



TOWN OF ESSEX
Inland Wetlands and Watercourses Commission

Executive Committee
Michael Furgueson, Chairman
David Kirsch, Vice Chair

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Regular Members
Ernest Cook
Andre Roussel
Fred Szufnarowski

Alternate Members
Noreen Brennan-Rowe
Carolyn Field

February 14, 2023 Regular Meeting Minutes

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

IWWC Chairman Michael Furgueson welcomed members of the public to the February 14, 2023 IWWC meeting. The IWWC members and attendees announced themselves. Attendees from the public were asked to please identify themselves for the record prior to making any comments.

| Attending Members: | Absent Members: |
|---|------------------------|
| Michael Furgueson, Chairman | Andre Roussel |
| David Kirsch, Vice Chair | |
| Ernest Cook | |
| Fred Szufnarowski (Via Zoom) | |
| Noreen Brennan-Rowe, Alternate (Via Zoom) | |
| Carolyn Field, Alternate | |

| Staff: | |
|---------------|--|
| | Danielle Schumacher, Recording Clerk |
| | Carey Duques, Land Use Official |
| | Sylvia Rutkowska, Commission Attorney (Via Zoom) |

| Audience: | |
|------------------|--|
| | Aron Schumacher, PE- Doane Engineering |
| | Mike Piagentini- 49 Plains Road Applicant |
| | James Clark- 42 Plains Road, Essex |
| | Geoffrey Jacobson- Nathan L. Jacobson & Associates (Commission Consulting Engineer) |
| | Gary Bombaci |
| | Robert Vitari |

1. Call to Order and Seating of Members

The meeting was called to order at 7:02 PM by Chairman Michael Furgueson.

2. Approval of Minutes

- **January 10, 2023 Regular Meeting Minutes**

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

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

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

3. Public Comment

M Furgueson noted that this is an opportunity for the public to make general comments. No comments received.

4. Public Hearings

- **IWWC Application No. 22-20 49 Plains Road, Essex-** Proposal to construct a 10,125 sq ft building and associated site improvements, which include parking lot, sanitary system, site utilities, storm drainage, etc. *Applicant: Robert Piagentini Owner: Piage Management Corp* (Received November 10, 2022; Public hearing opened December 13, 2022; Public hearing continued to January 10, 2023 and continued to February 14, 2023)

Members seated were M Furgueson, D Kirsch, E Cook, N Brennan-Rowe (Alternate) and C Field (Alternate).

Owner Mike Piagentini was present for the meeting along with Professional Engineer Aron Schumacher of Doane Engineering.

A Schumacher distributed revised materials to Commission members and C Duques distributed a copy of G Jacobson's engineering report dated February 10th 2023.

A Schumacher started by saying there is a revised section with minor changes. They had revised the engineering report once they had received G Jacobson's comments. He said they have a letter from R Snarski regarding the wetlands.

He went on to say that they are matching the total stormwater flow coming off of the property and have done additional soil testing (infiltration testing) to determine the infiltration rates. The rear of the site has been re-designed using shallower depth plastic chambers with no liner.

The plan now calls for the removal of a layer of material that is not permeable so as to increase infiltration rates. He said that they are being very conservative with their calculations.

At the front of the site they have enlarged the storm water retention basin and redesigned the wetland area. They propose to construct a berm in the middle of the existing wetland. The disturbance associated would be 2,450 sq ft of direct impact to the wetland. This would be roughly doubling the size of the front basin. He said that R Snarski reported that the value of the wetland is for storm water retention and that there was little value for wildlife or plants. He recommended plantings along the berm and in the wetland.

The applicant is matching all 24 hour flows off the site and there is a significant reduction in peak rates for all storms.

They met with the drainage engineer from DOT and DOT is planning to clean out the inlet to the pipe under Plains Road/Rt 153. Any pipes extending from the 18-inch pipe are not the responsibility of the DOT.

J Clark of 42 Plains Road said there has been a lot of hard work and there is a lot of difference from the last time. He requested 30 days to review the new numbers with his Engineer.

M Furgueson commented that the Town had hired G Jacobson as a 3rd party Engineer to review the project and that this would be an unusual request.

G Jacobson confirmed that he had reviewed the applicant's calculations and agreed with them and that the flow will not increase in volume because of this construction. The peak flows are proposed to be reduced from what they are currently.

C Duques said that it would be up to applicant to grant the extension.

J Clark said that he has been in this position before and he was told the same things in the past but has seen the water increase.

R Vitari spoke to the Commission and said that he wishes he had seen the revised plans sooner. He is worried about horizontal water and said that it is only fair that he has time to look over the numbers independently.

A Schumacher said that they would not be willing to grant an extension. He said that the calculations would stay the same and concerns could be brought to the next Planning and Zoning Commission meeting where a public hearing is open.

Owner M Piagentini spoke and said that they have had many revisions and this project is three years in the making. He said that the longer they delay the project the more it hurts his business.

C Duques said that the Planning and Zoning meeting is 3 weeks away. People are able to provide feedback at the meeting and Planning and Zoning has purview over the entire site.

MOTION made by C Field to close the public hearing for application 22-20 49 Plains Road, Essex; **SECONDED** by E Cook; **Voting in Favor:** M Furgueson, E Cook, D Kirsch, C Field and F Szufnarowski; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0; **Discussion:** No Discussion

5. **Unfinished Business/Action Items**

- **IWWC Application No. 22-20 49 Plains Road, Essex-** Proposal to construct a 10,125 sq ft building and associated site improvements, which include parking lot, sanitary system, site utilities, storm drainage, etc. *Applicant: Robert Piagentini Owner: Piage Management Corp* (Received November 10, 2022; Public hearing opened December 13, 2022; Public hearing continued to January 10, 2023 and continued to February 14, 2023)

Members seated are M Furgueson, D Kirsch, E Cook, N Brennan-Rowe (Alternate) and C Field (Alternate).

M Furgueson opened the floor to Commission members to comment.

D Kirsch said he appreciates the work that has been done to eliminate the increase in runoff.

M Furgueson said that both the applicant and the public have been real contributors to this process and that he appreciates them expressing their concerns. The applicant and the IWWC have looked at alternatives in a very thoughtful and respectful way. One thing that the IWWC has to balance is preserving functions and values of the wetlands but also allowing for reasonable economic development. He thinks that the proposed work has achieved that balance.

MOTION made by D Kirsch based on the information presented in this application, the accompanying documents in the record, and on the testimony given at this meeting, the Commission finds that the proposed activity is a regulated activity not involving significant or major effect upon the inland wetlands or watercourse which occur on the

property as defined in Section 2.2., and that no reasonable or prudent alternative exists to the proposed plans.

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

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

SECONDED by E Cook; **Voting in Favor:** M Furgueson, E Cook, D Kirsch, C Field and N Brennan-Rowe; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0; **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; Public hearing opened October 11, 2022; Public hearing continued to November 10, 2022 and continued to December 13, 2022; Closed public hearing on December 13, 2022; Continued on January 10, 2023 to February 14, 2023)

Members seated were M Furgueson, D Kirsch, E Cook, F Szufnarowski, and C Field (Alternate).

S Rutkowska said that she had attempted to communicate with the applicant's Attorney on three separate occasions. She received an email moments before this evening's meeting saying that the lack of response was due to the Attorney's schedule.

M Furgueson confirmed with S Rutkowska that the applicant is not requesting an extension or withdrawing the application. The Commission has discussed options, in prior meetings, as to what it is minded to do. The commission has proposed a detailed stipulated judgement to resolved the litigation and the defendant's counsel has had for over a week a copy of such.

C Duques distributed wording with respect to the stipulated judgement.

F Szufnarowski commented that this matter has extended over three years. The commission has given the applicant every opportunity to work with the commission but there has been no progress. Given the statutory requirements the Commission needs to move on this.

MOTION made by D Kirsch based on the documents presented, public hearings held, the site inspection and on the testimony given at meetings on September 28, 2022, October 11, 2022, November 10, 2022, and December 13, 2022, the Commission finds that the permitted activity, as stated above, is a regulated activity not involving significant or major effect upon the inlands wetlands or watercourse which occur on the property as defined in Section 2.2 (j), and that no reasonable or prudent alternative exists to the now approved upper patio/terrace, as cited above.

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

1. The property owner shall remove all aspects of the lower patio including but not limited to the lower patio/terrace, lower retaining walls, all associated steps, walkways, boulders, conduit and other unpermitted infrastructure, excluding the upper patio.
2. The disturbed area shall be restored to its original grade; all grading should be conducted in a fashion so as to blend the area to match the surrounding topography aiming to recreate pre-construction conditions. The area should be seeded and given its proximity to the wetlands, stabilized with bio-degradable erosion control matting anchored into the slope. The use of photodegradable and/or welded plastic erosion controls is not permitted.
3. Hydroseed all areas of exposed soil within the regulated area, including but not limited to mulched areas near the walkway and the location where the Hardscapes Project features are to be removed, with New England Conservation/Wildlife Mix, New England Wildflower Mix and/or New England Showy Wildflower Mix from New England Wetland Plants or a comparable mix from a reputable seed distributor such as Ernst seeds.
4. Monitor exposed and/or restored areas in order to prevent establishment by non-native, invasive vegetation such as Japanese stiltgrass and Asiatic bittersweet and remove such invasive vegetation by hand for a period of three years.

5. Provide a report to the Essex Inland Wetlands and Watercourse Commission (EIWWC) at the end of each calendar year, for a period of three years, from an environmental professional, documenting invasive species monitoring and removal activities.
6. Cease any and all activities that may disrupt native vegetation within at least 20 feet of the shoreline so that the area can naturalize and the wetland buffer functions and values can be restored.
7. Install plantings as shown on the Defendants' site plan, prepared by Indigo Land Design, LLC, dated September 27, 2022, revised to October 6, 2022, or approved by the Wetlands Enforcement Officer (WEO).
8. Complete further mitigation for the dredging of Birch Mill Pond as follows:
 - a. Retain a licensed qualified aquatic herbicide application company, certified by the Connecticut Department of Energy and Environmental Protection and approved by the WEO, to treat for aquatic invasive vegetation within Birch Mill Pond for one season, including paying for any and all associated costs for any required permits. "Invasives", "invasive vegetation" and "invasive species" shall include any "invasive species" as defined or enumerated by the Connecticut Department of Energy and Environmental Protection.
 - b. Retain a qualified professional limnologist or other specialist, approved by the WEO, to develop a Pond Management Plan that can be used to guide management decisions for the Pond and conduct a bathymetric survey of the Pond. The Plan and Survey shall be provided to the WEO and filed in the Essex Land Use Office
9. Not conduct any further activity within the regulated area on the Property without benefit of an EIWWC permit, including but not limited to:
 - a. Any tree removal, including but not limited to clearcutting;
 - b. Herbicide application;
 - c. Excavation;
 - d. Filling;
 - e. Removal and/or deposit of material into the wetlands or regulated area;
 - f. Removal of large stones and/or boulders from the regulated area;
 - g. Dredging of and/or removal of material from Birch Mill Pond;
 - h. Deposition of material into Birch Mill Pond; and
 - i. Removal/blowing of leaves in the regulated area.
10. Obtain the necessary written authorizations from the Southwinds Association (the "Association") for removal and/or restoration activities on the Association property and provide the WEO evidence of such authorizations.
11. Allow unimpeded access to the WEO or his agent(s) for inspection and confirmation of compliance.
12. Conditions of Removal/Restoration- the property owners shall abide by the following additional conditions of this permit:
 - a. No removal and/or restoration authorized herein shall occur before March 15, 2023 absent prior written approval from the EIWWC.
 - b. All removal and restoration authorized herein shall be completed by August 1, 2023.
 - c. All removal and/or restoration authorized herein shall be performed by a qualified, licensed and insured contractor, familiar with proper sedimentation and erosion control measures, construction best management

- practices, site stabilization and restoration methods; contractor to be approved by the WEO prior to work commencing.
- d. All work authorized herein shall be done in accordance with the protection measures presented in NDDDB Determination 202104876.
 - e. All silt fence/exclusionary barriers shall be toed into the slope a minimum of 6 inches so as to prohibit access by state-listed turtles or other sensitive species, into the work area.
 - f. Silt fence shall be placed upgradient, as far from the wetland boundary as possible. The use of secondary erosion control measures such as straw wattles and erosion control blankets shall also be considered, in consultation with the WEO.
 - g. All silt fences shall be removed once vegetation is established, as determined by the WEO.
 - h. The advice and direction of the WEO with regard to any field changes she/he deems necessary or may require for the protection of the inland wetlands and water course during the process shall be followed.
 - i. The Commission, through its Enforcement Officer, shall be notified in writing upon the initiation of the authorized activity and again upon completion of these activities.
 - j. All work authorized herein shall be, including but not limited to removal of the hardscapes, shall be done by the least invasive measures possible so as to cause the least disturbance to the regulated area; removal shall be by hand truck where possible. The WEO shall that the sole authority to limit the method of removal.
 - k. The WEO shall be notified immediately if any questions and/or problems arise at any stage of the authorized work.
13. The property owners agree to pay the outstanding fees associated with the Wetlands Application in the total amount of \$3,170, itemized as follows:
 - a. \$10 Application Fee;
 - b. \$310 Public Hearing Fee;
 - c. \$2,850 Third Party Review Cost.
 14. The property owners shall produce a bond or surety to the WEO/EIWWC in the amount of \$75,000 by March 1, 2023 to ensure the completion of the above referenced removal and restoration.

SECONDED by E Cook; **Voting in Favor:** M Furgueson, E Cook, D Kirsch, C Field and F Szufnarowski; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0; **Discussion:** No Discussion

6. Receipt of Applications/New Business

- **IWWC Application No. 23-1 83 Westbrook Road, Centerbrook-** Modification to a prior approval under IWWC Application No 19-1 for a new well location and additional reserve gravel parking area to be located within the 100-foot upland review area.
Applicant/Owner: E.S.T. Irrevocable Trust

C Duques said that she included the meeting minutes and prior approval in the packets. This was originally 75 Westbrook Road (the same approval from 2019). It is a request to construct a 20,000 square foot building and they are proposing to change the location of the well. Previously it was too close to the building and is being proposed 50 feet from the

wetlands. They are also proposing a parking area in the upland review area (gravel lot for reserve parking).

A Schumacher shared the plans for the project. There was a recommendation from the zoning commission to add timber guide rails to prevent people from going into the wooded wetland area. The applicant is proposing the addition of 7,000 square feet of gravel and 28,000 square feet of asphalt.

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

7. Section 12 Action by Duly Authorized Agent

- **IWWC Application No. 22-23 20 River Road, Essex.** Proposal to raise the height of the existing house to protect it from flooding. Equipment storage and access to the house will be located within the 100-foot upland review area. *Applicant/Owner: Matthew and Jean Walston* **Approved by Agent**

Issued approval for raising the height of the house.

- **IWWC Application No. 22-22 29 Park Road, Ivoryton.** Proposal to install a 12' X 16' shed on crushed stone within the 100-foot upland review area. *Applicant/Owner: Joseph and Lauren Burns* **Approved by Agent**

MOTION made by E Cook that the Essex Inland Wetlands and Watercourses Commission concurs with the decision of the wetlands agent with regard to Applications 22-22 and 22-23; **SECONDED** by C Field; **Voting in Favor:** M Furgueson, E Cook, D Kirsch, C Field and F Szufnarowski; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0; **Discussion:** No Discussion

8. Other Business

- **Discussion on enforcement fees**

M Furgueson said that he, C Duques, and S Rutkowska had met with N Needleman last week. They are proposing to add a corrective action fee for matters that involve a cease and desist or cease and correct action. N Needleman was supportive of the new proposed fees. They are bringing this to the Board of Selectmen tomorrow. All other application fees will remain the same.

9. Correspondence and Invoices

None

10. Reports:

- **Wetlands Official**
 - **Update on Open Permits**
None
- **Chairperson**
 - **Discussion regarding participation by Alternate Members**

Sylvia had previously distributed a case that involved a Chester ZBA decision. There was a short discussion regarding when alternates may participate and when they may not participate in applications before the commission.

11. Update from Attorney Regarding Pending Litigation

S Rutkowska said that March 7 and 8 is when the trial on the 32 Birch Mill Trail matter is scheduled.

12. Adjournment

MOTION made by E Cook to adjourn the meeting at 8:36 PM until the next regularly scheduled IWWC meeting to be held on Tuesday March 14, 2023 at the Essex Town Hall (alternate location via teleconference); **SECONDED** M Furgueson; **Voting in Favor:** M Furgueson, E Cook, D Kirsch, C Field and F Szufnarowski; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0; **Discussion:** No Discussion

Respectfully Submitted,

A handwritten signature in cursive script that reads "Danielle Schumacher".

Recording Clerk