



TOWN OF ESSEX  
**Inland Wetlands and Watercourses Commission**

**Executive Committee**  
*Fred Szufnarowski, Chairman*  
*Michael Fergusson, Vice Chair*

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

**Regular Members**

*Ernest Cook*  
*Andre Roussel*  
*David Kirsch*

**Alternate Members**

*Noreen Brennan- Rowe*  
*Carolyn Field*

**DRAFT**  
**October 11, 2022 Regular Meeting Minutes**

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

The Essex Inland Wetlands and Watercourses Commission (EIWWC) conducted their regularly scheduled meeting on Tuesday October 11, 2022 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).

EIWWC Chairman Fred Szufnarowski welcomed members of the public to the October 11, 2022 EIWWC meeting. The EIWWC members and attendees announced themselves. Attendees from the public were asked to please identify themselves for the record prior to making any comments.

<b>Attending Members:</b>	<b>Absent Members:</b>
Fred Szufnarowski, Chairman	Noreen Brennan-Rowe
Michael Fergusson, Vice Chairman	
Ernest Cook	
Andre Roussel	
David Kirsch	
Carolyn Field, Alternate	

<b>Staff:</b>	
	Danielle Schumacher, Recording Clerk
	Carey Duques, Land Use Official
	Robert Doane Jr., PE- Wetlands Enforcement Officer
	Sylvia Rutkowska, Commission Attorney

<b>Audience:</b>	
	Aron Schumacher, PE- Doane Engineering
	Matthew Walston, IWWC #22-11 Applicant
	Jean Walston, IWWC #22-11 Applicant
	Dan Lapman, Resident
	Terry Lynn McDonald- IWWC #22-18 Applicant
	Andrew R. Morin, Esq- Attorney representing IWWC #22-18
	Joe Wren, PE, Indigo Land Design
	Michelle Ford, EcoMaps LLC, Representing the Essex IWWC
	Tim Collins- 60 Main Street, Centerbrook

	Katie Collins- 60 Main Street, Centerbrook
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<b>Southwinds Association Members:</b>	
Fred DeCrescentis, Association President	Adrienne Brochu
Peter Decker (Via Zoom)	John Shepherd
George Sexton	Peter Bonanno
Suzanne Tweed	Jaye Middendorf
Michael Bonacorsa, Esq	Tom Middendorf
Bruce MacMillian	Steve Bancroft
Jerry MacMillian	Diane Sexton
Carol DeCrescentis	Peg Farley
Bert Polito	Jack Kearns
	Linda Levene
	Richard Levene

The meeting was called to order at 7:00 PM by Chairman F Szufnarowski.

Members seated for the meeting were Chairman Fred Szufnarowski, Vice Chairman Michael Furgueson, Ernest Cook, Andre Roussel, and David Kirsch.

**2. Approval of Minutes**

- **September 13, 2022 Regular Meeting Minutes**

**MOTION** made by E Cook to approve the September 13, 2022 regular meeting minutes with the following amendments;

- **Page 3:** change lawn all which to “lawn of which” in 20 River Road Essex application description

**SECONDED** by M Furgueson; **Voting in Favor:** F Szufnarowski, M Furgueson, D Kirsh, E Cook, A Roussel; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0. **Discussion:** No discussion

- **September 28, 2022 Special Meeting Minutes**

**MOTION** made by M Furgueson to approve the September 28, 2022 special meeting minutes with the following amendments;

- **Page 1:** List Robert Doane Jr., PE under staff and not audience
- **Page 3:** Motion made by M Furgueson to hold a site walk

**SECONDED** by E Cook; **Voting in Favor:** F Szufnarowski, M Furgueson, D Kirsch, E Cook, A Roussel; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0. **Discussion:** No discussion

- **October 4, 2022 Site Walk Meeting Minutes**

**MOTION** made by E Cook to approve the October 4, 2022 site walk meeting minutes as submitted; **SECONDED** by A Roussel; **Voting in Favor:** F Szufnarowski, M Furgueson, D Kirsh, E Cook, A Roussel; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0.  
**Discussion:** No discussion

### 3. Public Comment

F Szufnarowski said this is the opportunity for the public to ask questions about the Commission in general. This is not the time to talk about a specific application.

### 4. Update from Attorney Regarding Pending Litigation

**MOTION** made by M Furgueson to move item 4 to later in the meeting in order to go to Executive Session; **SECONDED** by D Kirsch; **Voting in Favor:** F Szufnarowski, M Furgueson, D Kirsch, E Cook, A Roussel; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0. **Discussion:** No discussion

### 6. Public Hearings

- **IWWC Application No. 22-11 20 River Road, Essex.** Proposal to construct a barn, restore and rejuvenate the pond, and construct an inground swimming pool along with regrading the lawn all which is located within the 100-foot upland review area. *Applicant/Owner: Matthew and Jean Walston* (Received August 9, Public hearing opened September 13, 2022, Continued from September 13, 2022)

C Field read the details of the application to the Commission.

Aron Schumacher, PE from Doane Engineering was in attendance to represent the applicant. The applicants, Matthew and Jean Walston, were also in attendance.

A Schumacher gave the Commission a brief update on the project.

The application is for the installation of an in-ground swimming pool, dredge the pond, and installing a barn. The plans have been updated to include the stream that is located on the abutting property to the southwest. They also revised the buffer to accommodate the stream.

In terms of the patio area and flood protection, they are exploring the option of potentially raising the house. Instead of the patio being blocked off it would be filled in and the elevation increased. They would take material from the pond and storage area to fill in and raise the elevation of the patio. The amount of compensatory storage provided would stay the same.

Applicant Matthew Walston spoke and said that they would raise the height of the house by about a foot higher than the flood zone in order to provide a buffer. When he met with the Architect, Charlie Brown, he said the slab is structurally sound enough to block up the house with rebar and then set it back down (there is no basement). The majority of the work can be completed from the driveway and there would be no disturbance in the wetlands or the upland review area.

F Szufnarowski said that this portion could be submitted as a separate application and handled administratively.

**MOTION** made by A Roussel to close the public hearing for IWWC Application 22-11 20 River Road, Essex; **SECONDED** by M Furgueson; **Voting in Favor:** F Szufnarowski, M Furgueson, D Kirsch, E Cook, A Roussel; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0. **Discussion:** No discussion

- **IWWC Application No. 22-18 32 Birch Mill Trail, Essex.** Proposal to remove an unpermitted existing stone patio and relocate it further from the pond, but within the 100-foot upland review area. The unpermitted stone walkway, stairs, and walls are proposed to remain within the upland review area. The proposal includes planting vegetation adjacent to the pond, located within the 100-foot upland review area. *Applicant/Owner: Terry Lynn McDonald* (Received September 28, 2022)

Carolyn Field read the details of the application to the Commission.

<b>Exhibit A</b>	Revised site plan
<b>Exhibit B</b>	32 photos
<b>Exhibit C</b>	Specs of mini excavator used at 32 Birch Mill Trail
<b>Exhibit D</b>	Recordings, Transcripts and associated documents from prior proceedings (November 2 <sup>nd</sup> show cause hearing)
<b>Exhibit E</b>	Amended application
<b>Exhibit F</b>	Michelle Ford's report
<b>Exhibit G</b>	3 plans presented by R Doane
<b>Exhibit H</b>	R Snarski's notes
<b>Exhibit I</b>	Estimated of probable construction costs 32 Birch Mill Trail October 2022
<b>Exhibit J</b>	Letter from Southwinds Association

Attorney Andrew Morin, Esq and Engineer Joseph Wren were in attendance along with the applicant Terry Lynn McDonald.

F Szufnarowski informed the members of the public in attendance on how a public hearing is run.

A Morin spoke to the Commission and stated that the applicant had retained a Certified Soil Scientist. They were also in receipt of Michelle Ford's report, Wetland Scientist representing the IWWC. They are requesting that the public hearing be left open to be able to respond. He said that they had sent more information today to C Duques along with an amended project description and photos. This included information about the removal of materials from Birch Mill Pond. The application has been amended since the Special Meeting. The Site Plan has been revised to include DEEP recommended actions and the description amended to include what had been done. They also included specs on the machine that was used.

A Morin then called on Engineer J Wren to talk about technical details of the project.

C Duques said that as of the meeting she had not received the documents A Morin referenced.

Joseph Wren, PE of Indigo Engineering in Old Saybrook presented the Site Plan (Exhibit A) to the Commission. The site is located at 32 Birch Mill Trail at the west side of Birch Mill Pond. The blue line on the drawing is the edge of the pond, the green is the wetlands (per record survey), pink line is the upland review area. The stone patio and stone path that were built are within that zone. There were no trees removed. There was no road that was created to the site and the trees have been there for quite some time. He said that the area that was disturbed was along the pond. The purpose of this application is to correct the unauthorized activity. R Snarski was previously the client's Wetland/Soil Scientist, but they are now using Bob Russo. On this plan anything that was previously labeled under R Snarski is now Bob Russo. They have added protected species provisions in response to DEEP guidelines for spotted turtles and box turtles; what it includes is inspections during construction to make sure there are no turtles in the area of activity and construction will be paused when turtles are burrowed into the ground. They extended the silt fence to encompass the entire work area with the exception of the walkway to make sure turtles do not get into the work area. There will be daily inspections before work is started to make sure no turtles are in the area.

He went on to say that the first portion of the planted buffer is 60 feet with 9 shrubs (species listed on schedule on plan). The west side of the existing lower stone patio is 100 feet long with 15 shrubs. This is a total of 24 shrubs. R Snarski originally commented, and B Russo agrees, there are many indigenous species that should be left as is, shrubs will be planted by hand digging. There will be a minimal amount of exposed ground and the silt fence details on the plan including installation.

The lower stone patio was originally recommended to be removed by hand or with a small rubber track machine by R Snarski. They will turn the area into a wildflower meadow along with diversifying plantings. The patio would be completely removed and rebuilt further up the slope and there would be a small wall on the south end that would blend into the topography.

He said there has been quite a bit of discussion about dredging. He has talked with the property owner and has photographs of the actual machine rented from Deep River Rental. The model number and specs of the machine have been submitted with the application. As discussed at the site walk, the max reach of the machine is 14 feet. The tracks go past the body a bit so that is another maybe 2 feet. When you operate a piece of machinery like this you aren't going to sit right at the edge. The applicant completed the work herself and she is not a professional operator. With the machine back several feet it is unlikely they got out more than 10 feet. The material taken from the pond was cast onto the shoreline and there isn't a huge pile of dirt out there. There is a small berm on the edge of the pond and no haul road. A small machine was rented for a couple of days and it was a very small amount of material.

He went on to say that Michelle Ford's letter recommends duck boxes. The applicant has many boxes already up on the trees. The applicant really has no intention of disrupting the

wildlife. She has good intentions, which is why we are here with a full application with hired professionals.

D Kirsch asked about the lower patio. J Wren commented that stone would be reused when the patio is moved. The wall is proposed to stay because it is holding back the slope. The patio would be dry laid as the current one was allowing water to drain through.

A Roussel commented that any digging over 2 inches runs the risk of killing off trees in the area. Not cutting trees down does not mean that there will be no damage done to the trees.

M Furgueson asked for clarification about the removal of the patio and that the walls and walkway were remaining. J Wren said that the entire walkway and walls are proposed to remain. M Furgueson said that part of the patio and walls are on someone else's property without the other property owner's permission.

A Morin said that it is his understanding through contact with F DeCrescentis of Southwinds Association that they are of the position that they want the property restored to the natural condition. He said that their intention is to do what is best for the environment and they will have to come to an agreement with Southwinds.

M Furgueson asked for clarification on whether the wall would be staying or not.

J Wren said legal counsel reached out to Southwinds Association. If the Commission and Southwinds would like the wall removed, then it will be removed. There have been discussions with Southwinds about swapping property and the applicant has made efforts to buy a piece of land or swap a piece of land. This sounds like more of a civil thing than a wetlands matter.

F Szufnarowski that the Commission has difficulty granting a permit for activity done on property not owned by the applicant.

A Morin has been in contact with Southwinds Association about this and would invite a discussion about what can be done. We are trying to make right what has been done wrong. He thinks that the public hearing needs to be left open to allow discussion with people at Southwinds.

M Furgueson asked if he had listened to the tape from the November 2020 meeting. The Wetlands Official stated that the pond was at an all-time low. Is it possible the machine was able to get further out and into the pond to dredge?

J Wren said this wouldn't be possible given the weight of the machine and how mucky the bottom was. It was also mentioned on the site walk by B Russo that there was a lot of vegetation close to the shoreline that was older than 2 growing seasons.

M Furgueson said he applauds J Wren for speaking the truth now. November 2<sup>nd</sup> testimony when asked what the material was the applicant said they were leaves and that she had turned them over with a pitchfork. That there were a lot of leaves in the area.

J Wren stated they want to work with the Association and consider comments from the public.

S Rutkowska asked to what extent does the applicant concede that there was dredging?

A Morin said 1 to 2 feet and that past activity includes leaves, organic sediment and sticks submerged at the edge of Birch Mill Pond. We cannot stress enough going forward that we act in good faith.

A Roussel asked about Japanese Siltgrass saying that he had not heard a management plan for that as well as the bittersweet. He said that the wisteria could very well also be invasive depending on the type. Unmanaged they will dominate the area.

David Kirsch asked about the section that was dug out about 20 feet wide and dirt that was placed on the bank.

T McDonald asked to show the Commission photos and explain what had been done. November 2, 2018 there had always been a flat spot by the water. M Ford mentioned that there was an area with no growth, but that area had always been there. The area is growing more now even with the Association spraying for invasive species.

F Szufnarowski thanked A Morin.

R Doane, PE came forward to speak to the Commission as the Wetlands Enforcement Officer. He said unfortunately, they were not at the site before Joe Budrow (former Zoning and Wetlands Enforcement Officer) discovered the activity. On November 5<sup>th</sup> he was at the site with R Snarski and J Budrow and T McDonald and the patio was in. To the right side of the patio he was standing on clumps of dirt and he commented to R Snarski that the pond had been dredged down to the underlying sand and gravel. The Association owns the pond so the excavation was done on Association property. There has been discussion on the quantity. On January 26, 2022 he and R Snarski were out and tried to estimate the width and length of the dredging and R Snarski took notes and passed them on to T McDonald's surveyor (which were included on the survey). They were removed from the plan and were no longer part of the application. He said that he does not think that the application properly reflects the activity that took place. He said that it is important to quantify it so that a full restoration can take place. He said there was a comment at the site visit on the edge of the pond made by J Wren. We have access to previous mapping.

R Doane passed out plans superimposed with the historic edge of the pond and fringe wetlands that run along the pond. It also shows the edge of the pond as it exists today. There were fringe wetlands that ran along the entire extent of T McDonald's property and onto association property.

The 2<sup>nd</sup> page is the survey submitted with the application. It shows the edge of the pond as it exists today. He superimposed the edge of the pond as it existed in 1999. The green dashed line shows the edge of the wetlands which was established when the subdivision

was done and flagged by R Snarski. The shaded area is the area of wetlands that was dredged from the pond.

He went on to say that we are fortunate to have a tie line that runs through the property. When we get to a shore line and it is irregular so we do a mathematical tie line from one boundary to another. This tie line shows up on all plans of the property throughout the years. We are able to use the tie line and scale on every map to keep it consistent. He feels very comfortable when he superimposes the 1999 and the 2020 survey done by Dave Annino. The initial survey did not have topography and they asked him to add this along with the area of dredging, area of spoils, and areas where the spoils were deposited. It is obvious this material came from the pond because there are wetland plants growing 10 feet above the wetland. The shaded area on the drawing is the area that was removed. It is 45 feet to the edge of the pond and on Dave Anino's survey we have a measurement of 35 feet which means 10 feet of wetlands were lost right where the patio is. On the second plan it is 32 feet which is 13 feet lost. Area of dredging might not mean much when we get to the discussion on restoration.

Area of dredging 2800 square feet Volume of dredging 4200 Area of spoil deposit- 2860 Area of existing patio walls and stairs 1300 sq
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R Doane stated that he knows what dug out areas look like. The edge of the pond was dug out by an excavator. He testified during the cease and desist hearing showing photos of excavator tracks. The fact of the matter is that material was taken from the pond and the edge is 13 feet further north than it used to be.

**Exhibit G- 3 plans presented by R Doane**

**Exhibit H- R Snarski's notes**

The November 5<sup>th</sup> measurement of the water depth of the pond at the edge was 2 feet.

F Szufnarowski referred to the minutes from the December 8, 2020 meeting. There was an update on the cease and desist order on page 8 paragraph 1. He said he and R Snarski had observed that pepperbush had been cut to get equipment access to the area. We are fortunate that the material that was excavated was well nourished because it is a wetlands soil. In the area where the pepperbush was cut the stumps had not been removed but he doesn't think it is necessary to be concerned.

S Rutkowska commented that because work was done on Association property that the association would need to be part of the application for any remediation.

Michelle Ford spoke to the Commission (the Town's expert Environmental Scientist, Professional Soil Scientist and Wetland Scientist) She said that she had been retained by the Town for a 3<sup>rd</sup> party review of the application.



The purpose of the review is to look at the information in the Cease and Desist Order and find the impact of the dredging (removal of silt sediment and other materials), installation of hardscape features, and review of the application to date.

In terms of the upper patio and lower stone terrace, hardscape features prevent stormwater from going into the ground, along with any fertilizer and pesticide runoff previously absorbed; including nutrient toxicant retention-anything coming from upgradient area. The upland review are helps protect from material entering the wetlands.

The most significant problem with hardscape are associated with the lower terrace. There is a loss of approximately 330 feet of a buffer. There is a loss of available area for native vegetation.

Hardscape features are taking away the functions and values of the wetlands.

She went on to say that there is no significant erosion coming down from the upper patio and that there are a lot of unvegetated mulched areas.

In terms of the impact associated with dredging of pond materials, it changed the environment and submerged aquatic vegetation. What was excavated was put on shore and they made more deep water areas. Although functions and values were reduced in some areas there were improvements for fish and shellfish.

She said that she reviewed the proposed work and there was nothing in Section 7 of the Essex Wetland Regulations about maintaining and protecting the wetlands. The application also requires an alternative with little to no impact and moving the patio does not get rid of the impact. She recommends additional erosion control measures.

She asked how does the installation of 24 shrubs and the seeding of the area where the patio is removed offset the negative impact?

There are also state listed species in the area including the spotted turtle (wetland dependent turtle) and the eastern box turtle (buffer area),

### **Recommendations**

- Allow upper patio to remain
- Removal of the lower terrace, retaining walls, and boulders
- Removal of terraces included in permit
- Work should be done by a licensed contractor
- Silt fence should be used upgradient
- Removal of lower retaining walls will require some grading
- All exposed areas should be hydroseeded
- Monitored for invasive vegetation

She believes that restoring the pond would not be beneficial. It would be best to let the pond be and let it stabilize with no further manipulation.

## **Provision**

- Pond management plan
- Treatment of aquatic invasive
- Look at the pond as an ecosystem
- Installation of wood duck box or bat box

M Furgueson asked about state listed species.

M Ford said that each state has their own state level Endangered Species Act. There is a list of species that are endangered, threatened, or special concern. They also have a National Diversity Database. This site has the eastern box turtle and spotted turtle.

A Roussel commented that the report was very thorough.

J Wren spoke to the Commission and said that the map by Don Carlson was done in 1999 and that the work on the property was done in 2020. Over 21 years the edge of the pond is going to change due to vegetation growing and sedimentation filling in. It could change by an inch or feet. It also depends on the time of year, this year we had a level 2 drought. The edge of the pond always changes similar to an ocean front property. He thinks it is an unfair comparison. A survey map is only supposed to report the existing conditions of the property. He said if you look at his map he based his survey on Don Carlson's map. He added the line from the 1999 map. R Snarski confirmed that the line had not changed since the 1999 map. The map done by Carlson was completed in July 1999 and the other was completed in November 2020. The pond levels fluctuate depending on the time of year.

He went on to say that to the west there is a path to the fire access road. It is very lush with a lot of vegetation and there is no area of clear-cut. If anything was taken from there it was very green when he walked through. He also said M Ford mentioned 6-8-month construction and that once the silt fence goes in and the patio is relocated it would be done in less than a month. November-April would be no work due to the turtles. DEEP recommends something with a 20-inch barrier height, anything lower wildlife can get over.

He said B Russo will be present for the next meeting

A Morin, in response to M Ford's report, said he believes the provision in her report are mis cited. He believes that it is Section 6.8E of the Essex Wetlands Regulations that maintain to protect existing conditions. B Russo's report will describe how we comply with those regulations. We are only proposing .001 square feet of impact to the wetland associated with removing the stone patio. He is confident, based off his discussions with Mr. Russo, that the application complies with those regulations.

C Duques stated that Section 7 of the Essex Wetlands Regulations, as referenced by M Ford is correct.

F Szufnarowski opened the floor to comments.

Fred DeCrescentis (42 Southwinds Drive), president of Southwinds Association, spoke to the Commission. He said that he had submitted a letter to C Duques dated September 27<sup>th</sup> and would like to highlight the letter and add additional information.

Southwinds Association represents 58 homeowners, many of whom are present at tonight's meeting. They support the letter that was submitted. Southwinds is a non-profit that owns Birch Mill Pond and 9 acres of open space. Members live on one of 3 streets; Southwinds Drive, Mares Hill, and Birch Mill Trail.

It was approximately October 2020 when the Chairman of the Open Space Committee became concerned about sediment. They contacted Joe Budrow to investigate the cause of the sediment buildup. To his best recollection the pond exceeded 10 feet from the present shoreline. He and J Budrow walked along the 2 brooks and as they were approaching the pond they noticed that the back of 32 Birch Mill Trail was very active and that there was no open permit. J Budrow issued a verbal cease and desist that day and a written cease and desist the next day. The stone patio and electrical conduit had extended into open space owned by Southwinds. This is when they learned about the dredging. On May 20, 2021 he received a letter from T McDonald's Attorney to talk about title issues. His response was that they would meet with him under one condition, that the structures be removed and the area be restored. On June 30<sup>th</sup> he received another correspondence stating that T McDonald was in adverse possession of land. As result of the legal threat, they retained legal counsel and believe that T McDonald is trying to use adverse possession.

Southwinds Association wants all structures removed from the open space including the lower patio, conduit, lighting, and wall. If feasible, they want Birch Mill Pond restored to its original condition. He noted that 42 feet of the proposed plantings extend into open space, which they will not permit without prior approval from all members and the board.

He thanked the IWWC along with R Doane and C Duques on informing them of responsibilities of IWWC. They are hoping to bring to a resolution of this unfortunate situation.

T Middendorf 20 Birch Mill Trail asked about the timing of the project being 6-8 months to restore the property or 1 month. He is not quite sure how you would deduct that without knowing if it encompasses the walkway, walls, etc. Wouldn't that have to be determined first?

J Wren commented that duration is based on the work.

F Szufnarowski commented that October 15 to March 15 is the no activity period.

P Farley of 38 Birch Mill Trail asked how does someone apply for work not on their property?

F Szufnarowski said that we have never issued a permit for work done on property that was not owned by the applicant. If the Association wanted to grant permission for the applicant, they could and that he majority of the work is on Ms. McDonald's property. He said that the Commission has no jurisdiction over property issues.

A Morin said that they are trying to convey a plan to comply with the regulations to start a dialogue. As an applicant we want to respond.

F DeCrescentis said that we have told you exactly what we want. We don't need to discuss it anymore.

J Wren commented that the Association would have to be co-applicants. On the application there is a note to verify property lines in the field and not to complete work without prior authorization.

F DeCrescentis said that there was letter from the Southwinds Association president saying from day 1 that they want everything removed and that they are willing to work with the Engineer and Legal Counsel. They do not want plantings on open space. They will have cooperation as long as they complete the work at their expense.

S Rutkowska said that the Commission can act on the application based on the property that T McDonald owns and not on Association property unless the applicant has explicit permission.

A Morin said that we need the specifics of what the parties agree to. The Association has made their demands quite clear. We don't hash out all of the details at the public hearing.

S Rutkowska said that she had asked R Doane to calculate the cost of some of the things that M Ford had suggested. Items listed on page 5 and 6 October 7, 2022 report

- Install silt fence
- Remove lower stone patio, stone wall
- Regrade excavated area to blend in
- All areas of exposed soil within upland review area including mulched area and area where hardscape feature are being removed should be hydroseeded
- Place biodegradable mat over seeded area
- Maintained silt fence until work is completed

Estimated \$10,000-\$12,000

This quote does not include the items in the final paragraph (Biologist to study the pond and maintenance of emergent growth. Fred Descrementis said the association paid \$2,500 this year)

S Rutkowska asked about the possibility of a bond established for that amount to cover the expenses of restoration and remediation.

### **Exhibit K- Budget of Southwinds Association**

S Tweed of 14 Birch Mill Trail asked if the next step would be to make a new application and then agree and sign as a co applicant?

F Szufnarowski said that Legal Counsel could help with this.

S Rutkowska commented that the Association should make comments on Association property and applicant property separately.

**MOTION** made by M Furgueson to continue the public hearing for Application 22-18 32 Birch Mill Trail, Essex at the November 10, 2022 meeting; **SECONDED** by A Roussel; **Voting in Favor:** F Szufnarowski, M Furgueson, D Kirsch, E Cook, A Roussel; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0. **Discussion:** No discussion

- **Cease and Desist Show Cause Hearing 20 River Road, Essex.** Removal of trees and vegetation within the 100-foot upland review area of a wetlands without a permit.

C Duques presented her findings to the Commission. She said there is a Cease and Desist Order included the packet. The Commission is familiar with this property because there is an application before them. She received a call from a neighbor that trees were being cut. She visited the property with R Doane. There were at least 25 trees cut. The Cease and Desist Order asks that activity stop and that the applicant provides the IWWC with a planting plan along with a timeline of when the work would be completed. The applicant would have to pay any enforcement fees if the commission deems it necessary. If the property owner is willing to pay for the plantings that is sufficient in her opinion.

A Roussel asked about the bare hill. Are we requiring any erosion control?

C Duques said that no tree stumps were removed and hasn't observed a need for erosion control at this time.

DKirsch asked can you plant on stumps and roots?

C Duques said that part of the planting plan is to remove the stumps. There are a lot of invasives there (bittersweet).

Aron Schumacher, PE Doane Engineering said that they had received the Cease and Desist Order. They agreed trees were cut without approval. He passed out a planting plan (Exhibit A)

He said the Garden Barn out of Vernon CT prepared the plantings and how to arrange them. The blue is wetland, upland review, the orange is the tree line surveyed prior to clearing, and the green is the tree line today.

The intention is to remove the existing irrigation, invasive, and stumps. Then they would install a new irrigation system to help plants, 66 plantings overall. The Garden Barn's intentions, if approved, are to put in the plants as early as the beginning of November. They will also apply topsoil.

A Schumacher said that they have a written request to work outside the no work time period.

A Roussel commented the silt fence does not extend far enough.

A Schumacher commented that they could extend the silt fence to the tree line

A Roussel asked how long do you think this would take?

Applicant M Walston spoke to the Commission. He said that they would pull stumps out, grade the hill, remove the bittersweet, and plant grass all throughout. This hopefully could be done in a week or 2. The Garden Barn would complete plantings November 10-17 and the grass would stay with plants put in. They will talk to someone on what they think will be best for the hill.

F Szufnarowski asked C Duques if she was comfortable with this proposal.

She said yes and she would defer to the experts on when the right time to plant would be.

Exhibit B- Formal request to work outside the approved time frame.

**MOTION** made by A Roussel to issue an order to restore confirming the planting plan submitted by Doane Engineering and the and letter requesting an extension and permission to work outside of the permitted work period of March 15- October 15, and for the project to be under the direction of the Land Use Official; **SECONDED** by E Cook; **Voting in Favor:** F Szufnarowski, M Furgueson, D Kirsch, E Cook, A Roussel; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0. **Discussion:** No discussion

## 7. Unfinished Business/Action Items

- **IWWC Application No. 22-11 20 River Road, Essex.** Proposal to construct a barn, restore and rejuvenate the pond, and construct an inground swimming pool along with re-grading the lawn all which is located within the 100-foot upland review area. *Applicant/Owner: Matthew and Jean Walston* (Received August 9, Public hearing opened September 13, 2022, Continued from September 13, 2022)

F Szufnarowski commented that expert J Jacobsen had said they had addressed all concerns

**MOTION** made by M Furgueson 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 inlands 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 15<sup>th</sup> and October 15<sup>th</sup> of the year of initiation.

2. Should the applicant determine that the permitted activity will not be completed between March 15<sup>th</sup> and October 15<sup>th</sup> of the year of initiation, the applicant agrees to appear before the Commission prior to October 15<sup>th</sup> 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

**SECONDED** by E Cook; **Voting in Favor:** F Szufnarowski, M Furgueson, D Kirsch, E Cook, A Roussel; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0. **Discussion:** No discussion

- **IWWC Application No. 22-17 25 and 27 Industrial Park Road, Centerbrook.** Proposal to construct a 14 foot wide access drive with culvert and crushed stone storage area for empty and clean trash/recycle containers and roll off dumpsters. *Applicant: Lara Luciani*  
*Owner: All Waste Incorporated c/o Russ Lallier (Received September 13, 2022)*

J Wren spoke to the Commission about the application. The application was received last month, and no changes have been made since. Highlighted in yellow is the intermittent watercourse. He spoke to R Snarski and the watercourse is clearly man made.

The first picture is of the ditch with exposed roots that was clearly excavated. There is leaf litter and not a lot of erosion. R Snarski evaluated the notes on the plan and the wetland flags are labeled IWC not wetlands soil because it is an intermittent watercourse.

To the west there is a driveway that belongs to a landscape contractor. There is a 24 inch plastic pipe under the driveway and at the other corner of the property there is a 30 inch concrete pipe. Last 2 pictures are of the existing culverts. It flows for quite a distance under the parking lot and into the pond. They are proposing a 30 inch pipe to match.

There is a 14-foot access driveway to get to the back property. The south end is in Industrial Zone and the north end is in Commercial Zone. All of this property is in the Industrial Zone. The blue dashed line on the plan is 100 feet from the intermittent watercourse. The proposal is to create an area to store clean plastic roll off containers.

Generally, the area is wooded to lightly wooded. Instead of asphalt he advised something that was impervious. The carts are cleaned before they are stored (unsure of process used). Since we do pitch slightly there should be little to no runoff. There is a rain garden designed to capture one inch of runoff as if the area were paved (clean crushed stone). There will be no parking or storage of vehicles. This will be for occasionally storing rolloffs that were full, if it was at the end of the day, but would get rid of them right away the next day.

A Roussel asked about having conditions for what is stored there and when the permit expires do the conditions expire?

S Rutkowska said that once a permit expires the conditions do not expire.

A Roussel asked about a condition that any full or partial containers be covered and stored no longer than 72 hours (over weekend).

R Doane recommends installing water quality basin at the low point of the existing parking lot (northeast corner) as well as plantings along both sides of the watercourse (protective measure) south and north side of the watercourse (native species).

F Szufnarowski asked if they should go up to 36 inch culvert.

R Doane said that one of the underlying problems is the outlet of the pond. The outlet is controlled by 3 telephone poles that were installed in the 70s. They were put in by the then IWWC to maintain the water elevation in the pond. He is prepared to go in and remove 1 or 2 of the telephone poles to lower the water level of the pond. It backs up all the way to the cemetery and to the pond behind the school.

F Szufnarowski commented that putting in a 36" culvert we would be ahead of the game and that they wouldn't have to come back in the future.

R Doane said that the tail water condition is backing things up.

J Wren said that the north parcel is about 6 acres. Proposed developed area is  $\frac{3}{4}$  of an acre. Remaining area would remain in its current condition. He said the rain garden is a water quality basin to receive runoff. It is sized for if the area was paved although is not proposed to be paved at this time.

What kind of maintenance does the rain garden require?

J Wren said that it does not require a lot of maintenance too. As long as they don't get filled or overgrown with woody invasives. There would need to be removal of invasives and annual maintenance.

A Roussel commented about how covering construction debris is essential. It isn't just construction debris it is trash from construction workers homes etc..

C Duques said she had received an email from Joel Marzi, resident, with concerns about the pond and higher than normal water levels over the year. Requesting a public hearing and site walk

Tim Collins of 60 Main Street Centerbrook asked if there was a permit for trees cut on the property.

F Szufnarowski said they did not know.



T Collins said the trees have been cut for about 2 years (Abutting resident at 60 main Street Centerbrook).

A Roussel commented that they might want a Cease and Desist Order with a more formal planting area.

T Collins said that there were trees freshly cut recently with logs still there. He pointed out on the drawing.

T Collins also asked about the process for cleaning the rolloffs. Are they cleaned enough that everything is removed? He also said that dumpsters covered if it rains could still leak into the waterway.

A Roussel recommends that C Duques and R Doane go out and inspect the site. Does still need to go to planning and zoning for a special exception because of the proposed use?

A Roussel said that what is troubling isn't the plan, it is what is going onto the lot and being potentially stored there. Occasional can become frequent. What triggered this push back is the trees being cut in the area.

F Szufnarowski commented about having a site walk and information about how the containers are cleaned (how thoroughly they are cleaned)

**MOTION** to continue Application 22-17 25 and 27 Industrial Park Road, Centerbrook at the November 10, 2022 meeting; **SECONDED** by E Cook; **Voting in Favor:** F Szufnarowski, M Furgueson, D Kirsch, E Cook, A Roussel; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0. **Discussion:** No discussion

- **Cease and Desist/ Corrective Order 20 River Road, Essex.**

Action taken noted above

## **8. Receipt of Applications/New Business**

None

## **9. Section 12 Action by Duly Authorized Agent**

None

## **10. Other Business**

- **Discussion on enforcement fees**

Tabled

- **Notice of Violations- 13 Mill Road, Essex**

C Duques that at 13 Mill Road there were trees cut down without a permit. At least one tree and vegetation in the wetlands and 3 trees within the upland review area. She and R Doane had visited the property owner and let them know it was a regulated activity that needed a

permit prior to doing the work. They had piled up the cut trees initially and since removed them from where they were piled. R Doane was at the site yesterday. C Duques and R Doane decided on a Noticed of Violation because the activity had stopped. She said the opportunity for planting really isn't there, and they should just let the area regrow. The property owners had acknowledged what they had done was not permitted. They did say that they cut vegetation down to the water so that they could see the water.

R Doane said that they had used a vehicle to remove the trees. The site is in a condition where it needs to be left alone. The applicant hired Attorney Chris Smith. The owner has been made aware that a wetlands application and permit is needed for any additional work.

## 11. Correspondence and Invoices

None

## 12. Reports

- **Wetlands Official**
  - **Update on Open Permits**

Nothing to report

- **Chairperson**

Nothing to report

## 13. Executive Session

**MOTION** made by D Kirsch to go into Executive Session at 11:17 **SECONDED** by M Furgueson; **Voting in Favor:** F Szufnarowski, M Furgueson, E Cook, A Roussel, and D Kirsch; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0. **Discussion:** No Discussion

**MOTION** made by M Furgueson to end the Executive Session at 11:44 PM; **SECONDED** by D Kirsch; **Voting in Favor:** F Szufnarowski, M Furgueson, D Kirsch, E Cook, A Roussel; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0. **Discussion:** No Discussion

## 14. Adjournment

**MOTION** made by D Kirsch to adjourn the meeting at 11:46 PM until the next regularly scheduled EIWWC meeting to be held on Thursday November 10, 2022 at the Essex Town Hall, 29 West Avenue (alternate location via teleconference); **SECONDED** by A Roussel; **Voting in Favor:** F Szufnarowski, M Furgueson, D Kirsch, E Cook, A Roussel; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0. **Discussion:** No discussion

Respectfully Submitted,



Recording Clerk