

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

Regular Meeting

Wednesday, April 5, 2023

7:00 p.m.

**Small Meeting Room
Town Hall, 11 Rye Street,
Broad Brook, Connecticut
(In-person)**

AND

Meeting held via ZOOM Teleconference
Meeting ID: 714 897 1799

MEETING MINUTES

*******Minutes are not official until approved at a subsequent meeting*******

- I. CALL TO ORDER:** Chairman Davis called the April 5, 2023 Regular Meeting of the East Windsor Inland Wetlands and Watercourse Agency to order at 7:07 p.m. in the Small Meeting Room. The delay in calling the Meeting to Order was due to technical difficulties, while the location change was due to a Board of Finance Budget Workshop having been scheduled in the John Daly Meeting Room at the same time. This Meeting is also available via remote access.

Present: Regular Members Rebecca Davis (Chairman), Alan Baker, Kurt Kebschull, Richard Osborn (Secretary), Richard P. Pippin, Jr (Vice Chairman); Alternate Members Kathleen Pippin, and Mike Sawka.

Unable to Attend: All Regular and Alternate Commission Members were present this evening.

Guests (In person): Wetlands Agent/Zoning Enforcement Officer Danielle Boudreau hosted the meeting. Also present for the **RIGHT-TO-FARM DETERMINATION/81 WINDSORVILLE ROAD:** Herb Holden, owner of K & H Properties; **Public:** Mike Ceppetelli.

Remote Guests (as identified on meeting participation list): Commissioner Kurt Kebschull, Peg Hoffman, Recording Secretary.

II. ESTABLISHMENT OF QUORUM:

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Chairman Davis noted the establishment of a quorum with 4 Regular and 2 Alternate Members in attendance in-person, and 1 Regular Member participated remotely as noted above. All Regular Members will sit in on votes this evening.

III. PLEDGE OF ALLEGIANCE:

As the meeting is being held in the Small Meeting Room, and there is no American flag available, the Commission did not recite the Pledge of Allegiance.

IV. AGENDA ADDITIONS: None

V. APPROVAL OF MINUTES – March 1, 2023 Regular Meeting:

Chairman Davis noted the Minutes for the Regular Meeting held on March 1, 2023 are available for approval, she questioned the Commissioner for changes or revisions. No one requested alterations, Chairman Davis called for a motion of approval.

MOTION: To APPROVE the Minutes of Regular Meeting of the Inland Wetlands and Watercourse Agency dated March 1, 2023 as presented.

Dick Pippin moved/Osborn seconded/DISCUSSION: None.

**VOTE In Favor: Baker/Davis/Kebschull/Osborn/D Pippin
(No one opposed/No abstentions)**

VI. NEW APPLICATIONS TO BE RECEIVED: None

VII. PUBLIC HEARINGS: None

VIII. CONTINUED PUBLIC HEARINGS: None

IX. NEW BUSINESS: None

X. OLD BUSINESS:

XI. 1) CONTINUED As-of-Right Determination – 81 Windsorville Road, K & H Properties – owner (clearing and grading to expand cropland in the Upland Review Area):

Chairman Davis read the description of the Continued Public

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Hearing. Present to discuss this application was Herb Holden, owner of K & H Properties.

Mr. Holden noted he's prepared a summation statement regarding what's occurred over the past couple of months which he would like to read for the Commission. He also has photos taken this morning to illustrate the site under discussion.

Mr. Holden requested to read the following statement:

Determination As-of-Right

81 Windsorville Road was an active farm that I purchased in 2020. We continue to farm the property raising field corn and pasture since its purchase. We have presented to the Commission a determination use as-of-right site plan that clearly shows that we are not interfering with the existing wetlands on the property in a project that will add an additional 8.5 acres to our farmable area. We believe that a farm expanding its farming operation through the regrading of soil is by definition an as-of-right use described in the Town's Zoning Regulations. Your Town Attorney, Brian McCann, stated on 2/13/2023, that after he reviewed the plans he also agrees that "preparation and clearing of land is included in the farming exemption." He further stated that ultimately he believes the exemption is going to have to turn on whether the activity proposed is essential for the preparation of the land to farm. That evidence should be provided by the applicant for the record." I believe we have discussed throughout our meetings that the property has a huge cliff that is prohibiting me from farming the 8 to 9 acres in question. That the material can not be "pushed" to the side to open up the area, that the material will somehow have to leave the property in order to expand the agricultural acreage.

Therefore, I do not understand why the Commission continues to say that I don't qualify as a determination use as-of-right. I am a farm, I am expanding my farm. Your regulations state that farming and the raising of crops is the definition of use as-of-right. To say the activity of clearing the fill out and regrading is any different than clearing trees is inaccurate. I'm trying to take this extremely segregated farm and turn it into one productive

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operation. The fact that there is a large amount of soil that ultimately will leave the site is a matter for Planning and Zoning to address. I have demonstrated that I'm not in the wetland, that I'm not changing any wetlands. My engineer has designed the site to have natural contours that will not impact the wetland. I know that this Committee wants me to submit an application as a gravel pit, however, I'm not running this as a gravel operation. Yes, I'm exporting fill, but what else would constitute a gravel operation? Machinery, scale house, business address, outside companies coming on the site. I'm not adding any of these to this project. If farming is truly a cornerstone to the quality of life in East Windsor, like your right- to-farm act states, then why are we making it so difficult for farmers to take otherwise unproductive land and make it useful? How much "exposure" does the Town face by allowing farms to regrade their land to accommodate the expansion of agriculture.

Mr. Holden then reviewed the photos he submitted tonight, which include one of the open cornfield with the cliff and structures running the length of the field which was left from a previous mining operation, and another of the hill at Chamberlain Road in the middle of the property which cuts everything into different fields.

Commissioner Baker suggested the issue of the gravel pit has nothing to do with the Wetlands determination, or if Mr. Holden needs a permit for his proposed activities. With regard to the wetlands, Selectman Baker indicated Mr. Holden is taking the water from the area and passing it through the tree barrier into the pond, he felt the plan shows both the speed and how much and when the wetlands will be impacted, as well as the potential for infiltration. Mr. Holden suggested the land has a natural flow into the wetlands, he questioned how much water the Commission thinks is going into the wetlands?

Commissioner Baker noted Mr. Holden is proposing 18 feet of gravel road along the edge of the wetlands, which will never grow in. The activity will continue for perhaps 5 years, the road will never grow in because of its use for the tractors. Commissioner Baker suggested the proposed activity is a significant impact. Commissioner Baker suggested if the Commission considers the

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proposed activity as shown on the plan as a permitted activity then its enforceable, if it isn't and is accepted as an as-of-right activity then the plan specifications aren't enforceable, and Mr. Holden can do anything he wants and no one can enforce anything. If someone goes by and says there are no silt fences installed and they're driving trucks up and down there the Commission no longer has the ability to enforce those plan specifications. Commissioner Baker cited page 3 of the soil scientists report, noting 5 of the 7 paragraphs directly apply and support his concerns. He referenced paragraph 3 – flow alterations – “the area of the wetlands is small relative to its watershed, the affected flood storage is small or non-existent up slope above the wetland. The wetlands contains HYDRIC soils which are able to contain water, the wetlands exist in a relatively flat area that has flood storage potential, wetlands is ponded water, there are signs of variant water levels, wetlands receives overland or sheet flow runoff from surrounding wetlands. In the event of a large storm this wetlands receives and retains excessive floodwater. Valuable property structures and resources are located in or near the floodplain downstream from the wetland. This wetlands/watercourse is sinuous and channel-flow velocity is affected by this wetland.” Commissioner Baker reiterated this was why he felt the proposed activity was a permitted activity rather than an as-of-right. He felt it should be a regulated activity because of the significant impact on the wetlands. Mr. Holden continued to contend that the farming exemption is an as-of-right activity, Commissioner Baker agreed that the farming agricultural exemption is heavily stacked in favor of agriculture. Commissioner Baker clarified he wasn't saying Mr. Holden shouldn't do the project, he felt it was a desirable project, but he felt it needs to be a permitted project.

Mr. Holden disagreed, he cited they were a farm, doing farming activities.

Commissioner Baker suggested the fact that the Commission and Mr. Holden are having this discussion is that the farming exemption isn't automatic. Commissioner Baker cited information from a 2021 Commissioner's training session which referenced case law regarding the farming exemption. He noted that the Town of Guilford ruled against a proposal for a farming exemption, the applicant took the decision to court, and ultimately

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lost their case; in that instance it was right for the Wetlands Commission to make the decision that they made. Commissioner Baker suggested it's not an automatic exemption. Commissioner Baker reiterated that in reviewing Mr. Holden's plan he felt the proposal should be a regulated activity.

Mr. Holden noted they've set up the material removal in phases. He referenced Section 4 of the regulations, noting that the water will still flow through the wetlands as it does now. Commissioner Baker read page 2 of the DEEP report regarding regulated activities, definitions "...alterations – "the act defines a regulated activity as any operation within a wetlands or watercourse involving removal or deposition of materials, any obstruction, construction or alteration of wetlands or watercourses ...", Commissioner Baker noted the definition of watercourses is "...rivers, streams, brooks, waterways, lakes, ponds, swamps, bogs, and all bodies of water, natural or artificial, vernal or intermittent, public or private, which are contained within or flow through the Town of East Windsor or any portion thereof..." Commissioner Baker suggested the Connecticut Farm Bureau says the same thing. Mr. Holden continued to disagree with Commissioner Baker's contention; Commissioner Baker felt the activity falls within the definition of a regulated activity.

Commissioner Dick Pippin concurred with Commissioner Baker, noting the information provided through the Commissioner's training sessions. He noted an instance where a farmer was given the as-of-right exemption and then farmed for a year and then ceased farming. Commissioner Dick Pippin indicated he didn't feel Mr. Holden would do that, he indicated he believed Mr. Holden completely, but Commissioner Dick Pippin indicated he felt this proposal should be handled as a regulated activity as well as it includes hauling a significant amount of material for several years. Commissioner Pippin suggested if Mr. Holden wanted to take that hill out of Phase 4, fill in the low spot between Phase 1 and 2, and regrade stuff without hauling materials other than brush and stumps that would be an as-of-right activity but to haul that much material out of there Commissioner Dick Pippin felt the Commission should have a permit on. Commissioner Dick Pippin noted the permit would then give Mr. Holden 9 years to complete the project as well.

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Commissioner Baker suggested considering Phases 1 – 3 as an as-of-right determination while considering Phase 4 for a permitted activity. Wetlands Agent Boudreau noted the application timeframe closes today, if a vote couldn't be made this evening the applicant would have to request a 65 day extension or withdraw the application.

The Commission and Mr. Holden agreed to vote on the alternative of an as-of-right determination for Phases 1 – 3, while Phase 4 would be a permitted activity.

MOTION: To GRANT the As-of-Right Determination for 81 Windsorville Road for K&H Properties for grading and clearing to expand cropland in the Upland Review Area for Phase 1, 2, and 3 only, and NOT TO INCLUDE PHASE 4 WHICH WILL REQUIRE A PERMIT as reflected under the referenced plans prepared by J. R. Russo, Surveyors and Engineers, Map 068, Block 60, Lot 001, Zone R-3, prepared for Double H, LLC, 81 Windsorville Road, Job 2020-076

**Baker moved/D Pippin seconded/DISCUSSION: None
VOTE: Baker/Davis/Kebschull/Osborn/D Pippin
(No one opposed/No abstentions)**

XII. MISCELLANEOUS: None

XIII. AGENT REVIEW AND DECISIONS: None

XIV. VIOLATIONS: None

XV. CONFERENCES/SEMINARS/TRAINING: None

XVI. CORRESPONDENCE: None

XVII. GENERAL BOARD DISCUSSION:

- The Commission briefly discussed the photos submitted by Wetlands Agent Boudreau regarding activity at the Gravel Pit Solar location on Apothecaries Hall Road. The land is being cleared and graded in

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anticipation of installation of solar panels.

The Commission requested that copies of the reports received by Wetlands Agent Boudreau be forwarded on to the Siting Council to keep them apprised of the activity occurring.

- Commissioner Dick Pippin requested that the Commission consider review of the Wetlands Regulations regarding material removal related to As-of-Right farming activities. Chairman Davis requested Wetlands Agent Boudreau research the existing regulations and provide information for the Commission at the next meeting.

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

Chairman Davis asked if Mr. Ceppetelli would like to offer any comments; Mr. Ceppetelli replied in the negative.

XIX. EXECUTIVE SESSION – Pursuant to C.G.S. Section 1-200 (6)(b) – pending claims/litigation – Action possible:

No **EXECUTIVE SESSION** this evening.

XX. ADJOURNMENT:

MOTION: To ADJOURN this Meeting at 8:01 p.m.

D Pippin moved/Osborn seconded/

**VOTE: In Favor: Baker/Davis/Kebschull/Osborn/Pippin
(No one opposed/No abstentions)**

Respectfully submitted:

Peg Hoffman, Recording Secretary, Inland Wetlands and Watercourse Commission