

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

**Regular Meeting – April 4, 2012**

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

**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:** everyone present.

**Guests:** Selectman Richard Pippin (Inland/Wetlands Liaison); Kathy Pippin, Board of Finance.

Chairman Samaria noted the establishment of a quorum with 6 Regular and one Alternate Members 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:**

**MOTION:** To ADD TO THE AGENDA Application #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 084, AND, Application #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.

Osborn moved/Slate seconded/

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

**APPROVAL OF MINUTES – March 7, 2012:**

**MOTION:** To APPROVE the Minutes of Regular Meeting dated March 7, 2012 as written.

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**Slate moved/Osborne seconded/**

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

**NEW PUBLIC HEARINGS:** None.

**NEW APPLICATIONS TO BE RECEIVED:**

**MOTION: To ACCEPT Application #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 084, AND, Application #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.**

**Osborn moved/Slate seconded/**

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

**NEW BUSINESS:1) Show Cause Hearing – Donald Wagner – Activities at 202 Main Street, East Windsor – Violation of IWWA Regulations Sections 4 and 6, and Exceeding the Scope of Work Permitted in Permit No. 1371:**

Wetlands Agent Newton reported a copy of the Cease & Desist Order had been included in the Commissioners packets, as well as a synopsis of what will happen tonight. She noted she understood that the Applicant wanted to ask for an extension although she had not been contacted directly. Wetlands Agent Newton indicated she didn't expect the applicant to be able to respond with the requested material by this Meeting.

Wetlands Agent Newton provided the Commissioners with a 2010 aerial map of the area under discussion. She noted the numbers on the aerial correspond to the areas where she and Town Planner Whitten stood while taking the photos to be discussed.

The Applicant, Donald Wagner, joined the Commissioners and Wetlands Agent Newton at the table.

Wetlands Agent Newton reviewed the following photos:

- **2006 GIS aerial** showing the area of discussion highlighted
- **2008 "leaf-on" aerial** showing trees in bloom, the area under discussion is highlighted again
- **2010 aerial** showing the trees are no longer there, the field has been substantially expanded
- **#1** - taken from the cul-de-sac looking northerly – driveway going into property, filled with asphalt millings, extensive clearing of the property
- **#2 & #3** – from same location, more to the east, is location of what is supposed to be detention basin, shows extensive clearing

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- **#4, 5, and 6** – looking west off I-91 south exit into East Windsor, show extensive clearing, berm of materials added near stream
- **#7, 8, 9, & 10** – looking north from the cul-de-sac, clearing of area around detention basin, shows excavator with large pile of fill material. Wetlands Agent Newton indicated she couldn't tell if it was filling or excavation; she didn't go onto the property without permission.
- **#11** – looking east from end of cul-de-sac at Main Street, shows fill entering catch basin, and silt coming off field into cul-de-sac.
- **#12** – looking north towards Main Street, entire sidewalk filed with silt

Wetlands Agent Newton advised the Commission she doesn't have a personal familiarity with the property. She has asked Mr. Wagner to come in to tell the Commission what happened between the permit issuance in 2005 and now.

Wetlands Agent Newton advised the Commission the permit issued for this property occurred prior to her employment with East Windsor. This situation came to her attention in 2011 when a business owner approached the Planning Office to discuss refitting the property at 230 Main Street which is the first building entering the cul-de-sac on the right; this building had previously been a carpet and paint store. The business owner got a ZBA (Zoning Board of Appeals) variance and then went to the PZC (Planning and Zoning Commission) with an application. In dealing with those issues it was determined that there were issues with drainage and with sediment going into the drainage structure/detention basin. It was subsequently determined that the detention basin was not functioning correctly based on the as-built plan.

Staff reviewed aerials, the as-built plan, and looked at the detention basin which was being utilized in a low spot on the property. Original approval for a commercial (business) park was granted in 1988. Commissioner Osborn concurred, noting he was a member of the IWWA (Inland Wetlands and Watercourses Agency) at that time; the only thing that went in was the sports bubble. Mr. Wagner interjected that the project failed because the I-91 exit ramp nearby was closed. Wetlands Agent Newton referenced the 2005 IWWA Permit, noting the approved activities. She noted the detention basin was shown as wetlands with one pipe and an intermittent stream (Blue Ditch). It was assumed that the purpose of the permit was to widen the existing driveway, which was not wide enough for emergency vehicles. Limited clearing was allowed.

Mr. Wagner suggested those issues have nothing to do with that permit. Wetlands Agent Newton suggested she was giving the Commission historical data on the site.

Wetlands Agent Newton reiterated that some clearing was approved. Mr. Wagner noted that "actually, he added another section of pipe to one end, and did some clearing so the driveway could be bigger". Wetlands Agent Newton suggested that based on historical data and the aerial photos, work has occurred in the detention basin and the upland area that wasn't approved. Clearing has also occurred, which is an as-of-right activity but it must be determined as such by the Board prior to work commencing. That determination

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has not been requested of the IWWA.

Mr. Wagner offered the following information for background. What caused him to do what he is doing now is “this” storm drainage which drains into the detention basin has failed for a number of reasons, including the impact of muskrats, wild roses, etc. The area was a jungle. The storm drains didn’t drain. Water from the sports bubble comes into the basin. Mr. Wagner indicated he discussed the problem with the people operating the sports bubble as he didn’t want to take on the financial cost, but those individuals said their water was going into the public sewer. They blew him off; it wasn’t their problem. Mr. Wagner indicated he talked to Town Engineer Norton; no one has any recollection of the situation. Mr. Wagner indicated his original engineer said he couldn’t do anything because he couldn’t see anything. During the October snowstorm he lost some trees, which he had to cut down. Then you could see the pipe. The detention basin had silted in. Mr. Wagner suggested his goal is to return the detention basin to what it was supposed to be.

Mr. Wagner had come to the Meeting with a disc of photos which Wetlands Agent Newton displayed on the Smartboard. Mr. Wagner referenced photo #1, noting he put in wood chips when the detention basin pipe failed. Referencing photo #2 Mr. Wagner suggested this shows some of the pipe under the road that drains into Blue Ditch; 2/3 of the pipe is exposed, 1/3 is under water. He suggested this was designed as an overflow spout. Mr. Wagner suggested he cleaned it out at the end. He felt the elevation is wrong; “stuff” washed away towards Main Street. Mr. Wagner suggested the escarpments are all wrong on the detention basin. Mr. Wagner questioned if the detention basin was finished as it was supposed to be; he felt when the (original) project was aborted “they” just left.

Chairman Savaria questioned if this was Mr. Wagner’s responsibility? Wetlands Agent Newton suggested Dechton was the previous property owner. Mr. Wagner suggested the issues are a real quagmire. Wetlands Agent Newton concurred, noting the road was never accepted as a Town road; the process was started but never completed. The drainage doesn’t match what is on file. The property was never legally subdivided.

Returning to photo #3, Mr. Wagner suggested “this” is looking at “this” leg of the detention basin. He suggested he cleared out material that has been going in for 25 years. He was careful not to disturb the virgin soil. Mr. Wagner plans to put in riprap and regrade the escarpments to be more manageable. The stumping was done 3 to 4 years ago; he dug out the stumps. Chairman Savaria suggested he saw some fresh cut material in the photos. Mr. Wagner suggested he had problems with people dumping material – a couple of loads of pine logs - on the site. His stuff is ground up and turns to soil. Approximately 90% of the material growing was invasive plants. The stumping was approved by a previous Wetlands Agent; she visited the site frequently. Wetlands Agent Newton indicated there is no file documentation regarding those visits. Commissioner Osborn recalled that Mr. Wagner had never come before the Board regarding this work. Mr. Wagner suggested that was because his activities were for farming; the previous Wetlands Agent had told him he could stump without coming in. Wetlands Agent

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Newton and Chairman Savaria clarified that comment wasn't true; Wetlands Agent Newton noted that when she makes site visits she does a file memo of the visit. Mr. Wagner suggested he was here for several meetings; he logged it first and had to get a permit for that. Wetlands Agent Newton reiterated there is nothing on file indicating that occurred. Chairman Savaria suggested even if the permit had been misplaced there would have been minutes, and there are not any. Commissioner Osborn reiterated that the only one who came in was the person who got the original permit. Mr. Wagner suggested he thought it was something you could do. He suggested the stumping wasn't done in the wetlands; it was done on an agricultural property which was always a farm. Mr. Wagner indicated he was told by the people operating the sports bubble that he was responsible for it. He's not changing anything; he will put it back to the as-built.

Discussion returned to resolution. It was noted work on a detention basin in wetlands requires a permit. Mr. Wagner questioned if he needed the assistance of an engineer, as that will cost him money; he was going by the original as-built. Wetlands Agent Newton recalled he had previously said the as-built wasn't accurate. Mr. Wagner suggested that was because the basin was silting in. Wetlands Agent Newton suggested using the as-built, but noted Mr. Wagner had talked about putting riprap on the slopes. She would rather have a wet-bottom basin to maintain the wetlands; she suggested there are some wetlands seed mixes which work well. Mr. Wagner suggested he wants it to be free-flowing so he can drive a mower through it. He noted corn has been grown here 27 years ago but it's been so long without anything being done to it. The stumps are his fault; he did it for agricultural land. He will remove the stumps.

Chairman Savaria suggested Mr. Wagner should consider hiring an engineer as the Commission would want to see plan of what he intends to do, and what he plans to do for erosion controls. Chairman Savaria noted he didn't see any silt fence in use in the current photos. He reiterated all of these requirements are stated in the Inland Wetlands Regulations. Mr. Wagner indicated he would prefer to use chips along the erodible area; silt fence isn't taken away. Chairman Savaria acknowledged Staff will have to go out to look at this; he questioned if Mr. Wagner would give his permission for Staff to visit the site? Mr. Wagner replied affirmatively. Chairman Savaria suggested the Commission and Staff will work with Mr. Wagner; the Commission and Staff understand what Mr. Wagner wants to do but there are Regulations which must be followed. If some activities are rights as a farmer the Commission/Staff will work with Mr. Wagner on that as well.

Mr. Wagner referenced one of his photos and suggested he would rather do grading, and there should be a catch basin with grates. Chairman Savaria reiterated the Commission needs to see a plan. Mr. Wagner stated that would cost him \$2500. Chairman Savaria reiterated Mr. Wagner needs to work with Staff. He suggested Mr. Wagner can't just tell the Commission what he wants to do; Mr. Wagner needs to provide a plan. The Commission can't grant a permit without plans for the work. Mr. Wagner acknowledged it's a problem. Discussion returned to the original approval for the industrial/commercial campus with drainage easements from the lots to the detention basin which would discharge into Blue Ditch. Wetlands Agent Newton noted the drainage is all privately

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owned. There are easements going from the sports bubble entering into the cul-de-sac and then into the detention basin. Commissioner Osborn suggested Mr. Wagner subsequently purchased the property and inherited these problems. Mr. Wagner suggested he does have Title Insurance. He indicated he doesn't have an issue accepting the water from the sports bubble and another individual considering the site but they need to help maintain this. Mr. Wagner suggested he will never do anything with the property; someone else will buy the property and develop it and Mr. Wagner indicated he will farm it in the meantime. Wetlands Agent Newton reported she and Town Planner Whitten have been going over the deeds as a result of the application being brought before the PZC. She noted they found nothing was filed on the Land Records; there are no legal lots out there. She questioned why the Title Attorney didn't find the same information?

Wetlands Agent Newton returned discussion to the present resolution. She reported Mr. Wagner had big piles of soil out in back; Mr. Wagner suggested he could grade them out. Wetlands Agent Newton stated she assumed the soils came from the wetlands? Mr. Wagner indicated he is working with DOT, who will be cutting down trees "back here". The exit was moved, and the drain just hangs out there and only services a small area. Mr. Wagner suggested there is another drain from Walmart. Wetlands Agent Newton requested clarification that all the work associated with IWWA Permit #1371 has been done? Mr. Wagner replied affirmatively. Wetlands Agent Newton questioned that Mr. Wagner wanted to try to put the detention basin back to the 1988 approval; Mr. Wagner replied – "if he could." Wetlands Agent Newton suggested Mr. Wagner needs to file an application for the work he proposes. She suggested he could use the as-built from the original approval, but there are minimum Regulation requirements; Mr. Wagner's engineer needs to work on a plan. Wetlands Agent Newton suggested Mr. Wagner also needs to consider what he wants to put in the detention basin; riprap is considered fill if used in a wetlands. She reiterated there are wetlands seed mixes which work well; Mr. Wagner suggested he will do that. Wetlands Agent Newton reiterated Mr. Wagner needs to provide that information on the application.

Mr. Wagner suggested to Wetlands Agent Newton that he did try to talk to her but she was busy and (Town Planner ) Laurie Whitten took the call; he talked to (Town Engineer) Len (Norton) because he worked on this before. Chairman Savaria advised Mr. Wagner the Wetlands Commission is trying to work with people; if he had consulted with the Town first all of this could have been avoided. Mr. Wagner suggested his engineer couldn't find out what to do. Discussion continued regarding the intent of the Wetlands Commission and Staff to be pro-active if given the opportunity to work with a resident.

Commissioner Koczera cited the detention basin at Walmart; he noted they are working in the detention basin to maintain it. Wetlands Agent Newton pointed out the difference is that whomever designed the detention basin on this property designed it in the wetlands; Walmart's detention basin was not in the wetlands. There is a section of the Regulations that discusses the ability to go in and perform maintenance. Walmart came in for a permit for that work; Mr. Wagner could have come in to do what Walmart did –

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which was to clean out the detention basin.

Mr. Wagner requested the disc of his photos be returned to him; Wetlands Agent Newton passed the disc over to him.

Wetlands Agent Newton requested the Commission vote to keep the Cease & Desist Order in place until resolution can be worked out.

**MOTION: To KEEP THE CEASE AND DESIST ORDER IN PLACE FOR Donald Wagner for Activities at 202 Main Street, East Windsor – Violation of IWWA Regulations Sections 4 and 6, and Exceeding the Scope of Work Permitted in Permit No. 1371 until there is a resolution.**

**Osborn moved/Slate seconded/**

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

**OLD BUSINESS: 1) East Windsor Cemetery Association – Springdale Cemetery, Warehouse Point – Cease and Desist Order for Conducting a Regulated Activity without a Permit:**

Mr. Jay Ussery, of J. R. Russo & Associates, LLC, joined the Commission to update them on the status of this Cease & Desist Order.

Mr. Ussery suggested indicated his firm has completed a plan; they are waiting for Clarence Welti (soil scientist) to do borings and give his recommendations. They have no issues with the DOT Diversity Database regarding endangered species. Mr. Ussery indicated he visited the site with the State Archeologist to discuss the possibility of burials in the proximity of the slope that might not be marked with headstones. The State Archeologist has indicated he wants to be present if borings will be required in areas near the slope. Mr. Ussery suggested they submitted a preliminary plan to FEMA; it appears FEMA will assist with the cost of the proposed repairs – perhaps up to 75%, or \$50,000+/- . They hope that by the next Commission Meeting Mr. Welti will have completed his study and they can submit a plan. The area on the DOT property has not yet been resolved.

Mr. Ussery submitted a copy of the plan submitted to FEMA to Wetlands Agent Newton for the IWWA file.

**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 gave the Commission an update on this Cease and Desist Order as well. He indicated he met with Mr. Parente and Clarence Welti at this property. They have

located the bank. Mr. Ussery referenced a plan which indicates as a green line the limit of the area of fill which was deposited when the slope began to slip. Mr. Ussery felt Mr. Welti's suggestion will be to cut the bank back to a 2:1 slope. He noted they have a plan from 1975 when the current house was moved from across the street when Harken's Market was built. There is a Conservation Easement on the watercourse; they may need to work within that area. Mr. Ussery indicated he hopes to have a plan to submit for the next meeting. Mr. Parente has seeded the slope with hay, but they may need to cut that bank back.

Mr. Ussery kept the plan referenced in his presentation; nothing has been submitted to the IWWA as of yet.

**MISCELLANEOUS: 1) KROS East Windsor, LLC – Transfer of Inland/Wetlands Permit #03-2011 for property located at 44 and 54 Prospect Hill Road, East Windsor:**

Chairman Savaria noted the new owner of the site approved for the big box retail development has requested that the IWWA Permit be transferred. Appearing to request the transfer was Eric Spungen, developer of the project, and Attorney John Knuff representing Walmart.

Mr. Spungen concurred; they are just transferring the permit to Walmart so they do what is planned. Wetlands Agent Newton noted they haven't started their work with regard to the Wetlands Permit. This request is an administrative function required by the Regulations.

Commissioner Slate questioned if the mitigation work approved transfer to Walmart as well? Attorney Knuff indicated that work can't begin until money is transferred.

**MOTION: To TRANSFER INLAND WETLANDS PERMIT #03-2011 for property at 44 and 54 Prospect Hill Road, East Windsor from KROS East Windsor, LLC to Wal-Mart Real Estate Business Trust.**

**Koczera moved/Slate seconded/**

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

**MISCELLANEOUS: 2) Gaeton Letourneau – Norton's Crossing, Hayfield Lane, Extension of Inland Permit #1396 – to conduct regulated activities associated with 10 single family lots:**

Wetlands Agent Newton noted when preparing a Zoning Permit she discovered that the Wetlands Permit had expired. The road is in and well established but the Town has not yet taken it over. There are approximately 4 lots remaining to be developed. The developer does a great job on the site; erosion controls are up. Wetlands Agent Newton reported she has no problem with the Commission extending the permit.

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**MOTION: To EXTEND FOR FIVE YEARS INLAND WETLANDS PERMIT #1396 FOR Gaeton Letourneau for Norton's Crossing, Hayfield Lane, to conduct regulated activities associated with 10 single family lots. Wetlands Permit extended through May 7, 2019.**

**Koczera moved/Slate seconded/**

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

**AGENT DECISIONS:** None.

**STATUS REPORTS:**

- Wetlands Agent Newton reported the vernal pools at **Newberry Village** are virtually dry this year due to seasonal conditions; there was no snow melt and little rainfall this year. She suggested there would not be much information regarding species activity from the annual report required of the developer; she recommended to NOT require the 2012 report from the soil scientist.

The Commission concurred with Wetlands Agent Newton's recommendation.

- With regard to **68 Newberry Road**, a Special Use Permit and mylars have been filed on the Land Records; the Planning Office has been working with the engineer regarding the bonds. Wetlands Agent Newton reported she has been talking to the engineer regarding work in the wetlands. There has been significant progress on this property.

**CONFERENCES/SEMINARS/TRAINING:**

Discussion followed regarding Commissioner's need to sign up for Session 1 (online) of Inland Wetlands Certification Program. Cost of Session 1 is \$60; funding is available through the Town for only one member to participate. Wetlands Agent Newton offered a Smartboard presentation as an alternative; however, in-house training would preclude members from acquiring certification. Commissioner Roloff indicated she would like to take Sessions 2 and 3; she felt Session 1 was very basic. Wetlands Agent Newton noted participation in all three sessions is necessary for certification; she takes the session every year to maintain her certification. Chairman Savaria also plans to take the courses; he will provide funding himself.

Wetlands Agent Newton reiterated she will provide the Smartboard presentation if the Commission is interested.

**CORRESPONDENCE:** None.

**GENERAL BOARD DISCUSSION:** None

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

Selectman Pippin indicated the Commission did a good time tonight.

**ADJOURNMENT:**

**MOTION: To ADJOURN this Meeting at 8:05 p.m.**

**Sawka moved/Slate seconded/VOTE: In Favor: Unanimous**

Respectfully submitted:

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Peg Hoffman, Recording Secretary, Inland Wetlands and Watercourse Commission  
(3992)