

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

Regular Meeting – May 2, 2012

*******Draft Document – Subject to Commission Approval*******

CALL TO ORDER: Chairman Savaria called the Meeting to order at 7:00 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, Michael Sawka, Robert Slate, and Alternate Member Kathryn Roloff.

Unable to Attend: All Commission members were present this evening.

Guests: Selectman Richard Pippin (Inland/Wetlands Liaison); Selectman Alan Baker; Selectman Dale Nelson; Kathy Pippin, Board of Finance.

Chairman Savaria noted the establishment of a quorum with 6 Regular and one Alternate Member as noted above. All Regular members will sit in on votes this evening. If, for any reason, a Regular Member must step down from service, Alternate Member Roloff will serve in rotation as noted at each Agenda Item.

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

AGENDA ADDITIONS:

Chairman Savaria acknowledged receipt of the following new Agenda Items:

1. **NEW APPLICATION TO BE RECEIVED: #06-2012 – Gardner Chapman:**
Request to conduct regulated activities associated with the construction of a 480 unit luxury apartment complex. This property, which is owned by Helen Maciolek of 28 Galbraith Road, Somers, is located at 111 and 115 South Main Street, and 49 Phelps Road, East Windsor. Assessor's Map 052, Block 20, Lot 61 and 65 (111 and 115 South Main Street), and Assessor's Map 53, Block 20, Lot 52 (49 Phelps Road). (65 day application period ends July 6, 2012)
2. **MISCELLANEOUS: 04-2011: Steven Dearborn – 68 Newberry Road:**
Request to discuss IWWA Permit #04-2011 to eliminate bonding in lieu of submission of Surety Bond. Property owned by Newberry Road Enterprises, LLC. Assessor's Map 09, Block 19, Lot 006.

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Wetlands Agent Newton noted receipt of the following Application received via mail just prior to this Meeting:

3. **NEW BUSINESS: (Application Number to be assigned after Meeting)**
Connecticut Water Company – Request to perform a timber harvest of 26 acres of property accessed via Mahoney Road, some of which is adjacent to the Scantic River. Property is owned by the Connecticut Water Company, identified on Application as Assessor's Map 16, Map 30, Block 73. (65 day application period ends July 6, 2012)

APPROVAL OF MINUTES – April 4, 2012:

MOTION: To APPROVE the Minutes of Regular Meeting dated April 4, 2012 (includes correction of meeting date on page headings).

Osborn moved/Slate seconded/

VOTE: In Favor: Unanimous (Kozcera/Malin/Osborn/Sawka/Savaria/Slate)

NEW PUBLIC HEARINGS: None.

NEW APPLICATIONS TO BE RECEIVED:

#06-2012 – Gardner Chapman: Request to conduct regulated activities associated with the construction of a 480 unit luxury apartment complex. This property, which is owned by Helen Maciolek of 28 Galbraith Road, Somers, is located at 111 and 115 South Main Street, and 49 Phelps Road, East Windsor. Assessor's Map 052, Block 20, Lot 61 and 65 (111 and 115 South Main Street), and Assessor's Map 53, Block 20, Lot 52 (49 Phelps Road). (65 day application period ends July 6, 2012)

Wetlands Agent Newton reported this new Application indicates wetlands crossings are proposed which will cause significant impact. For that reason the Commission should consider scheduling this Application for a Public Hearing. Wetlands Agent Newton reported she has spoken to Mr. Ussery, of J. R. Russo and Associates, LLC, regarding scheduling of the Public Hearing as the Wetlands Assessment Report was not received with the Application. David Askew, of the Hartford County Soil and Water Conservation District (HCS&WCD) must have time to review the Wetlands Assessment Report in conjunction with the Application. Wetlands Agent Newton suggested the Commission consider scheduling the Opening of the Public Hearing for June 6, 2012.

MOTION: TO SET A PUBLIC HEARING for the Inland Wetlands Regular Meeting scheduled for June 6, 2012 for Application #06-2012: Gardner Chapman: Request to conduct regulated activities associated with the construction of a 480 unit luxury apartment complex. This property, which is owned by Helen Maciolek of 28 Galbraith Road, Somers, is located at 111 and 115 South Main Street,

and 49 Phelps Road, East Windsor. Assessor's Map 052, Block 20, Lot 61 and 65 (111 and 115 South Main Street), and Assessor's Map 53, Block 20, Lot 52 (49 Phelps Road).

Osborn moved/Slate seconded/

VOTE: In Favor: Unanimous (Kozcera/Malin/Osborn/Sawka/Savaria/Slate)

NEW BUSINESS/1) 03-2012: Lisa Perkins: Request to construct driveway and single family house on existing lot of record. This property is located 150+/- feet north of Mahoney Road. Assessor's Map 85, Block 30, Lot 84. (65 day application period ends June 7, 2012):

Wetlands Agent Newton provided plan copies to the Commissioners. She noted she believed there would be one revision due to the recommendation made by Town Engineer Norton.

Appearing to discuss this Application on behalf of the Applicant was Jay Ussery, of J. R. Russo & Associates, LLC. Mr. Ussery described the property as being located on the east side of Wells Road north of the intersection with Mahoney Road. The parcel contains 3.9 acres. Sheet 1 of the plans shows a proposed driveway access near the southwest corner of the property. Mr. Ussery referenced a blue line which indicates the wetlands line; when looking at the plans with Wells Road at the front of the plan everything to the left, or north, of that blue line is wetlands. The only place to provide an access driveway is in the corner shown. The driveway, and wetlands crossing, will cause 1,515 square feet of wetlands disturbance.

Mr. Ussery advised the Commission the plan before them shows a single wetlands crossing. Town Engineer Norton suggested that during some storm events water may back up into the Fahey property on the corner of Wells and Mahoney Roads. For that reason they are now showing 2 pipes to eliminate that back up of water, and ensure the water will stay on the Applicant's property. Mr. Ussery submitted revised plans for the file.

Mr. Ussery referenced the green line on the map, which indicates the 150' regulated area. He suggested most of this work, including the house and septic system and some of the driveway, is within that regulated area. Mr. Ussery noted they have also received approval from the North Central Health District (NCHD). He requested the Commission's approval of the Application.

Commissioner Roloff questioned if the wetlands under discussion drains anywhere? Mr. Ussery indicated it drains to the north to the next/Butenkoff property. There is a drainage ditch behind the Butenkoff property; Mr. Ussery indicated he believed that ditch drains to the Connecticut Water Company property and then into the Scantic River. The curtain drain around the property is proposed to drain into that ditch. Commissioner Osborn questioned if this was part of the watershed for the Connecticut Water Company; Mr.

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Ussery believed that it was.

Chairman Savaria questioned what happens to the drainage easements to the 4 properties listed? Mr. Ussery suggested there are 4 parcels which have a right-to-drain into the ditch. The pipe for the Belval property has been located and reconstructed to get out of the way of the septic system; the Caldon pipe has been located; he is unsure if the other 2 pipes have been located. Commissioner Osborn noted the Town put a culvert into the field across Wells Road; Mr. Ussery concurred, noting that culvert also drains into the ditch.

Wetlands Agent Newton questioned what is the intent for the wetlands area in the front, which is currently shrub brush. Lisa Perkins, speaking from the audience, indicated she plans to leave it in its current condition. Commissioner Osborn questioned if it's been mowed? Mr. Ussery indicated it had not been mowed in some time; there are pine trees in there now.

Chairman Savaria questioned if the Commissioners had any further questions for Mr. Ussery; no one raised any additional questions.

Wetlands Agent Newton noted Town Engineer Norton has said that any concerns he had raised regarding the water backing up had been addressed. Review of the file indicated two memos had been received from Town Engineer Norton; a third memo, which had been received by Mr. Ussery, noting that Town Engineer Norton's concerns had been addressed was not available in the Meeting packet.

MOTION: To APPROVE the Application of Lisa Perkins for a request to construct driveway and single family house on existing lot of record. This property is located 150+/- feet north of Mahoney Road. Assessor's Map 85, Block 30, Lot 84.

Koczera moved/Slate seconded/

VOTE: In Favor: Unanimous (Koczera/Malin/Osborn/Sawka/Savaria/Slate)

NEW BUSINESS/2) 04-2012: American Auto Wholesalers: Request to use location of 157 North Road for used car dealership. Property owned by 157 North Road, LLC. Assessor's Map 125, Block 16, Lot 028. (65 day application period ends June 8, 2012):

Appearing to discuss this Application was Jay Ussery, of J. R. Russo & Associates, LLC, representing the Applicant, American Auto Wholesalers.

Mr. Ussery described this property as being the location of the old Mobil Station. The property has been sold to a used car dealer who is thinking of moving his business from a rental property on Main Street (Warehouse Point) to this property. The proposal would include an addition to the building as shown on Sheet 3 of the plans, and a reconfiguration of the parking area. The site is currently all paving in front and to the

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east side of the building. As that situation no longer conforms to existing Regulations they will be removing some of the impervious paving to the rear of the property. The property was previously served by a septic system, which will be removed in lieu of tying into the sewer line.

Mr. Ussery suggested they are not proposing any change to the wetlands which are located to the back of this property, and are adjacent to the side driveway to the property previously occupied by Chester's Market. Commissioner Koczera suggested that area of wetlands is like a dump back there. Mr. Ussery suggested that wetlands is a remnant of a larger wetlands which had continued on to wetlands near Golden Irene's (on Mullen Road) that was cut off when the Chester's driveway was constructed. Mr. Ussery indicated they are not doing anything to the wetlands; they are not adding water to it and are reducing the impervious surface. Mr. Shook (wetlands soil scientist) delineated the area a month ago.

Chairman Savaria noted he has visited the property and had not seen any wetlands flags. Mr. Ussery suggested they are blue flags; he referenced Mr. Shook's memo (dated 3/28/2012). Mr. Ussery suggested it would be a nice wetlands if it were cleaned up. Commissioner Osborn questioned if that was the intent of the Applicant? Mr. Ussery suggested "probably"; the Applicant wants the property to look good. Commissioner Koczera questioned if the wetlands was natural, or man-made? Mr. Ussery felt it was a natural wetlands which had been disconnected. Commissioner Osborn suggested it probably comes from across North Road before the Mobil Station was built.

Chairman Savaria referenced a note on the plans (Sheet 3, note #6) that states the "...site is the location of a historic release of oil/hazardous material....". Mr. Ussery reported that Mobil did some remediation at the site due to some leakage which occurred when the tanks were removed; monitoring wells were installed. There is a stipulation from Mobil and DEEP (The Department of Energy and Environmental Protection) that the site can no longer be used for a gas station. Chairman Savaria requested clarification that the Applicant can do repairs at the site? Mr. Ussery replied affirmatively, noting they can NOT sell gas.

MOTION: To APPROVE the Application of American Auto Wholesalers for a request to use location of 157 North Road for used car dealership. Property owned by 157 North Road, LLC. Assessor's Map 125, Block 16, Lot 028.

Osborn moved/Slate seconded/

VOTE: In Favor: Unanimous (Koczera/Malin/Osborn/Sawka/Savaria/Slate)

NEW BUSINESS/3) Donald Wagner – Activities at 202 Main Street, East Windsor
– As-of-Right Application for small irrigation pond * Assessor's Map 101, Block 12, Lot 20. (65 day application period ends July 6, 2012: * **VIOLATION – CORRECTION NOTICE – POND BUILT WITHOUT DETERMINATION:**

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Wetlands Agent Newton advised the Commission the Applicant made an Application to the Planning Office for a farm pond; that Application has not yet been received by the Commission but work has already been done to construct the pond. As a result a Violation/Correction Order has been issued rather than a Cease & Desist Order as you can't make someone stop work on something that has already been built.

Wetlands Agent Newton reported at the previous Commission Meeting Mr. Wagner appeared to discuss a Cease & Desist Order issued on the other (farm field) property; the Commission has upheld that Cease & Desist Order. During that Meeting Mr. Wagner asked about constructing a farm pond and was told to submit an Application and get a determination from the Board. Wetlands Agent Newton reported Mr. Wagner did submit an Application, and circled the site of the pond on a map. A letter was sent to Mr. Wagner requesting more information; an e-mail response was received from Mr. Wagner rather than a notation on a map. Wetlands Agent Newton reported that when she returned from vacation she found that the pond had already been built. Chairman Savaria noted the pond is clearly visible from Main Street.

Wetlands Agent Newton submitted photos of the pond, noting Blue Ditch comes into the property from the left, an intermittent stream comes in from the right and all that flow goes under the street. The pond contains approximately 67,000 gallons of water, which seems like a lot. Wetlands Agent Newton contacted David Askew, (HCS&WCD) and asked how big a pond would be required to irrigate a 12 – 14 acre field? Mr. Askew responded that 303,000 gallons of water/acre would be required to properly irrigate that size farm field; Wetlands Agent Newton suggested the pond which has been built isn't sized correctly for the purpose for which it was constructed. The Correction Order was issued, in which the determination process was explained. Wetlands Agent Newton reported she has spoken with Mr. Wagner, who is not present at this Meeting. She suggested he has various options – to acquire a Diversion Permit from the State to use water from the Blue Ditch, turn the detention basin into a retention basin, or to provide irrigation from other means. Wetlands Agent Newton noted Mr. Wagner has other options to provide irrigation for the farm field.

Commissioner Osborn questioned if the farm pond has been constructed in a Connecticut Flood Plain area? Wetlands Agent Newton replied affirmatively, and noted the area is also located within a FEMA Map. Commissioner Koczera questioned that water was there before construction of the pond? Wetlands Agent Newton reported the area contained wetlands vegetation; Commissioner Osborn suggested it contained skunk cabbage. Wetlands Agent Newton submitted additional photos of the area when the recent tropical storm came through, and also photos during the Winter before the farm pond was constructed.

Commissioner Koczera questioned the purpose of the pond if Mr. Wagner can't use it for irrigation? Wetlands Agent Newton replied she didn't know. She provided the Commission with the State guidelines for making a determination on the farm pond; those same guidelines had been sent to Mr. Wagner. Wetlands Agent Newton suggested

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the guidelines say the pond must be essential (no other way to irrigate the property) for it to be a farm pond. The Applicant must prove to the Board that the pond is needed to farm, and none of that was provided by Mr. Wagner. Wetlands Agent Newton also provided the Commission with documentation from a court case regarding a similar situation; that same information was provided to Mr. Wagner

Wetlands Agent Newton clarified that the pond is not a large pond; it can be dewatered in a day. The area would then be filled with clean fill. She and Town Engineer Norton have recommended use of a wall of hay bales to prevent sedimentation into the brook. It has been suggested to Mr. Wagner to call the Planning Office for suggestions.

Chairman Savaria clarified for the Commission that the recommendation is for Mr. Wagner to fill in the pond.

Commissioner Koczera questioned again what the purpose of the pond was? Wetlands Agent Newton reiterated she didn't know. Commissioner Koczera suggested it was foolish if he can't use it. Wetlands Agent Newton recalled that Mr. Wagner had said at the previous Commission Meeting that he wanted to do a pond.

Commissioner Osborn questioned if it could be used as a detention pond? Wetlands Agent Newton suggested it has been built on an intermittent stream, which will dry up in a draught. Commissioner Osborn suggested the stream doesn't flow into the pond. Wetlands Agent Newton concurred; she then noted the direction of flow of the various water courses. Commissioner Osborn questioned the depth of the pond? Wetlands Agent Newton reported it is 5'; Chairman Savaria noted it is silted in.

Wetlands Agent Newton noted that with regard to the Cease & Desist on the detention basin (near the farm field – "VIOLATION - Activities at 202 Main Street") more work was done on that property while she was away on vacation. On return she noted she can see where the soil eventually drains into the farm pond. Wetlands Agent Newton reported she is scheduled to meet with Mr. Wagner Friday (5/4) and hopes to discuss a better location for the farm pond.

Commissioner Osborn questioned that no one is here at the Meeting tonight to represent Mr. Wagner? Wetlands Agent Newton replied negatively. Commissioner Osborn questioned that Mr. Wagner isn't interested in coming into the office? Wetlands Agent Newton responded apparently not; he just called to reschedule a meeting. Commissioner Slate questioned if Mr. Wagner could use water from the fire hydrant nearby? Wetlands Agent Newton replied that he could.

Chairman Savaria suggested that due to the way it was done he felt this isn't an As-Of-Right Application. None of the Town Staff, or the Commission, had a chance to review this proposal. He noted the Commission had advised Mr. Wagner they were willing to work with him on this site. Wetlands Agent Newton noted that in that area of Blue Ditch, as you get closer to the Connecticut River, it silts up. She felt the Commission didn't

have enough information available but it could have been discussed.

MOTION: To NOT ALLOW/DENY the As-Of-Right Application of Donald Wagner – Activities at 202 Main Street, East Windsor – As-of-Right Application for small irrigation pond * Assessor’s Map 101, Block 12, Lot 20. The As-Of-Right Application is denied because the pond isn’t big enough, and is located in the Flood Plain.

DISCUSSION: Chairman Savaria also noted he believed an Applicant can’t alter a watercourse as an As-Of-Right determination.

Osborn moved/Slate seconded/

VOTE: In Favor: Unanimous (Kozcera/Malin/Osborn/Sawka/Savaria/Slate)

Wetlands Agent Newton suggested the Commission must decide how it wants to handle the Correction Order; options include upholding the Correction Order as written, or modifying, or rescinding the Correction Order.

Chairman Savaria suggested his intention was to uphold the Correction Order as written; the Commission concurred.

MOTION: To UPHOLD THE CORRECTION ORDER as outlined in letter dated 4/24/2012 to Donald Wagner from Assistant Town Planner/Zoning Wetlands Enforcement Official Robin Newton. Correction Order includes the following requirements:

1. You are to install the appropriate erosion control measures downstream of the farm pond including silt fence and haybales.
2. You are to de-water the pond. This should be done by creating a wall of haybales downstream and pumping into the row of haybales so the water is cleansed before entering into Blue Ditch.
3. After the pond is de-watered you must fill in the pond with clean fill (a definition has been attached) and seed with a wetland seed mix.
4. Once this has been established you may call my office for an inspection.

DISCUSSION: Chairman Savaria suggested the DEEP (Connecticut Department of Energy and Environmental Protection) and the ACOE (Army Corps of Engineers) be contacted to see if this pond applies to their areas of regulation. Wetlands Agent Newton reported DEEP involvement will depend on how much of the drainage area goes into the Blue Ditch, and the ACOE has opened up a Violation Order.

Osborn moved/Slate seconded/

VOTE: In Favor: Unanimous (Kozcera/Malin/Osborn/Sawka/Savaria/Slate)

NEW BUSINESS: (Application Number to be assigned after Meeting) Connecticut Water Company – Request to perform a timber harvest of 26 acres of property accessed via Mahoney Road, some of which is adjacent to the Scantic River. Property is owned by the Connecticut Water Company, identified on Application as Assessor’s Map 16, Map 30, Block 73. (65 day application period would July 6, 2012)

Wetlands Agent Newton reported this Application had come in via the mail late this afternoon; Staff had not been able to provide information for the Commission in their packets. The Application is for timber harvesting on property owned by the Connecticut Water Company, which is located off Mahoney Road. The property contains in excess of 26 acres. The proposal is to take down 345 trees, which works out to approximately 13 trees/acre. A similar harvest was done in 1993. This Application proposes to use the same bridge crossing utilized in 1993, and an additional “corduroy” crossing in which they will lay down logs to allow equipment to cross while allowing water to flow through. No trees will be harvested within 10’ of the wetlands; less than a quarter of the trees will be harvested within 100’ of any stream or wetlands. The anticipated time to complete the harvest is 2 months; the area will be reseeded at completion.

Wetlands Agent Newton also submitted to the Commission a document provided by DEEP regarding qualifications for an agricultural commodity which is sometimes allowed as an exemption under Wetlands Regulations, Section 6. While they are not actually building roads they do have to drag the trees out to a staging area, which was also used in the 1993 harvest. Wetlands Agent Newton reported she will be able to inspect the operation as it occurs. Based on the information and maps provided Wetlands Agent Newton felt this operation may fall under an exemption.

Commissioner Slate questioned where the staging area is located? Wetlands Agent Newton replied it will be a log landing near Mahoney Road. Commissioner Slate suggested that area is near the Scantic River; he cited concern that debarking debris may enter the river. Chairman Savaria indicated he was disappointed that no one was present to discuss the proposal. Wetlands Agent Newton noted the Application came in the mail late today. Commissioner Slate questioned the applicability of the exemption; Wetlands Agent Newton noted they aren’t really building a road. Commissioner Slate requested the forester/applicant provide the following: 1) a better aerial than the black and white submitted with the application as the submission is difficult to read, and 2) advisement of the type of equipment to be used as sometimes large equipment can drop hydraulic fluid easily. Chairman Savaria requested the forester/applicant show what the wetlands crossings will look like. Wetlands Agent Newton will advise the applicant the Commission has concerns regarding the landing area being so close to the river; she’ll also request information/photos of other operations done by the forester.

The Commission decided to continue the Application to the next Meeting to request someone appear to discuss the proposal. No motion made.

OLD BUSINESS/1) East Windsor Cemetery Association – Springdale Cemetery,

Warehouse Point – Cease and Desist Order for Conducting a Regulated Activity without a Permit:

Mr. Ussery, of J. R. Russo and Associates, LLC advised the Commission that the borings have been completed by Clarence Welti; 7 ½' of loamy sand and clay down to 35' was found. J. R. Russo's has completed a design plan, which has been sent to Clarence Welti. A cost estimate in the amount of \$60,000 – vs. the estimate of \$100,000 suggested earlier in the project – has been sent to FEMA. Mr. Ussery feels FEMA will participate in reimbursement of the project cost.

Mr. Ussery felt Mr. Welti's report/recommendations may be ready for next meeting.

Chairman Savaria questioned the current condition of the site? Mr. Ussery suggested the slope is fairly stable. Commissioner Slate suggested they dropped a lot of trees there; Mr. Ussery concurred. Commissioner Slate questioned if the cut trees will be left there? Mr. Ussery suggested the trees were taken down during the slope failure, and others were taken down at David Askew's (HCS&WCD) recommendation. Some of the trees may be removed, but not the stumps. Mr. Ussery suggested he felt Mr. Askew may have thought the weight of the trees may have contributed to the slope failure.

OLD BUSINESS/2) Emilio and Adeline Parente – 284 South Main Street, East Windsor, CT. – Cease and Desist Order for Conducting a Regulated Activity without a Permit:

Mr. Ussery, of J. R. Russo's and Associates, LLC indicated they prepared an As-Built Survey to determine the existing condition; he also participated in a site walk with Clarence Welti. The slope is 1:1 now; Mr. Welti recommended cutting to a 2:1. A plan has been submitted to Mr. Welti.

Mr. Ussery felt they may have an application/plan for the slope repair for the next meeting.

OLD BUSINESS: Donald Wagner – Activities at 202 Main Street, East Windsor, CT. –

- Violation of IWWA Regulations Section 4 and 6
- Exceeding the Scope of Work Permitted in Permit No. 1371

Wetlands Agent Newton suggested this is the Violation Order the Commission upheld at the April Meeting. Mr. Wagner was present during that Meeting, and provided the Commission with information regarding the activities which occurred, including work on the detention basin which is located within the wetlands. Wetlands Agent Newton reported that additional work was done while she was on vacation; that work included the installation of crushed glass. A letter was sent to Mr. Wagner questioning the purpose of the use of the crushed glass; no response was received. The Commission expected to have received an application for this evening's Meeting, but that hasn't been done.

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Wetlands Agent Newton advised the Commission she is meeting with Mr. Wagner on Friday (5/4); she hopes to have more information to offer the Commission shortly.

Chairman Savaria noted Mr. Wagner gave the Commission permission to inspect the property; Chairman Savaria took photos of his visit. The material Mr. Wagner called stone is actually crushed glass. Wetlands Agent Newton noted the crushed glass is washing downstream; she doesn't know why Mr. Wagner used this material. Chairman Savaria agreed; he didn't see the purpose of the crushed glass either other than it was available fill.

MOTION: To TAKE A FIVE MINUTE RECESS.

Slate moved/Osborn seconded/VOTE: In Favor: Unanimous

(The Commission RECESSED at 7:59 p.m.)

MOTION: To COME OUT OF RECESS.

Osborn moved/Slate seconded/VOTE: In Favor: Unanimous

(The Commission RECONVENED at 8:05 p.m.)

MISCELLANEOUS: 04-2011: Steven Dearborn – 68 Newberry Road: Request to discuss IWWA Permit #04-2011 to eliminate bonding in lieu of submission of Surety Bond. Property owned by Newberry Road Enterprises, LLC. Assessor's Map 09, Block 19, Lot 006:

Appearing to discuss this request was Attorney Louis Flynn, of Brown, Paindiris & Scott, LLP. Attorney Flynn advised the Commission and Wetlands Agent Newton he was filling in for someone else with regard to this request. He suggested the Commission is familiar with the situation, which involves Permit #04-2011 dated July 6, 2011 which calls for things to be done, and the Town is of the opinion that those things haven't been done. There is a lawsuit pending in the Hartford Superior Court regarding the Town and Dearborn, LLC. A Mandatory Injunction has been filed which forces him (Mr. Dearborn) to do these things which the Commission wants; he is willing to do this but the approval calls for a bond and no work is to be done until the bond is in place. Attorney Flynn suggested the bond estimates as provided by Town Engineer Norton and Mr. Dearborn's engineer differ. Mr. Dearborn is a small business owner – the mulch business and farming. Town Engineer Norton's memo indicates the bond estimate to be \$120,000. There were subsequent discussions with "his" office as to how the work can be done, and everyone thought it should be a Cash Bond. Attorney Flynn suggested he didn't think there was any small business – Mr. Dearborn is the only employee there most of the time, with the exception of truck drivers – who could get \$120,000 to put in a Cash Bond. He (Mr. Dearborn) has the equipment to do the remediation; he tried to do removal of mulch and received word from Counsel to stop. He (Mr. Dearborn) doesn't have \$120,000 cash

“to put in the tank”.

Attorney Flynn indicated they received information from the Town that acceptance of Letters of Credit have been eliminated. They are left with Cash, or a Surety Bond. Attorney Flynn suggested he felt he (Mr. Dearborn) could ask the Commission to waive the bond and let him do it. To make it more complex there is a “sister” action from the P&Z (Planning and Zoning Commission) on some of the same issues. Attorney Flynn suggested “so here we are.” He has spoken to Staff regarding waiving the bond and he was told the decision must be by the action of the Commission. Attorney Flynn indicated because of the pending Court case that he (Mr. Dearborn) be allowed to do the remediation work to see if it passes muster without a bond, and if that is not possible then that they be able to acquire a Surety Bond. Attorney Flynn suggested he (Mr. Dearborn) doesn't have the money – the loose change – to put that up. Attorney Flynn suggested he didn't concede the \$120,000 is correct but he would agree to let the engineers work it out. It comes down to the necessity of the bond, and the form of the bond. Attorney Flynn suggested he was up there after a recent storm and there wasn't a heck of a lot of water there; he didn't have his ballet slippers on but he didn't need hip boots. The water was running into and out of the pond which has been constructed.

Attorney Flynn suggested the bottom line is the bond issue; they are willing to satisfy people, move on, and stop the bleeding.

Wetlands Agent Newton reported the background information given to the Commission was put together with help from Counsel. Town Engineer Norton gave a list of definitions regarding bonding. The project engineer, Guy Hesketh, and Town Engineer Norton, can work out the numbers required for the bonds. Wetlands Agent Newton noted that no contact was made to Town Staff directly; all discussion came through Counsel, and they felt because it (the bonding) was a Condition of Approval Staff couldn't make the decision. Wetlands Agent Newton noted she did NOT have a conversation with Attorney Gallagher.

Wetlands Agent Newton referenced Condition #17, which is the Condition regarding the bonding issues. Wetlands Agent Newton READ CONDITION #17 FOR THE RECORD, which reads as follows:

“A performance bond will be required for all work associated with this permit in accordance with Section 13 of the East Windsor Inland Wetland Watercourses Regulations. Such bond shall be in the form of a cash bond or passbook. For the purpose of the permit, two separate bonds shall be maintained. One bond shall be for the work associated with the drainage swale and water quality basin. The second bond shall be for the wetland remediation work. *NO WORK MAY COMMENCE UNTIL SUCH TIME AS THE APPROPRIATE BOND IS IN PLACE WITH THE TOWN. RELEASE OF BONDS SHALL REQUIRE A CERTIFIED AS BUILT PREPARED BY A PROFESSIONAL ENGINEER.*”

Wetlands Agent Newton noted that in addition to that, at the request of the Applicant it

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was a condition of approval that the swale and water retention basin must be in place at least a month BEFORE restoration of the wetlands area, and that was the request of George Logan, who represented Mr. Dearborn.

Wetlands Agent Newton noted a bond estimate was received from Guy Hesketh; she and Mr. Hesketh agreed to the estimated amount in July. A bond estimate was received from Town Engineer Norton, also in July, which differed from the amount estimated by Mr. Hesketh. A subsequent memo was received from Town Engineer Norton explaining the difference in the bond amounts.

Wetlands Agent Newton noted a letter was recently received from Attorney Gallagher requesting to eliminate all bonding, or, as an alternative, to offer a Surety Bond.

Wetlands Agent Newton also noted she has provided the Commission with a memo summarizing what she has just said.

Wetlands Agent Newton noted bonds are not normally in place when the Commission grants an approval; the bond amounts are worked out with the engineers. Chairman Savaria questioned that the bond amount was estimated at \$81,000? Attorney Flynn felt that was Mr. Hesketh's estimate. Wetlands Agent Newton concurred, noting the difference between the two estimates is due to Town Engineer Norton using \$10/cubic yard for earth excavation, while Mr. Hesketh used \$5/cubic yard. Town Engineer Norton used guidelines provided by the Connecticut DOT, and numbers used during numerous bid estimates. Attorney Flynn felt the bond amount could be worked out by reasonable people, but the amount is a serious impediment; it's a financial issue.

Commissioner Osborn recalled that the Commission has heard many times before that the work would be done, and it's never happened. Attorney Flynn suggested the Town wouldn't let the work be done. Commissioner Osborn noted bonds were never posted. Attorney Flynn suggested he doesn't have the money; it's a practical issue, and there is a case pending in Court with an injunction to do the work, and now they can't do the work, and that doesn't get any closer to getting the work done, and it's crazy to be spending all this money.

Commissioner Koczera suggested if he needed money he could put his house up for collateral; Wetlands Agent Newton cited difficulty if the Town had to call the bond. Chairman Savaria suggested he was of the inclination that the work will not be done without a bond; the only way it will get done is with the bond. Attorney Flynn suggested he is trying to get it done. Chairman Savaria suggested he needed to be assured the Surety Bond is a rock-solid agreement, and can't be cancelled without the Town being advised.

Wetlands Agent Newton noted the amount of the Erosion Control Bond must be taken out of the bond estimates, as only cash, or a passbook, is acceptable for posting Erosion Control Bonds. The Town of East Windsor is made part of the bond, and as a bond

expires she gets notice from the insurance company. The Town has never had to call a bond as people want to get the work done. Wetlands Agent Newton gave as an example Surety Bonds have been accepted for Performance Bonds by Herb Holden Trucking, and Charbonneau. Erosion Control Bonds are taken out of the Surety Bonds as Erosion Control Bonds can only be posted in cash or passbook. Wetlands Agent Newton reported she has spoken with Attorney Whitney who would be comfortable with the Surety Bond, but the Erosion Control Bond must be taken out of the bond amount and posted separately in cash or a passbook. Commissioner Osborn questioned why the Cash Bond was requested originally? Wetlands Agent Newton recalled that work was started in the wetlands area and then left uncompleted; the Cash Bond is more readily available and is a quicker avenue than calling a Surety Bond. Commissioner Slate cited the pending Court case; Wetlands Agent Newton reported she couldn't speak of the Court case until the Commission goes into Executive Session.

MOTION: To ACCEPT a Surety Bond, except for the amount of the work for the erosion controls.

Koczera moved/NO SECOND/MOTION FAILED.

Chairman Savaria suggested he still had concerns, although it helped him that Attorney Whitney felt the Surety Bond was ok. Wetlands Agent Newton suggested the Commission take a break and read the information provided regarding the definition of Surety Bonds, and perhaps take the Executive Session out of order before coming back to this item.

MOTION: To GO INTO RECESS.

Osborn moved/Slate seconded/VOTE: In Favor: Unanimous

(The Commission RECESSED at 8:30 p.m.)

MOTION: To COME OUT OF RECESS.

(The Commission RECONVENED at 8:33 p.m.)

**MOTION: To CHANGE THE ORDER OF BUSINESS as reflected on the posted Agenda, and go into EXECUTIVE SESSION at this time – 8:34 p.m.
Attending the Executive Session were: Chairman Savaria,
Commissioners Koczera, Malin, Osborn, Roloff, Sawka, Slate;
Wetlands Agent Newton; Recording Secretary Hoffman.**

Slate moved/Osborn seconded/

VOTE: In Favor: Unanimous (Koczera/Malin/Osborn/Sawka/Savaria/Slate)

EXECUTIVE SESSION/1. Pending Litigation:

SEE MOTION ABOVE regarding entering EXECUTIVE SESSION.

MOTION: To COME OUT OF EXECUTIVE SESSION at 8:45 p.m.

Slate moved/Osborn seconded/

VOTE: In Favor: Unanimous (Kozcera/Malin/Osborn/Sawka/Savaria/Slate)

MISCELLANEOUS: 04-2011: Steven Dearborn – 68 Newberry Road: Request to discuss IWWA Permit #04-2011 to eliminate bonding in lieu of submission of Surety Bond. Property owned by Newberry Road Enterprises, LLC. Assessor's Map 09, Block 19, Lot 006:

Attorney Flynn indicated he had been provided the same information as the Commission. Wetlands Agent Newton referenced page 3, noting the required language for the Surety Bond, and the specific information to be provided. The Town of East Windsor is named on the bond; the bond is held by the Town. The bond would be reviewed by the Attorney before signature to be sure all parameters have been met.

Chairman Savaria queried the Commission members if anyone wanted to eliminate the bonding? The consensus of the Commission was to retain bonding.

Chairman Savaria then queried the Commission members regarding their preference for a Surety Bond vs. a Cash Bond? The consensus of the Commission was to accept a Surety Bond.

MOTION: TO ALLOW A SURETY BOND IN LIEU OF A CASH BOND IN REGARD TO PERMIT #04-2011 NEWBERRY ROAD ENTERPRISES, WITH THE EXCEPTION OF EROSION CONTROLS, WHICH SHALL REMAIN A CASH BOND. PENDING REVIEW OF THE FORM OF THE BOND BY OUR ATTORNEY.

DISCUSSION: Amount of Erosion Control Bond to be determined by the Town Engineer and Project Engineer.

Koczera moved/Slate seconded/

VOTE: In Favor: Unanimous (Kozcera/Malin/Osborn/Sawka/Savaria/Slate)

AGENT DECISIONS:

Wetlands Agent Newton recalled for the Commission that during Phase 2 of the North Road Sewer Expansion they have found that water backs up into a low spot in front of the building on the easterly corner of Wells Road. Mr. Ussery concurred, noting that the pipes are not set at the right angle, which causes the water back-up. Wetlands Agent suggested the area of the low spot is a wetlands, but impact to fill the area with gravel

would be minimal.

The Commission was in agreement with Wetlands Agent Newton's suggestion.

STATUS REPORTS:

Wetlands Agent Newton advised the Commission she is scheduled to appear before the Board of Selectmen to present the latest draft of the Wetlands Fee Schedule.

CONFERENCES/SEMINARS/TRAINING:

- Wetlands Agent Newton noted she still intends to present Session 1 of the Wetlands Training Session on the Smartboard for Commission Members. As the room is heavily booked during May, and possibly June, the presentation probably will not occur until July.
- Chairman Savaria noted the latest edition of "*The Habitat*" includes an article regarding training for Commission Members. Commission Koczera requested the Minutes reflect his dissatisfaction that he is expected to pay for his training personally. He noted he is a volunteer, he must come into Town Hall to pick up his Meeting packet on his dime, he served his country and gets \$1,000 off his taxes; if members are mandated to go for training that demands more of his time, while the Town gives raises to employees. Chairman Savaria noted if members don't attend training they would not receive certification. Wetlands Agent Newton clarified that the Wetlands Agent is required to be certified, as is one member. Chairman Savaria suggested he will try to attend all the sessions. Wetlands Agent Newton suggested she felt it's important for any commissioner sitting on a Land Use Board for which every decision is appealable to have a good grasp of their responsibilities. If she presents the Smartboard presentation at least members will receive training.
- Chairman Savaria noted the same issue of "*The Habitat*" includes an article by Attorney Janet Brooks regarding the legal right to go onto someone's property. Wetlands Agent Newton reported that CAZEO (The Connecticut Association of Zoning Enforcement Officers) is having the attorney from the town involved in the case mentioned by Chairman Savaria at a future meeting; she will bring back information regarding access rights she'll share with the Commission.

Discussion continued regarding identification badges for Commissioners. Chairman Savaria noted he asks for permission to visit the site of an applicant during Commission Meetings. Wetlands Agent Newton indicated her first stop during an inspection is to knock on the owner's door.

CORRESPONDENCE:

**TOWN OF EAST WINDSOR
INLAND WETLANDS WATERCOURSE AGENCY
Regular Meeting – May 2, 2012**

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See discussion under Agent Decisions regarding *The Habitat*.

GENERAL BOARD DISCUSSION:

Commissioner Slate reported some members of the Conservation Commission are working on the Community Gardens. Redesign of the parking lot may be required; he encouraged Commissioners to visit the site to familiarize themselves with the area. Wetlands Agent Newton reported that if the parking lot is moved, they will still be within the 150' uplands area.

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

No one requested to speak.

ADJOURNMENT:

MOTION: To ADJOURN this Meeting at 9:07 p.m.

Osborn moved/Slate seconded/VOTE: In Favor: Unanimous

Respectfully submitted:

Peg Hoffman, Recording Secretary, Inland Wetlands and Watercourse Commission
(6905)