

CONSERVATION COMMISSION  
SPECIAL MEETING FEBRUARY 4, 2014  
CONFERENCE ROOM L 101

These minutes are not verbatim, but represent a summary of major statements and comments. For minutes verbatim, refer to audiotapes on file in the Office of the Town Clerk. Audiotapes are retained for the minimum period required under the retention schedule as provided under Connecticut Law.

Chairman Block called the roll call at 7:00 p.m. and noted Commissioners Cassasanta, Clark, Igielsk, Sadil and Zelek were present. Also present were Alternates Krawiec and Paskewich and Mr. Chris Greenlaw, Town Engineer.

NOTE: Chairman Block designated that Alternate Paskewich would vote for Commissioner Ancona.

ITEM III  
PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

Roy Zartarian, 27 Stuart commended the Commission for acting outside of the norm in securing presentations on special topics (tonight's presentation on "How to conduct a Stereoscopic Survey for Vernal Pools)" of interest to the Town.

ITEM IV-A  
Presentation on Vernal Pools "How to conduct a Stereoscopic Survey for vernal pools"

Commissioner Zelek introduced Mr. Edward Pawlak who had made a presentation at a conference on locating vernal pools utilizing stereoscopic review of topographic maps.

Mr. Edward Pawlak, a soil scientist and professional wetland scientist, Connecticut Ecosystems LLC noted that the goal of tonight's presentation is to presents several ways on how potential vernal pools could be identify and on how a vernal pool could be defined as a wetland.

Mr. Pawlak noted that the basic vernal pool is defined as a shallow basin depression in the landscape. It can start filling up with water in the fall or winter; but definitely in the spring with the melting of the snow. They are temporary features in the landscape or temporary pools of water. They will dry up sometime in mid to late summer.

Mr. Pawlak noted that the basic components of a vernal pool include:

- A. It forms a depression in the landscape.

- B. It is characterized by a seasonally flooded hydrology. They are flooded or ponded for only a small portion of the year, which means they go through wet and dry phases.
- C. They are fishless. If fish did exist, they would eat all of the larvae in the pool and thus destroy the morphology of the pool.
- D. Supports the breeding of obligate species (frogs and salamanders).

There were a number of questions from Commission members on the components of vernal pools with the emphasis component 4 (listen to audio tape for questions and answers).

Mr. Pawlak noted that vernal pools are obvious in the spring and are not obvious for the remainder of the year.

Mr. Pawlak noted in order to confirm the existence of a vernal pool in the spring, there must be the existence of at least one obligate species. He reviewed the various types of obligate species (listen to audio tape for the species covered).

Mr. Pawlak noted that it is more difficult to locate a vernal pool during the summer months because the main components previously noted are not readily visible. However, there are visible markers that when combined can depict the existence of a vernal pool. These markers include:

- A. The observance of sparsely vegetative matter within the basin depression.
- B. The existence of water marks on tree trunks.
- C. Dark gray water stains on leaves.
- D. The existence of woody plants on hummocks.
- E. The existence of juvenile wood frogs, finger nail clams and caddis fly cases.

Mr. Pawlak noted that a wetland could be classified as a vernal pool during the dry season if it contains a number of the above markers.

There were a large number of questions raised by Commission members (listen to audio tape for questions and responses).

Mr. Pawlak noted that the challenge facing the Commission is how do you protect something, if you do not know where it is? The solution would be a town wide vernal pool study that would map potential vernal pool locations that would be separate from a town's wetland map. This goal could be achieved by conducting a stereoscopic survey for vernal pools.

The study would be conducted as follows:

- A. An airplane using two (2) cameras would take two (2) sets of identical aerial photographs at a slight angle. This work should be done in the spring for best results.
- B. Placing two (2) identical aerial photographs side by side under a stereoscope on a stand with two (2) side mirrors provides a three (3) dimensional perspective of the area.
- C. A professional (such as Mr. Pawlak) would be retained to determine the possible locations of vernal pools on the maps under the study.

Mr. Pawlak noted that this method is generally used because a large area can be reviewed at one time, one can focus on an area where a vernal pool could exist and does not require a land owner's permission.

Mr. Pawlak noted that the process has the following limitations:

- A. An area of conifer trees can obscure the ground.
- B. In an area where there is a mixture of trees, the conifers can cast ground shadows on possible vernal pool locations).
- C. False positive results (indicates the existence of a vernal pool, where in reality one does not exist) and false negative results (indicates that a vernal pool exists, where in reality it does not exist).

Mr. Pawlak noted that when a determination has made of possible vernal pool locations from the aerial photographs, a qualified consultant would be retained to go out into the field to confirm the location of the actual vernal pools. NOTE: Field verification of possible vernal pools should not be initiated until permission slips, to enter onto the affected properties, have been secured from the property owners.

Mr. Pawlak, using plan sheets, reviewed studies that were done in the Farmington Valley and the Town of Suffield (listen to audio tape for the details of his remarks).

Chairman Block noted that he could not find a court case to which the presence of a vernal pool was actively considered in the decision.

Mr. Pawlak noted that the River Sound decision (involving the "Preserve" within the Towns of Essex, Old Lyme and Old Saybrook) in his opinion would fall into this area. The "Preserve" was a 1,000 acre parcel of land that was proposed development of a golf course and housing. One of the denials was appealed on the basis that the Commission had gone beyond its authority when it considered the impacts to the amphibian species that were breeding in the vernal pools (there was an exchange between Chairman Block and Mr. Pawlak-listen to audio tape for the details of the exchange).

Mr. Pawlak noted that at the conclusion of the discussion, a commission cannot base a decision on an impact that occurs outside of the regulated area unless it can be shown there is a physical impact to the wetland.

Mr. Greenlaw asked relative to the stereoscopic process, are all vernal pools wetlands or do they have wetland soils? Mr. Pawlak responded that it has been his experience that the core of the vernal pools are characterized by wetland soils.

Mr. Pawlak noted the following steps would be required in conducting a stereoscopic survey:

- A. Purchase two (2) identical sets aerial photographs for the area to be studied. You should make sure that the flight was made recently because the span between flights could be up to five (5) years apart.
- B. Turn the aerial photographs over to an expert such as himself to determine the possible of vernal pools.
- C. He would make a judgment on each potential site and give it a rating of 1(low) to 3 (high).
- D. A report would be turned over to the client to make more detailed maps showing the location of all sites for further study along with property lines.
- E. Upon completion of the maps and securing the required permission slips from the affected property owners, have the expert (note: some towns have used volunteers with mixed results) go out into the field and perform a field verification of each designated site.

Note: A fee of \$400 to \$500 was mentioned (tape was not clear on the scope of services that would be involved).

Mr. Greenlaw asked how would the Town go about in securing two (2) sets of aerial photographs? Mr. Pawlak responded that they are available on demand from a vendor.

There was an extensive question and answer forum between Commission members and Mr. Pawlak (listen to audio tape for the details discussed during the forum).

Commission went into recess at 8:36 p.m.

Commission came out of recess at 8:46p.m.

#### ITEM IV-B

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

Mr. Greenlaw noted that this item represents a dry run on the process that would be followed in updating the Commission's wetland regulations and entered the following remarks into the record:

Letters, which would include an attachment entitled "Recommended Changes to the Inland Wetland Regulations" relative to the Town's adoption of "Low Impact Development (L.I.D.) Techniques" that would be made part of the land use regulations", would be sent to DEEP and the Town Council for comment.

The Commission would set February 18, 2014 for a public hearing on the proposed changes to its Regulations that would emanate from "L.I.D. Techniques" being made part of the Town's land use regulations.

It would be his recommendation that the public hearing would be held open for an additional month (Commission meeting of March 18, 2014). The final vote would be made at the April meeting.

Chairman Block noted that L.I.D. is a state mandate. He recommended that Commission members have their comments ready for L.I.D. and the Regulations themselves for the February 18, 2013 meeting.

Mr. Greenlaw noted that the Commission's Regulations were last updated in 2010. The revisions would include the following areas:

- A. Legislative changes approved since 2010.
- B. Inclusion of "L.I.D. Techniques".
- C. Changes that may be proposed by Commission members.

Commissioner Igielski noted that per section 15.3 of our Regulations, DEEP has 35 days to respond upon receipt of notice.

Motion made by Commissioner Zelek that the Commission hold a "Public Hearing" on February 18, 2014 to include "L.I.D. Techniques" into the Town Of Newington "Inland Wetland and Watercourses Regulations. Motion was seconded by Commissioner Clark. There was no discussion. Vote was 7 yes, 0 no and the motion was carried.

#### ITEM IV-C

##### Inland Wetlands Regulations Changes—Legislative Changes

NOTE: There was no discussion on this item.

#### ITEM IV-D

##### Inland Wetlands Official Map Changes

Mr. Greenlaw noted that his department faces a major undertaking in updating the Town's "Official Inland Wetland and Watercourses Map". His staff has developed a catalogue system to track current and past applications that have had a physical effect on the map. The result is there are a large number of changes that need to be added to the map. This project will result in a major undertaking by his department.

#### ITEM IV-E

##### Agenda—Format and Outline

Chairman Block noted that the item is on the agenda because of a complaint from the public that there is not adequate information for the public to have an understanding of what would be discussed under a specific agenda item.

Mr. Greenlaw noted that providing additional information could end up misinforming the public with information that might be misleading.

There was a general discussion among Commission members (listen to audio tape for the full details of the discussion). The focus of the discussion centered around:

- A. Adding a space at the bottom of the front page of the application for an explanation of the proposal by the applicant.
- B. Adding space on the back of the front page of the application for an explanation of the proposal by the applicant.
- C. Place a paragraph in "Notice" that would appear in the newspaper (Chairman Block noted that this option could be expensive).
- D. Look at the format of Commission agendas prior to 2010.

Commissioner Clark noted that "Agent Approvals Notices" sent by e-mail contain insufficient information on what was approved under the permit.

Mr. Greenlaw noted that the onus of responsibility should be placed on the applicant (to provide any required information).

Mr. Greenlaw noted that any final action would apply to both a regular application and Agent approval.

It was the consensus of Commission members to carry the item over to the March meeting.

#### ITEM V- A

##### Application 2013-22, Milk Lane (Town Highway Garage)

Mr. Greenlaw entered the following remarks into the record:

- A. The channel cross section together with materials to be used in its construction have been added to the construction plan.
- B. CL&P has issued its required encroachment permit for the project

- C. The Town is still waiting for the required permit from the MDC.
- D. The project calls for the replacement of the existing twin pipe culvert under the main access road into the site and the realignment of the existing upstream Channel.

Motion made by Commission Igielski to carry the item over to the March 18, 2014 meeting and was seconded by Commissioner Sadil. There was no discussion. Vote was 7 yes, 0 no and the motion was carried.

#### ITEM V-B

#### Internal Rules and Regulations

Commissioner Zelek noted that he had some language that he would want the Commission to add to our "Internal Rules and Regulations" relative to "abstaining" from voting on a matter. He noted that currently, if two (2) attorneys were asked to define "what happens when a person abstains from voting on a matter" would provide two different opinions. Therefore, it would be beneficial for the Commission to have language in the Internal Rules and Regulations addressing this matter and he proposed the following language, "Abstaining from voting should be rarely used and only used in the most extreme situations in which commissioners are unable to render a decision. A vote to abstain shall not be considered to be a vote either in favor or against and shall not be counted in the final vote".

Chairman Block suggested that the motion be put in print and be put on next month's agenda for discussion.

Chairman Block noted that he had the following two (2) concerns relative to the motion:

- A. Traditionally, it has been required that the person(s) who vote to abstain, state on the record the reasons(s) for the vote.
- B. If an abstention is not to be counted either way, then it can be argued that the person who should be voting is absent. If the person is considered to be absent; then what happens if we no longer have a quorum? Chairman Block noted that he believes that if the Commission fails to act on something; he believes that there is precedent that the item would be considered to have been passed. NOTE: He noted that this is a matter that should be referred to the Town Attorney.

Commissioner Clark requested that the Town Attorney be present at next month's meeting to discuss this matter.

Commissioner Zelek noted that that this matter came up for discussion at a recent conference that he attended. There were two (2) attorneys who gave different opinions.

Chairman Block noted that our Town Attorney has given us an opinion in the past.

Chairman Block suggested that the motion on the table together with any other proposal(s) be forwarded to the Town Attorney prior to next month's meeting for consideration.

Mr. Greenlaw noted that the Town Attorney should be afforded the opportunity to review the substance of the matter. He recommended that Commission members send their questions and comments directly to the Town Attorney and let him review the matter with the Town Manager who administers his time. He noted that the Town Manager is currently on medical leave.

Chairman Block suggested guidelines to Mr. Greenlaw, as to content that would be contained in a communication to the Town Attorney on the matter under discussion (listen to audio tape for details).

Commissioner Zelek noted that he has already e-mailed to the Chairman a paragraph with his concern along with the draft wording.

Chairman Block noted that he would work with Commissioner Zelek in putting together the request that would be sent over to the Town Attorney.

Chairman Block noted that the end result would be given to Mr. Greenlaw, who would forward it to the Town Attorney.

Mr. Greenlaw noted that the Commission already has a full agenda for the February 18<sup>th</sup> meeting and recommended that consideration be given to moving this matter over to the March meeting.

It was the consensus of Commission members to carry the item over to the March meeting.

#### ITEM V-C

##### New Initiative--"Vernal Pools"

Commissioner Zelek noted that recognizing that vernal pools provide a unique and fragile habitat for rare amphibian species and the need to identify and protect such vernal pools, made a motion that "The Town of Newington, through its Engineering Department inland wetland agent, engage in a stereoscopic aerial mapping of the Town of Newington for the purpose of creating a town wide map of potential vernal pools sites. The need to perform this mapping should be completed prior to the 2014 spring wet season so that potential vernal pools may be verified on Town property or on private property when property owner permission has been received. Recommend that the (Engineering Department) inland wetland agent engage professional services to acquire the necessary aerial photos and other mapping services as needed to accomplish this goal". Motion was seconded by Commissioner Clark.

Chairman Block posed the following questions:

- A. How much would the proposal cost?
- B. Where would the money come from for the (proposed) services?

C. How much of the Town would be involved? He noted that most of the Town is developed. His initial thought is that the only major natural area left in Town is the Cedar Mountain ridge line.

D. What would be the cost to do the field work?

Commissioner Zelek noted that he supports looking at the whole town.

A consensus vote of the Commission was taken. The majority of the Commission members supported looking at the whole Town.

Chairman Block noted that the proper procedure to follow would (initially) be to prepare a proposal for submission to the Town when the costs are known.

Commissioner Casasanta noted that a pit fall to this proposal would be to a land parcel that was developed after the aerial photos were taken. The Commission would not then have the big picture.

Mr. Greenlaw entered the following remarks into the record:

- A. The first step in the process would be for the Commission to develop a scope of services for what it expects to have done.
- B. The Commission would be best served by establishing a sub-committee to develop a scope of services. Ideally, a consultant would be involved in the process.
- C. Once a sub-committee is put together and a preliminary set of services is developed; consideration could be given to approaching a consultant, possibly on a pro-bono basis.

Motion made by Commissioner Zelek to carry the item over to the March meeting and was seconded by Commissioner Sadil. There was no discussion. Vote was 7 yes, 0 no and the motion was carried.

#### ITEM V-D

#### Invasive Plants

Commissioner Clark noted that she found an on line training course on invasive plants.

Chairman Block noted that the Commission should approach the subject matter by taking small bites at a time. He noted that the Town has a major problem with phragmites engulfing the nature trail at Churchill Park.

Commissioner Clark noted that she is working on a small project at the Young Farm (dealing with the removal of phragmites) that was discussed at the December meeting).

#### ITEM VI

#### PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

Mr. John Marchund, 56 Maple Hill Avenue, commended the Commission on its continuing education program on matters that are of concern to the Town. He noted that he has two (2) videos on Cedar Mountain on U-TUBE. He would be willing to serve as a guide on a Commission tour of Town Property on Cedar Mountain.

There was a discussion among Commission members for having a "Special Meeting" relative to Mr. Marchand's offer. At the conclusion of the Discussion, Mr. Greenlaw noted the meeting would have to be open to the public. He suggested that the Commission give consideration to holding a forum on the subject matter, where a presentation would be made by a speaker to be followed by a tour. It was the consensus of Commission members to carry the item over to the March meeting.

ITEM VII  
COMMUNICATIONS AND REPORTS

Alternate Krawiec recommended that the Commission consider entering into a partnership with the Environmental Quality Commission (EQC) to pick up litter on Town Property and private property where the property owner has given permission. There was a general discussion among Commission members. Commissioner Clark and Alternate Krawiec at the conclusion of the discussion agreed to be a committee of two (2) to meet with the chairman of the EQC on the matter and report back to the Commission

Commissioner Sadil noted that he was disappointed with the Newington Life newspaper article (relative to application for 129 Main Street) that appeared in the newspaper. He would be willing to make a public response for the Commission. Chairman Block noted that a public response would not be appropriate at this time. There was a general discussion among Commission members. Commissioner Clark and Alternate Krawiec at the conclusion of the discussion, suggested that the Commission contact a local reporter to report on the positive feedback from the presenter tonight on its interest in vernal pools. Chairman Block again noted that he did not support a response at this time.

Commissioner Zelek noted that there was rubbish problem at the Gateway Plaza.

Motion made by Commissioner Sadil to adjourn the meeting at 11:25 p.m. and was seconded by Alternate Paskewick. There was no discussion. Vote was 7 yes, 0 no and the motion was carried.

Sincerely;



Peter M. Arbur  
Recording Secretary

Commission members  
Tanya Lane, Town Clerk  
John Salomone, Town Manager

Town Planner  
Councilor Myra Cohen  
Councilor David Nagel  
Chairperson, Town Plan and Zoning Commission  
Peter M. Boorman, esquire, Town attorney  
Chris Greenlaw, Town Engineer  
Lucy Robbins Wells Library (2)

