-term risk. G Logan stated that there is impact to wildlife and aquatic habitat when their habitat is disturbed and degradation of the area under the tree canopy.

The affidavit signed by Mr. Whalen has been made part of the file which is located in the Essex Land Use office. M Whalen, owner of property situated at 10 Fife Court and abuts 11 Fife Court observed on June 6 and 7, 2020, operation of a cement mixer appearing to be located within the 100-foot wetland review area. Attorney Ainsworth stated that there was a green umbrella placed on the left of the cement mixer which he speculates was put in place to block the view of the cement mixer. Attorney Ainsworth expressed a concern related to work proceeding during the cease and desist order.

Attorney Ainsworth suggested appropriate topics related to cease and desist and noted that he would wish to have opportunity to prepare and present at the next meeting. Mr. Johnson noted that the mixer was used to install a small retaining wall adjacent to the garage, to hold a garden wall of loose stones in place.

F Szufnarowski stated that the IWWC is not prepared to act on the cease and desist order this evening.

Mr. Johnson had no further comment.

Mr. Whalen thanked the IWWC for their time and expertise.

F Szufnarowski stated that J Budrow sent an email to Attorney Ainsworth in which J Budrow stated that that he would recommend to the IWWC to remove the cease and desist order for activities on site.

A Roussel noted the benefit of having all of the detail provided at one time and expressed the need for more information which will culminate into submission of a formal application.



11 Fife Court Exhibit List for the record:

June 8, 2020 report from Doane Engineering summarized at the June 9, 2020 EIWWC meeting.  
June 8, 2020 letter from Attorney Keith Ainsworth with attached affidavit from Michael Whalen.  
June 9, 2020 letter from Attorney Keith Ainsworth with attached recommendations for resolve issues on cease and desist order.

J Budrow noted that a way to move forward to resolve the issues is for the property owner at 11 Fife Court would be to submit an application for the July 14, 2020 meeting for the tree felling, runoff from the garage roof and for the shed.

Update of Previous Topics not discussed this evening: - CT Pond Services - June pesticide application for Griswold Pond - Innovative Mosquito Management, Inc. – Invasive Plant Management at Foxboro Point.

- **99 Westbrook Road, Greg Peterson - Application 19-9.** J Budrow reported that he visited the site to review the mediation that was designed by Bob Doane. This was an application to correct wetland violations related to site grading, property drainage and an addition to the existing commercial building, which was approved at the September 10, 2019 IWWC meeting. J. Budrow all work has been completed and he will confer with R Doane to confirm the work was performed in accordance with the permit.
- **57 Main Street Ivoryton.** A Roussel previously recommended that a buffer plan of a 6-foot swath should be extended along the bank so lawn treatment would not infiltrate the edge of the pond, per prior agreement with G. Dayharsh. J Budrow requested a revised plan reflecting an extension of plantings westward and reported that a fence has been installed however there is no erosion and sedimentation control in place as yet.

b. **Chairperson** - Fred Szufnarowski provided comments earlier in the meeting:

**11. Adjournment**

**MOTION** made by D Lapman to adjourn at 9:47 p.m. to the next regularly scheduled IWWC meeting to be held on Tuesday, July 14, 2020 at the Essex Town Hall, 2<sup>nd</sup> Floor Conference Room A, 29 West Avenue (alternate location by teleconference); **SECONDED** by B Currie; **Voting In Favor:** F Szufnarowski, B Currie, D Lapman, A Roussel, J Leo; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0. **Discussion:** No further discussion.

Respectfully submitted,  
*Stella A. Paione*  
Stella A. Caione, Recording Clerk

