

**TOWN OF EAST WINDSOR  
INLAND WETLANDS WATERCOURSE AGENCY**

**Regular Meeting – October 5, 2011**

**\*\*\*\*\*Draft Document Subject to Commission Review\*\*\*\*\***

**CALL TO ORDER:** Chairman Savaria called the Meeting to order at 7:04 p.m. in the Town Hall Meeting Room, 11 Rye Street, Broad Brook, CT.

**ESTABLISHMENT OF QUORUM:**

**Present:** Regular Members Ron Savaria (Chairman), Michael Koczera, John Malin, Richard Osborn, and Alternate Members Alan Baker, and Kathryn Roloff.

**Unable to Attend:** Regular Members Michael Sawka (out of town on business), and Robert Slate (attending another meeting).

**Guests:** Attorney Diane Whitney, Counsel for the Commission; Town Planner Laurie Whitten; Kathy Pippin, Board of Selectmen; Officer John Barracato, Jr., and Officer Tamrah Stepien.

Chairman Savaria noted the establishment of a quorum with four (4) Regular and two (2) Alternate Members as noted above. All Regular members will sit in on votes this evening. Alternate Members will serve in rotation as noted at each Agenda Item.

Also in attendance was Wetlands Agent/Zoning Enforcement Officer Robin Newton.

**AGENDA ADDITIONS:**

**MOTION:** To **ACCEPT** under **AGENT DECISIONS** the Agenda Addition of Application #15-2011: Wal-Mart, 69 Prospect Hill Road: Request to remove existing damaged Gabion Basket retaining wall at detention pond, and replace with precast concrete Stone Strong wall 372+/-' long by 7' high. This property is located at 69 Prospect Hill Road. Assessor's Map 102, Block 14, Lot 007B. (65 day application period ends December 9, 2011).

**Koczera moved/Osborn seconded/VOTE: In Favor: Unanimous**

**MOTION:** To **GO OUT OF THE AGENDA ORDER** to consider approval of the Minutes at the end of the Meeting, and continue in the Agenda order as posted.

**Osborn moved/Roloff seconded/VOTE: In Favor: Unanimous**

**EXECUTIVE SESSION/1. Pending Litigation:**

**MOTION:** To GO INTO EXECUTIVE SESSION at 7:06 p.m. Attending: Chairman Savaria, Commissioners Koczera, Malin, Osborn, Baker and Roloff; Wetlands Agent Newton; Town Planner Whitten; Attorney Diane Whitney.

**LET THE RECORD SHOW** the Recording Secretary left the room

**Osborn moved/Baker seconded/VOTE: In Favor: Unanimous**

**MOTION:** To COME OUT OF EXECUTIVE SESSION at 7: 28 p.m.

**Osborn moved/Koczera seconded/VOTE: In Favor: Unanimous**

Chairman Savaria noted the Commission had been in Executive Session to discuss pending litigation; no action was taken.

**OLD BUSINESS/1. RECONSIDERATION OF APPLICATION #08-2011 – GERRY WILCOX: 50 Newberry Road:** Request for permit for regulated activities – to include construction of a concrete block wall and the construction of a detention basin for the expansion of equipment storage and trailer parking by filling of approximately 2,150 square feet of wetlands and creating 2,150 square feet of wetlands. This property is located on Newberry Road; nearest intersection is Thompson Road. Assessor's Map 092, Block 19, Lot 004.

**LET THE RECORD SHOW** all Commission Members in attendance at this Meeting will be participating in discussion and action on this Application.

**MOTION:** To RECONSIDER THE APPLICATION OF GERRY WILCOX/ 50 Newberry Road - Request for permit for regulated activities – to include construction of a concrete block wall and the construction of a detention basin for the expansion of equipment storage and trailer parking by filling of approximately 2,150 square feet of wetlands and creating 2,150 square feet of wetlands.

**Osborn moved/Koczera seconded/VOTE: In Favor: Unanimous**

Present to discuss this Item of Business on behalf of the Town and the Applicant, Gerry Wilcox, were the following individuals: Attorney Diane Whitney, Counsel to the Commission; Wetlands Agent Newton; Town Engineer Norton; Commission Members as noted above. The following individuals were present to represent Mr. Dearborn: Attorney Janet Brooks; George Logan/REMA Ecological Services, Soil Scientist; Guy Hesketh, P.E.

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Attorney Whitney requested to PUT ON THE RECORD what will be happening tonight. This is an Application for a Wetlands Permit for property located on 50 Newberry Road. The Application was filed on June 2, 2011, and the Commission decided a Public Hearing was not required because the activities proposed were not likely have a significant impact on wetlands or watercourses. On September 7, 2011, when the Commission had to make a decision, Mr. Dearborn filed a Petition as an Intervenor. The Commission reviewed all the allegations listed in the Petition and found none were true; they denied the Petition and denied Mr. Dearborn the opportunity to speak that night. The Application was not subject to a Public Hearing as the Commission decided earlier. The Application was approved that night, and the Decision was published. Since then Mr. Dearborn has served the Commission with a draft Complaint alleging he had a right to present his case that evening. Attorney Whitney suggested in her opinion the way the Commission treated the Application on September 7th was correct but Mr. Dearborn's attorney has presented us with authority that suggests that Mr. Dearborn should have been able to present his case, and that the Petition should not have been denied. (√)

Attorney Whitney indicated Gerry Wilcox has generously agreed, which in her experience is very unusual, to allow the Application to be reopened so Mr. Dearborn's evidence can be presented and the Commission and they can reconsider their decision. That is what will happen tonight. A concern which has been expressed was that this gave Mr. Dearborn an additional month to prepare additional material, and it is a month beyond the Statutory deadline, but Mr. Wilcox has been informed of that, and has agreed to allow any information that Mr. Dearborn wants to present to be presented. The Commission has reopened reconsideration of this Application, and they will hear Mr. Dearborn's evidence. The Planning Office/Commission didn't receive any of this evidence until this afternoon, and some of it was received tonight so the Commission will take a short break to review the material. (√)

Attorney Whitney requested that all members of the Commission that are here and will be voting on the Application reconfirm that they were present on September 7<sup>th</sup> and voted on the Application that evening. The Commissioner's responses follow:

- Commissioner Roloff – yes, was here.
- Commissioner Baker – yes was here
- Commissioner Malin – yes was present
- Commissioner Osborn – yes was present
- Commissioner Koczera – yes was here
- Chairman Savaria – yes was here (√)

Attorney Whitney noted the Commission will be noting tonight a two pronged consideration. 1) Are the activities reasonably likely to cause unreasonable pollution, impairment or destruction of the public trust in the air, water, or any other natural resources in this State. (√) If the answer to that is "no" it will end the consideration. If the answer is "yes" the Commission will then go to 2) Are there feasible and prudent alternatives to what is proposed by this Application? If the answer to number 1 is no then you don't go on to number 2. (√)

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Attorney Whitney queried if there were any questions from the Commission? Chairman Savaria requested that THE RECORD SHOW that no one said anything. (√)

Chairman Savaria noted the Commission had received, and read, the Application for the Intervenor status, but many of the Commissioners had not had an opportunity to read the 15 page report, so the Commission will take a recess to review the material.

**MOTION: To TAKE A RECESS TO REVIEW THE MATERIAL RECEIVED FROM INTERVENOR.**

**Roloff moved/Osborn seconded/VOTE: In Favor: Unanimous**

(The Commission RECESSED at 7:35 p.m.)

**MOTION: To RECONVENE/COME OUT OF RECESS at 8:04 p.m.**

**Osborn moved/Roloff seconded/VOTE: In Favor: Unanimous**

Chairman Savaria advised those present at the Meeting that this is NOT a Public Hearing. The experts will speak on points pertinent to this Application. There will be no discussion between members of the audience, applicants, or either side of this Application. Chairman Savaria advised the audience if he senses a problem with that he will have those people removed from the Meeting. (√)

Attorney Janet Brooks, representing Steve Dearborn as Intervenor, approached the Commission. Attorney Brooks asked if the documentation signed by Gerry Wilcox agreeing to reopening the decision was part of the record? Wetlands Agent Newton responded affirmatively, noting Mr. Wilcox has agreed to reopening the decision and that testimony can be made, and he would not appeal the decision to reopen and reconsider the decision but has reserved the right to appeal should the decision be reversed. (√)

Attorney Brooks indicated she agreed with the Town Attorney (Attorney Whitney) as to how one proceeds with an Intervenor Petition, but since 2008 she reported the Supreme Court has indicated there is another way a CEPA Intervenor may prevail. She referenced the case of Findley vs. the (Orange) Inland Wetlands Commission – Supreme Court Case 289.CT.12, Page 40, heard in 2008, which was a case of a CEPA Intervention which appealed the Application of Stew Leonard's in Orange. The Intervenor claimed in their appeal that they could just prove, not their Intervenor Petition, but just prove that the Applicant didn't comply with the wetlands law. The Supreme Court said if the Wetlands Agency has not made a determination supported by substantial evidence the Applicant proposal complies with the applicable Statutory regulation the decision approving a permit can not be sustained on appeal regardless of whether the Intervenor has affirmatively established the proposal will cause harm to the wetlands. We conclude therefore that an Intervenor pursuant to Section 22a-19 can prevail on appeal not only by proving that the proposed development will likely cause harm to the wetlands but also by

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proving that the Commission's decision was not based on a determination supported by substantial evidence that the development complies with governing Statutes and regulations. Attorney Brooks wished to draw attention to the lack of consideration of alternatives by the Applicant and the application process and the lack of consideration by the agency of feasible and prudent alternatives. Attorney Brooks suggested that while the Intervenor Petition triggers the prudent and feasible alternatives analysis if you find unusual impairment of the wetlands or watercourses the Wetlands Act itself requires this in all applications, not only Public Hearings. Attorney Brooks READ FOR THE RECORD Section 22a.41 a), and 2). Attorney Brooks indicated they will be addressing the lack of consideration of alternatives and recommendations made by George Logan which will address those alternatives, some of which would allow the application to occur, but in an alternative form. (√)

Attorney Brooks indicated she agreed with the Town Attorney (Attorney Whitney) on the analysis of how to proceed with the CEPA Intervention but also that the Intervenor has an alternate basis on which to proceed. Because this Application is occurring directly in wetlands this is an example of the 2004 Public Act which brought wildlife back into your jurisdiction. Wildlife is a consideration and may be a basis for conditioning or denying a permit because the activity is occurring within a wetlands. (√)

Attorney Brooks introduced George Logan, who represented himself as a principle in REMA Ecological Services. Mr. Logan gave his credentials, noting he has been a consultant since 1988. Mr. Logan suggested he would review his report point by point for the Commission.

Mr. Logan indicated he had reviewed the Application records, which included letters, plans, and drainage reports. To illustrate his findings Mr. Logan educated those present with his expansive knowledge of eco-systems and wetlands functions. To support his findings, Mr. Logan submitted this afternoon (10/5/2011 at approximately 2:30 p.m.) via e-mail a 13 page report, with 22 pages of attachments; the report is co-authored by Sigrun Gadwa and George Logan – see report for professional credentials. This report, and numerous attachments, is part of the material reviewed by the Commission during the previous recess. The report is part of the Application file, and Mr. Logan gave lengthy enlightenment during the meeting; a summary of Mr. Logan's findings follows below.

Mr. Logan felt not much information had been put into the record by the (Applicant's) soil scientist. Mr. Logan advised the Commission he has experience with this wetlands going back to February of 2008, when he delineated the wetlands on the Dearborn property and this property. As there was no fence in existence at that time Mr. Logan advised the Commission he just continued on with his investigation until he thought he was on another owner's property.

**REMA Report Summary:**

**Existing conditions:**

The Wilcox property is predominately open, including farmland and storage and parking

lots. A small forested area comprised of uplands and wetlands exists to the east. The forested wetlands includes varies species of deciduous (sp<sup>v</sup>) trees and native shrubs; the wet meadow contains various species of vegetation, including some invasive species.

Mr. Logan suggested the Applicant's experts had described these wetlands as being low-functioning. It was his opinion that to determine the value of the wetlands the Commission must evaluate the hydrologic regime/wetlands not only on the Wilcox property but the Dearborn property as well. Mr. Logan gave a lengthy narrative of his findings; he felt impacts to this area will occur due to the activities proposed under the Wilcox Application.

**Function and values:**

Mr. Logan challenged Mr. Wilcox's experts, both the soil scientist and the engineer, regarding their assessment that "the low quality of the wetlands is due to the work on the adjacent (Dearborn) property and historical work performed on site", and that "the main function of the wetland at this location is the capture and control of surface runoff at the toe of the slope from the site". Mr. Logan gave a lengthy narrative, explaining that "per REMA's assessment, the functions of groundwater discharge, wildlife habitat, production export, and sediment trapping/nutrient attenuation are all present."

**Wetlands & Watercourse Impacts/Overview:**

- 2,150 square feet of impact caused by filling and grading of wooded portions of the upland review area will reduce wildlife and production export functions of the wetland. Mr. Logan questioned why Mr. Wilcox's experts did not offer an alternative to the proposed activities?
- Proposed mitigation within the detention basin will not work. Mr. Logan felt the stone and gravel proposed to line the basin will result in a high pollutant load, thereby preventing good wetlands function. Mr. Logan presented extensive narrative explaining his opinion that Mr. Wilcox's plan failed to follow CT DEEP's Water Quality Manual regarding design and size of the proposed detention basin; see Mr. Logan's report for specifics.
- Flow patterns will become less diffuse, groundwater discharge will be reduced due to filling.
- Short-term impact to wetlands caused during construction; long-term impact may enter wetlands via the detention basin.
- Loss of existing wooded buffer causing loss of food/habitat and loss of mature wooded screen between Mr. Wilcox's property and Mr. Dearborn's property.

**Wetlands & Watercourse Impacts/Water Quality Impacts: Stormwater Management:**

Mr. Logan felt Mr. Wilcox's engineer failed to follow the CT DEEP's Stormwater Quality Manual when designing the detention basin; he felt it was improperly designed and undersized, and water storage calculations are incorrect. Mr. Logan presented lengthy narrative explaining his opinion; see REMA report for specifics. It is Mr. Logan's professional opinion that the "proposal will result in unreasonable pollution of

downgradient wetlands and watercourses.”

**Wetlands & Watercourse Impacts/Water Quality Impacts: Hydrologic Impacts:**

Mr. Logan felt the proposed activities will “adversely impact the existing hydrologic regimes, the existing plant diversity, and the wetland functions associated with these functions”. During his narrative Mr. Logan indicated that if water is diverted away from the wetlands, or becomes surface runoff into the wetlands or detention basin it will be diverted away from where it goes today - into the groundwater.

**Wetlands & Watercourse Impacts/Water Quality Impacts: Compensatory Wetlands Mitigation:**

Mr. Logan referenced excerpts from David Askew’s letter of 8/10/2011 regarding comments on the Applicant’s proposed mitigation plan. (David Askew is Director of the North Central Conservation District, Inc./Professional Soil Scientist, SSSNE. Mr. Askew was asked to offer consultation by Town Staff regarding Mr. Wilcox’s Application). Mr. Logan continued in his narrative that Mr. Askew had suggested that mitigation should follow a consideration of alternatives which would determine the proposed impacts were unavoidable. Mr. Logan felt alternatives were not provided. Mr. Logan’s narrative indicated he felt there would be direct impact and loss of wetlands functions, as well as hydrologic impacts. Mr. Logan’s comments were lengthy; see his report for detailed specifics.

**Wetlands & Watercourse Impacts/Water Quality Impacts: Alternatives Analysis:**

During lengthy narrative Mr. Logan offered the following alternatives:

- Avoid filling wetlands
- Design a stormwater collection and treatment system that promotes infiltration
- Properly design and size primary treatment systems
- Provide a permanent undisturbed 40’ to 50’ buffer.

**Conclusion:**

The report indicates that it is Mr. Logan’s (and Ms. Gadwa’s, Mr. Logan’s associate) professional opinion that the proposed activities will have a high likelihood of adverse short and long-term impacts to function of regulated wetlands and watercourses, both on-site and off-site. See Report for specific impacts regarding diminutions of functions. It is the conclusion of the co-authors that “the proposed activities are reasonably likely to have the effect of unreasonably polluting, impairing, or destroying the public trust in the air, water, and wetlands of the state, including those located both on, and off, the subject site.” See caveat in report regarding effect of suggested alternatives on minimization of the impacts.

Commissioner Roloff requested to address Mr. Logan regarding some of his comments. Commissioner Roloff gave her professional credentials, noting she has a Bachelor’s Degree in Environmental Science with a minor in Chemistry and a minor in Geochemistry, and has worked as a Waste Water Analysis Chemist for over 10 years. (√) Commissioner Roloff indicated she is struck by the number of subjective comments in

Mr. Logan's report. She indicated she saw no demonstration as to how Mr. Logan got his area, no numbers of vertebrates and invertebrates though Mr. Logan mentioned them, she didn't see how he got 6000 square feet, she didn't understand how a wet meadow could be considered a water body. She suggested Mr. Logan hadn't done a wildlife population assessment, or an estimate of seed production and nutrient production for that area. Commissioner Roloff suggested she is looking for numbers; she felt Mr. Logan didn't present any numbers to support his comments made during his narrative. Mr. Logan questioned if Commissioner Roloff had seen the Applicant's numbers? Commissioner Roloff reiterated she needed to see Mr. Logan's numbers. She indicated Mr. Logan was saying there was a difference/change; she requested to see his numbers. Mr. Logan referenced his notes. He suggested some of this information was important, but also felt there was some qualitative stuff that was important. (√)

Mr. Logan offered his notes. Commissioner Roloff suggested she would like to see some type of mapping, or a graph to support the numbers; Mr. Logan suggested the information was in his computer. Commissioner Roloff questioned if the information had been printed out to show to the Commission? Mr. Logan angrily questioned if the Applicant had done the same thing? He suggested (the Commission) took the Applicant's word; why wouldn't they take his? Commissioner Roloff suggested this was Mr. Logan's report; she is looking for background. Mr. Logan questioned if the Applicant gave the Commission background information? Commissioner Roloff reiterated she was asking for Mr. Logan's numbers. Mr. Logan felt he was being asked to do something over and above what was necessary. Commissioner Roloff reiterated she was asking for numbers, information, water flow, all items that Mr. Logan was saying would change; she felt they were important to discuss. Mr. Logan questioned when was the last time the Commission asked this of an applicant or an Intervenor? Commissioner Roloff suggested the numbers were all items discussed in Mr. Logan's presentation. Commissioner Malin felt Mr. Logan was being evasive; Commissioner Roloff concurred; Mr. Logan opposed the allegation of evasiveness. Commissioner Roloff suggested the numbers were important; the nutrient load is important. Mr. Logan suggested he was more than capable of giving Commissioner Roloff that minutia to prove his point, but was asking her to accept his word as she has accepted the word of the Applicant. Discussion continued; Commissioner Roloff reiterated she was asking Mr. Logan for his documentation; Mr. Logan angrily suggested he was showing Commissioner Roloff the Applicant's calculations were wrong. Commissioner Roloff felt Mr. Logan was being evasive again; Mr. Logan angrily suggested if Commissioner Roloff wanted to keep this open he would be more than happy to give Commissioner Roloff whatever information that seemed reasonable to give. (√)

Commissioner Roloff suggested she had never heard of a wet meadow being an upland water body? Opposing discussion continued; Attorney Brooks interjected on Mr. Logan's behalf, suggesting she would like to have Mr. Logan answer if a wet meadow was a water body or a wetlands. Mr. Logan countered he never said in this presentation that a wet meadow was a water body; if he said that he should take all his credentials and put them in a garbage bag and throw them away. Mr. Logan suggested Commissioner Roloff had

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misunderstood him, and gave a detailed explanation of what he perceived to be the intent of his comments. Mr. Logan suggested he was saying you can't create a wet meadow in an environment depicted by the Applicant; he felt there would not be the proper hydrology or proper soils. Mr. Logan suggested he was not saying that a wet meadow is a water body. Commissioner Roloff suggested Mr. Logan was saying there would be a lot of sedimentation, and then you say there isn't soil; sedimentation quickly becomes soil. Mr. Logan disagreed. Discussion continued regarding clarification of Mr. Logan's comments. Mr. Logan again questioned why he was being asked these questions? Commissioner Roloff suggested Mr. Logan was the person stating this would be a problem. Mr. Logan suggested "he" didn't do it; why should I? (√)

Attorney Brooks interjected again, noting that as she has said earlier there are two ways that a CEPA Intervenor can prevail. She suggested that Mr. Logan has made the comments to prove the contents of the Intervenor Petition. Attorney Brooks suggested the second is to establish the Applicant hasn't proved compliance with the underlying wetlands regulations. Some of this is offered to establish that the Applicant hasn't put forth information that establishes compliance, and the other point of George Logan's report may be to establish substantiality of the Intervention Petition. Attorney Brooks suggested the two points were not mutually exclusive; one part could go to one and one part could go to the other. (√)

Chairman Savaria questioned if Commissioner Roloff's question had been answered? Commissioner Roloff suggested she had a lot of questions. She felt there is a lot of subjective information in Mr. Logan's report; if Mr. Logan has those figures she would like to see them. These have a bearing on the application; he is saying there will be substantial impact but not saying what the numbers are. (√)

Chairman Savaria suggested he could understand Commissioner Roloff's frustration. Mr. Dearborn's experts have had an extra month to come up with information, and the Commission has had a few hours for review. He suggested if Commissioner Roloff felt there isn't enough information she has a valid point.

Commissioner Baker noted Mr. Logan had mentioned wildlife several times in his report; Commissioner Baker questioned if Mr. Logan did a wildlife study? Mr. Logan countered that as a wildlife biologist he can look at an environment/habitat and tell what kind of wildlife was there. As an example, a wet meadow jumping mouse might be there. Mr. Logan suggested that he can look at a habitat; you don't have to go out there and look at every species. Mr. Logan indicated he didn't do that; he suggested you didn't need to do that; he does it when it's necessary. Mr. Logan suggested he can go to the habitat and based on his experience and come up with a list. He was talking about a wildlife function; if you take a habitat and turn it into pavement you lose wildlife based on the correlation of wildlife to habitat; that's what's happening here – to the tune of about 3,000 square feet of wetland that's being destroyed here, in his opinion. Commissioner Baker questioned that the short answer is "no" but in your professional opinion it would? Mr. Logan replied "yes". (√)

Discussion with Mr. Logan ceased.

Mr. Guy Hesketh, of F. A. Hesketh & Associates, Inc. approached the Board. Mr. Hesketh listed his professional credentials; he reported he was hired by Mr. Dearborn to look at the technical issues of the project. In his review he looked at various materials, including plans, dated 4/5/2011 (and later revised); see Mr. Hesketh's Report dated 10/5/2011 submitted to the Commission at this Meeting. This report, containing 5 pages, is part of the material reviewed by the Commission during the previous recess. The report is part of the Application file; Mr. Hesketh offered lengthy presentation of his opinions during the meeting. A summary of the opinions presented in Mr. Hesketh's report, and his comments during discussion, follows below.

**Hesketh Report Summary, re: Application #08-2011, 50 Newberry Road:**

**Plans:**

- Original Plan (Improvement Location Plan) submitted with Wilcox Application was a plan prepared in 2010 by J. R. Russo. Mr. Hesketh reported the plan lacked existing conditions of clearing adjacent to subject site; also gravel and millings have subsequently been added to site.
- Improvement Location Plan revised 8/25/11 to show existing condition contours and spot grades on a portion of the site, and now shows Post Development Drainage Plan, while the Pre-Development Drainage Plan appears to show Russo (2010) topo. Mr. Hesketh's report suggested the information shown on this revised plan was not sufficient to determine "contributory watershed areas that drain to the proposed detention area and receiving wetlands and watercourses and then immediately discharged to Mr. Dearborn's property."
- "Plan lacks spot grades and contours along western and northern limits of the operations area", while the Russo plan shows spot grades and contours in those areas. Mr. Hesketh's report suggested the Russo plan indicates a larger watershed area which drains to the detention area than then pre- and post-development drains submitted with the Application. If the Russo plan is considered accurate then the watershed delineations are incorrect and under-estimate total peak flow and total volume of runoff to the detention area and then to Mr. Dearborn's property. If the Russo plan is considered NOT to be accurate then Mr. Hesketh's report suggest that the existing conditions data should be presented accurately to determine watershed delineations. It is Mr. Hesketh's opinion that the "contributory drainage area that discharges to the detention area is measurably larger than presented in the Drainage Report and shown on the 'Plans'". Mr. Hesketh's report suggested the detention area is significantly undersized.
- Drainage swale shown on "Revised" plans extends 8' further south into the wetlands, and into the area south of the retaining wall. Proposed contour for elevation 108 does NOT depict the swale. Review of the Original Plan against the "Revised Plan" indicates that the silt fence barrier locations have not changed between the plans. Mr. Hesketh suggested that the additional 8' location revision, multiplied by 170' length of swale, would result in an additional 1360 square feet of wetlands disturbance – greater than the disturbance shown on the plans.

- Mr. Hesketh's report cited concern that the existing soils would support the proposed concrete retaining wall and associated fill and questioned the stability of the wall. The report questioned if a "global stability analysis or other geotechnical evaluation had been completed to assess the design." Mr. Hesketh suggested failure of the wall would cause damage to the wetlands and Mr. Dearborn's adjacent property. He suggested a better design would be to locate the wall further away from the wetlands.
- Mr. Hesketh's report suggested there is no flow data, or calculations, for the swales.
- Mr. Hesketh's report suggested there is no access to the detention basin.
- The "Plan" reflects discharge to Mr. Dearborn's property. Instead discharge should be directed to the upland area via a level spreader to disperse flow. It is not the intention of Mr. Dearborn to grant "rights to discharge" to the Applicant, should they be needed.
- Mr. Hesketh's report challenges that the CT DEEP considers wetlands created for storm water treatment/basin as wetlands mitigation. The report offers an alternative mitigation option.

**Drainage Report:**

- Original Drainage Report modeled 2 watershed areas, an existing conditions watershed containing 3.25 acres, and a proposed conditions watershed area of 3.40 acres. In his report Mr. Hesketh questioned if these 2 areas correlate to the pre- and post-drainage maps? He suggested information was missing from the Drainage Report; the analysis was done using the Rational ( $sp^{\sqrt{}}$ ) Method. Mr. Hesketh suggested the Drainage Report lacked information to show runoff coefficients based on various topography – grass, woods, gravel, etc. And, the Drainage Report lacked information regarding "routing of the proposed-conditions storm through the detention structure." See report for additional information.
- Mr. Hesketh's report suggested the watershed areas as shown in the Drainage Report are undersized.
- Mr. Hesketh's report questions the design, and choice of materials, of the proposed discharge swale, level spreader, and outlet structure. Mr. Hesketh suggested the proposed construction with riprap isn't feasible.
- Mr. Hesketh's report suggested the Water Quality Volume calculations were based on a watershed of 3.40 acres, yet the data suggested the volume to be considerably larger. Mr. Hesketh suggested the total watershed area to be underestimated by 30+/-%.
- Mr. Hesketh's report challenges the inclusion of swale volume in the Water Quality Volume calculations.

Mr. Hesketh concluded, as he did in his report, that it his professional opinion that there will be short term and long term wetlands and watercourse impact, both on and off site, due to the activities as proposed. Mr. Hesketh's report conclusion reiterates his

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professional opinion that the wetlands disturbance has been significantly underestimated. In his report, Mr. Hesketh further opined that “if recommendations made by Mr. Logan the likelihood of adverse impacts to receiving wetlands and watercourses would be significantly minimized.”

Mr. Hesketh noted the following report corrections (Page 4, Bullet 6) for the Commission: 1) “.....discharge to ~~my~~ Mr. Dearborn’s property.....” 2) “~~I have no intention~~ Mr. Dearborn has no intention.....”

The Recording Secretary requested a break.

**MOTION: To TAKE A SHORT BREAK.**

**Baker moved/Roloff seconded/VOTE: In Favor: Unanimous**

**(The Commission RECESSED at 9:40 p.m.)**

**MOTION: To COME OUT OF RECESS AT 9:47 p.m.**

**Roloff moved/Koczczak seconded/VOTE: In Favor: Unanimous**

Mr. Hesketh reiterated his conclusions made prior to the break. The Commission had the following questions for Mr. Hesketh.

Commissioner Koczera recalled Mr. Hesketh had said the Applicant’s engineer didn’t give the height of adjacent landowners properties; Mr. Hesketh responded “yes”. Commissioner Koczera questioned if Mr. Hesketh had permission from adjacent landowners to go on their property to make determinations? How does he (the Applicant’s engineer) get those heights? Commissioner Koczera suggested as a private property owner he wouldn’t have permission to go on someone else’s property to get the heights; how would the Applicant’s engineer get those heights? Mr. Hesketh suggested the measurements could have been taken in the field and estimated where the watershed areas were by visual inspection. In order to accurately determine what the total contributory watershed is you need to define the limits of the watershed and determine where those high points are. Mr. Hesketh suggested these maps don’t do that. Mr. Hesketh countered that there isn’t enough information on the maps to determine that information; they are technically deficient. (√)

Referencing the plan/map Commissioner Roloff suggested there really isn’t any change going on up “here”, the only change proposed is “here”; she questioned if her statement was correct? Mr. Hesketh suggested that historically there appeared to have been changes made since 2010; the topography shown doesn’t accurately depict the changes made. Commissioner Roloff questioned how substantial were those changes? Mr. Hesketh indicated he didn’t know; even if it were a couple of inches it could impact the watershed area. Mr. Hesketh suggested the spot grades were not depicted. He

suggested that there may have been data collected in 2008, and if that was correct it's ok to transfer it to the other plan. We need to see a plan of existing conditions that accurately depicts what the topography is at the time the application was made. "This" data suggests that the watershed is significantly larger and includes some part of "this" property. There is information missing on the plan submitted with the drainage report. (√)

Commissioner Koczera questioned if there was any way he could have reworked it the property and never said anything to anyone; is there any proof of the way it looked before he reworked it. Commissioner Koczera clarified that he wasn't saying the Applicant had reworked the property, but if he did. Now we have satellites and can see swimming pools and such. Mr. Hesketh suggested aerial photography doesn't accurately depict topographic conditions; you can tell coverage, such as trees. Mr. Hesketh suggested the plan is technically deficient. (√)

Attorney Brooks suggested Mr. Dearborn would like to speak. Town Engineer Norton requested to ask a few questions.

Town Engineer Norton suggested that Mr. Hesketh had claimed the map done by Russo, subsequent to the map being done Mr. Dearborn had witnessed activity up "here"; Town Engineer Norton requested clarification if that was a correct statement? Mr. Hesketh replied that was correct. Town Engineer Norton suggested that when you're drawing a line here saying that's the watershed area, and maybe that's not the case, he wondered if Mr. Arsenault field verified the information with his map because he didn't have the topo information there? Town Engineer Norton noted he had done that himself; he questioned if Mr. Hesketh had ever done that? Mr. Hesketh suggested what he was saying was that the map he was looking at "here" does not have enough topo information to depict the top high points, therefore determining what the watershed areas are is an interpretation someone makes without having the information there. Mr. Hesketh suggested his question was why isn't there official data here; he suggested it's in conflict with the plan submitted during the previous application. Mr. Hesketh suggested the question is what did go on; maybe it's higher or lower, but we should know that. It's important because we are trying to determine if there are potential adverse impacts to the receiving watershed or watercourse area. Mr. Hesketh suggested that's the point he's making. (√)

Town Engineer Norton suggested the point he believed Mr. Hesketh was making is that a licensed professional engineer or surveyor, whoever did that, has the capability of going out into the field and mapping that line on the map without showing spot grades. Maybe that's where the surveyor stopped because that's where the high point was. If they're only working in that portion of the property why would they survey the whole property, or topo the whole property, if they know that's the top of the watershed? Mr. Hesketh countered that if you're looking at it from a water quality perspective then those data points, and a little beyond, should be shown to verify. Mr. Hesketh referenced various spot grades and gave comments as to their significance. Town Engineer Norton suggested there was a comment made that Mr. Dearborn witnessed him moving earth

there, so that's not necessarily a correct depiction of what's out there. Mr. Hesketh indicated he was bringing it up because the existing topo map was the same map used in 2010. Town Engineer Norton questioned that Mr. Hesketh didn't believe the gentleman could have used the existing map and walked out in the field and determined that line? Mr. Hesketh disagreed that he made that comment. (√)

Town Engineer Norton suggested that having done this for over 30 years he would offer that hydrology is not an exact science and when it's stated a few inches may make a difference he disagreed with that. (√)

Town Engineer Norton indicated that with regard to the riprap outflow of the basin, he had designed them himself when he worked in private practice, and they work. Every one that he built worked. They can build them, it's hand work, but they work. I wouldn't have approved it if I didn't think it wouldn't work. (√)

Town Engineer Norton noted the retaining wall will require a permit from the Building Department and the Building Official will require a geotechnical study before the wall is built. Town Engineer Norton noted that having worked in private practice he didn't require his clients hire a geotechnical engineer and a structural man to design a wall before they knew if they had a wetlands permit. There will be a permit, and there will be an analysis on the design before it's built if it's approved. (√)

Attorney Brooks requested to ask redirect questions. It was noted the Commission must make a motion to extend the meeting past the 10 o'clock deadline to continue.

**MOTION: To CONTINUE THIS MEETING PAST 10 O'CLOCK.**

**Malin moved/Roloff seconded/**

As the vote to continue was NOT unanimous the Commissioners were asked to cast their vote by a show of hands. The vote taken follows.

**VOTE: In Favor: Baker/Malin/Roloff/Savaria  
Opposed: Koczera/Osborn  
Abstained: No one**

Attorney Brooks opened her questions by asking Mr. Hesketh what he said about a couple of inches making a difference and Town Engineer Norton saying it didn't; she asked Mr. Hesketh to explain his opinion.

Mr. Hesketh suggested he agreed with Town Engineer Norton that delineations are interpretations that engineers make but the interpretations must be made on the best available data. The previous survey on which the existing conditions application showed additional data which was not on this plan which depicts the watershed as being significantly larger than it is, not from a strictly hydrologic standpoint; he was more

concerned with a water quality standpoint because they are looking at impacts to receiving wetlands and watercourses. The types of activities that are occurring here are commercial or possibly industrial which are considered by the DEP to have potential high pollutant loads. It's imperative to protect the receiving wetlands and watercourses, we have to depict the minimum water quality volume. If the basin proposed were 1 ½ or 2 times the water quality volume he would agree with Town Engineer Norton, we would be splitting hairs, but it's not; it's significantly under-designed and the watershed could be significantly larger. Mr. Hesketh went on to explain the importance of protecting the receiving wetlands and watercourses. (√)

Chairman Savaria queried the Commissioners for questions?

Commissioner Baker noted Town Engineer Norton had said he has designed riprap outlets and they can work. He questioned Mr. Hesketh's opinion on that statement. Mr. Hesketh suggested he was not saying they can't work, he was saying in using a 6" or 10" stone on such a small structure you don't have the quality control to throttle back the flow. Drainage analysis submitted didn't include stage-storage or stage-discharge relationship or specific geometry of the structure. He couldn't evaluate the analysis. Mr. Hesketh felt you have much better water quality control with a concrete structure. (√)

Attorney Brooks advised the Commission Steve Dearborn wanted to make some comments to the Commission.

Mr. Dearborn joined the Commission at the table; Chairman Savaria requested he identify himself. Mr. Dearborn did so, noting he was the owner of 68 Newberry Road; he is a neighbor of Mr. Wilcox. Mr. Dearborn indicated he wanted to clarify some of the things Len/Town Engineer Norton said as well. Mr. Dearborn began with a history of his property (at 68 Newberry Road), noting he had purchased it four (4) years ago. He reported he put in the pond As-Of-Right. The water flowed from the Noble farm. Chairman Savaria reminded Mr. Dearborn the Commission was discussing this Application (50 Newberry Road). Mr. Dearborn indicated he wanted to continue; what was right was right; there could be a lot of fallout from this. Mr. Dearborn continued to advise the Commission that the water flowed from the Noble property to the Wilcox property to a pond "he" dug to the Urano property. When "he" dug the pond the Commission didn't let the water run to where it ran for many years to the Urano property. Chairman Savaria suggested Mr. Dearborn was getting off topic; Mr. Dearborn disagreed; Attorney Brooks requested Mr. Dearborn bring discussion back to this Application. Mr. Dearborn alleged the Commission was letting Wilcox do things, if the Commission wants me to explain the 4 points that I have I will. (√)

Mr. Dearborn suggested the Commission is letting Mr. Wilcox do things on his property which "he" was denied. Attorney Brooks interjected – "such as?". Mr. Dearborn continued that the water couldn't go down to the Urano property; he had to dig a ditch down the boundary line so none of that water would leave that property, Number 1. Number 2, I'm being made to do a swale all around my property line so that not one drop

of the water that ran there would go there anymore. But we can run the water onto my land. Chairman Savaria suggested it was Mr. Dearborn's swale; Mr. Dearborn indicated his swale was put in to keep every drop of water from his contractor's storage yard from "his" property. Number 3, Mr. Dearborn said he had had to dig a retention pond to hold 5 acres of water – all that water for all that area - for a 100 year storm. He isn't doing that; he doesn't have to do that; why is that? Those are some of my concerns; there was another one but he forgot it. Mr. Dearborn suggested the water will leave Wilcox's property, without a big enough pond, that water a rate that will hit his pond, run down the swale, wash the land out and cause run off into Namerick Brook and who will get blamed for that? This is not happening. (√)

Mr. Dearborn noted Town Engineer Norton's statement about doing work on the site (50 Newberry Road); Mr. Dearborn indicated he had photos of the work to show the Commission. Attorney Whitney and Attorney Brooks advised Mr. Dearborn the photos will become part of the record; Mr. Dearborn was in agreement with submitting the photos. Mr. Dearborn indicated the photos were taken last Summer; Attorney Brooks interjected 2011, Mr. Dearborn concurred. Mr. Dearborn indicated these photos are from the south side of the property from where the building where they stored the papers fell down. They have put material down and rolled it this Summer; Attorney Brooks interjected, questioning when these photos were taken? Mr. Dearborn thought it was this Summer; it was done after he was approved to put in the trailer parking. This is stuff that's going on over there; they have raised the topo up. He has photos of the water flowing towards the street. Mr. Dearborn continued to explain his frustration at the activities going on. These are pictures that show him filling in by his building where there was a big valley; Attorney Brooks suggested Mr. Dearborn was referring to photos 1 and 2. Mr. Dearborn suggested it's were Wilcox filled in the property behind his building; he actually has a pipe in there that's actually deflecting the water. Chairman Savaria noted he had visited the property (50 Newberry Road) today; he couldn't actually tell from the photos that it was that property. Referencing a different photo Mr. Dearborn indicated this was to the left inside the gate, it's another photo of what he's doing with the property. Chairman Savaria questioned if this was a photo of the same property; he suggested that area wasn't what the Commission was dealing with; it isn't a wetlands area. Mr. Dearborn stated it's showing what he is doing with the water; he's pushing to get into my wetlands. I have a soil type wetlands on the corner of that farm; when I bought that Noble farm I didn't have a problem. When he filled all this in and directed the water over there it became a big problem. Mr. Dearborn reiterated he was going to show the Commission these pictures, I want you to see these pictures, so you understand. I want you to understand what's happened because of filling and rolling and grading. Mr. Dearborn repeated, this has to be seen; these pictures have to be seen. (√)

Mr. Dearborn continued on. "This" photo shows filling through the ditch, water coming out of the fence brings dirt with it and flows towards the street; I've got a major lake here. Attorney Brooks referenced photos "24 and 25" (√). Mr. Dearborn stated this shows you what's happened because he's filling; all the water flows toward me; it's all directed towards my property. Chairman Savaria suggested he could understand Mr.

Dearborn's concern but Commissioner Savaria indicated he couldn't tell, without a key map or something, where the pictures are. Attorney Brooks suggested this is anecdotal support of what Mr. Hesketh was saying, that the existing conditions shown may not be what is out there. Even if it's not in an area of wetlands and are not regulated activity, if they are not currently accurately depicted they can affect the determination of the size of the watershed, the volume of the water, and (after conferring with Mr. Dearborn's experts) the size of the water quality basin. Mr. Dearborn submitted to the Commission a letter that he said he had sent to the town with copies of those photos; Chairman Savaria confirmed the file already contains the letter and photos. (√)

Mr. Dearborn continued. He suggested "this" photo shows where he's cleared the land, pulled the stumps, filled, rolled and graded that property. Chairman Savaria questioned if that was in the front; Mr. Dearborn indicated it's not in the front, it's out in the back where he's parking the trailers today. Chairman Savaria suggested the area under discussion wasn't up against Mr. Dearborn's property; Mr. Dearborn said the water flows away from the blue building; the back side of the property is high. Mr. Dearborn indicated he wanted to submit one more photo, it shows him pulling the stumps and doing that work along the fence, and it's towards the area where he wants to do this thing. Mr. Dearborn suggested he knows he doesn't have permits to stump, and grade, and fill, the same thing he (Mr. Dearborn) got in trouble about. Mr. Dearborn suggested the Commission heard the experts; let's be fair. He's going to do what I couldn't do. Mr. Dearborn states that if this gets approved and he gets water on his property there will be some great fallout from this. (√)

Attorney Brooks suggested that in summation in addition to determining the allegations in the Petition the Intevenor can prevail by proving that the deficiencies in the Application as submitted does not meet the applicable Statute; she felt that had been proved by Mr. Hesketh. Regarding Commissioner Roloff's frustration regarding lack of information Attorney Brooks cited an excerpt from the Findley Case, same page as previously quoted, "this court can recognize that the applicant has the burden to prove compliance with Statutory requirements for a wetlands permit." Attorney Brooks felt whatever frustrations there were should be directed at the Applicant and the deficiencies, and in reconsideration, either more information needs to be provided, or the alternative of moving, resizing or reshaping the basin which would allow it to go forward. (√)

Chairman Savaria queried the Applicant's team for responses.

Mr. Arsenault (Mr. Wilcox's engineer) clarified that he has been doing this since 1988 and has been in private practice for 90% of that time; he has done hundreds of site plans. When he submitted the information from Mr. Gragnolati and himself to Town staff it was reviewed by Town staff and David Askew. Mr. Arsenault reported he addressed all comments made by Town staff, Town staff agreed to the revisions/adjustments, and the Application was approved. A lot of information has been presented tonight; they received Mr. Logan's report this afternoon at 3 o'clock and Guy Hesketh's report this evening; he finds the timing of the submissions very unprofessional.

Regarding the topographic information and the area contributing to the drainage area, Mr. Arsenault reported he looked at Russo's 2008 map; their charge was to look at the wetlands there. They contracted to have topography done down "here". He indicated his first question was where the watershed was located so he originally looked at the Russo map, some subsequent topography taken at his request, and he also walked the site and took visual information. Mr. Arsenault indicated that's how he arrived at his drainage areas. Mr. Arsenault reported he is confident with his findings. He reported he always walks a site; he doesn't just consider mapping. (√)

Regarding use of the Rational Method (sp √), for a watershed this small it's absolutely acceptable.

Regarding the discharge from the detention basin, Mr. Arsenault indicated a weir of this kind is commonly used. He has the stage discharge and stage storage computations; the summary information was reviewed by Town Engineer Norton who reviewed his (Mr. Arsenault's) calculations on the same computer program. Mr. Arsenault indicated Town Engineer Norton was able to duplicate Mr. Arsenault's numbers. (√)

Regarding the wall, Mr. Arsenault concurred that they do have to get a building permit. Mr. Arsenault continued, it's not just a 6' wall sitting on grade, there's actually another stone below grade as well. There are actually 4 stones; 3 above grade and 1 below, 2.7 tons of weight for each stone. Mr. Arsenault reported he has confidence in the stability of the wall. (√)

Mr. Arsenault felt he had heard comments that they didn't provide information on all storms; for clarification they provided information from two (2) to 100 year storms.

Regarding moving the silt fence which will be an additional loss of wetlands, Mr. Arsenault disagreed. The silt fence is a temporary disturbance. When it's removed the wetlands can be restored. There will be 2,150 square feet of loss of wetlands; anything beyond that is a temporary loss of wetlands that can be restored. (√)

Chairman Savaria queried the Commission for questions.

Commissioner Baker noted he had heard mention of the potential that size of water conveyance swales wouldn't work as far as scour; do you find that to be true? Mr. Arsenault reported that in his opinion there is such a small area going to these swales; he referenced the various areas and contours on the map. The only reason for the swales is so the water doesn't go off the property but goes to our proposed system.

Commissioner Baker suggested that at a previous meeting you (Mr. Arsenault) testified that the outflows from this proposed construction would be the same as beforehand, do you stand by that? Mr. Arsenault concurred; he suggested they must look at pre and post (discharge) and make sure that our peak rate of discharge is what it was or less than prior to construction. The numbers were in the report and reviewed by the Town Engineer. (√)

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Regarding the detention area Commissioner Baker questioned how do you (Mr. Arsenault) feel about George Logan's comments about it being undersized? Mr. Arsenault reported he stands by his computations. (√)

Commissioner Koczera questioned if the purpose of the wall is to keep the property at the same level all the way across? Mr. Arsenault reported the purpose is so we don't have to have as tall of a slope going down to the wetlands. Commissioner Koczera questioned - so you want to get more flat land; is that the correct procedure? Mr. Arsenault replied we want to get a little more flat land but we also want to reduce the slope; we're trying to minimize as much of the slope as we can for erosion purposes. Commissioner Koczera questioned the process for the installation of the wall; Mr. Arsenault gave a detailed description of the construction. Chairman Savaria questioned that's an accepted practice for building retaining walls? Mr. Arsenault replied "absolutely, I've designed these many times." Discussion continued regarding construction of the proposed wall vs. other construction methods. (√)

Commissioner Roloff questioned – the netting, will it be permanent? Mr. Arsenault replied basically it's like tobacco netting to hold the seed. Mr. Gagnolati suggested this method. (√)

Commissioner Osborn noted he had reviewed previous Meeting minutes but had been unable to find an answer; he questioned if there is any alternative to this plan that would be more feasible? Mr. Arsenault reported as far as what potential development of this property in the future could be, we are trying to just get that one acre of land. The only alternative would be to not do this. Commissioner Osborn questioned that all the trees, shrubs, and stumps will be removed? Mr. Arsenault replied "yes". (√)

Commissioner Roloff questioned how much, roughly, is the square footage area of forested area? Mr. Arsenault reported now tree line is shown "here", if this is about an acre, then it probably would be about 2/3 of an acre. (√)

Mr. Wilcox, owner of 50 Newberry Road, requested to speak. Mr. Wilcox reported that as a contractor he has built these walls, one in East Windsor, some higher, 12' high 120' long. The towns use these all the time; these are common with transfer stations (in Windsor Locks). Mr. Wilcox described the construction process for the proposed wall. The first square block is set in the ground 2', earth is removed, the next block is set over, they are rotated, dirt is set behind it. (√)

Chairman Savaria questioned if Town Engineer Norton still stood by what he said? Mr. Dearborn wanted to speak again; he was advised Town Engineer Norton was making comments. (√)

Town Engineer Norton indicated he believed the parking area was to be gravel, his recollection was on the site next door these gentlemen were telling us how rapidly permeable millings were; I'm thinking the gravel would probably be more permeable so

he didn't know if there would be run off from the site. Chairman Savaria questioned that Town Engineer Norton was talking about the co-efficient of run-off, but the permeability of what's there. Town Engineer Norton suggested you can't have it both ways, either it's impervious or it's permeable. On one site it's permeable on the other site it's pervious. (√)

Commissioner Baker questioned Town Engineer Norton - you checked Mr. Arsenault's numbers and agreed with them; do you still agree with them? Town Engineer Norton replied – “absolutely”. (√)

Wetlands Agent Robin Newton requested to make the following comments FOR THE RECORD:

- Comments made by George Logan that they (Dearborn/68 Newberry Road Enterprises) were waiting for EPA approval for the remediation work to be done: to have an accurate depiction of what's being done, on 8/30 a letter was sent to Robin Newton and cc'd to Steve Dearborn of Newberry Road Enterprises, and George Logan of REMA, and Carol Kilbride, wetlands enforcement office, approving the remediation – well over a month ago. Attorney Whitney questioned that Wetlands Agent Newton's point was that the Federal approval has been received? Wetlands Agent Newton replied “yes”. Chairman Savaria questioned that nothing has been done yet? Wetlands Agent Newton replied that nothing has been done yet; all of the approvals to do that work are in place.
- Comments about the pond being referred to on the abutting property and described by George Logan as being an aquatic ecosystem: Wetlands Agent Newton noted the pond was approved before she became employed by East Windsor but it was her understanding that it was approved under a Farm Exemption for an irrigation pond. Wetlands Agent Newton suggested there are many times during the year in which this pond could be depleted of its water system so there would be no aquatic ecosystem.
- Wetlands Agent Newton noted the Commission didn't ask for a habitat evaluation on this application therefore none was provided; it's only required if it's asked for.
- Regarding the wonderful paragraph from David Askew's letter of 8/10 which was read into the record and incorporated into George Logan's report, if Mr. Logan had gone on further and included another subsequent paragraph – “regarding the issue of the adequacy of wet bottom detention basins as mitigation: in general, a wet bottom detention basin can be adequate mitigation, as long it replaces the wetlands functions altered, and maintains the appropriate hydrology to serve it's intended function.” Wetlands Agent Newton suggested the issue may be up for debate but the comment was included in George Logan's report and entered into the record; it should be accurately depicted to the Commission (√)
- Regarding the photos submitted to the Board, Wetlands Agent Newton reported a complaint was submitted to the Planning Office, and drainage complaints are Zoning complaints. There are no wetlands in the area where this complaint originated from. She indicated that Town Engineer Norton can attest to the

receipt of the complaint and the procedure. They went out and determined that the drainage, which is shown in these pictures which the Commission has no idea where it is, is actually staying on Mr. Wilcox's property. Mr. Wilcox built a berm with concrete culverts to be sure the drainage doesn't leave his property and it's slightly graded so it goes back in. This is not a wetland area; this is not an upland review area. Wetlands Agent Newton requested Town Engineer Norton confirm her comments; Town Engineer Norton suggested the complaint and visit occurred perhaps a year and a half ago. Wetlands Agent Newton reported when the complaint came in she met with Mr. Wilcox and Jay Ussery of J. R. Russo & Associates; they showed her in the field with a laser that the grades haven't been to the photos of the leased area, Wetlands Agent Newton reported that was approved under a Site Plan Approved by the Planning and Zoning Commission. It did not require a Public Hearing. Mr. Wilcox subsequently got a slight modification and received an Administrative Approval from Town Planner Whitten. That work is outside our upland review area and is not in an area under consideration for this Board. (√)

Chairman Savaria suggested the Commission will now make a decision regarding the unreasonable impact on the wetlands. Attorney Whitney suggested the Commission should also consider if the Application presents a violation of the Wetlands Regulations or Statutes.

Chairman Savaria polled the Commissioners individually.

Commissioner Roloff: The Commission has been going over this Application since June and they have been thorough and there have been a number of items of concern. All have been addressed to Wetlands Agent Newton, David Askew, and Town Engineer Norton's satisfaction. The REMA report is subjective and antidotal and there are many unsubstantiated statements, she felt there was nothing to find to uphold the Intervenor objection. (√)

Commissioner Baker: It seems to be a "he said, he said" issue. We have been working on this for many months, and asked a bunch of questions and got a bunch of answers. Tonight we heard from two different engineers. Commissioner Baker felt that he has heard nothing, after hearing again from Mr. Arsenault statement that he stood by his statements of last month after hearing testimony tonight, that would indicate that he was lying. As far as the soil scientists, the Commission has Mr. Gragnolati's original study, which may not be as lengthy as Mr Logan's, but it is to the point and included a site visit and he says they are low quality wetlands with previous disturbance. The Commission also has updated information to his original investigation (from Mr. Gragnolati) and he still stands by his statements; Commissioner Baker saw no reason to doubt him. Commissioner Baker didn't feel there is an issue of unreasonable pollution; he heard no evidence contrary to what was already heard. Regarding the issue of not meeting the Statutory requirements for a wetland permit Commissioner Baker didn't feel that was the case, they have done everything asked of them, and the information is backed up by

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Town Engineer Norton who has years of experience as well as a body of work in this Town that backs up what he says, as well as Town staff of whom he can say the same thing about. Commissioner Baker suggested he could see no reason why this wouldn't pass. (√)

Commissioner Malin: The Commission has adequately reviewed the Application, and the decision from last month should stand (√)

Commissioner Osborn: The Commission has heard from both sides and both sides feel they are right, but the Commission must go with the information provided by the Applicant. Commissioner Osborn felt the Commission should approve the Application.

Commissioner Koczera: Indicated he isn't a professional engineer but he felt he had to go with Town Engineer Norton because he trusts and seen him work before. He indicated he trusted everyone but felt he has to go with the decision the Commission made originally. (√)

Chairman Savaria: It comes down to who you believe or who's data is more accurate, and Mr. Norton has been helping the Commission with their applications since Chairman Savaria has been on the Commission for four years. Chairman Savaria suggested he felt Town Engineer Norton has done a good job. The calculations show there will not be any change of runoff across this property from what there was before. He realized conditions have been altered, swales have been put in, and swales may be required for the remediation work, but Chairman Savaria felt, all in all, this will have a fairly minor, or very minor impact, on anyone off the property. This has been designed properly; you're talking about 2500 square feet, up to 3000 square feet, depending on who you decide. The Commission has approved projects with much more impact than this; they have approved projects with much more impact right next door. Chairman Savaria felt he would have to stick with what our experts have told the Commission. Chairman Savaria indicated he sees no reason to see that the wetlands will be unreasonably impacted with regard to pollution, or destruction, or impairment; he just didn't see the facts telling him that. Chairman Savaria suggested Mr. Dearborn will have recourse if he thinks water is being discharge on his property; he's sure Mr. Wilcox doesn't want to get into a lawsuit and will want to control any runoff that will come off of his property. Chairman Savaria felt the decision the Commission made before stands. (√)

Attorney Whitney suggested the Commission is deciding on Mr. Wilcox's Application. If the decision is that there is not a reasonable likelihood of an unreasonably impairment or destruction then you don't have to go to alternatives. The Commission must now vote again on the Wilcox Application. (√)

**MOTION: To REAPPROVE Application #08-2011 - GERRY WILCOX: 50 Newberry Road: Request for permit for regulated activities – to include construction of a concrete block wall and the construction of a detention basin for the expansion of equipment storage and trailer**

**parking by filling of approximately 2,150 square feet of wetlands and creating 2,150 square feet of wetlands. This property is located on Newberry Road; nearest intersection is Thompson Road. Assessor's Map 092, Block 19, Lot 004.**

**Osborn moved/Malin seconded/VOTE: In Favor: Unanimous**

**NEW PUBLIC HEARINGS:** None.

**NEW BUSINESS:** None.

**NEW APPLICATIONS TO BE RECEIVED:** None.

**MISCELLANEOUS:** Nothing to present.

**AGENT DECISIONS/1) 12-2011- East Windsor Congregation of Jehovah's Witnesses-** 202 North Road, East Windsor. Agent's Decision for Regulated Activity to install an 8' x 12' shed approximately 65 feet from the nearest wetlands. This property is located on North Road; nearest intersection is Wells Road. Assessor's Map 125, Block 27, Lot 003:

**AGENT DECISIONS/2) 13-2011 - 37 Cemetery Road, East Windsor.** Agent's Decision for Regulated Activity for filling and grading of existing property. This property is located on Cemetery Road; nearest intersection is Woolam Road. Assessor's Map 45, Block 32, Lot 015.:

**AGENT DECISION/3) 14 – 2011 - Michael Rodrigues** – 22 Mill Street. Agent's Decision for Regulated Activity to construct new deck and mud room. This property is located on Mill Street; nearest intersection is Main Street, Broad Brook. Assessor's map 087, Block 37, Lot 012-02:

**AGENT DECISION/4) 15-2011 - Wal-Mart, 69 Prospect Hill Road:** Request to remove existing damaged Gabion Basket retaining wall at detention pond, and replace with precast concrete Stone Strong wall 372+/-' long by 7' high. This property is located at 69 Prospect Hill Road. Assessor's Map 102, Block 14, Lot 007B:

**STATUS REPORTS:** None.

**CONFERENCES/SEMINARS/TRAINING/1. Segment 3 – DEEP Inland Wetlands Commissioners Training:**

Wetlands Agent Newton reported the third session is now available; Commissioners are requested to contact the Planning Office if they want to attend.

**CORRESPONDENCE:** None.

**GENERAL BOARD DISCUSSION:** None

**PUBLIC PARTICIPATION (Discussion on non-Agenda items only):**

Kathy Pippin suggested the Commission did a whale of a job tonight.

**APPROVAL OF MINUTES/September 7, 2011:**

**MOTION:** To APPROVE the Minutes of Regular Meeting dated September 7, 2011 with the following amendments:

Page 3, Line #113, NEW BUSINESS: 08-2011: GERRY WILCOX: 50 Newberry Road: “.....basin has HAVE been proven to be correct.”

Page 4, Lines 130 through 142, 08-2011: GERRY WILCOX: 50 Newberry Road: Review of discussion for accuracy.

Page 10, GENERAL BOARD DISCUSSION/Commissioner Roloff’s comments:

“.....blacktop and a rusty backhoe blade in the pond *IN THE WETLANDS/UPLAND REVIEW AREA BEHIND MY HOUSE AND MERLOT. THE BACKHOE HAS BEEN THERE FOR ABOUT 5 YEARS, AND WAS DUMPED THERE BY THE FORMER OWNER.*”

Koczera moved/Baker seconded/VOTE: In Favor: Unanimous

**ADJOURNMENT:**

**MOTION:** To ADJOURN this Meeting at 10:59 p.m.

Sawka moved/Koczera seconded/VOTE: In Favor: Unanimous

Respectfully submitted:

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Peg Hoffman, Recording Secretary, Inland Wetlands and Watercourse Commission  
(10,926)