

Inland Wetlands and Watercourses Commission

Regular Meeting

June 28, 2021 6:30pm (Via Zoom)

1. Call to Order. Present: Sally Spillane, Steve Belter, Peter Neely, John Landon, Maria Grace, Cary Ullman and Abby Conroy, Land Use Administrator. Absent: Larry Burcroff (Chair) and Vivian Garfein (Alternate).

Approval of Agenda. So Moved by S. Belter, seconded by J. Landon and unanimously **Approved.**

2. Seating of Members & Alternates. S. Spillane was named Acting Chair; all regular members were seated.

3. **Approval of Minutes of June 7, 2021. So Moved** by S. Belter, seconded by P. Neely and unanimously **Approved.**

4. Training Session with Darcy Winther, CT DEEP / Q & A

Ms. Winther began her presentation with an overview of the law that gives the IWWC its authority, the CT IWW Act, which is separate and distinct from others in the General Statutes or Federal definitions. She suggested having the law and the Salisbury Regulations available at every meeting, for reference. She addressed topics including: responsibilities, review of applications, enforcement, the determination of jurisdiction, permits, fees and opinions from consulting engineers. She mentioned that second opinions from consulting engineers are not necessary for every application; the Commission must determine the specific expertise and experience among the “dueling” experts. She noted the importance of asking questions and a having a complete good record for substantial evidence. She added that enforcement tools can be formal or informal. S. Belter asked how the Commission could respond quickly to issues that are brought to the Land Use Administrator’s attention. Ms. Winther explained that permit applications are public and different from enforcement issues; a phone call to inform a Commissioner of a possible violation is permissible. The IWW Act allows the agent, in this case, Abby Conroy, to issue orders, if the Commission authorizes her to do so. S. Belter asked what would happen if the Commission disagreed with their agent; Ms. Winther emphasized the need for internal discussions to take place, before orders are issued. S. Belter pointed out that there aren’t always notifications of withdrawal of orders; he would like the individuals to receive notices of the follow-up. Ms. Winther went on to speak about exemptions, which can be as-of-right or non-regulated. She noted that the person claiming the exemption must prove it. Exemptions have been strictly construed by the State Legislature and must be followed. Ms. Winther will look at non-regulated uses further next month, when she comes back to the

Commission. She did point out that the duly authorized agent should be the whole IWWC, not the Land Use Administrator. S. Spillane asked “what is a Declaratory Ruling”? Ms. Winther explained that it is a jurisdictional ruling; that the IWWC is declaring that they have jurisdiction over an activity and it requires a permit or the IWWC is declaring that they have no jurisdiction because the activity meets one of the exemptions provided for by statute. The Commission can ask specific questions about the exact details of the proposed activity. Ms. Winther used the example of farming, which is exempt, except for certain specific activities; the IWWC decides what makes sense. J. Landon asked for clarification about knowing something is going to have a negative impact versus thinking it may possibly have a negative impact. Ms. Winther responded that the IWWC regulates specific activity that may impact a wetland or watercourse. She added that case law has focused on adverse impacts. For complex applications, she mentioned that experts should be retained by either the applicant or the IWWC. The issues can be very technical, but the focus should be on impacts to the wetlands or watercourses and whether the applicant has shown that they should get a permit which would allow adverse impacts to occur. S. Belter is concerned that they can’t foresee all adverse impacts. Ms. Winther explained that there may be well-intentioned’ applications, but things can go wrong and it’s up to the IWWC to enforce issues that may occur. There were no further questions.

(Note: Commissioner S. Belter left the meeting at 7:25pm. Commissioner P. Neely also left the meeting.)

5. 2021-IW-016 / Faucher / 52 Preston Lane / Develop Single Family Residential Lot / Map 66 / Lot 3 / DOR: 04/26/2021
No one representing the application was present. A **Motion to Table Application #2021-IW-016** was made by J. Landon, seconded by C. Ullman and unanimously **Approved**.
6. 2021-IW-024D / Wohl / 226 Between the Lakes Road / Replacement Dock / Map 58 / Lot 06 / DOR: 06/28/2021 / Declaratory Ruling
The Applicant was not present. A. Conroy reviewed the application, as submitted. C. Ullman asked if this should be an Application for Regulated Activity (instead of a Request for a Declaratory Ruling) and if the Commission is going to regulate new and replacement docks or not; she wants a consistent approach. M. Grace asked to refer to prior recent IWWC decisions about docks; if the replacement dock is identical in size and materials, then it could be considered exempt from permitting. The consensus was that every dock replacement should come to the IWWC for a Declaratory Ruling; there are no blanket exemptions, each is decided on a case-by-case basis. **Motion: To Find This Dock Replacement (2021-IW-024D)**, because it is an exact replacement with size and materials, **to be an Exempt Activity**. The **Motion** was made by J. Landon, seconded by M. Grace and unanimously **Approved**.
7. 2021-IW-023D / Fiertz (Allyn) / 225 Taconic Road / Invasive Phragmites Treatment / Map 23 / Lot 59 / DOR: 06/14/2021 / Declaratory Ruling

Christian Allyn, a licensed invasive plant specialist, described the treatment plan of an application of 2% Rodeo twice a year for 3 years. He will spot treat the phragmites. S. Spillane indicated that she would like a report in the spring of 2022, before the next round of treatment. A. Conroy pointed out that would be voluntary on his part, if this is found to be exempt activity. C. Ullman expressed concern about others bringing future applications to the IWWC. A. Conroy suggested that she would continue to ask people to bring Requests for Declaratory Rulings or Applications, depending on the complexity, to the Commission. J. Landon is OK with this one request, as exempt, but wants to decide future requests on a case-by-case basis; M. Grace agreed for this one Declaratory Ruling. **Motion: To Find This Activity to be Exempt (2021-IW-023D Invasive Phragmites Spot Treatment).** The **Motion** was made by J. Landon, seconded by M. Grace and unanimously **Approved**.

8. 2021-IW-023 – Withdrawn

9. 2021-IW-026D / Van Straaten (Allyn) / 35 Bostwick Street / Invasive Plant Treatment / Map 49 / Lot 51 / DOR: 06/14/2021 / Declaratory Ruling

S. Spillane expressed her concern about invasive plant management treatments, in general. Christian Allyn described the conditions on the property and the extensive knotweed problem which may threaten the house, if not treated. J. Landon asked if there are wetland soils, Mr. Allyn answered that his understanding was that there are not wetland soils. J. Landon asked how close the work would be to the waterbody, Mr. Allyn answered that he would be working right up to the edge of the stream bank. M. Grace asked if there is knotweed on adjacent properties, Mr. Allyn answered yes. A. Conroy asked for a description of the treatment plan; Mr. Allyn gave the details. J. Landon indicated that invasive plants are a huge problem, that this treatment seems reasonable and should be an exempt activity for a Declaratory Ruling here. **Motion: To Find that the Treatment of Invasive Species, in this situation (2021-IW-026D) to be an Exempt Activity.** The **Motion** was made by J. Landon, seconded by M. Grace and unanimously **Approved**.

10. 2021-IW-026 – Withdrawn.

11. 2021-IW-025D / Taylor Farm Bolton LLC (Gillespie) / 47 Dimond Road / Expansion of Agricultural Crop Land / Map 05 / Lot 01 / DOR: 06/28/2021 / Declaratory Ruling

Robert Taylor, owner, explained that he is looking to expand about 24 acres into cropland. Jim Gillespie, consultant, described the proposed expansion and cited Section 4.1.a. of the Regulations to support their Request for a Declaratory Ruling. He indicated that the area includes wetlands and activities would include cutting trees, grubbing, stumping, grading, seeding and mulching. S. Spillane asked if the land would remain in agricultural use; the answer was yes, the farm will be in crops. Mr. Gillespie indicated that silt socks would be placed after the trees are removed. A. Conroy asked questions regarding the as-of-right use of the land. S. Spillane asked what the crop would be; the answer was alfalfa initially, then eventually corn. J.

Landon expressed his concerns over possible adverse impacts to the wetlands. Mr. Gillespie mentioned that the work would be done in stages and they will address future issues, such as erosion. J. Landon indicated that based on the presentation, the applicant is prepared to address future issues; he thinks it meets the agricultural exemption. **Motion: To Declare This Request for Declaratory Ruling (2021-W-025D) as Exempt Activity.** The **Motion** was made by J. Landon, seconded by C. Ullman and unanimously **Approved**.

(Note: At this time, Commissioner C. Ullman left the meeting; therefore, there was no longer a quorum present.)

12. 2021-IW-027D – Not considered for lack of quorum; will be on the agenda on July 12, 2021.

13. 2021-IW-027 – Not considered for lack of quorum; will be on the agenda on July 12, 2021.

14. Staff Updates –

Legislative Changes – It appears that there will be an option for holding hybrid meetings and/or continuing with Zoom meetings into 2022. More details to be announced.

Agent Approval – 2021-IW-022A / Tavlin (Fitch) / 194 Dugway Road / Invasive Plant Management / Map 8 / Lot 29 /Cut back invasive plants encroaching on open space.

15. Public Comment – None.

16. Adjournment. So Moved by S. Spillane.