



NEWINGTON CONSERVATION COMMISSION

Tuesday, January 19, 2016

MEETING MINUTES

I. CALL TO ORDER

Chairman Zelek called this meeting to order at 7:00 p.m. in Conference Room 101 of the Town Hall.

II. ROLL CALL

Philip Block
John Igielski
Kathleen-Marie Clark
Jeffrey Zelek
John Casasanta
Andreas Sadil
Peter Manke
Alan Paskewich
John Bachand

Also present

Chris Greenlaw, Town Engineer
Susan Gibbon, Recording Secretary

*(*These minutes of the meeting held on January 19, 2016 are verbatim.)*

Chairman Zelek: Seeing on open seats, I don't see a need to appoint any of the alternates this evening. However, the alternates may participate in discussion they just will not be able to vote. Acceptance of, excuse me the next item is Public Participation of Non-Agenda Items. Any member of the public wishing to speak please come forward and state your name and address for the record.

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS (EACH SPEAKER LIMITED TO 2 MINUTES)

Chairman Zelek: Seeing none, we will move on to the next item.

VI. ACCEPTANCE OF MINUTES

Chairman Zelek: Acceptance of Minutes of our regular meeting December 15, 2015. Any updates or modifications from the commissioners?

A. Regular Meeting of December 15, 2015

Commissioner Clark: My name is spelled with a K under the roll call and on page, the bottom of page 5, statement by Chairman Zelek "sealant needed if rock salt was found" should that have been basalt?

Chairman Zelek: It should be basalt, so anywhere in the minutes where the word salt is, it should be changed to basalt, it is a type of rock.

Commissioner Igielski: Page 7, middle of the page, the long paragraph, comment by Mr. Greenlaw, I just ask him to review the first word on the next line, that's the word form and should instead be from. Page 7, middle of the page, long paragraph, starting with your name - "What I recommend to the Chairman is that you get a consensus form the commissioners" it should be from the commissioners.

Chris Greenlaw: Yes, I concur.

Commissioner Igielski: Ok, that is all I have.

Commissioner Paskewich: page 4, second paragraph down from the top. At the end of the paragraph I would like to add: "I have additional soil data cards that I would like to pass out to the commissioners for their applicable land use needs."

Chairman Zelek: Anything else?

Commissioner Paskewich: Yes, on page 7, top of the page, second paragraph, Chairman Zelek second line down, "to impact the wetland is has" not "ash" to come before this commission. Just a spelling check and on page 8, bottom of the page going up to the second paragraph from the bottom, Commissioner Paskewich: "I" have been working "with" (not under) building development..."

Chairman Zelek: Thank you, any other commissioners? Seeing none, can I get a motion to accept the minutes? Commissioner Clark?

Commissioner Clark: I vote that we accept the minutes as corrected.

Chairman Zelek: Can I get a second please?

Commissioner Manke: Second.

Chairman Zelek: Second from Commissioner Manke, all in favor?

All commissioners: Aye

Chairman Zelek: Opposed? Abstentions? Passes unanimously. Moving on to the next item, Public Hearing, Inland Wetlands Regulations - L.I.D. (Low Impact Development)

IV. PUBLIC HEARING

A. Inland Wetlands Regulation Changes – L.I.D. (Low Impact Development)

Chairman Zelek: Are there any updates for us Chris?

Chris Greenlaw: I have no updates at this time.

Commissioner Zelek: Ok, this being a public hearing, if any member of the public wishes to speak, please come forward. Seeing none, we will table this item to the next meeting.

V. NEW BUSINESS

Commissioner Zelek: Next item, Application 2016-01A, Mill Brook from Dowd St south to Cedar St – Wetland Map Amendment. If the applicant is present would you please come forward and state your name for the record.

A. Application 2016-01A, Mill Brook from Dowd St south to Cedar St – Wetland Map Amendment

Chris Greenlaw: Mr. Chairman, if I may while the consultant is setting up, just very quickly. You have the authority of the MDC and they have their consultant with them, they are going to be introduced in a second, with a map amendment, I would like to just go on the record and stat that they have a project, as many of the projects that they have, they parcel them out and in a good housekeeping effort they are here before you tonight to recommend ultimately that there is a motion for a public hearing because with all map amendments it is automatic that we have a public hearing, what they would like to do is just a brief outline of the framework of what they intend by achieving the map amendment and give you a full presentation at the public hearing and entertain any questions into the public hearing testimony at that time.

Chairman Zelek; Alright, so gentlemen if you could just state your name for the record and please just a very brief presentation for us because we will set a public hearing date and then we will review your application *[very garbled - maps being unfolded]*.

Thank you, Jason Waterbury from The Metropolitan Commission and this is George Pendelton, Martinez *[very difficult to hear - maps being unfolded; speaker not using mic.]*

Chairman Zelek: Excuse me, can you please use the microphone.

Jason Waterbury: I'm sorry, George Pendelton with Martinez Couch. As Chris alluded to, we are in the process of evaluating our sewer easements throughout the district, this is part of our maintenance program that came out of the consent decree. One of the first areas we targeted was this area in Newington between Cedar and Dowd. The assessment basically

with that topographical survey confirmation of existing easements and mapping of wetlands and the mapping alone is here to show that the wetlands in the field differ from what is on the town's map, so our application before you is to amend the town's map.

Chairman Zelek: Thank you. John can you make a motion for a public hearing?

Secretary Igielski: At this time I make a motion that per Section 15.7 of the Inland Wetlands and Water Process Regulations of the Town of Newington, the Commission hold a public hearing on Application 2016-01A, Mill Brook from Dowd St south to Cedar St – Wetland Map Amendment for the proposed map amendment to establish wetland boundary limits determined by soil scientists in the field on February 16, 2016 at 7:00 p.m. in Conference Room L101, Town Hall.

Chairman Zelek: Very good, can I get a second please?

Commissioner Casasanta: I second that.

Chairman Zelek: Second from Commissioner Casasanta. All in favor?

All commissioners: Aye.

Chairman Zelek: Opposed? Abstentions? Motion passes unanimously. Thank you gentlemen.

Commissioner Block: Excuse Mr. Chairman, we have a procedure I think it is, or a practice on these amendments that the new line should match up to old lines where they join. I noticed on this map that on several they either don't or they make a right angle turn and before we go to the next meeting I would like to have it resolved by the applicant as to how they intend to merge the end of their changes in to the official lines.

Chairman Zelek: Ok. I think Chris, you are aware of the situation that Commissioner Block has brought to our attention. Can we just say that we will leave it to you to work with the applicant on the map amendment to determine where those lines should be closed?

Chris Greenlaw: Yes.

Chairman Zelek: Ok, thank you. Thank you gentlemen. Moving on to the next item, Old Business - Inland Wetlands Regulations- L.I.D. (Low Impact Development), Chris *[again very difficult to hear - maps being folded]*.

VI. OLD BUSINESS

A. Inland Wetlands Regulations Changes – L.I.D. (Low Impact Development)

Chris Greenlaw: I have nothing to add at this time.

Chairman Zelek: Very good, would you like us to table this to the next meeting.

Chris Greenlaw: Yes, please.

Chairman Zelek: Next item, New Initiative - Vernal Pools. Allen, anything?

B. New Initiative – Vernal Pools

Commissioner Paskewich: Now that I have wound down with the holiday and such, I am starting to compile and breakdown documents I had into categories which will be subject, title, authors, peer reviews and about 45 citations, so I am going to be looking at actually attending a workshop at Harvard one day through the Library of Science regarding on how to look at journals for their, what is the word I am looking for, accuracy for importance to the scientific community in that body of 45, so it will be an ongoing process.

Chairman Zelek: Ok, so we have had some experts come in and talk to us about vernal pools on several occasions, so the majority to the commission is fairly well educated when it comes to vernal pools, however we do have a couple of new members and I would like to get them some materials that explain the unique features and around a vernal pool, and some of the best practices for development around a vernal pool. If you could do something up for them, I would greatly appreciate it to get them up to speed so they understand the importance of these unique potential wetlands.

Commissioner Paskewich: Yeah, I believe I can pull all of the information directly from DEEP in their area of expertise and actually I have been talking to John Bachand lately and since he as been active on the mountain for so long and knows quite a bit about the land up there and vernal pools, he is willing to help with the inventory when the time comes of things of nature to a vernal pool. So I will provide information for both of them regarding that as well

Chairman Zelek: Ok, so inventorying vernal pools was something that we expressed interest doing in the past, is this something that the two of you are willing to pursue?

Commissioner Paskewich: He mentioned that he would take it on. I would be more than happy to work with him when the time comes in the spring.

John Bachand: OK.

Chairman Zelek: Ok, thanks, anything else? You want to move on?

Commissioner Paskewich: Yes please, I am finished for now.

Chairman Zelek: Next item is invasive plants, Kathleen?

C. Invasive Plants

Commissioner Clark: Nothing new.

Chairman Zelek: Thank you. It brings us to Public Participation on Non-Agenda Items. Any members of the public that wish to speak, please come forward.

VII. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

(EACH SPEAKER LIMITED TO 2 MINUTES)

Chairman Zelek: Seeing none, we will close public participation and we will move on to Communication and Reports.

VIII. COMMUNICATIONS AND REPORTS

Chairman Zelek: We have item Administrative Approval - Application 2015-24AA, 23 Highland Street - Deck in the Upland Review area. Chris would you want to give a brief rundown on on this one.

A. Administrative Approval - Application 2015-24AA, 23 Highland Street – Deck in the Upland Review area.

Chris Greenlaw: Just a brief description of what the application was before us. The Chairman and I visited the site, of course staff entertained this application prior to going into the field with the Chair. It was a house on Highland Street that has been, the common term is flipped, revitalized and as far as he work there was a deck that was proposed to be put on the back of the house that would be in the upland review. The impact of the wetlands was proposed as three sona tubes to support the very small deck, I think it was around 8 x 12. The Chairman and I also met on field and in the field to assist with the development of the map and what bmps would be utilized and ultimately the chairman authorized us to administer the application, three sona tubes to be dug and deck place on top.

Chairman Zelek: I think as far as the rehab the house had a very small porch on the back, so what is here is a little landing and then they put on a very modest deck, I wouldn't call it a deck, I would just call it an extension of the porch that existed.

Chris Greenlaw: Correct.

Commissioner Block: Mr. Chairman.

Chairman Zelek: Yes, Commissioner Block.

Commissioner Block: Just for clarification, when you started your presentation you said he upland review area and when you said the sona tubes you said in the wetlands. Are the tubes in the wetland or the upland review?

Chris Greenlaw: There was no work, thank you for the correction, I should not have mentioned any work in the wetlands, the activity was in the upland review as proposed.

Chairman Zelek: Thank you Chris. The next item on the agenda is a review of Application 2006-26 - 751 Russell Road. The Town Attorney was going to speak to us on some questions that were raised at the last meeting by the Commission, any word on the arrival of the Town Attorney?

Chris Greenlaw: The Town Attorney will be joining us this evening, hopefully sooner than later, I think in anticipation of our meeting he was probably allowing some buffer time.

Chairman Zelek: All right, so I am not going to go on to the next item, but I do want to point to the next item is 2015 Legislative Updates and I believe we were going to talk with the Town Attorney on those also when he was here.

Chris Greenlaw: May I suggest perhaps a 5 minute recess and what I'll do; did everyone receive the 2015 Legislative Update?

Commissioner Block: No, I didn't.

Chairman Zelek: It was an email that went out from Eric Hinckley...

Chris Greenlaw: Yes.

Chairman Zelek: You may want to check your email to see if you got it and if you don't have it we can probably get you a copy.

Commissioner Block: How long ago?

Chris Greenlaw: If I could share something, many time, every year that we receive these legislative updates, this is all our public acts written by our legislature and every year I attend the legislative update session which is usually held in June at the DEEP and they have their Assistant Chief State's attorney go over that and go over the updates and they explain to us how they apply to municipal land use agencies, specifically inland wetland. You'll note that I believe in the advisory, it goes on to state, I think it is 15-68, I believe it even states in there that, I can't quote it, but it does state that there is powers that were given to the courts, so what is have asked the Town Attorney to do, I haven't had the opportunity of being brief at the seminar yet by DEEP, and certainly if there is powers of authorities given to judges over the courts, certainly we want something like the Town Attorney to perhaps interpret that rather than your staff agent. So you will note that in there, I believe it should be on the first page. We can recess and get acquainted with that and I can check on the attendance of the Town Attorney.

Chairman Zelek: So to answer Commissioner Block...

Commissioner Block: I found it.

Chairman Zelek: You did find it? Very good. Motion to recess?

Commissioner Casasanta: I motion that we recess.

Chairman Zelek: Before we go for a second on that, did you have a question Mr. Bachand?

Commissioner Bachand: Yes, I am not sure of the process, so I thought there was going to be a more in depth discussion.

Chairman Zelek: There will be, we have not spoken to the item yet, so we are going to take a recess.

Commissioner Bachand: No, I mean on the map amendment.

Chairman Zeke: That will be done during the public hearing.

Commissioner Bachand: Ok, coming up.

Chairman Zelek: Correct. We don't take too much information the first night because the applicant will have to rehash it during the public hearing anyway, so we don't want to take up too much of their time and have to repeat what has already been said.

Commissioner Bachand: I just have one suggestion and that would be on the map amendment that they do an overlay of the sewer. It is in all the little pages, but it is not on the big amendment, I think that would be helpful just to give everyone an idea.

Chris Greenlaw: In the map amendment, exclusively, the map amendment is its own application and what we look to achieve at that point is they have a good, any applicant has a right, any owner, any resident has the right to, if they feel as though there is a discrepancy between the existing official map and what appears to be in the field and what they are going to do, so what we offer at that time is an application that speaks to just the physical boundaries of the property, the owner, the existing wetlands and the proposed changes do to boots on the ground effort by their soil scientist. That is what we entertain, it is a quote on quote analysis and we listen to the testimony and certainly if we have knowledge of the area, that if there is anything we want to question, it comes out in the testimony. That is separate from the future application, it's a good housekeeping effort, get everything in accordance of where it is and then they will come in with an application and say alright now here is our proposal for activities, separate application, for activities as it relates to the wetlands.

Commissioner Bachand: I just thought that their proposed amendments are related directly to where the sewers are so it may be helpful. Again, I am not clear on the process.

Chairman Zelek: The amendments will be for wetland boundaries, nothing to do with their sewer system.

Commissioner Block: Mr. Chairman, if I can work with John.

Chairman Zelek: Sure.

Commissioner Block: The wetlands map is originally created from the soil types and aerial overlays, it obviously cannot be a factor in what is on the ground. So the applicants come in to, with their soil scientist, to say we are fine tuning what the soil types are and that is why it is a separate application from what they want to do within that land. Ok, so it is two bites of the apple.

Commissioner Bachand: Ok.

Commissioner Sadil: Mr. Chairman.

Commissioner Sadil: Commissioner Bachand's point, I looked that the package preparation and what is the significance of these, in the back, I understand what we are trying to do, but it was very difficult to follow all these snippets, I would have to put these out a table and scotch tape them, I want to know what the significance of those were, it was very difficult to follow and that is my own reference.

Chris Greenlaw: What I would ask you to do is specifically at that public hearing that of the applicant, certainly the overall map is the map that they are going to present, that their soil scientist is going to sign in the end. I would ask them to identify the actual materials that they have given you and that explanation entered into the record for the benefit of everyone at that time.

Chairman Zelek: And I would ask the rest of the commissioner, save your questions for the public and take the opportunity between now and the next meeting to go through the packet and prepare all of your questions. Thank you. I see Attorney Ancona has arrived. We are ready for you.

Chairman Zelek: So we are moving on to, Item B, under Section XI, commissioners report Application 2006-26, 751 Russell Road. The Town Attorney is in attendance to discuss. So, at the last meeting, there were a number of questions that were raised during our review with the Town Engineer about this application and some raised questions and passed them on to Chris to get to our Town Attorney and requested, I believe this commission wanted to have the Town Attorney in attendance so that we could pose these questions to him and speak to him directly. We also entertained the possibility of having the Town Planner join us this evening, but it was determined by myself and the Town Attorney did not believe that was necessary. If this goes any further than we could always ask for him to be present. So Mr. Attorney, do you have the questions that I had posed on behalf of the commission?

B. Application 2006-26, 751 Russell Road (Town Attorney in attendance to discuss)

Attorney Ancona: I do Mr. Chairman, can you hear? Mr. Chairman thank you for having me. Commissioners, the Town Engineer, I guess has disappeared for a moment, I guess we will be going forth without him. I may have a question or two for him, so I was hoping he would still be in here. Before, just to clarify something, it is my understanding that you have referenced Mr. Chairman an application number.

Chairman Zelek: Yes, the application number was 2006-26.

Attorney Ancona: Correct, if we could just clarify for a moment, there is no pending application.

Chairman Zelek: There is no pending application, you are correct, it was a permit that was issued for that application.

Attorney Ancona: Before we start with your questions, if I may, just say a couple of things if you wouldn't mind. There are a lot of lawyers that have a greater knowledge base than I do in this area and we all know that, but one of the things that I would like to address is just a couple of items that are always floating around in the back of my mind when it comes to land use bodies, especially inland wetlands and so forth. I guess the first thing that comes to mind, is predetermination and I think we all know what predetermination is. And that is, when I was on the other side I should say, where I represented applicants to, when I wanted to hone in on something I always looked for predetermination. If I could find a little nugget of something that showed the commission came in with some sort of bias or an agenda, that is what I wanted. I just want to say that this commission here, I think, has been very good at it, at being very straight and narrow. I remember sitting over there during one agenda item and I was extremely proud, to be honest, to be on this commission. It is a very well educated, well versed commission and even those that are new here, some of you sat here and watched it and it was a great place to be and I just want to say I appreciate all that you do. I would also like to say that, just to remind this commission that you are an autonomous body. You think for yourself, you do as you need to do under the statutes. The TPZ does what it needs to do under its own statutes. Sometimes they are combined, sometimes they are not, but I just want to say that especially for someone who may be analyzing this at home or someone reading the minutes that both bodies are autonomous. I think we all know that, but it is just sort of a reminder and just to remind TPZ and to remind this body that each one of you can't tell the other one what to do. And finally, the record, I like the term the record, what is the record? Is it the minutes being taken here tonight? No. The record is the record and that is why I asked Mr. Chairman is there an application pending, because if there is an application pending, there would be a record with the application and the record is that material that the town staff or attorney has to submit to the court, I think it is 30 days after the return date, that is the record. I remember during one application here, we were so good at keeping within the record, there were outside influences from outside the record, but we were focused, we stayed in the record and I really believe that is the reason why some matters become good [?]. Now to the Chairman's questions. I am just going to read them so that the, or Mr. Chair would you like to read them? They are your questions.

Chairman Zelek: If you want, I could read the communication that I sent to Chris to pass on to you.

Attorney Ancona: Sure.

Chairman Zelek: Ok, so this [memo] is dated December 23 and I had sent this on to our Town Engineer Chris Greenlaw.

Chris, At the December 15th, 2015 meeting of the Inland Wetlands and Conservation Commission, the commission was briefed by Staff on the expiring Hunter Properties Inland Wetland permit 2006-26 for 751 Russell Rd. We believe this permit will expire March, 2016. The commission is aware that TPZ has issued a zoning permit in 2015 for this same address for a use case that is drastically different than the permit issued for Hunter. This new use case is known as "Amara".

The Inland Wetlands commission has not issued a permit for the new "Amara" use case that recently TPZ approved. There is only one Inland Wetlands permit that exist for this address and it is the "Hunter" 2006-26.

"Hunter" - will refer to the gas station \hotel\retail strip approved under ILW permit 2006-26

"Amara" will refer to the Continuing Care Retirement Community plan that TPZ approved in 2015

The commission asked several legal questions which I will try to summarize.

1. If Hunter completes all work in the 100ft upland review area before permit 2006-26 expires are they allowed to continue with the remainder of the site work outside of the upland review area without a new ILW permit being issued or an extension being granted?

Attorney Ancona: Mr. Chairman, let me stop there and let's address that.

Chairman Zelek: Ok, there are three issues here, let me finish just the one notation that I also have with that first question:

Of important note is our Inland Wetland regulations do not restrict the commissions' authority to only the upland review area. Our regulations cover any activity on site that may pose a risk to the wetlands.

Attorney Ancona: Can they continue without an inland wetland permit? The answer is yes. I think deep down we all know that were looking for regulated activity and once they have completed all their conduct within the permit and reasonable additional regulated activity that is being governed. They are not. I get a sense of the concern, because I m reading here and on an important note our regulations cover any activity on site that may pose a risk to the wetland. That's really not quite true, it is almost accurate, but if you, I would like to refer to it as just page 4. Page 4 of our regulations, those activities that are "likely" to impact or effect wetlands. It is not activity that may impose a risk and that is why the answer is yes, so the above referenced query.

Chairman Zelek: Ok, thank you.

Attorney Ancona: Sure.

Chairman Zelek: Questions from, should we entertain questions from the commissioners regarding this?

Attorney Ancona; Mr. Chairman, it is your call.

Chairman Zelek: Commissioner Block.

Commissioner Block: The point of concern will be if there is a substantial disconnect if you will between the drainage that was originally proposed to go into the upland review and wetlands and where and what drainage is going to be altered by whatever new project is going to be created. Yes, I can understand that there is a boundary between our jurisdiction and the other, but the question is, how much latitude would there be by new construction that requires some variation off that theme. If the pipes don't match is one, or is it a substantial difference or what? When does horse become a zebra?

Commissioner Clark: Can I, may I add?

Commissioner Clark: Let me give you a specific example, and I believe it was Chairman Zelek who had some concerns about this aspect of the different construction, but I also state I think the tail is wagging the dog and we are not going to see anything in the a, b, c, d framework that might have occurred otherwise, if that makes sense.

Attorney Ancona: I think you are absolutely right.

Commissioner Clark: Ok, so know, just so you know, knowing that, one of our concerns was that the new building would be taller, quite a bit taller, than any of the structures that were proposed in the original application. Tallness can create shadows, can create change in wind pattern that can affect the wetland, but there is no opportunity for a specialist to come in and make that assessment.

Chairman Zelek: At this point, the question really is only related to Hunter and what Hunter can do with the Hunter application that is approved. I do have a follow up question which we will get to related to the Amara case.

Commissioner Clark; Just to give you an example of something that we were concerned about when possibility number two came up and we are not, anyway I just thought I would use that as an example of something that, to us, looked like it was likely, likely the right word?

Attorney Ancona: Yes.

Commissioner Clark: It was likely to cause change and had nothing to do with the more obvious drainage water flow, but something that could effect the wetland.

Chairman Zelek: To summarize the answer to the first question, can Hunter continue with activity outside the wetland review area after the wetland permit has expired, the answer is yes, they may.

Attorney Ancona: Yes.

Chairman Zelek: Thank you. Now the next question that I pose is:

2. What authority does the ILW Commission have and what actions can it take if the above situation is deemed a violation.

Chairman Zelek; So we have deemed that this it is not a violation, so we don't need to address this question.

Attorney Ancona: Very well.

Chairman Zelek: Unless you want to speak to it.

Attorney Ancona: Well I just want to remind this body that there are remedies. You don't sit here hopeless, if there is something that arises and staff comes up with something, the general statutes are very clear in which you can do, it is 22-844 and there are penalties. You can cease and desist, fines, all sorts of things. So, it is not a hopeless matter, if someone is harming or effecting regulated areas you have authority.

Chairman Zelek: Commissioner Block.

Commissioner Block: Again, to get back to it. The project that was approved has a specific shape, size and intrusion.

Chairman Zelek: You are talking about Hunter.

Commissioner Block: Right and whatever is going to be built under this new owner or whatever you want to call it, has to match up to what it is we approved.

Chairman Zelek: We will...

Commissioner Block: And the question is going to be when do we have the opportunity to see those changes and to make a determination as to whether or not it doesn't match up.

Chairman Zelek: Let me ask the next question that I had sent to the attorney and then we will start to answer the questions as they relate to the other project which is known as Amara.

Commissioner Block: Ok.

Chairman Zelek: Ok, so the third question I sent to the attorney on behalf of this

commission was:

3. What if Hunter completes all site work within the 100ft upland review area under permit 2006-26 but then the developer then begins to execute the Amara project?

What authority does the ILW Commission have and what actions can and/or should the commission take?

The commission has already expressed concern that the Amara project appears more impactful as it includes a larger taller structure that is closer to the wetland than the original Hunter plan.

Chairman Zelek: I will stop there.

Attorney Ancona: I guess in a nutshell, if they complete the project pursuant to their permit there is no longer any regulated activity and if there is no longer any regulated activity, if there is no longer any regulated activity, that matter is closed.

Chairman Zelek: Commissioner Block:

Commissioner Block: So, just to make sure I understand what you are saying. Under the permit, there are various drainage systems which enter into the upland review and to the wetlands. So you are saying that as long as what ever the new construction is drains in exactly the same points, then we have nothing further to say about it.

Attorney Ancona: I think what I am saying, I know what I am saying but I want to make sure I address the question. If there is no longer any regulated activity, I guess like what you are saying if there isn't additional permits that haven't been mitigated or addressed, then there is no longer any regulated activity. If somebody comes in and builds something and there is an impact, a greater impact than this body considered, then we have an issue.

Commissioner Block: Ok, let me give you a supposition if you will. Under the original plans there is a storm drain system that enters the upland review area and wetlands at point A. Under what they start to construct, that storm drainage system is now 100 feet elsewhere, but still has to enter the wetlands. Does that create a need for them to return to this body?

Attorney Ancona: I don't know and I will tell why I don't know, because I am not an engineer and I don't know if it would be less of an impact or a greater impact. The case law is clear, Attorney Boorman, I think it was disseminated to all commissioners his opinion. One of the items, the cases that her references is Vine v. Wallingford and the premise there and the reason why I point that one out is because it was a superior court case when he cited it, but I actually found the appeal and the appeal affirms the superior court case saying that if it is a less of an impact, if it is revealing less than it is a permitted conduct.

Commissioner Block: So the question is going to be is whether or not this body considers it to be a greater impact than what was originally permitted. It that correct?

Attorney Ancona: Well, my concern is that when we discuss “this body”, I really want to admonish this group for being an ethicists group, there is no pending application, we don’t know what is coming down the road.

Commissioner Block: But I am talking hypothetical.

Attorney Ancona: But the hypothetically is, we are addressing a particular site.

Commissioner Block: No, I am specifically discussing a situation in which there may well be, we don’t know, but somebody might come in with an ad hoc amendment added to whatever was originally agreed to by this commission and the question is whether or not they are beyond further review or jurisdiction by this group.

Attorney Ancona: Well, I will answer this way. If an applicant or builder or somebody comes in and decides they are going to do something different than what was originally planned and staff determines that wow that is quite and impact, then there is authority to pursue it, I guess that is long beginning to your answer.

Chairman Zelek: Commissioner Bachand.

Commissioner Bachand: Just to know mention what Commissioner Block was talking about, the wetlands in this case are elevated so none of the storm waters actually drains into the wetlands, but I think the bigger issue here is that your concerns, all of our concerns would normally typically have been addressed if it came back to the wetlands commission.

Commissioner Block: Excuse, I again, I was speaking of hypotheticals, I was not referring to the site at all.

Commissioner Bachand: I just would say that they used an exception and they were granted the exception at TPZ that they didn’t have to come back here. Is that accurate?

Attorney Ancona: That is correct.

Commissioner Bachand: Normally they would normally come back here and we could argue about whether that exception was allowed or not, but if it did come back we could address all those questions, but right now I don’t think it is ever going to come back.

Chairman Zelek: Chris, why don’t you make your comment?

Chris Greenlaw: I am going to have a comment in the end, that I believe is kind of going to be the tail wagging the dog to a lot of these comments that are coming up, but all of you should ask your questions, but there was a large portion of, I am going to use the word education. These commissioners may or may not have attended, much like Mr. Bachand had, to the TPZ commission where they made the decision, after advisement of attorney’s for the

applicant and the former attorney for the town bestowed upon them the interpretation that allowed them to make a decision to proceed with the application without it coming back to this commission. It is spoken to specifically in the minutes of the meeting for TPZ, but that is something I have highlighted, that we can take a recess and perhaps you could bring to their attention, but there is testimony in the minutes that speaks to from their attorneys where they are on the record that there is, they posture themselves, they don't raise, they come in, they talk about under the existing wetlands approval, there is activity, the activities that is taking place within the 100 foot setback line that are exactly the same activities that were permitted in the inland wetland commission existing permit. So we have activity in the wetlands, we have activity that are identical activity in the upland review. There is no activity in the wetlands, excuse me, and so the rest of the site there has been a reduction in the amount of impervious surface. So they build a case, they state law in one meeting and when you read from meeting to meeting obviously the TP&Z commission asked he town planner to have our former town attorney validate that the law that they were speaking to, section 8-32g, to have an interpretation. So when you walk through the minutes you can see how all this transpired without your knowledge.

Attorney Ancona: Mr. Town Engineer, let me just clarify one thing, he didn't come in to validate it. Attorney Boorman came in with an open mind to look, say yes to an accurate reflection of what the law is and he did look at that.

Chris Greenlaw: He validated their assertion by stating the law and specifically went on to tell them when it was asked, and I want you to understand this, it was asked so that on April 8 they had their first meeting I believe, April 22 Attorney Boorman wrote his advisory.

Attorney Ancona: That is correct.

Chris Greenlaw: Or his opinion as it relates to 8-32g. When they came back on the 22nd at the TPZ I think you are going to find this very interesting, Commissioner Serra, 4 lines into her testimony, she said.

Commissioners: He.

Chris Greenlaw: He, sorry. He said *"I asked a while ago, since we are not the experts on wetlands, we have an Inland Wetlands Commission, if we could hear from them to get their input on this. I was told they were told that they couldn't speak on the issue. I'm not trying to put you on the spot, but can you tell me why?"* This is Commissioner Serra asking Attorney Boorman asking that question. Attorney Boorman says: *"Sure. The way the law is set up provides that if there is a wetlands issue there must be an application that goes to Inland Wetlands. So that is the rule that is applied in the vast majority of the cases. The question that you are addressing here is an exception that was carved out in terms of the particular facts before you, and only you can decide [only you can decide] that, by applying the law"* and he is referring to Section 8-32g. So, thank you. And what he did was wrote that opinion, stated some case law, gave the some interpretation, but if I understand this correctly, when I said validate, validate the assertions originally by the attorneys for the Amara, any question the

town attorney he came with some examples of case law and if I understand this correctly, he put the determination of the 8-3g in the hands of the TP&Z commission very specifically.

Attorney Ancona: That is correct. There is also, he referenced a superior court case that is actually now an appellate court case which is binding authority, that's primary authority. That is Vine v. Wallingford Planning & Zoning.

Chairman Zelek: Ok Chris, are you done?

Chris Greenlaw: I just want to share with you. There was a lot that happened and in the last meeting I had reported to you that this education would be pertinent for your understanding of the process that took place that is was transparent so you have full understanding, I offered to the Chairman that after this discussion perhaps I forward you those sections of minutes if you would like to digest as well after hearing from our active town attorney.

Commissioner Clark: I would love that.

Chairman Zelek: I am going to go to Commissioner Paskewich because he had yielded to Chris.

Commissioner Paskewich; Actually, Chris has been moving forward on what I was going to ask and he is going to be moving forward later.

Chairman Zelek: Commissioner Bachand.

Commissioner Bachand: There was an exception and as he wrote in his letter that they could apply the exception based on two criteria and one was that there was no change at the wetland and the second one was that it was downsized project or a scaled down project. I argued that it was not a downscaled project and I made my point and I thought that their representatives kind of stretched the truth if you will. Again, I don't think it is going to change anything. I think it is done, I think it could have been done differently that's all.

Chairman Zelek: Commissioner Clark.

Commissioner Clark: John, I just wanted to state that you made those statements as a member of the public, is that correct?

Commissioner Bachand: Correct.

Chairman Zelek: Thank you for that clarification. Commissioner Casasanta.

Commissioner Casasanta: First I would like to thank the Town Attorney for taking the time to come down here...

Attorney Ancona: Thank you for having me.

Commissioner Casasanta: Yes, always a pleasure. Just for my self, for clarification, let's say Hunter application, they decide to do something that deviates from the approval they got, would we have recourse in that case?

Attorney Ancona: Absolutely.

Commissioner Casasanta: Ok. So, hypothetically there is hypothetically a different use under this permit that was given, if there is a different use in terms of how the wetlands are impacted that should come before us. If the plans are changed by the applicant.

Attorney Ancona: I would use if there is different impact, yes.

Commissioner Casasanta: Yes, again just for clarification, so if there is a an alteration to what they stated they were going to do in the original application, as compared to what they end up wanting to do, it would legally have to come before us again?

Attorney Ancona: Actually, we may be talking about two different things. If they are going to beyond the scope of the permit, then there is recourse.

Chairman Zelek: Again, that was 22A-44?

Attorney Ancona: Yes.

Chairman Zelek: Thank you.

Commissioner Block: Could you please expand upon recourse, particularly as to the timing and the procedures that would be involved.

Attorney Ancona: Well, the statute, there are multiple provisions, the staff would have to go out as you know and take a look to see what is happening or they would be alerted that there is something going on and then it would come back and there could be a cease and desist order issued, a fine tipping issued, we could bring an injunctive action, there are multiple avenues that the statute provides.

Commissioner Block: Would there be a situation which could be claimed as a need for an ex parte injunction? Which means that is issued by the court without hearing.

Attorney Ancona: I am sure there are possibilities out there that an ex parte injunction could be issued. That is a very drastic measure.

Commissioner Block: On the other hand, changing the environment of the site could be reversible too.

Attorney Ancona; You mean irreversible.

Commissioner Block: Yes.

Chairman Zelek: Commissioner Sadil.

Commissioner Sadil: Expanding on that, hypothetical situation - you have the current Hunter application and say, you know, this other application is a land use change that has people actually living in this property. First you have a strip mall, a gas station and say for like flood line, the blocked sky issues, may or may not have an impact on the wetland, now there is a different use of the property which may or may not have an impact, but what could be do at that point. Who would be policing that at that time, again they have stayed within the bounds, the drainage is fine, but some other intangible thing that may have had an impact on the wetland now, how do we reverse that? What is the check and balance?

Attorney Ancona: That reminds me of a case years ago where a client of mine was actually cleaning out the brook. The concept was a good will gesture, he was trying to do the right thing, but he was actually impacting the wetland. He wasn't licensed to do that, he wasn't licensed to take the motors out, he wasn't licensed to take the debris out, however, somebody didn't like it and a complaint was filed and DEP, back then it was DEP, came out. Now DEEP, they have broad authority to deal with situations like that.

Chairman Zelek; When this commission reviews a site plan that is attached to an application, we focus on the impacts to the wetlands and the activities in the upland review area, but we also look all the activities on the site that are proposed as part of that application and when we issue the permit, are we issuing the permit only for the activities in the inland wetland review area or are we issuing the permit for all the activities that we reviewed as part of that site plan?

Attorney Ancona: That is a great question I anticipated and it is not just a, I don't think it is a black and white answer because I know that this commission looks at every aspect of every site plan and with a very close eye to whatever potential impact may arise, but it really is under our own regulations that it is that definition is the conduct likely to effect, then yes. If it something that is not likely to then I think it is not in your purview.

Chairman Zelek: Commissioner Casasanta.

Commissioner Casasanta: I believe that gets to what we are trying to ___ in a way. Is possibly, probably, likely, the definitions of these words are the basis of our authority and if it is possibly than we don't have authority, if is likely we do. So how do we, would you have any legal recommendation for use for any kind of threshold or any kind of test to apply.

Attorney Ancona: I don't have a threshold or a test, but what I can tell you is that it is pretty much based on staff. You have to trust your staff. Your staff is your eyes and ears out

there and if your staff in telling you it is not likely to impact, then I think you should trust staff. If the staff says it is likely to, then you trust them that way too.

Commissioner Casasanta: Thank you.

Chairman Zelek: I think we had a question over here, is it Alan?

Commissioner Paskewich: Actually, it was the same question. Thank you.

Commissioner Bachand: Just again to clarify, I don't think it is a hypothetical, it is only hypothetical when we were asking the first question. The developer has a permit to build the project.

Chairman Zelek: Again, I think the attorney briefed us at the beginning of the conversation not to prejudice ourselves about any particular application in particular, so let's keep it hypothetical.

Commissioner Bachand: Ok.

Attorney Ancona: Well we don't know what might come before this body, we just don't know.

Commissioner Casanta: Just for clarification with Mr. Greenlaw, right now all the work that the applicant is doing on the site is consistent with what they were approved for under 2006-26.

Chris Greenlaw: I believe it was last month I reported to you on the project as follow up and I went out and did diligence. Before I come to you as a commission I want to go out and review the site, I want to go out with the plan the active plan that I have is 2006-26 which is Hunter Development. It is the only inland wetland permit, it is the only application we have for site development. There is another application that we have not received Mylars for, so in my mind when I went out to look at that site, I looked to see that it was in conformance with the approved and active permit that we have on site, I did not ask at this time because they are not complete for a letter of drainage certification from their engineer, but what I can testify to is the fact that there are conditions in accordance with approved permit such that the 50' wetland buffer prior to evening clearing the land they were requirements that they had to stake out the buffer are which I walked with the developer prior to trees being removed, I walked them myself in accordance with the plan. Additionally, when I went out to the site, I observed those stakes still in place. Before I took pictures of what I observed to be a wall and drive that was southeasterly of where that buffer should be it wasn't northwesterly that would put it in the wetlands presuming that those stakes were still correct and in place and at the end of the project when they will be receiving an as built, so at this time definitively I did not perform a survey, you know but an observation showed that it was in accordance with the plans. So what I observed was what is being built looked like what was illustrated on those plans.

Chairman Zelek: Thank you. Commissioner Block.

Commissioner Block: To educate the fellow commissioners, I would like to tell you a story. About 10-15 years ago, I was following a situation in which another municipality had an application before them for a development of a three acre parcel and in the middle of the parcel there was about a one acre wetlands. Clearly a wetlands, all the flora and fauna you would want and it was coming up for a public hearing and it was delayed for some reason, somebody supposedly was unavailable. Well it turns out, after the fact, that we found out that somebody else unrelated to anybody on record had registered a complaint to the local health department that there was a junked automobile that had been left there and the health department in all ignorance presumably issued an order to the property owner to remove the vehicle, which they did so by the time the next meeting of the wetlands came up, the wetlands was gone. The junked vehicle had been damming the stream, it has been there for decades probably, but the stream was now in its channel and the wetlands was gone. So in response to your comment, if whatever is going to be done to the site impacts the scope of the permit that was issued and it occurs after the damage is done, I believe it is not going to be within the practicality of the jurisdiction of this commission to do much about it. I don't recall any cases in which the restoration of a wetlands has been ordered.

Attorney Ancona: Mr. Commissioner I am not aware of any order or any case that has actually ordered that.

Commissioner Block: So again, if in fact something is going to happen, again hypothetically, we need to be on top it to stop it from progressing any further than it does.

Chairman Zelek: Commissioner Bachand.

Commissioner Bachand: Just to add on to what Commissioner Block is saying, I think it is unfortunate because I think this commission was the only one that would have been able to make that determination if there was a potential. likely or unlikely, the fact of the matter is that's not, we don't have that opportunity now, so to use that hypothetical, I'm sorry Mr. Block if you disagree with me, but I hope the attorney can either confirm or straighten this out, I hate to see this like we are not certain, so the way I understand it, hypothetically, you go by there and see a hypothetical continuing care retirement community, there are fully within, as long as they filed a plan, as Chris, the engineer mentioned, they haven't filed a plan, from what I understand it is just a housekeeping measures that need to be corrected on there. There is an approved plan, so if you see that there it is too late like Commissioner Block said, but I don't think we are ever going to get an opportunity to.

Chairman Zelek: Commissioner Block.

Commissioner Block: If in fact and tell me please to the contrary, tell me if I am off base on this, but if in fact information came to our attention by which we determined that what

is proposed changes the impact upon the wetland significantly, would we not have the ability to ask for injunctive relief to stop the project and determine whether or not that is indeed the case.

Attorney Ancona: If you are going to be harming wetlands, yes.

Commissioner Block: So again, John and other commissioners, if in fact something comes to our attention that causes us to have that belief, we do have a avenue if we can act within a timely manner.

Commissioner Bachand: I would say yes I would agree, I would think everyone would agree if it were something so clear cut, again one would agree with that. But just to see a different structure hypothetically, a different project being built there, that is not, we won't have the opportunity to address that.

Commissioner Block: Well yet, I have not seen new plans. But if there are those who have and those people come up with the belief that they want to bring to this commission, that is substantial alteration and that alteration is going to effect the wetlands and this commission reviews that information then we can refer it to the Town Attorney and have the matter reviewed by the court through an injunction.

Chairman Zelek: Any other commissioners? Ok, I think we are done with this item, we will move on to the next matter which is on our agenda 2015 Legislative Updates.

C. 2015 Legislative updates

Chairman Zelek: There was an email sent out with an attachment from Erik Hinckley, I'm sorry and I asked that this be put on the agenda for a review and since we have the Town Attorney here I asked him to quickly brief us on these and see if there is anything in here that this commission needs to be concerned about, my main concern is that we are compliant with the new regulation.

Attorney Ancona: Mr. Chairman, I don't think there is anything that is of any concern. Public Act 50-85 amended 22a-43a and all it did was it gave the courts a little bit more powers. CT has courts of equity already, so when the legislature sort of gives them more power in this arena, it doesn't mean a whole lot, it just spells out a few more things they can do. That is regarding what the court can order, including the scary word of taking the 5th Amendment as incorporated in the 14th Amendment, taking property.

Chairman Zelek: How about the other item that is in here, Public Act 15-68?

Attorney Ancona: 15-68 is no exc_____ statute and that pertains to, it really didn't change a whole lot regarding notice of public hearings, what it did was it just made the municipalities, it made it so they are not required to do a title search. So when you are

looking for abutting owners you just look at the tax rolls or the town assessor, get the name and send out your notice.

Chairman Zelek: Thank you. Any questions from any commissioners? Ok. Thank you very much.

Attorney Ancona: Thank you Mr. Chair.

Chairman Zelek: Under Communications and Reports before we go to adjournment, there was one item, there was not official agenda from the last meeting, but a member of the public had asked us about the area behind St. Mary's and the Senior Center flood control area, we will call it the retention area. Commissioner Bachand volunteered to walk the area and I volunteered to join him. We did walk the area two weeks ago, I believe it was on a Sunday afternoon. My observations are pretty much what we had assumed that area was, it pretty much just a basin in which flood waters are captured, ground water is recharged. I didn't observe too much litter or debris. I saw a white-wall tire from probably the 1950's, a plastic bag, a plastic bottle and some loose asphalt that looks like it was probably 40 or 50 years old that may have been placed in the upland review area when someone had redone their driveway. Other than that I didn't see any areas of grave concern, it looked like a healthy naturalized area, I will allow Mr. Bachand's comment.

Commissioner Bachand: I would agree, I think what you said, you said it best. It is an area that is designed to flood, it is a low lying area, the water doesn't move perfectly through the channel all the time but it's got plenty of a buffer area to spill in to. The interesting thing is it is exactly the area that is on the map amendment area, the part we walked is where trump sewer goes. One thing I would mention is that if you look on the bigger map, Mill Brook as pronounced and as aggressive as it is, when you see that water fall crashing over at Mill Pond, when you look on the map, there is one spot on the map where it actually just disappears, it stops and then starts again, which is it soaks into the ground, kind of anomaly, well maybe no anomaly its doing what it is supposed to do, I guess. We saw some things that are in the actual channel itself there, but again if it floods it has plenty of room to go around, so I wouldn't mind taking another look at with the commissions ok, maybe next spring, look at it under its most tested conditions, if you like.

Chairman Zelek: So when you hear the map amendment application at the next meeting, you can refer, make some of the questions to Commissioner Bachand and myself since we did travel the area fairly extensively. Any commissioners questions on that report? Ok, seeing none. I ask for a motion to adjourn. Before we do, it looks like Chris has something for us.

Chris Greenlaw: Yes, Mr. Chairman, two quick things. I also just wanted to show the commissioners, pursuant to your Chairman taking the consensus of the commission as it relates to 2006-26, I want to let you know, I know we have some new commissioners here as well, we had a general consensus, those questions were garnered through the chair, he choreographed an email. I put together a memo because I understood the importance of that topic and I can

certainly share that with you if you wanted a copy of that to make sure that vehicle by which we sequestered the Town Attorney to do research, we give him the research to make sure he shows up here which we greatly appreciate, I just want you to appreciate the work we do behind the scenes collectively as a conduit to go through the chain of command and likewise if you have any questions, I know the veteran commissioners understand that if there is questions you are going to call the Chair rather than having a quorum on line or anything like that and I just want to reiterate that because out of the gate, the town attorney did reiterate to many of us about prejudice, ex parte conversation and things as such. It is very important just in case there is another application that comes before us, we don't want to tarnish our record ahead of time. Very quickly, Eversource, as far as a, I believe DEEP now requires, I think its DEEP requires that one Eversource, either way we have correspondence from Eversource indicating that they are going to be doing some maintenance at the location of their right of way lines to apply herbicides in certain areas and they mention the words invasive species so I thought that might be of particular interest to some here on the commission that they are going to target some areas within the right of way. This document basically what that means is they are going to spray underneath the lines to keep the growth down so it doesn't impair their infrastructure, but some generalized multi-town maps if that is anything that anyone would like to look at those records will be in the office of engineering.

Chairman Zelek: Thank you Chris, with that can get a motion to adjourn?

IX. ADJOURNMENT

Motion by Commissioner Block, seconded by Commissioner Sadil; it was unanimously voted to adjourn the meeting at 8:10 p.m.

Respectfully Submitted,



Mrs. Susan Gibbon

Recording Secretary–Conservation Commission