

**SPECIAL JOINT MEETING OF THE
SALISBURY INLAND WETLANDS & WATERCOURSES COMMISSION
AND
PLANNING & ZONING COMMISSION
WEDNESDAY, DECEMBER 1, 2021 – 8:30 AM**

Remote Meeting by Live Internet Video Stream and Telephone

Members Present:

Vivian Garfein (Chairman)
Dr. Michael Klemens (Commissioner)
Cathy Shyer (Commissioner)
Peter Neely (Vice Chair) joined at 8:43
Maria Grace (Commissioner)
Debra Allee (Commissioner)

Staff Present:

Abby Conroy, Land Use Administrator (LUA)
Alison Forman (Land Use Assistant)

Members Absent:

1. Call to Order

The Chair called the meeting to order at 8:33am.

2. Attendance

All six member of the Commission, staff LUA Abby Conroy and recording secretary Alison Forman were in attendance.

3. Jurisdictions: “Setback”, “Upland Review Area”, “Buffer”, “Regulated Area”

The Chair requested Commissioner Klemens begin the discussion. Commissioner Klemens addressed the Commission explaining he and LUA Conroy constructed draft definitions for the terms “*setback*”, “*upland review area*”, “*buffer*” and “*regulated activity*”.

Commissioner Klemens designated *setbacks* as measured distance from a street line, lot line, watercourse or waterbody. He noted that there are overlapping jurisdictions of *setbacks* between Planning & Zoning (PZC) and the Inland Wetlands and Watercourses Commission (IWWC) as it pertains to waterbodies and watercourses. He identified that the PZC *setbacks* are regulatory, but may be varied on a case-by-case basis with a special permit in specific overlay districts, or through the Zoning Board of Appeals (ZBA) with demonstration of a hardship. Commissioner Klemens explained that the PZC has front, side and rear *setbacks* as well as *setbacks* from waterbodies and watercourses (50’ for an accessory structure and 75’ for a principal structure).

Chair Garfein inquired how these relate to the 75’ *upland review area (URA)* used by IWWC. Commissioner Klemens explained that the PZC’s tools are regulations and prohibitions, whereas the IWWC has an upland area where activities are reviewed (not automatically prohibited). He added that there is a perception that increasing the *URA* from 75’ will limit the rights of property owners to enjoy their properties. In reality, the IWWC already has the legal ability to look beyond the defined *URA*. If activities can be shown to have the potential to significantly impact the wetland resource, the *URA* can be extended to 300 feet, 500 feet or further, as long as a link to impacting the wetlands or watercourses can be established. However, the burden is on the IWWC to demonstrate an activity is likely to significantly impact the wetland resource.

LUA Conroy displayed the current definition and the proposed definition. Commissioner Klemens emphasized the new definition states “it is not a prohibitory setback or ecological buffer nor a taking of land but rather a defined area where certain activities are regulated because of

40 reasonable likelihood that these activities will adversely impact the adjacent wetlands or water
41 courses.”

42 At 8:43 Vice Chair Peter Neely joined the meeting.

43 Vice Chair Neely recognized in the current IWWC regulations there is a conflict under appendix
44 C and page 3 relating to the *URA* and the 75’ requirement. Chair Garfein stated she believes IWWC
45 acted on this contradiction, and she will check the minutes and come back to it. Commissioner
46 Klemens added that the PZC has similar problems with definitions that are in conflict with the text.
47 The goal is to take definitions out of the text and put them into a glossary.

48 Commissioner Klemens suggested from an administrative standpoint that aligning the *URA* and
49 the *regulated area* under the purview of the PZC, the 300’ Lake Protection Overlay District, could
50 make sense but recognized expanding the *URA* could result in pushback. Vice Chair Neely opined
51 that in order for the IWWC to match the 300’ Lake Protection Overlay it must show significant
52 impact to the resource, logically the farther away from the resource the less likely and activity is to
53 impact the resource. Chair Garfein clarified that the *URA* gives the Commission the right to look
54 and evaluate impacts rather than putting the burden on the agency to prove with confidence and
55 substantial evidence that an activity outside of the *URA* will have an impact on the resource.
56 Commissioner Klemens added that he has considered shrinking the PZC overlay to 200’ in an
57 attempt to harmonize more closely with the IWWC but that would reduce the development
58 potential of properties around the lakes as the PZC overlay district allows development up to 10%
59 of the property within the district (300 feet), and shrinking the overlay to 200 feet would result in a
60 reduced area where the 10% would be calculated from.

61 Commissioner Klemens moved on to describe *buffers*. An area or strip that can be natural or
62 anthropogenic between properties or uses. There are screening *buffers* or a wetlands or
63 watercourse *buffers*. Wetlands *buffers* have the most ecological value and the term is frequently
64 confused with the *URA*. Chair Garfein added that these *buffers* are valuable to keep undisturbed
65 and can mitigate negative impacts of development. Commissioner Shyer indicated that *buffers*
66 have become a very important tool in PZC. PZC typically reviews plans with *buffers* designed to
67 treat stormwater, although they are not required, they are a best practice.

68 Commissioner Klemens continued. Enhanced or undisturbed *buffers* of even 25’ can
69 significantly protect the receiving waters. Although, sites with steep grades benefit from a larger
70 area. He added it would be beneficial to use incentives to promote *buffers* in the Lake Protection
71 Overlay District.

72 Vice Chair Neely proposed incorporating *buffers* into IWWC regulations through best
73 management practices enabling the reduction of the *URA*. Chair Garfein suggested using *buffers* as
74 offset for the *URA* adding they are frequently misunderstood and using specific language with
75 examples would provide a stronger understanding, lessening the assumption that *buffers* are a
76 burden.

77 Commissioner Klemens posited using *buffers* as a tradeoff for increased impervious surfaces
78 and justification to compensate for an increased *URA*, possibly eliminating the calculations
79 currently being used to determine impervious surfaces. This would result in increased
80 developability within the Lake Protection Overlay District for the installation or preservation of a
81 *buffer*. Commissioner Shyer gave an example of a property where the 10% maximum impervious
82 surfaces were reached without the development of practicalities like a path, garage or shed. She

83 added that this is frustrating for PZC as they had to grant the permit but recognized the 10% would
84 eventually be exceeded and this is not a practical solution.

85 LUA Conroy summarized the discussion concerning definitions mentioning this was a practical
86 exercise to understand and recognize the importance of using terms correctly. She gave an
87 example of the term *Regulated Area* stating IWWC regulates *activities* and PZC regulates *areas* such
88 as the lake Protection Overlay District. Inconsistencies within texts such as, the definition for
89 *setbacks* used in PZC regulations does not include wetlands or watercourses but these have defined
90 setbacks thus the definition of setback should be amended. She noted that the *URA* definition
91 should clarify it is not a *prohibitory setback* or an *ecological buffer*.

92 Commissioner Grace mentioned that many times the focus of the *URA* discussions is on the
93 lakes. Streams and rivers tend not to receive as much attention but are no less ecologically
94 significant. She proposed having a different *URA* designation for rivers and streams. Chair Garfein
95 agreed this should be addressed and has spoken to both Attorney Janet Brooks and Darcy Winther
96 of the DEEP about a resource-based approach. It was recommended that the Commission establish
97 scientific evidence to give it validity.

98 The Commission agreed that the value of this joint commission is to give recommendations
99 and eliminate conflict between agencies. Commissioner Klemens added that these joint meetings
100 provide opportunities to evolve meaningful protection of ecologically sensitive resources like the
101 vernal pools and fens.

102 Commissioner Klemens clarified that PZC has the authority to put the burden on the applicant
103 to delineate resources, but they can also require a consulting professional to review it. It is then the
104 duty of PZC to determine the importance of the resources, whether it warrants protection. It is
105 done in this manner to select the most valuable resources and provide development guidance with
106 the use of best development practices. Vice Chair Neely inquired if Commissioner Klemens thinks
107 that soil scientists in this area can determine the location of vernal pools, adding that IWWC has
108 not seen a designation in two years. Commissioner Klemens considers most of the consultants in
109 the area capable of finding vernal pools.

110 Chair Garfein asked if IWWC should be inquiring about vernal pools on properties when they
111 come before IWWC seeking approval. Commissioner Neely affirmed that if the IWWC regulates
112 vernal pools, the applications should have questions about their presence. Commissioner Klemens
113 added that PZC subdivision regulations require the designation of vernal pools, fens and other
114 natural features. LUA Conroy clarified that PZC subdivision regulations reference vernal pools and
115 other resources but not fens and the distinction should be made. Commissioner Shyer identified
116 the subdivision regulations were last updated in 2008 and noted that this was an opportunity for
117 the subcommittee to have a benefit and recommendation to the PZC.

118 Chair Garfein requested if anyone had anything else to add to the topic of Jurisdiction, none of
119 the commissioners had additions.

121 4. **"Declaratory Ruling"/"As-Of-Right Activities"/ "De Minimus"**

122 Chair Garfein began with section 22a-40 declaratory ruling and as of right. LUA Conroy
123 identified that these are typical exemptions. The term *permitted* is ambiguous because it refers
124 to operations that are allowed, not operations that require permits. Commissioner Neely
125 identified that the ambiguous language could be challenged and suggested adding identifying

126 language for transparency. LUA Conroy continued with an explanation that the statute requires
127 the person conducting the activity go before the Commission to determine if the activity is
128 allowed as of right and does not require a permit. This is referred to as a declaratory ruling. She
129 added the statute is confusing. Even if an activity is allowed, one must demonstrate the action
130 is exempt to the regulatory authority.

131 Chair Garfein suggested using the language “persons proposing such uses should seek
132 confirmation from the municipal wetlands agency that their proposed project does not require
133 a permit.” Commissioner Shyer suggested changing *municipal* to *town*. Vice Chair Neely
134 recommended addressing the difference between the terms “permitted” (requiring a permit)
135 and “permitted” (allowed) along with “as of right” within the definitions section. LUA explained
136 that the most common exemptions in Salisbury are under item #4. She gave an example of
137 maintenance / mowing of existing lawn which would be considered exempt compared to
138 turning a wooded area into lawn. The latter would not be considered maintenance to *existing*
139 landscaping. Chair Garfein acknowledged many activities are “as of right” but require the
140 administrative components such as submitting documentation, while other activities do not
141 need this review, but the distinction between these needs to be made.

142

143 5. **Organization of Topics & Tasks**

144 It was acknowledged Vice Chair Neely left the meeting at 10:01 am.

145 The Commission agreed to go back to *declaratory ruling* and *de minimus* and address *ordinary*
146 *high-water mark* as topics for the meeting on December 10, 2021, at 8:30am.

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148 6. **Adjournment**

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150 *Motion:* To adjourn the meeting at 10:04 a.m.

151 Made by Klemens, seconded by Shyer.

152 Vote: 5-0-0 in favor.

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155 Respectfully submitted,

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159 Alison Forman, Land Use Assistant