

INLAND WETLANDS & WATERCOURSES COMMISSION

REGULAR MEETING

FEBRUARY 26, 2024 – 6:30PM (VIA ZOOM)

- 1       1. Call to Order. The meeting was called to order at 6:30pm.
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- 3       2. Roll Call & Seating of Alternates. Present: Larry Burcroff, Vivian Garfein, Sally Spillane, Cary
- 4       Ullman, John Landon, Steve Belter, Tracy Brown (Alternate), Russ Conklin (Alternate), John
- 5       Harney (Alternate), Abby Conroy (Land Use Director), Miles Todaro, (Land Use Tech Specialist)
- 6       and Georgia Petry (Recording Secretary). Absent: Maria Grace. T. Brown was seated Voting
- 7       Member for M. Grace.
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- 9       3. **Approval of Agenda. So Moved** by S. Spillane, seconded by V. Garfein and unanimously
- 10       **Approved.**
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- 12       4. **Approval of Minutes of February 13, 2024. So Moved** by J. Landon, seconded by S. Spillane and
- 13       unanimously **Approved.**
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- 15       5. Public Comment – None
- 16
- 17       6. #2024-IW-003 / Michael W Klemens / 14 Red Mountain Road / Construct a stream crossing to
- 18       access approved building lot / Map 03 / Lot 05-5 / DOR: 2/13/2024
- 19       New requested documents had been provided and were reviewed. S. Spillane asked if the
- 20       proposed culverts would be connected to the ones that are there; Mr. Klemens answered, yes, it
- 21       would be the third culvert on the lower part of the stream. S. Spillane asked if the pipes would
- 22       match; Mr. Klemens answered no, it would be larger using 2 30” pipes. S. Belter asked if the 2
- 23       other culverts are pre-existing; the answer was yes, they are owned by Red Mountain
- 24       Properties. S. Belter asked if they were new; Mr. Klemens answered yes, relatively, and
- 25       assumed they were permitted previously. S. Belter mentioned that putting 2 30” pipes above a
- 26       12” pipe could cause a problem; Mr. Klemens responded that was the recommendation from his
- 27       engineer. A. Conroy asked if there is flow all of the time; Mr. Klemens described it as a ditch
- 28       that does carry water, especially in the spring. T. Brown asked about having 2 pipes instead of
- 29       one; the answer was that it was the recommendation of the engineer, in case one gets blocked.
- 30       T. Brown asked about the material of the new culvert. Mr. Klemens asked the Chair, Larry
- 31       Burcroff, to confirm that members who were here, but not present at the previous meeting, had
- 32       read the submissions and listened to the tapes of the last meeting, for the record. S. Belter
- 33       responded that he was not at the last meeting, but he did view the video and is up-to-date with
- 34       what has transpired so far. V. Garfein responded that she was not at the last meeting, but had

35 read everything and listened to the video. T. Brown responded that she was not at the last  
36 meeting, but is up to speed on all of the material submitted. S. Belter asked if the schematic  
37 shown was boilerplate; the answer was yes, it was from a design manual and shows what it is  
38 going to look like. Mr. Klemens offered that it is a visual representation, to answer S. Spillane's  
39 question of what it would look like. S. Belter asked if there was engineering on this and asked to  
40 see it; Mr. Klemens answered yes, it was on another page. S. Belter asked if the IWWC Engineer  
41 is looking at this; Mr. Klemens responded that at the last meeting, the Commission was satisfied  
42 that the Engineer was not needed. S. Belter strongly suggested that the Town Engineer have a  
43 look at this plan, as any other that would have this much activity within close proximity to the  
44 stream and that Tom Grimaldi would have pertinent thoughts that the rest of the Commission  
45 would like to hear. V. Garfein disagreed and commented that R. Conklin had asked many  
46 questions; the members at that meeting determined that the Engineer was not needed. S.  
47 Belter asked what the basis was for that decision; L. Burcroff mentioned that he had asked if  
48 anybody wanted the Engineer review. S. Belter pointed out that what he had heard seemed to  
49 focus on the crossing and nobody talked about the fact that there's a lengthy driveway; Mr.  
50 Klemens indicated that the driveway is 380' in length. S. Belter noted that it appears about 150'  
51 of the driveway are within the 75' setback line on each side and added that in his experience,  
52 the IWWC had not approved someone putting a driveway alongside a stream bed. S. Belter  
53 continued that they don't want to start doing that, without having the Engineer take a look at it  
54 to find out if there's going to be any impact to that adjacent stream. Mr. Klemens pointed out  
55 that there is a high berm alongside the stream. He mentioned the prudent and feasible  
56 alternatives were brought up at the last meeting about why this is crossing the stream in that  
57 location; the alternative would be to build on the flat, which is also within the 75' setback. S.  
58 Belter commented on using another existing driveway; Mr. Klemens answered it was not  
59 possible because 3 other houses are served by that driveway and there can't be any more. L.  
60 Burcroff indicated that he did ask a question at the last meeting about having the Engineer look  
61 at this and the consensus was that with what they were looking at, they were pretty well  
62 covered. S. Belter agreed about the stream crossing, but not the driveway, as that would be  
63 setting a precedent about going ahead with a 300' driveway within 75' of an existing stream. S.  
64 Belter stated that he would like to have the Engineer take a look to make sure there is no impact  
65 to wetland that they are not privy to; he further commented that there was no discussion at the  
66 meeting about the driveway, that it was all about the stream crossing. S. Belter commented  
67 that no one had asked for a review and no one on the Commission is an engineer; he added that  
68 anything that has any impact goes to the Engineer and asked why there is a sudden change by  
69 the IWWC now. S. Belter expressed that there should be an Engineering review and noted that  
70 the septic system had not been approved; Mr. Klemens explained that the septic system is  
71 shown where TAHD indicated it needed to go. S. Belter asked if TAHD had approved it; Mr.  
72 Klemens responded that it had been approved for the subdivision, but they hadn't approved this  
73 design yet. V. Garfein commented that the 75' line is the upland review area; no one was  
74 concerned that there was going to be a negative impact to the stream and suggested it is not  
75 complicated. S. Belter added that he did not see actual engineering for the culvert on this plan,

76 just boilerplate for something else. S. Belter made a **Motion to have the IWWC Engineer Look**  
77 **at this Project for Clarification and the Assurance that there is no Adverse Impact on this**  
78 **Property by what has been Proposed.** Mr. Klemens expressed, for the record, his objection to  
79 this action as unfair and inappropriate. S. Belter acknowledged the objection, but moved for a  
80 vote. A. Conroy referred to the **Motion on the Table and asked if there was a Second; there**  
81 **was not.** S. Spillane commented that the Commission was being asked to give approval for the  
82 entire project without knowing where the septic is going; Mr. Klemens responded that the  
83 septic is going where it is shown. S. Belter noted that it had not been approved by TAHD; S.  
84 Spillane also commented that it had not been approved, it had just been suggested. A. Conroy  
85 explained that with the subdivision process, they have to do perc tests to see if the soils are  
86 appropriate, then the septic system usually gets installed in the location within close proximity  
87 to where the perc tests are done; there are variables that could change the design. S. Spillane  
88 asked if this application would come back to IWWC when the plans are firm; A. Conroy  
89 explained that, as S. Belter had noted before, the health code requires at least a 50' separating  
90 distance and it was all covered in the feasibility review. A. Conroy added that it is the main and  
91 reserve septic area shown and that if the activity was not occurring in the area proposed, it  
92 could be referred back to the IWWC. A. Conroy pointed out the silt fence shown is the limit of  
93 disturbance for grading; small changes in the area where the Commission has already approved  
94 disturbance would not come back. S. Belter asked where the V-100-A (the reserve area) is for  
95 this project; Mr. Klemens answered that it is shown there for both the reserve and the septic,  
96 taken from the subdivision plat that was previously approved. V. Garfein commented that A.  
97 Conroy had talked about the actual subdivision plan at the previous meeting and described what  
98 was appropriate and had been approved. L. Burcroff asked if there was a **Second for the**  
99 **Motion on the Table to have the Town Engineer review this plan; there was no Second.** A  
100 **Motion to Approve #2024-IW-003, As Is,** was made by V. Garfein and seconded by J. Landon.  
101 **The Vote was 6 in Favor, 1 Opposed, no Abstentions; the Motion Passed.**  
102

- 103 7. #2024-IW-004 / Boyett R & Miller T Trustees (Rooney) / 57 MT Tom Road / Burying greenhouse  
104 utility lines across a stream / Map 24 / Lot 26 / DOR: 2/26/2024  
105 There was a description of the property given by A. Conroy. Kealan Rooney, Applicant, was  
106 present. L. Burcroff asked how long the ditch would be; Mr. Rooney didn't know the actual  
107 distance. L. Burcroff asked how the stream would be crossed; Mr. Rooney indicated they would  
108 need to dig underneath it to put in conduit and then cover it back. L. Burcroff asked if the water  
109 would be impounded; Mr. Rooney answered yes. L. Burcroff asked how far under the brook  
110 they would be going; Mr. Rooney responded maybe 30" under brook level. T. Brown asked  
111 about the water flow; the answer was there is usually some. T. Brown asked how the excavating  
112 would be done; Mr. Rooney wasn't sure. S. Belter asked many questions, including if they could  
113 tunnel under the stream; if they were putting in power and water, could they be parallels; and if  
114 the water was going to be seasonal or year-round. S. Belter indicated that they would need to  
115 be 4' under the stream and asked if any testing had been done on either side of the stream yet;  
116 Mr. Rooney answered no. A. Conroy suggested that if it was an intermittent watercourse and

117 dry at time, that would be the preferred time to do the work. C. Ullman asked if the stream  
118 flows into the Housatonic; T. Brown answered yes, it does. L. Burcroff and J. Landon  
119 commented that tunneling under may be the best option. S. Spillane mentioned that she is  
120 familiar with the area and there is a lot of ledge. J. Landon suggested there needs to be testing  
121 on either side of the stream; S. Belter suggested having the excavator do some digging or probe,  
122 about 10' on either side. S. Spillane indicated that they need to see a lot more information on  
123 how it's going to be done, before it can be approved. C. Ullman commented that they need to  
124 know where the water is going to go, if it is going to be stopped in some way. S. Spillane  
125 suggested having a site walk. A. Conroy asked if the 2 possibilities being considered were boring  
126 under the brook or doing the work within the brook in a dry time of the year. L. Burcroff  
127 expressed his preference for the boring, but they need to find about out about the ledge there.  
128 Mr. Rooney commented that waiting for a dry time would be an issue. A. Conroy suggested  
129 having a site visit on Wednesday, March 6<sup>th</sup> at 4:30pm. T. Brown suggested looking at a few  
130 different elevation points, if the plan is to dig through, for restoration at the appropriate  
131 elevation. A **Motion to Accept Application #2024-IW-004**, was made by S. Spillane, seconded  
132 by J. Landon and unanimously **Approved**.

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134 8. Correspondence

- 135 a. Solitude Lake Management – 2/5/2024 – This was an informational letter to the IWWC  
136 about a permit application for the use of pesticides at the Hotchkiss School; there was brief  
137 discussion, but no vote.
- 138 b. The Pond and Lake Connection – 2/14/2024 – This was an informational letter about a  
139 permit application for the use of pesticides in Pierzga Pond, 193 Lime Rock Road in Lakeville.  
140 There was a brief discussion of the pond and larger property; no vote was taken.

141

142 9. Discussion of Bylaws

143 The Bylaws had been previously discussed, but not adopted; A. Conroy asked if there were any  
144 comments or questions. A. Conroy pointed out that the document is in tandem with the  
145 Wetlands Regulations. Potentially, before July, there could be a Hearing for adopting the  
146 Regulations; at that point, they would have to revisit the Bylaws again. A **Motion to Approve**  
147 **the Bylaws of the IWWC**, was made by S. Spillane, seconded by J. Landon and unanimously  
148 **Approved**.

149

150 10. Discussion of Regulations

151 There were no major issues to discuss from Atty. Janet Brooks, according to A. Conroy. There  
152 was a lengthy discussion about the definitions of “Clearing” and “Clear-cutting”, including:  
153 -- Not using “breast-height” as too vague, but using a specific reasonable number of feet  
154 -- Should trees or vegetation be used or include all  
155 -- “Clearing” could be a lot less than 2’ in diameter  
156 --“Clearing” & “Clear-cutting” are different definitions

157 -- Regarding the definition within Regulated Activity, Atty. Brooks recommends removing “clear-  
158 cutting of trees”, because of the use of the word clearing, which is already there, and the  
159 contradiction with timber harvest and clear cutting  
160 -- S. Spillane and V. Garfein want a definition of clearing.  
161 -- T. Brown asked if any clearing is acceptable within the URA.  
162 -- A. Conroy indicated that the applicant needs to come and demonstrate the activity; IWWC is  
163 the only authority to determine whether it’s regulated or exempt  
164 -- S. Spillane suggested asking Curtis Rand for those definitions  
165 -- A. Conroy noted there are still issues with the definitions; there is some case law on specific  
166 parts, such as the expansion of crop land  
167 On-line Permitting – According to A. Conroy and Atty. Brooks, the system is basically ready to go  
168 live, when the Regulations are adopted. A. Conroy will review the internal process in the future.  
169 Regarding the timeline, the language has changed to extend the duration of the permits; the  
170 regulations have been updated to reflect those Statutory changes. The Standard Conditions  
171 should remain in the Regulations, according to Atty. Brooks. R. Conklin had questions about the  
172 DEEP documents, regarding stormwater; the references will be updated. According to A.  
173 Conroy, Atty. Brooks recommends that the IWWC provide clarity for the bond process.  
174 There will be further discussion on the “Clearing” definition; the wetlands map; the next  
175 iteration of the Bylaws, which includes the fee schedule; and possible specific references to the  
176 CT E & S Guidelines. V. Garfein asked if the next discussion could be limited to the few items left  
177 for consideration, instead of another total review.

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179 **Adjournment. So Moved** by S. Spillane, seconded by J. Landon and unanimously **Approved**.  
180 The meeting adjourned at 8:10pm.

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