

1 SALISBURY INLAND WETLANDS AND WATERCOURSES COMMISSION
2 SPECIAL MEETING
3 SEPTEMBER 27, 2023 – 3:00PM (VIA ZOOM)
4

5 **Brief Items and Announcements**

6 1. Call to Order.

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8 Vivian Garfein called the meeting to order at 3:03pm.
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10 2. Roll Call & Seating of Alternates.

11
12 Present: Vivian Garfein (Alternate), Peter Neely (Regular Member), Maria Grace (Regular Member), Abby
13 Conroy (Land Use Administrator), Miles Todaro (Land Use Technical Specialist).
14

15 **Other Business**

16 3. Regulation Discussion
17

18 A. Conroy commented that Town Attorney Janet Brooks explained Section 1 deviates slightly from the
19 model regulation. It includes the statement of purpose referred from the subcommittee (section 1.7).
20 The new authorizing Ordinance which split the Inland Wetlands and Watercourses Commission and the
21 Conservation Commission was added. A. Conroy showed the Commission suggested changes she made
22 to section 1.7. V. Garfein and P. Neely commented that they agreed with the changes.
23

24 A. Conroy directed attention to section 1.7.e. This section Connecticut Critical Habitats, which she
25 believes is important to tie back to in this section. P. Neely noted that vernal pools are not mentioned in
26 1.7.e, and asked if they're included. A. Conroy responded that they are not, however they are mentioned
27 in 1.7.d. Additionally, she pointed out the change of "calcareous fens" to "fens," to more closely align
28 with State terminology. P. Neely and V. Garfein suggested combining points 1.7.d and 1.7.e. A. Conroy
29 concurred. The Commission deliberated the State definitions of different fen types, and where
30 calcareous fens would fit in. The Commission decided A. Conroy will reach out to IWWC Alternate Russ
31 Conklin and Planning and Zoning Commission Chair Michael Klemens for their opinions on whether or
32 not the State fen definitions cover all the fen types present in Salisbury.
33

34 The Commission reviewed the definitions section of the draft regulations. A. Conroy directed attention to
35 the definition of "Cumulative Impact." She spoke with Attorney Brooks about this term, which has no
36 legal definition at the State or Federal level. The language used for this definition comes from a federal
37 court ruling, provided by Attorney Brooks.
38

39 The Commission discussed the possibility of rephrasing certain sections of model regulations to make
40 them easier to read. A. Conroy explained that Attorney Brooks' did not support such changes as they can
41 be appealed in court. The commission agreed to leave these sections unchanged from the model
42 language.
43

44 A. Conroy directed attention to the definition of "Regulated Activity." The Commission discussed the size
45 of the upland review area (URA). V. Garfein commented that she supports the idea of a 150-foot URA. P.
46 Neely commented that the suggestion of at 200-foot URA was what triggered a lawsuit, and he believes
47 the 100-foot URA is substantially backed and would allow the Commission to avoid a lawsuit. He
48 commented that DEEP has backed the idea of a 100ft URA since the 1990s, and 150 feet would be a

49 compromise. A. Conroy clarified that the DEEP reports P. Neely referenced support a 100-foot buffer, not
50 a URA. In those reports, DEEP recommends no activities at all within 100 feet, not just regulating
51 activities in that zone. P. Neely reiterated his feelings that a 150-foot URA is prudent and manageable. V.
52 Garfein asked if points “a.” and “b.” could be combined, since the URA would be the same, 150 feet in
53 both cases. A. Conroy explained Attorney Brooks’ encouraged distinct identification of resources like the
54 lakes in the Lake Protection Overlay District (LPOD), it’s better to keep them defined separately so their
55 regulations can be more easily adjusted should the need arise.

56

57 Regarding the URA of high-gradient coldwater streams, A. Conroy pointed out that these streams do not
58 only originate from the Taconic Plateau. The Commission agreed it would be best not to specify where
59 the streams originate from. Regarding Vernal Pools, the Commission agreed basing the regulation on an
60 ecological distinction of “tier 1” could be impractical. V. Garfein and P. Neely supported a general vernal
61 pool URA of 300 feet. M. Grace commented that the Commission as a whole agreed on the current
62 language, so she would like to see it go back before the whole Commission before changing it to 300
63 feet. LUA Conroy added that section two of the Regulated Activities section allows the Commission to
64 regulate activities located outside of the URA if they’re found to likely have a detrimental impact on a
65 wetland or watercourse. This means that the Commission can still use tier 1 pool information when
66 looking at applications on a case-by-case basis.

67

68 V. Garfein commented that discussion of vernal pool obligate species would be better suited for the
69 vernal pool definition. M. Grace suggested not specifying “high value vernal pools” within the vernal
70 pools definition, to ensure all pools are covered under the definition.

71

72 P. Neely asked about the previously discussed possibility of defining certain activities as not needing to
73 go before the Commission. A. Conroy responded that this can be handled in the handbook. V. Garfein
74 added that those activities could change, and they would be easier to change in the handbook as
75 opposed to the regulations.

76

77 A. Conroy Commented that the Statute requires that the Commission adopt a form for applications for
78 regulated activities, but does not require a form for applications for jurisdictional ruling. However, the
79 jurisdictional ruling application is beneficial, and Section 7 was amended to clarify the necessary
80 submission materials when applying for a regulated activity. She added that the Commission’s input
81 would be particularly helpful in this section, as there are likely a number of listed requirements that are
82 not needed. A. Conroy explained the prospective online permitting application, which she hopes will be
83 able to go live in 2024. Section 7 of the regulations could be edited to account for online permitting.

84

85 A. Conroy explained that requiring the names and mailing addresses of adjacent land owners on the
86 application is not necessary. Additionally, there is currently no notice requirement to abutters in the case
87 of an application being determined to have significant activity. M. Grace asked if requiring notices to
88 abutters would include those in other municipalities, which A. Conroy confirmed.

89

90 A. Conroy overviewed other minor changes suggested for Section 7. V. Garfein asked how the
91 Commission could handle a situation where an application comes in for a project near a vernal pool that
92 has yet to be evaluated. A. Conroy suggested that this would be a topic to discuss with Attorney Brooks.

93

94 A. Conroy explained that in Section 9 (Public Hearings) she inserted the notice requirements from
95 Planning and Zoning. This means the applicant would be providing Public Hearing notice to abutting
96 property owners, and the Town would publish the notice in the newspaper. She also recommended

97 augmenting the section on bonds (Section 13) to clearly define the process. P. Neely asked what Planning
98 and Zoning has in terms of language describing this process. A. Conroy explained that the fee schedule is
99 set by ordinance, there's bond language in the subdivision regulations, and there's bond language in the
100 Zoning Regulations. The Zoning Regulations call out two different types of bonds and the ordinances
101 enable the authority to have escrow for third party review.

102
103 A. Conroy asked if the Commission would prefer to schedule another special meeting to work together
104 possibly with J. Brooks, or return to the rest of the Commission to review the changes made during this
105 meeting. V. Garfein asked if there's any changes in particular that A. Conroy feels should be reviewed by
106 J. Brooks. V. Garfein would prefer to bring the changes to the Commission first, and then have J. Brooks
107 review everything at the end. A. Conroy replied that the only question she had was regarding how the
108 Commission would handle applications with vernal pools in different scenarios. The Commission agreed
109 to review the changes at the October 23, 2023 meeting.

110
111 A. Conroy explained that checking for application completeness cannot be delegated to Land Use staff.
112 However, if the required application material were in the format of a checklist, Land Use staff could more
113 easily present the application completeness status to the Commission.

114
115 The group further deliberated when to present these changes to the whole Commission. It was decided
116 to reserve the October 23, 2023 meeting for the regulation discussion along with the planned
117 presentation by the Pope Land Design Committee.

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119 **Adjournment**

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121 Motion: To adjourn the meeting at 4:45pm
122 Made by Grace, seconded by Neely
123 Vote: 3-0-0