



TOWN OF ESSEX
Inland Wetlands and Watercourses Commission

Officers
Michael Furgueson, Chairman
David Kirsch, Vice Chair

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Regular Members
Ernest Cook
Noreen Brennan-Rowe
Carolyn Field
Alternate Members
Lisa Krall
Kathleen Sullivan Sealey

October 10, 2023 Regular Meeting Minutes

Attending Members:	Absent Members:
Michael Furgueson, Chairman	Noreen Brennan-Rowe
David Kirsch, Vice Chairman	
Ernest Cook	
Carolyn Field	
Lisa Krall, Alternate	
Kathleen Sullivan Sealey, Alternate	

Staff:	
	Danielle Schumacher, Recording Clerk
	Carey Duques, Land Use Official
	Gregory Harris, Arch Law Group, Alternate Commission Attorney

Audience:	
	Frank Perrotti- 46 Main Street Ivoryton
	Tom Sgroi- 46 Main Street Ivoryton Engineer
	James Sipperly- 46 Main Street Wetland Scientist
	Todd Rossel- 21 Heron Pond Road Applicant
	Michael D’Occhio- 1 Johnnycake Lane Ivoryton
	Reinhard Von Hollander, 21 Heron Pond Road Applicant

1. Call to Order and Seating of Members

The meeting was called to order at 7:00 PM by Chairman Michael Furgueson.

Seated for the meeting were Chairman Michael Furgueson, Vice Chairman David Kirsch, Ernest Cook, Carolyn Field, and Lisa Krall (alternate).

2. Approval of Minutes

a. September 12, 2023 Regular Meeting Minutes

MOTION made by E Cook to approve the minutes from the September 12, 2023 regular meeting, as submitted; **SECONDED** by L Krall; **Voting in Favor: M**

Furgueson, D Kirsch, E Cook, C Field, L Krall; Opposed: None; **Abstaining:** None; **Approved:** 5/0/0; **Discussion:** No Discussion

3. Public Comment

No public comment.

4. Public Hearings

a. Cease and Desist Show Cause Hearing 46 Main Street and 1 Johnnycake

Lane, Ivoryton Cutting of vegetation in a wetlands and filling of a stream with soil and removal of vegetation within 100 feet of a wetlands without a permit. *Property Owner: Spartan Associates, LLC and Michael and Kalyn D'Occhio (Continued from June 13, July 11, August 8, and September 12, 2023)*

Property owner Frank Perotti gave an update. He started by saying that they had submitted the remediation plan according to the deadline set forth by the commission. It includes the soil scientist report and survey map. It also outlines several steps based on information that was taken from previous meetings along with advice from the soil scientist and the Connecticut Invasive Species Council.

Mr. Perotti went on to summarize the steps for remediation:

- Start by going back into the area and carefully remove any debris and overgrowth so that they can see what they are working with.
- Line the watercourse with native stone from the property, which will help with the erosion control.
- Install a coir log barrier behind the stones along the watercourse. The coir logs are biodegradable and will also help with sedimentation control. They sit on top of the ground as opposed to digging in a sedimentation fence that would need to be removed later.
- Plant native shrubs, wildflowers, and grass in the area.
- At the same time invasive species would be treated with Glyphosate, as recommended by the Connecticut Invasive Species council. The Glyphosate would be applied by a licensed company in the months of August, September, and October. After that, they would continue to apply the herbicide at times when it is deemed necessary.

He said that there is a misunderstanding about the stream on the property and that it was never touched by them. It is outside the area that they are working in. There is no need or plan to disrupt it.

M Furgueson asked if it is an appropriate time to do the plantings now or in the Spring.

C Duques asked if the plantings can be done at the same time as the invasive species are being treated.

Mr. Perotti answered that this is the best time of year to begin treating the invasives because they are in a post emergent state.

E Cook commented that nurseries usually recommend doing plantings at this time of year.

James Sipperly, Wetland and Soil Scientist representing the property owner, spoke to the commission. He said that there is one area where Richard Snarski's line is a bit wider than his (at the most southern point). He said that R Snarski came out in 2006 and that there can be some differences in delineation due to the time of year, vegetation that you cannot walk through, and hydrology.

J Sipperly said that he was able place his flags more accurately because the area had been cleared.

L Krall asked about his test hole log sheet and J Sipperly responded that he did not keep one and that no one keeps detailed logs like that. He went on to say that R Snarski is more conservative.

J Sipperly said that they will not be grading, they are just smoothing out any ruts from the equipment that was in the area. He also commented that Fall is the best time to plant trees and shrubs and that grass is a cool weather crop.

L Krall asked what wetlands functions would they be restoring and how?

J Sipperly responded that they would be restoring groundwater recharge and discharge, sediment stabilization, nutrient removal and transformation, product export, and wildlife diversity and habitat. The property owner did not alter the stream itself and did not grade any of the wetland areas. The functions are going to continue as they were because nothing was changed.

L Krall asked where the large boulders had come from.

F Perotti said that they had come from the edge of the stream, all the way up onto the property. The backhoe operator was removing the vegetation and moved the boulders as well. They are going to use them to make everything stable.

Tom Sgroi, the engineer representing the applicant, spoke to the commission. He said that the goal was to come up with a restoration plan that was satisfactory for the town. It is simple because they are trying to make it better than it originally was. Based on what J Sipperly said, the area was very overgrown. They are going to plant native species and try to make the area function for the betterment of the environment.

T Sgroi went on to explain the choice of coir logs for sedimentation control. He said that they would work well in the situation because they are biodegradable. They are staked in. As plants are beginning to establish, anything eroding will stop at the logs.

The seed mix will blend into the area and grow in over time. If a sedimentation fence was used it would need to be pulled out, which would disturb the wetland again.

M Furgueson asked if the commission is satisfied with the delineation of the wetland given the difference between this and the prior report.

D Kirsch said that he is not convinced that the stream hasn't been changed. The wetlands enforcement officer should keep an eye on it over the next couple of months and make sure it is restored to how it was.

M Furgueson said that the commission is entitled to hire their own soil scientist to take a look at the soil and where the wetlands are flagged.

L Krall said that soil characteristics are very slow to change. The soil would not change just because there was a change in runoff. She said if you are going to reduce the size of a wetland you should give a log of the soils along with a record of your flags.

J Sipperly said that he used the criteria established by the state statute and he has never seen such a request.

MOTION made by C Field to finalize the Cease and Desist Order for **46 Main Street and 1 Johnnycake Lane, Ivoryton**, originally dated June 7, 2023, as modified on June 13 2023, and September 10, 2023 and further modified on October 10, 2023 to include conditions outlined in the remediation plan and for compliance with the plan to the reasonable satisfaction of the Wetlands Enforcement Officer (WEO) including a three year monitoring plan of treatment and removal of the invasive species and monitoring by the WEO, and payment of two times the application fee; **SECONDED** by E Cook; **Voting in Favor:** M Furgueson, D Kirsch, E Cook, C Field, L Krall; **Opposed:** None; **Abstaining:** None; **Approved:** 5/0/0; **Discussion:** No Discussion

5. Unfinished Business/Action Items

- a. **Cease and Desist Show Cause Hearing 46 Main Street and 1 Johnnycake Lane, Ivoryton** Cutting of vegetation in a wetlands and filling of a stream with soil and removal of vegetation within 100 foot of a wetlands without a permit. *Property Owner: Spartan Associates, LLC and Michael and Kalyn D'Occhio (Continued from June 13, July 11, August 8, and September 12 2023)*

Discussed above

- b. **IWWC Modification of Application 23-15 21 Heron Pond Road, Essex** tree removal and construction of a single-family home and associated septic system within the 100-foot upland review area. *Property owner: Todd and Jennifer Rossel; Applicant: Heron Homes/VH LLC (Received September 12, 2023)*

Reinhard Von Hollander was in attendance to represent the applicant. He said he is there for a simple application. He was the developer of this subdivision in 2006. They are looking to install a septic system within the 100 foot upland review area.

C Duques said that the setback shown on the plan is 20 feet when the requirement now is 40 feet.

Mr. Von Hollander said that this was originally approved as an open space subdivision in 2006 and it would be rural residential today. There is no work being proposed in the wetlands.

M Furgueson said that has long as there is no change in the location of the septic system then the commission could approve this as it is submitted. If there were any changes C Duques would have to review it and determine whether it needed to come back.

MOTION made by L Krall based on the information presented in **IWWC Application 23-15 21 Heron Pond Road, Essex**, 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.
2. Work will be allowed during the no work period of October 15th -March 15th.
3. The applicant agrees to follow the advice and direction of the Town of Essex Enforcement Officer with regards 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. Construction will be completed as outlined in the plans submitted to the commission and if there are changes a referral will be made back to the IWWC.
6. Proper erosion and sedimentation controls will be used as advised by the Wetlands Enforcement Officer.

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

6. Receipt of Applications/New Business

C Duques said that she has a referral per Section 140L of the zoning regulations. It would be a variance of Section 101E, work within the coastal jurisdiction. There is a proposal to install a pool and patio at 15 Novelty Lane. The Gateway commission is concerned about the view from the cove.

D Kirsch asked how they would backwash the pool.

K Sullivan-Sealy said that they should ask about pool care and recommend that it would be a salt ion pool. You do not need to backwash a saltwater pool.

7. Section 12 Action by Duly Authorized Agent

None

8. Other Business

a. Update on GIS wetlands mapping

No change

9. Correspondence and Invoices

None

10. Reports:

a. Wetlands Official

No updates

b. Update on Open Permits - Educational flyer

None

c. Chairperson

M Furgueson said that he had a brief conversation with S Rutkowska. He had asked about the pending litigation. The defendant brief is due the 1st of November and her response is due November 20th. She feels that the judge will rule quickly, potentially before thanksgiving.

11. Update from Attorney Regarding Pending Litigation

None

12. Adjournment

MOTION made by L Krall to adjourn the meeting at 9:09 PM; **SECONDED** by D Kirsch;

Voting in Favor: M Furgueson, D Kirsch, E Cook, C Field, L Krall; **Opposed:** None;

Abstaining: None; **Approved:** 5/0/0; **Discussion:** No Discussion

Respectfully Submitted,

Danielle Schumacher