

**SPECIAL JOINT MEETING OF THE
SALISBURY INLAND WETLANDS & WATERCOURSES COMMISSION
AND
PLANNING & ZONING COMMISSION
SPECIAL MEETING**

Friday, December 10, 2021 – 8:30 AM

1 Members Present:

2 Vivian Garfein (Chairman)
3 Peter Neely (Vice Chair)
4 Dr. Michael Klemens (Commissioner) joined at 8:42
5 Cathy Shyer (Commissioner)
6 Debra Allee (Commissioner)

Staff Present:

Abby Conroy, Land Use Administrator (LUA)
Alison Forman (Recording Secretary)

Members Absent:

Maria Grace (Commissioner)

8 Brief Items and Announcements

10 1. Call to Order

11 The Chair called the meeting to order at 8:40am.

13 2. Attendance

14 It was acknowledged that the members in attendance included Vivian Garfein (Chairman), Peter Neely
15 (Vice Chair), Cathy Shyer (Commissioner), Debra Allee (Commissioner), Abby Conroy (LUA) and Alison
16 Forman (Recording Secretary) and was noted that Maria Grace (Commissioner) was unable to join the
17 meeting.

19 3. Minutes from 12/01/2021 - Pending

20 At the Chairs request this item was tabled.

22 Old Items

24 4. Jurisdictions: "Setback", "Upland Review Area", "Buffer", "Regulated Area"

25 Commissioner Klemens joined the meeting at 8:42am.

26
27 Chair Garfein gave a brief summary of questions posed at a previous Inland Wetlands & Watercourses
28 Commission (IWWC) meeting concerning upland review areas specifically as they relate to vernal pools
29 and calcareous fens. She noted that not all vernal pools or calcareous fens are of equal ecological
30 importance. She emphasized that the burden is on the applicants to document if these features exist
31 and provide information about these features; field verification is essential for determination.
32 Commissioner Klemens identified that most towns and the Army Corps of Engineers use a standard of
33 750' Upland Review Area (URA). A certain percentage of development is possible within the URA
34 without destroying the resource. He recommended that the IWWC adopt a 750' URA for vernal pools
35 reiterating that the burden is on the applicant to demonstrate the quality of the pool by using the two-
36 step, industry standard described in *Calhoun and Klemens* (2002) to assess the productivity of the pool
37 and determine the integrity of the envelope and its critical terrestrial habitat landscape. Commissioner
38 Klemens cautioned that the data collection required for a vernal pool study is seasonally dependent

39 and that many times applications are submitted with analysis conducted outside of the appropriate
40 seasonal time frame.

41 Fens are extremely sensitive and require a 300' *buffer*. That standard is identified by the US Fish and
42 Wildlife Service (USFWS) in the Bog Turtle Recovery Plan. Commissioner Klemens explained the three
43 zones identified by the USFWS. Zone 1 consists of the wetland itself. Zone 2 is the 300' buffer around
44 the wetland which would ideally remain undeveloped. Zone 3 consists of a radius of .5 to 1 mile around
45 the fen in which activities that could have negative impacts on the wetland resource such as
46 groundwater withdraws are analyzed. Based on his professional expertise, Commissioner Klemens
47 advocated for a 300' buffer and a 0.5 to 1 mile URA around a fen but believed this might not be
48 practical in some situations.

49 Commissioner Shyer inquired if the Land Use Office (LUO) could provide guidance documents and
50 resources for the public explaining buffers, vernal pools, and fens so that applicants can be informed
51 rather than just relying on their team of professionals. Many times, applicants are unaware of the
52 significance of these features. LUA Conroy informed the Commission that informational handouts for
53 the applicants/public are already being drafted. Chair Garfein added that changes to the application
54 form are being considered which would require more definitive information from the applicant.

55 Commissioner Allee inquired if the LUO has a system for tracking applications to identify these features
56 all in one place, such as creating a comprehensive map? LUA Conroy explained that there is potential in
57 to create maps in GIS however the Town is not set up to do this yet. Vice Chair Neely pointed out that
58 the State GIS database which are based on USGS topographical maps have some discrepancies and the
59 Commission cannot rely on the accuracy of these GIS maps. Chair Garfein emphasized that the
60 Commission should not rely on such general resources, accurate information will have to be provided
61 by the applicant.

62
63 **Pending Items**

64
65 5. "Declaratory Ruling"/ "As-Of-Right Activities"/ "De Minimus"
66 The Chair requested to move on to the item #6 "Ordinary High-Water Mark".

67
68 6. "Ordinary High-Water Mark"
69 Chair Garfein read the existing regulations of the Lake Protection Overlay District (LPOD) describing the
70 Ordinary High-Water Mark (OHWM) she also read the current Planning & Zoning (P&Z) definition of
71 OHWM and explained that IWWC does not have OHWM defined in their regulations. She read the
72 proposed IWWC definitions. LUA Conroy clarified that these definitions would replace the current P&Z
73 definitions and be added to the IWWC regulations. Commissioner Klemens, LUA Conroy, Attorney
74 Janet Brooks, and Attorney Mike Zizka have reviewed the proposed language. Vice Chair Neely inquired
75 if the OHWM and flood stage are different? Adding the delineation of a wetland is defined by soil type
76 and not vegetation. LUA Conroy concurred that they are different and that is why the definition states
77 the *OHWM may not be synonymous to wetland delineation*. LUA Conroy asked the Commissioners if
78 they had any questions regarding the definitions and if they could refer the definitions to the IWWC &
79 P&Z to adopt? The Commissioner's agreed they were satisfied and moved to recommend the changes
80 to replace P&Z definitions and be added to the IWWC regulations.

81
82 7. Draft Land Use Complaint Form

83 Chair Garfein moved to item # 7 on the agenda asking if the complaint form would be used by both
84 P&Z and IWWC. LUA Conroy confirmed it would be adopted by both Commissions. The Chair gave a
85 brief description of the *Zoning & Wetlands Complaint Form* including pertinent information as date,
86 location, name(s) of alleged violators, name of complainant and the nature of the complaint. It was
87 recognized there would be no follow up to the complaint if it was submitted anonymously.
88 Commissioner Shyer inquired if the form could list the complainant generally as “neighbor” and not
89 provide specific personal information? This was determined to be problematic, and the Commissioners
90 agreed not to follow up on anonymous complaints.

91
92 *Motion: to remove the anonymity option on the Zoning & Wetlands Complaint Form.*
93 Made by Klemens, seconded by Neely
94 Vote: 5-0-0

95
96 It was suggested that the statement **DO NOT TRESSPASS ON PROPERTY** be put in bold lettering.
97 The use of drones was considered, and it was agreed that documentation obtained with drones would
98 not be accepted. LUA Conroy suggested asking for permission from the complainant to access their
99 property for observation. Commissioner Klemens suggested softening of the language in the heading
100 to read “a report of potential violation”.
101 LUA Conroy informed the Commission that a form response would be issued to the possible
102 violator/property owner. Indicating that a potential violation has been reported to the LUO and
103 requesting an appointment to determine if these activities require a permitting. Commissioner Allee
104 pointed out the need to add a *respond by deadline* to the form issued to the potential violator.
105 The Commission concluded that legal council would be consulted, changing the wording to “a report of
106 potential violation”, adding permission for an agent to access and observe from the complainant’s
107 property to view the possible violation, highlighting the *do not trespass on property* and adding *direct*
108 *fly over with drones is also considered trespassing* and removing the anonymity option on the form.
109 At this time the Chair requested to move back to item #5 five on the agenda.

110
111 5. “Declaratory Ruling”/“As-Of-Right Activities”/ “De Minimus”
112 Chair Garfein explained the IWWC would like to clarify what activities are considered as of right and
113 which are considered permitted activities as part of their regulation rewrite. She read proposed
114 language to be added before Section 22a-40. Commissioner Klemens noted that the IWWC does not
115 want people to have to go before the Commission for insignificant activities, such as mowing of an
116 existing lawn. The Chair agreed stating guidance documents could be issued to clarify existing “As-Of-
117 Right Activities” vs. new activities that would require permitting.
118 The Chair requested adding “Authorized agent approval for activities in the URA that have no greater
119 than minimal impact” to the language in regulations. Vice Chair Neely suggested making a list of the
120 types of activities that would not require one to go before the Commission to seek approval. The Chair
121 requested that Vice Chair Neely draft text for the next meeting on what one can do without IWWC
122 approval. LUA Conroy noted that legal counsel may not recommend inclusion of this in the text but
123 possibly as a separate informational document. She added that it is helpful to both the LUO and the
124 Commission to have standardized criteria for those activities eligible for agent approval. Commissioner
125 Klemens suggested defining the term to be used along with the list of what can be done adding this to
126 the definition section.

127 The Chair noted that the term “clearing” has yet to be defined, LUA Conroy noted that both Darcy
128 Winther of the DEEP and Attorney Janet Brooks have been to do so. Vice Chair Neely suggested waiting
129 until the State provides a definition. Commissioner Klemens pointed out that many times the State
130 statute and lawyers’ interpretations can be vague, and it is important to provide clear guidance to the
131 public.

132 Chair Garfein informed the Commission that although guidance documents are helpful it is best if the
133 statute or regulations are clear and concise. She was satisfied with the progress made and the
134 Commission would revisit the topic along with Vice Chair Neely’s supplemental text. She acknowledged
135 more work needs to be done with “declaratory ruling”.

136 It was recognized that P&Z does not use declaratory ruling however, they do have a minor site plan
137 modification which is similar to the agent approval. These can be approved by the LUA and the
138 Chairman reducing some of the volume of applications before the P&Z. Chair Garfein identified that if
139 IWWC expands the URA the number of applications before the Commission will increase. Providing a
140 clear definition of the “De Minimus” activities will lessen this burden. She further noted that the URA is
141 not a regulated area it rather it is a defined area in which the IWWC has a right to have a closer
142 examination of the site. Vice Chair Neely stated that many people do not read the regulations and
143 emphasized a need to make them a clear, user-friendly document.

144 LUA Conroy described the differences between the minor site plan modification process used by P&Z
145 and the agent approval process available to the IWWC. The authority granted by statute is different.
146 She stated if an agent determination of IWWC is appealed it goes to the IWWC Commission.

147 Commissioner Klemens added that the goal is to reduce the volume of the minor things that go before
148 the IWWC Commission so they can focus on bigger issues. The Commission discussed the difference
149 between the “De Minimus” activities list and the activities eligible for approval by agent determination
150 and the legal complexity of establishing a finding of *no impact* and/or *minimal impacts*.

151

152 8. Organization of Topics & Tasks

153 Next meeting Vice Chair Neely will provide a draft text for *de minimus* activities. The Commission
154 agreed that progress needs to be made and would like to have these topics concluded by the end of
155 February so that recommendations can be referred to both P&Z and IWWC in March. Chair Garfein
156 suggested reviewing the August 6th IWWC meeting recording concerning the URA.

157 Commissioner Klemens left the meeting at 10:18 a.m.

158

159 **Adjournment**

160

161 *Motion:* To adjourn the meeting at 10:23 a.m.

162 Made by Neely, seconded by Shyer.

163 Vote: 4-0-0 in favor.

164

165 Respectfully submitted,

166

167

168 Alison Forman