

**MINUTES
CONSERVATION COMMISSION/
INLAND WETLANDS AGENCY
WATERTOWN, CONNECTICUT**

**PUBLIC HEARING
Proposed Amendments to
Inland Wetland and Watercourse Regulations**

Time: 7:00 P.M.
Date: Thursday, March 12, 2009
Place: Watertown High School Technology Center
324 French Street
Watertown, Connecticut

1. Call Hearing to Order

The Chairman called to order the public hearing at 7:00 pm

2. Roll Call

Vice Chairman, Mr. Donato Orsini executed the roll call.

Present: Chairman, Mr. Edwin Undercuffler
Vice Chairman, Mr. Donato Orsini
Mr. Michael Genovese
Mr. Joseph Polletta
Ms. Martha Sturgis
Alternate, Ms. Denise Russ

Absent: Alternate, Mr. Michael Brown
Secretary, Mr. Thomas Murphy
Mr. James Zawadzki

Also Present: Wetlands Enforcement Officer, Mr. Moosa Rafey
Town Engineer, Mr. Chuck Berger
Land Use Secretary, Mr. Chuck Bezio

The Chairman seated Alternate, Ms. Denise Russ for absent member Mr. James Zawadzki.

3. Hearing of Applications

The Chairman read the ground rules into the record. The Chairman read the legal notice into the record.

GROUND RULES
CONSERVATION COMMISSION INLAND/WETLAND AGENCY

1. The applicant or his representative will make his formal presentation to the Commission stating the proposed regulated activities, the wetland impacts, and the alternatives which were considered by the applicant.
2. All comments, discussion and observations shall be made through the Chairman after proper recognition by the Chairman. This is necessary to ensure that only one person at a time speaks on any issue, thus making it easier for everyone to understand and for clearer legal transcription.
3. All persons addressing the Commission shall begin by first clearly stating their name and address for the record. If necessary, the person may be asked to spell his name for the record.
4. Following the presentation of the application, the Conservation Commission Inland Wetland Agency will ask specific questions of the applicant.
5. After the Commission has asked its questions of the applicant, I shall then allow any members of the public who wishes to speak either in favor of this application or against it to address the Commission.
6. I shall then allow the applicant to respond to the comments of the members of the general public.
7. I shall then allow any members of the general public who wish to present any additional information or clarifying discussion to do so.
8. I shall then provide an opportunity for the applicant to respond to these additional remarks if he or his representative so wishes.
9. The Conservation Commission/Inland Wetland Agency has thirty-five days from the date the public hearing commences to complete the public hearing. The Commission may ask the applicant for a thirty-five day extension of the public hearing period if the Commission requires any additional information or wishes to schedule a site walk to observe the situation for themselves.
10. The Conservation Commission/Inland Wetland Agency has thirty-five days from the date when the Public Hearing is closed to render its decision.

Legal Notice

The Conservation Commission/Inland Wetlands Agency of the Town of Watertown pursuant to Section 14 of the Watertown Inland Wetlands and Watercourse Regulations and Section 22a-42a of the Connecticut General Statutes will hold a public hearing at 7:00PM on Thursday, March 12, 2008 at Watertown High School Technology Center 324 French Street, Watertown, CT to hear and possibly act on proposed amendments to the Inland Wetlands and Watercourses Regulations of the Town of Watertown, Connecticut. The Commission will amend the Inland Wetlands and Watercourses Regulations in accordance with changes in the Connecticut General Statutes and the State Department of Environmental Protection Model Regulations.

At this hearing interested persons and written communications will be heard. A copy of the regulations with proposed amendments is on file in the Planning and Zoning Office, 51 Depot Street, Suite 502, Watertown, CT. A copy of the revised regulations is also available for review in the Town Clerk Office, Watertown Library, and Oakville Library.

Dated at Watertown, CT this 26th day of February 2009

Dated at Watertown, CT this 5th day of March 2009

Tom Murphy, Secretary

Conservation Commission/ Inland Wetlands Agency

- A. An application by the Watertown Conservation Commission/ Inland Wetland Agency to amend the Inland Wetland and Watercourse Regulations of the Town of Watertown.**

Recess or adjourn the Public Hearing must be closed by April 16, 2009.

The entire Commission agreed that they have read the revised regulations. The Chairman explained that the amendments to the current regulations have been prepared from the DEP model regulations.

The Chairman read Section 2 page 5 titled “Regulated Activity” from regulations and noted these sections are proposed amendments.

Furthermore, any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging of storm water on the land within 100 feet measured horizontally from the boundary of any wetland or watercourse is a regulated activity.

The Agency may rule that other activity located within such upland review area or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity.

Mr. Polletta asked if this section is new and was wondering if it is just a recommendation or required and how it would affect existing building lots.

Mr. Rafey explained that if there is any activity within 100 feet the Commission has the jurisdiction to review. Mr. Rafey explained that this is the recommended upland review area by the DEP and is the minimum amount allowed. Mr. Rafey advised the Commission that they are one of the only town's that continue to have a 50' regulated area setback.

The Commission reviewed section 3 of the regulations.

Mr. Rafey noted that this section is regarding the wetlands map. Mr. Rafey reviewed the wetlands map with the Commission.

The Chairman noted that the Wetland's map is a guideline only and each applicant is required to hire a soil scientist.

The Commission unanimously agreed to get the exact language from Mr. Rafey and review this prior to making any decisions.

Mr. Rafey noted that section 7.11 has been added per the letter dated 10/14/08 from the DEP, Bureau of Water Protection and Land Reuse regarding the 2008 Legislation and Regulations Advisory.

The Chairman read the following section 7.11 from page 12 of the model regulations and noted that this is new.

7.11. For any permit application involving property subject to a conservation restriction or preservation restriction, the following shall apply:

- a. for purposes of this section, "conservation restriction" means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land described therein, including, but not limited to, the state or any political subdivision of the state, or in any order of taking such land whose purpose is to retain land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming, forest or open space use.

b. for purposes of this section, “preservation restriction” means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of land, including, but not limited to, the state or any political subdivision of the state, or in any order of taking of such land whose purpose is to preserve historically significant structures or sites.

c. no person shall file a permit application, other than for interior work in an existing building or for exterior work that does not expand or alter the footprint of an existing building, relating to property that is subject to a conservation restriction or a preservation restriction unless the applicant provides proof that the applicant has provided written notice of such application, by certified mail, return receipt requested, to the party holding such restriction not later than sixty days prior to the filing of the permit application.

d. in lieu of such notice pursuant to subsection 7.11.c, the applicant may submit a letter from the holder of such restriction or from the holder’s authorized agent, verifying that the application is in compliance with the terms of the restriction.

The Commission reviewed section 10, page 15 titled Consideration for Decision.

Mr. Rafey asked the Commission if the Fire Marshal and Police Chief should be notified.

The Commission unanimously agreed that the Fire marshal and Police Chief does not need to be notified.

The Chairman read Section 10.9, from page 17 of the regulations and noted that this is new.

In the case of an application where the applicant fails to comply with the provisions of subsection 7.11c or 7.11d of these regulations, the party holding the conservation or preservation restriction may, not later than fifteen (15) days after receipt of actual notice of permit approval, file an appeal with the Conservation Commission / Inland Wetland Agency, subject to the rules and regulations of such agency relating to appeal. The Conservation Commission / Inland Wetland Agency shall reverse the permit approval upon a finding that the requested land use violates the terms of such restriction.

The Chairman read Section 12 from page 19 of the model regulations and noted that this is new.

The Agency may delegate to its duly authorized agent the authority to approve or extend a permit for an activity that is not located in a wetland or watercourse when such agent finds that the conduct of such activity would result in no greater than a minimal impact on any wetlands or watercourses provided such agent has completed the comprehensive training program developed by the Commissioner of Environmental Protection pursuant to section 22a-39 of the Connecticut General Statutes. Requests for such approval shall be made on a form provided by the Agency and shall contain the information listed under Section 7.5 of these regulations and any other information the Agency may reasonably require. Notwithstanding the provisions for receipt and processing applications prescribed in Sections 8, 9 and 11 of these regulations, such agent may approve or extend such an activity at any time. The Agent shall notify the Agency of any such approvals at the next scheduled meeting.

Mr. Rafey advised the Commission that the applicant would be responsible for filing the legal notice. Mr. Rafey explained the option of setting different zones within the regulated area.

Ms. Sturgis noted that she would prefer to leave it alone.

Mr. Polletta noted that as long as the Commission receives a report of the Agent's actions he also does not have any issues either.

The Commission discussed Section 19: Fees and agreed that they need to review the current fee schedule.

Mr. Rafey reminded the Commission that a recommendation for fees changes would need to be made to Town Council, since it is in their authority to modify the Town Ordinance concerning fees. Mr. Rafey advised the Commission that he will revise page 1 to remove Tony DiBona and add Martha Sturgis to Regular Members.

The Commission unanimously agreed to add an effective date and a revision date to the regulations.

The Chairman asked if the appendix were needed.

Mr. Rafey explained that the appendix attached will assist the applicant on what may be expected of them during the application review process. Mr. Rafey noted that he had hand delivered the letter to Town Manager Chuck Frigon regarding the Ordinance to provide for citation enforcement of violation of the Wetland Regulations.

Public:

Planning and Zoning Commission Chairman Dave Minnich was present and read the following Memorandum into the record.

Memorandum

To: Conservation Commission / Inland Wetlands Agency
From: Planning and Zoning Commission
Date: March 12, 2009
Subject: Comments for March 12, 2009 Agency Public Hearing Draft of Inland Wetlands and Watercourses Regulations

The Planning and Zoning Commission at its March 4, 2009 meeting reviewed a draft of your Agency's proposed regulations. The Commission makes the following comments for the Agency's March 12, 2009 public hearing.

1. The Commission is pleased that "Regulated Activity" as is proposed to be defined in section 2.1 has a 100 foot boundary measured from any wetland or watercourse. This boundary conforms to the Plan of Conservation and Development, which in section 10.1 has a recommendation to the Agency as a policy change that reads: "Encourage the Inland Wetlands Commission to adopt the DEP model regulations for upland review areas, which would increase from 50 feet to 100 feet the area for review from wetlands and watercourses." This 100 foot area will significantly improve the scope and quality of Agency review.

2. The Commission requests the Agency amend section 7.2 by adding, "The Planning and Zoning Commission encourages, but does not require, Inland Wetlands Agency permits be approved prior to formal application to the Planning and Zoning Commission."

Mr. Minnich noted that by law they can not require this of the applicant.

3. Amend section 7.5.j by adding: "The applicant is encouraged to permit the public to accompany the Agency on Agency noticed site walks of the subject property."

4. Effective October 10, 2008 the Commission and the Zoning Board of Appeals requires applicants to post public hearing notice signs on their property. These signs supplement the legal requirement of publishing notice of a public hearing in the local newspaper. Both the Commission and ZBA believe that motorists viewing the signs can often be more effective notice than notice in a newspaper.

The signs have been designed to include notice of Inland Wetlands Agency public hearings, if and when the Agency chose to require public hearing notice signs. The signs say “Land Use Public Hearing” and not any specific Commission, Agency or Board. Often the same property is being reviewed at the same time by more than one Town agency.

Amend Agency regulations to add a new section 9.4:

Mr. Minnich advised the Commission that this will mirror the Planning and Zoning Commission and Zoning Board of Appeals Regulations.

“9.4 Posting Public Hearings Notices on Subject Property

9.4.1 The applicant shall post an Agency public hearing notice sign on the subject property during the ten day period prior to commencement of and during an Agency scheduled public hearing.

9.4.2 One public hearing notice sign shall be provided by the Agency without expense to the applicant upon Agency receipt of an application fee and the Agency scheduling a public hearing. Additional signs required by this section shall be provided by the Agency at a fee to the applicant covering the cost of the signs.

9.4.3 Signs shall be no further than 500 feet apart along paved street frontage of the subject property, and shall be in proximity to the street with clear and unobstructed visibility to motorists passing the signs. If a property has no paved street frontage, signs shall be posted in locations determined by the Agency’s Duly Authorized Agent.

9.4.4 Public hearing notice signs are not required for Agency regulation text amendments, wetlands and watercourses map amendments, for Agency hearings that are not required to have notice published in a local newspaper, or for Agency enforcement hearings.

9.4.5 The signs shall be no less in size than 2 feet wide by 1¼ feet high, indicating a land use public hearing will be held by the Agency, and shall display the Agency office telephone number to contact for information.

9.4.6 The signs shall be reasonably maintained and replaced if necessary by the applicant until the day following the close of the public hearing, at which time all signs shall be removed by the applicant.

9.4.7 The applicant is required on forms determined by the Agency to make return under oath to the Agency that the applicant complied with this section of the Agency regulations.

9.4.8 In the event the applicant fails to post and/or maintain signs as required by Agency regulations, the application may be deemed by the Agency to be incomplete; and in that circumstance a reason for the Agency to not approve the application.

9.4.9 In the event the Agency finds the applicant’s non-compliance with this section of the Agency regulations was not the fault of the applicant, or for other reasons determined by the Agency, the Agency may waive this section by a motion with two-thirds Agency membership vote of approval .“

5. Amend section 10.1 by adding:

f. Inland Wetlands and Watercourses Regulations of the Agency, as amended.

g. Guidelines for Upland Review Area Regulations Under Connecticut's Inland Wetlands and Watercourses Act, June 1997 by the State of Connecticut Department of Environmental Protection, as amended.

h. 2002 Erosion and Sedimentation Control Guidelines, by the State of Connecticut Department of Environmental Protection, as amended.

i. Guidelines of the 2004 Connecticut Stormwater Quality Manual, by the State of Connecticut Department of Environmental Protection, as amended.

The Commission noted that the entire appendix should be listed hear.

Chairman Undercuffler noted that maybe the years on the documents should be left off.

Mr. Rafey advised the Commission that the years are part of the title and are extremely important in identifying what standards the Commission is relying on.

6. Amend section 19 by adding new section 19.8:

“Third party reviews approved by the Agency or approved by the Duly Authorized Agent shall be paid by the applicant directly to the third party consultant. The Town of Watertown and its officials are not liable for payment of services or for work products of third party consultants. Prior to commencing work there shall be a written agreement executed by the applicant, the Agency or the Duly Authorized Agent, and the third party consultant describing the third party review services, payment for these services, and scheduled delivery dates of reports and work products.”

The Agency should request the Town Council to amend the Watertown Ordinance establishing fees for the Inland Wetlands Agency and include foresaid language therein.

The Chairman recommended that all fees be paid prior to a permit being issued.

Mr. Rafey advised the Commission that the standard conditions require all fees be paid prior to any site work.

Mr. Minnich noted that an estimate be paid up from the third party reviewer therefore no money passes through the Town. Mr. Minnich discussed the standard agreement that his Commission uses.

7. The P&Z Commission encourages the Inlands Wetlands Agency to recommend to the Town Council that Ordinance No 04-17-06-270 “An Ordinance to Provide for Citation Enforcement of Violations of Wetlands Regulations” be repealed.

This ordinance does little to encourage compliance with Agency regulations. If the violator has not complied with an Agency enforcement order and is fined by the Agency in accordance with C.G.S. 22a-42g, how would the hearing officer under this ordinance have any impact other than reducing the fine and in so doing provide confusion when the Agency seeks remedy to its enforcement order in Superior Court? Legal fees and other Town enforcement expenses are costs recoverable in Superior Court. How would a hearing officer, who in accordance with C.G.S. 7-152c be an Agency member or Agency staff, have the knowledge and expertise to decide Agency fines. Inevitably the violator will address in their appeal to the hearing officer the merits of the Agency enforcement order. The hearing officer in these circumstances will be placed in the situation to determine the merits of the fine without expert knowledge of Agency regulations, and also may be viewed as making enforcement decisions for the Agency, which the hearing officer does not have authority to do. An alternative to the Commission’s encouragement that the Agency should request the Town Council to repeal said ordinance, is for the Agency not to impose fines.

8. Section 14.1 begins, “The Agency may appoint an agent or agents to act on its behalf with the authority to issue notices of violations or cease and desist orders and carry out other actions or investigations necessary for the enforcement of the regulations.” The operable word in this sentence is “may”. Implied here is the Agency on a case by case basis decides the authority of its agents. The Planning and Zoning Commission recommends the Inland Wetlands Agency determine by these regulations the standing authority of its Duly Authorized Agent.

First, the “Duly Authorized Agent” should be defined. Amend section 2.1 definitions to add:

“Duly Authorized Agent” means Agency’s Wetlands Enforcement Office?”

Second, amend section 12.1 by:

a. Replace the first nine words, “The Agency may delegate to its duly authorized agent” with “The Agency delegates to its Duly Authorized Agent”.

b. Replace all references to “agent” in section 12.1 with “Duly Authorized Agent”.

Third, amend section 12 by adding section 12.3:

“The Duly Authorized shall:

- a. Determine for the Agency in the event there is no wetland or watercourse on the subject property. The Duly Authorized Agent shall so inform the Agency and applicant, and when applicable, inform the Planning and Zoning Commission.
- b. Prior to the Agency authorizing use of a third party consultant, cause contracts for third party consultant services to be prepared for Agency approval.”
- c. This is not the wording but a comment that also should be included here is the minor enforcement activity the Agency authorizes its Duly Authorized Agent to conduct; however “minor” is best defined by the Agency.

The Chairman noted that the Courts have decided the jurisdiction of the Commission as it related to what impacts there will be to wetlands and watercourses.

The Commission expressed concerns with the recommendations from Mr. Minnich regarding the Ordinance to Provide for Citation Enforcement of Violations of Wetlands Regulations.

Mr. Genovese asked when the last time the Ordinance to Provide for Citation Enforcement of Violations of Wetlands Regulations has been used.

Mr. Rafey advised the Commission that the Ordinance to Provide for Citation Enforcement of Violations of Wetlands Regulations has never been used.

The Commission agreed to remove Appendix E regarding the Ordinance to Provide for Citation Enforcement of Violations of Wetlands Regulations from the model regulations. The Commission discussed with Mr. Minnich the enforcement of the Baile Co. as an example.

9. Replace section 19.6 with “Exemptions are as determined by the Agency pursuant to the Watertown Ordinance establishing fees for the Inland Wetlands Agency.” The Agency does not have authority to determine the list of fee exemptions. That is the power of the Town Council.

10. The last sentence of the definition of “Regulated Activity” in section 2.1 states the Agency may rule that other activity both within the upland review area and outside the upland review areas is a regulated activity. Is the Agency really saying here that a Regulated Activity is whatever the Agency determines a Regulated Activity is at the time of application? The Commission understands this is model language recommended by DEP.

Will that non-precise language lead to confusion and conflict that ultimately is litigated challenging the “Regulated Activity” definition when such activity is outside the 100 foot perimeter of a wetland or watercourse? This expanded definition as written could be excessively costly to the applicant to model for review, cause confusion, and cause much more work for the Agency than it intends to regulate and is necessary to promote its purposes.

The Commission suggests the Agency consider qualifying the last sentence of its “Regulated Activity” definition.

11. Section 4.1 a. “suction” in the second sentence should be either “section” or “subsection”.

12. Clarification is needed to section 7.11 concerning conservation restrictions and preservation restriction as to when and what circumstances this section applies.

MOTION: Joseph Polletta moved to continue the public hearing to 4/16/09.

SECOND: Alternate, Ms. Denise Russ.

VOTE

AYES:


Chairman, Mr. Edwin Undercuffler; Vice Chairman, Mr. Donato Orsini; Mr. Michael Genovese, Joseph Polletta; Ms. Martha Sturgis, Ms. Denise Russ.

NAYS:


None

MOTION PASSED 6-0.

Attest:



Tom Murphy, Secretary
Conservation Commission/
Inland Wetland Agency



Approved by: Chuck Bozio, Land Use Secretary