

AGENDA
Regular Meeting
Mansfield Conservation Commission
Wednesday, February 18, 2015
Audrey P. Beck Building
Conference Room B
7:30 p.m.

1. Call to Order
2. Roll Call
3. Opportunity for Public Comment
4. Minutes
 - January 21, 2015
5. New Business
 - CT DEEP Open Space and Watershed Acquisition Grant, Meadowbrook LLC parcel
6. Continuing Business
 - Mansfield Tomorrow | Our Plan ▶ Our Future
7. Project Updates
 - Review of Monitoring Procedures for Town-Owned Easements
 - UConn's Master Planning Effort
 - Town of Coventry/ Mansfield Control of Fanwort in Eagleville Lake
 - Swan Lake Discharge Mirror Lake Dredging and other UConn Drainage Issues
 - UConn Agronomy Farm Irrigation Project
 - Eagleville Brook Impervious Surface TMDL Project
 - UConn Hazardous Waste Transfer Station
 - Ponde Place Student Housing Project
 - CL&P "Interstate Reliability Project"
 - Protecting Dark Skies in the Last Green Valley
 - Water Issues
 - Other
8. Communications
 - Minutes
 - Open Space: 01/20/15
 - PZC: 01/20/15, 02/02/15 adjourned to 02/03/15
 - IWA: 01/20/15, 02/02/15 adjourned to 02/03/15
 - *The Habitat*
 - Other
9. Other
10. Future Agendas
11. Adjournment

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Town of Mansfield
CONSERVATION COMMISSION
Meeting of 21 January 2015
Conference B, Audrey P. Beck Building
(draft) MINUTES

Members present: Aline Booth (Alt.), Joan Buck (Alt.), Robert Dahn, Neil Facchinetti, Quentin Kessel, Scott Lehmann, Grant Meitzler, John Silander, Michael Soares. *Members absent:* none. *Others present:* Jennifer Kaufman (Wetlands Agent).

1. The meeting was called to order at 7:35p by Kessel.
2. The draft minutes of the 17 December 2014 meeting were approved as written.

3. Fanwort control in Eagleville Lake.

Fanwort is an invasive aquatic plant, now present in 60 acres of Eagleville Lake. Unchecked infestations displace native species, threatening water quality and aquatic life as decaying mats of vegetation remove oxygen from the water; in consequence, fanwort invasions threaten the recreational, aesthetic, and real-estate values of lakes. The recommended control is treatment with the herbicide flumioxazin; biological control is not feasible at this time.

Mansfield and Coventry have been awarded a \$14K grant from DEEP to initiate fanwort control in Eagleville Lake. The grant must be matched with \$7K from each town. If the Town accepts the grant, its \$7K matching share would be taken from the Open Space Fund. The grant would cover an initial herbicide treatment. However, there is no “final solution” to the fanwort problem: long-term control would require monitoring and additional treatments as needed, and the Town would need to budget for these.

Kaufman distributed a 01/20/15 draft Agenda Item Summary for the Town Council, which reviewed the history of this issue and recommended that the Town accept the grant. She requested that the Commission weigh in on this issue. To initiate discussion Kessel moved (Dahn seconded):

That the first sentence of final paragraph of the “Subject matter/Background” section of the Agenda Item Summary be altered to read: “The Open Space Preservation Committee and the Conservation Commission have reviewed this grant application.”

This paragraph continues: “While they would rather not use herbicides, they realize that this is the most effective way to handle this infestation initially. They encourage the use of an integrated pest management approach. Additionally, they are opposed to using the Open Space Fund for management of fanwort.”

Several concerns were raised in discussion:

- Facchinetti opposed use of flumioxazin to control fanwort in Eagleville Lake, pointing out that Massachusetts prohibits use of this herbicide in lakes with an outflow – and in other cases requires a more cautious treatment regimen than the one proposed here. Kaufman reported that, according to Aquatic Control Technology (the company that would apply the herbicide), the more stringent Massachusetts protocols reflect uncertainty about the effects of the herbicide on certain endangered invertebrates that are not present in Eagleville Lake.
- Money set aside for open space acquisition should not be diverted to other projects, like this one.
- Meitzler worried about an open-ended commitment by the Town to control fanwort in

Eagleville Lake, pointing out that the lake is owned by the state. If the Town goes ahead, it will be crucial to monitor and assess the program carefully. Dahn asked if accepting the grant carries any commitment to continue control after the initial treatment. Kaufman said, "No." Silander suggested that lakeside property owners in Coventry should shoulder some of the financial burden of continuing treatment.

- Buck wondered what was known about the use of flumioxazin to control fanwort in other Connecticut lakes: was it effective? what side-effects did it have? Kaufman did not have this information and may not be able to get it before the Council meets on 25 January.

In the end, despite these misgivings, Kessel's motion was **approved** (for: Kessel, Lehmann, Meitzler, Silander, Soares; against: Dahn, Facchinetti).

4. Agronomy Farm. Facchinetti summarized DEEP's recommendations and actions regarding pesticide use at the UConn Agronomy Farm. He is concerned that water from monitoring wells is being tested for pesticides only once a year, that the irrigation pond remains untested, and that experimental pesticides may elude discovery because those testing water samples don't know what to look for. Facchinetti was encouraged to draft a letter to the Town Council on these issues that the Commission could consider at a future meeting.

5. Water System Advisory Committee. Buck attended the last meeting of this committee, which is overseeing importation of Connecticut Water Company water. The water main from Tolland to Four Corners & UConn will generally run underneath route 195; installation of pipe will start near Storrs Congregational Church (perhaps at the end of 2016) and proceed to Tolland. There is some question whether an EIE is needed. Buck is encouraged that planning appears to be an open process in which public input is welcomed.

6. UConn Master Plan. Town Planner Linda Painter has drafted a letter from the Town to UConn concerning the university's draft Master Plan. It will be considered at the 1/25/15 meeting of the Town Council, which Kessel will attend. Comments solicited from the Commission and other Town committees are attached to the draft letter.

7. Mansfield Tomorrow. Booth reported having promoted dark skies and clustered development in the Zoning Focus Group; she would like more emphasis on the importance of wetlands in the new Plan of Conservation & Development (PoCD).

Kaufman distributed a grayscale print-out of Painter's power-point presentation "Mansfield Tomorrow: Our Plan, Our Future," along with material from Chapter 8 ("Future land use and community design"). Urging Commission members to see the full-color power-point presentation at 7:00p on 5 February at the Mansfield Middle School, she then briefly outlined the content of the draft PoCD chapter-by-chapter. The Commission will probably be most interested in commenting on Chapter 8. Soares is concerned that Map 8.3 could be interpreted as limiting conservation efforts to areas identified as "Conservation/recreation land." He and Kessel will prepare draft comments for discussion at the February meeting; these could be sent out with the packet. Other Commission members were encouraged to read relevant sections of the draft PoCD and to draft comments as well. Unless a special meeting is scheduled, its February meeting will be the Commission's last opportunity to comment on the draft PoCD to the PZC before the public hearing on 2 March.

8. Adjourned at 9:28p. Next meeting: 7:30p, Wednesday, 15 February 2015.

Scott Lehmann, Secretary, 22 January 2015.

**CT DEEP Open Space and Watershed Acquisition Grant
Meadow Brook LLC Property, Puddin Lane (Parcel ID 33.97.3-39)
February 13, 2015**

Description

The proposed area for preservation is a 61-acre property with approximately 395 feet of frontage on Puddin Lane (Parcel ID 33.97.3-39). The property slopes down to Sawmill Brook, which forms the eastern boundary. A seasonal brook bisects the property. West of the brook lie irregular ridges. East of this brook, a relatively flat area extends to Sawmill Brook. The property appears to have been logged about 30 years ago, and is currently forested in second growth oak, hickory, and beech trees. There are no major invasive plant infestations. Abutting on the north side is Town-owned land (Sawmill Brook Preserve) and Joshua's Trust Land (Wolf Rock Preserve).

Town Plan Criteria

The property meets the following criteria in the 2006 Town Plan of Conservation and Development. These criteria are consistent with the Open Space Acquisition Criteria in the Public Hearing Draft of the Mansfield Tomorrow Plan of Conservation and Development.

Significant Conservation and Wildlife Resources

A section of Sawmill Brook, which forms the property's east boundary, has a series of islands, cascades, and pools, which offer a scenic setting and possible habitat for native brook trout.

Wildlife Habitat

The property is part of a large forest tract and provides habitat for interior forest wildlife

Forestry Land

The property is in an area designated as a priority interior forest tract. A large part of this forest tract has already been preserved (see map). This is a potential for future timber harvests in 20 to 30 years.

Surface Water Resource

This property abuts a significant portion of the Sawmill Brook watershed, between Puddin Lane and Crane Hill Road, and a tributary brook crosses the property. Portions of Sawmill Brook are already protected.

Connections

The Nipmuck Trail, one of the blue dot trails maintained by the CT Forest and Parks Association, has its southern trail head at the entrance to the property, with an informal parking area for 5-6 cars. This trail is an official CT Greenway. The trail passes through the subject property before continuing through a protected corridor to Wolf Rock Preserve and Crane Hill Road. The section of the trail that runs through the property is the last unprotected portion between Puddin Lane and Crane Hill Road. The Trail currently follows the west boundary of this property near homes on Jacobs Hill Road. Preserving this property would make it possible to move the trail away from these houses. Note that there is a white dot trail connecting the Nipmuck Trail to the end of Jacobs Hill Road.

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trail guide

There is a total of 3 miles of blazed hiking trails within the Joshua's Trust and Town boundaries. The Nipmuck Trail (blazed in blue) and Joshua's Trust (blazed in yellow) wind through the following points of interest:

- 1. Glacial Remains** - Signs of glacial activity are visibly scattered around the preserve. Many of the rocks were carried by the glacier from regions much farther north and were deposited here over 15,000 years ago.

- 2. Wolf Rock** - Approximately 6 feet in diameter, this rock was left perched at the edge of a 40-foot cliff by the glaciers. Today it remains as one of Mansfield's most spectacular landmarks, mentioned in deeds dating back to the late 18th century.

- 3. Scenic View** - As you look out south and east over the tree canopy from Wolf Rock, the views are breathtaking. Here the forested valley of Sawmill Brook can be seen, as well as the open fields on the brow of Crane Hill Field. In the distance is the campus of Eastern Connecticut State University.

- 4. Rock Ledge** - During the descent down the trail, one of the preserve's many rock ledges can be seen. The bedrock exposed here is a variety of metamorphic rock called Willimantic Gneiss.

- 5. Old Blacksmith Shop Road** - This abandoned road once connected Mansfield Center to the Crane Hill area.

- 6. Riparian Vegetation** - While the trail winds along Wolf Rock Brook, take note of native water-tolerant vegetation growing here: skunk cabbage, ferns and birches. This palette of greenery will appear in many of the wet areas in the preserve.

- 7. Hemlock Grove** - The dominant tree species here is the evergreen hemlock. While these trees are native, the species is currently threatened by a non-native insect called the Hemlock Woolly Adelgid.

- 8. Invasive Plants** - As you cross over Sawmill Brook, notice the understory vegetation. These invasive species (barberry, multiflora rose, and bittersweet) were introduced as ornamental plants, and have since escaped from cultivated gardens into the wild, replacing native plants.

- 9. Beaver Activity** - As the trail winds along the marsh's edge, note the pointed stumps. These are the remains of trees that were felled by beavers. The size of the marsh may be attributed to beaver damming.

- 10. Marsh Views** - Sunny, treeless wetlands are called marshes. Phragmites, the tall 'wheat-like' grass seen at the far edge of the marsh, is a common invasive species of this wet environment.

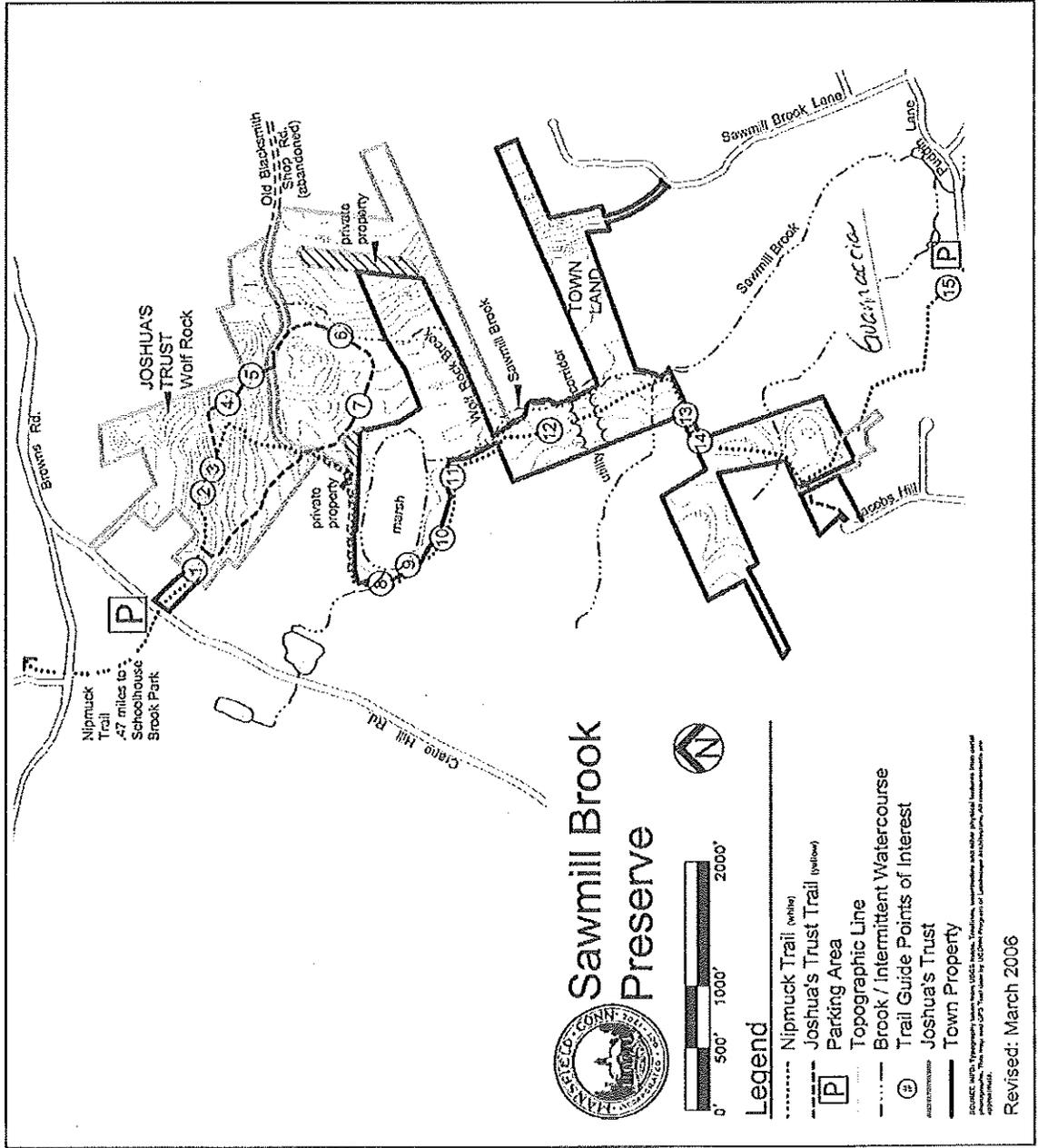
- 11. Wildlife View** - A view opens when the trail rounds the end of the marsh. Approach quietly and you may spot a Great Blue Heron.

- 12. Utility Corridor** - This area is cleared for power lines and reveals the profile of Sawmill Brook valley, as the land slopes down to the brook, then steeply up the other side to Beech Mountain.

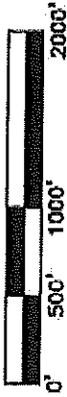
- 13. Upland Hardwoods** - As the trail makes a gradual climb, notice the change in tree species. Hardwoods such as oak, beech and maple dominate the forest here.

- 14. Old Stone Wall** - In most forests in New England it is common to find spans of old stone walls used to contain grazing animals and property boundaries.

- 15. Nipmuck Trail** - The blue-blazed Nipmuck Trail extends 37-miles from Union, Connecticut to Mansfield Hollow State Park and connects many of Mansfield's town parks. The Nipmuck trail is maintained by the Connecticut Forest and Parks Association.

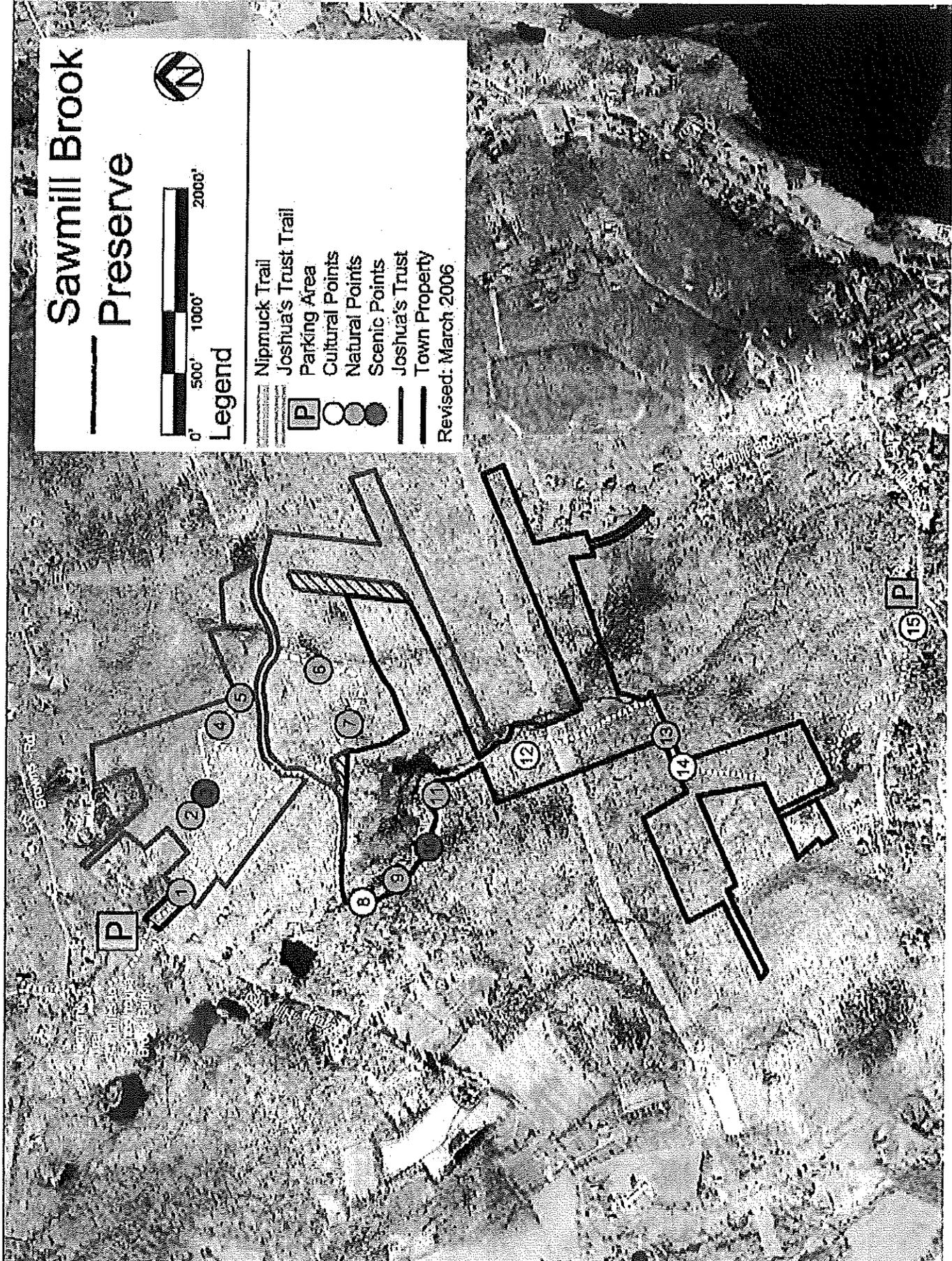


Sawmill Brook Preserve



Legend

- Nipmuck Trail
 - Joshua's Trust Trail
 - Parking Area
 - Cultural Points
 - Natural Points
 - Scenic Points
 - Joshua's Trust
 - Town Property
- Revised: March 2006



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OPEN SPACE PRESERVATION COMMITTEE
DRAFT Minutes of January 20, 2015 special meeting

Members present: Jim Morrow (chair), Quentin Kessel, Ken Feathers, Michael Soares, Vicky Wetherell, Jennifer Kaufman (staff).

Meeting was called to order at 7:30.

Vicky was appointed acting secretary.

Minutes of the December 16, 2014 meeting were approved with corrections. Jennifer requested that an agenda item be added concerning the fanwort grant. Vicky requested that an agenda item be added about the UConn Master Plan.

Old Business

Fanwort Removal in Eagleville Lake Jennifer reviewed the fanwort infestation in Eagleville Lake and the CT DEEP recommendations for addressing the problem. After discussion, the committee voted to endorse the CT DEEP recommendation for an integrated pest management approach, which includes an initial treatment with the herbicide "Clipper, followed by an analysis of the results and possible further applications in the following years. The committee continues to be concerned about using the Open Space Acquisition Fund for this project (particularly since it will be an ongoing effort) and encourages the Town to find an alternative source of funding.

UConn Master Plan Vicky conveyed an Agriculture Committee suggestion that the committees/commissions that reviewed the UConn Master Plan make a short statement during the public comment portion of the Town Council meeting. The committee agreed, and a short statement will be presented to the Council at their January 26 meeting.

Mansfield Tomorrow POCD Review The committee began review of the Public Hearing draft, which will be continued at their February 17 meeting.

The meeting was adjourned at 9:10.

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MINUTES
MANSFIELD PLANNING AND ZONING COMMISSION
Regular Meeting
Tuesday, January 20, 2015
Council Chamber, Audrey P. Beck Municipal Building

Members present: J. Goodwin (Chairman), B. Chandy, R. Hall, K. Holt, G. Lewis, B. Pociask,
K. Rawn, B. Ryan
Members absent: P. Plante
Alternates present: P. Aho V. Ward, S. Westa
Staff Present: Linda Painter, Director of Planning and Development
Curt Hirsch, Zoning Agent

Chairman Goodwin called the meeting to order at 7:35 p.m., appointing alternate V. Ward and to act in P. Plante's absence.

Minutes:

- a. 12-15-14 Meeting Minutes -B. Ryan MOVED and R. Hall seconded, to approve the 12-15-2014 meeting minutes as written. B. Pociask noted that he listened to the audio of the meeting. MOTION PASSED UNANIMOUSLY.
- b. 1-05-15 Meeting Minutes- B. Ryan MOVED and K. Rawn seconded, to approve the 1-05-2015 meeting minutes as written. MOTION PASSED with all in favor, except B. Chandy who was disqualified.

Zoning Agents Report:

There were no questions or comments on the Zoning Agent's monthly report.

Public Hearings:

Scenic Road Alteration, 140 Codfish Falls, S. Guyette, PZC File #1010-1- Chairman Goodwin opened the Public Hearing at 7:38 p.m. Members present were J. Goodwin, B. Chandy, R. Hall, K. Holt, G. Lewis, B. Pociask, K. Rawn, B. Ryan and alternates P. Aho, V. Ward, S. Westa; V. Ward was seated. Linda Painter, Director of Planning and Development, read the legal notice as it appeared in the Chronicle on 1/6/15 and 1/14/15 and noted a 1/15/15 memo from Linda Painter.

Ed Pelletier of Datum Engineering, appeared on behalf of the applicant. He described the plan to remove two trees and move back a fence and decorative stone wall along Codfish Falls Road.

J. Goodwin noted that there was no public comment.

K. Holt MOVED and B. Pociask seconded to close the Public Hearing at 7:41 p.m. MOTION PASSED UNANIMOUSLY.

Old Business:

- a. **New Subdivision Application, 140 Codfish Falls Road, S. Guyette, PZC File 1329 -**
Commission members discussed the need for a conservation easement and the enforcement options of the note on the plan requiring an open space dedication if the property is sold to someone outside the Guyette family. The Director of Planning will consult with the Town Attorney for an opinion as to whether the payment of any consideration by one family member to another would take this property out of the statute and provide the Commission with authority to require an open space dedication, and if not, what enforcement provisions could be incorporated into the map note to provide greater protection. A second issue was discussed that staff will look into: siting of houses outside of the Building Area Envelope in order to protect the vernal pool. The applicant did consent to the establishment of a conservation easement

along Codfish Falls Road. Discussion of all the issues will be continued at the 2-2-2015 meeting.

Public Hearings:

Re-Subdivision Application, 101 East Road, C & L Niarhakos, PZC File #293-2 - Chairman Goodwin opened the Public Hearing at 8:18 p.m. Members present were J. Goodwin, B. Chandy, R. Hall, K. Holt, G. Lewis, B. Pociask, K. Rawn, B. Ryan and alternates P. Aho, V. Ward, S. Westa; V. Ward was seated. Linda Painter, Director of Planning and Development, read the legal notice as it appeared in the Chronicle on 1/6/15 and 1/14/15, and noted a 1/15/15 memo from Linda Painter, 1/14/15 and 1/17/15 memos from Derek Dilaj, a 1/14/15 memo from Jeff Polhemus, a 12/2/14 letter from Troy Quick, a 11/17/14 memo from Edward Pelletier, the 1/5/15 minutes of the Conservation Commission, a 1/8/15 memo from Gerald Hardisty, a 11/25/14 letter from Mary Harper (with attachments), a 4/17/14 memo from Robert Thorson, a 4/25/14 letter from Donald Aubrey, a 3/13/14 soil test from Geoffrey Havens, a 1/15/15 email from Liz Vitulla, an undated letter from George and Jean Norman, and a 1/20/15 letter from Jean Phillips.

K. Holt MOVED and R. Hall seconded to continue the Public Hearing to 02-17-2015. MOTION PASSED UNANIMOUSLY.

Old Business:

b. Re-Subdivision Application, 101 East Road, C. & L. Niarhakos, PZC File #293-2;
Item tabled pending 2-17-2015 continued public hearing.

c. Proposed Tenant Signage, 1659 Storrs Road, OMS Development LLC., PZC File #1319
Zoning Agent Curt Hirsch and Applicant Bill Gavigan, Jr., responded to Commissioners' questions regarding the number, use and location of the proposed signs. After much discussion, G. Lewis MOVED and K. Holt seconded to approve the proposed signage for 1659 Storrs Road submitted by Poyant Signs, dated 1/13/15, as required by the special permit approval granted to OMS Development, with the following conditions:

1. There is no authorization for an additional tenant to occupy the site. Signage for Pizza Mike's shall not be authorized until the Commission has approved a modification to the special permit;
2. Further details on materials and landscaping for the monument sign shall be submitted to the Planning Office for review and approval prior to the construction of this sign;
3. During the construction of the monument sign, the gasoline pricing sign shall be removed;
4. Per Article X.C.11 of the zoning regulations, signs shall be lighted only during the hours open for business or until 11:00 p.m., whichever is later.

MOTION FAILED with B. Chandy, K. Holt, G. Lewis and B. Ryan in favor, all others opposed.

K. Rawn MOVED and V. Ward seconded to approve the previous motion with the addition of a new condition (5): This approval does not authorize the Dunkin Donuts sign proposed on the south façade of the building (Route 44) as depicted on Sheet 7a.1.

MOTION PASSED with all in favor except G. Lewis and B. Ryan who voted in opposition.

d. Draft UConn Campus Master Plan

Commission members reviewed the wording of the proposed correspondence to the University of Connecticut regarding the Draft Campus Master Plan. By consensus, members agreed to add the following wording to the beginning of the paragraph regarding the Hockey Arena, "We understand the need for a year round ice center; however, the Town..." and to eliminate the last sentence of that paragraph.

K. Holt MOVED and B. Ryan seconded to authorize the Chair to edit the draft letter and to include agreed upon changes to the Hockey Arena section (page 3) and to forward said letter to the Town Council.
MOTION PASSED UNANIMOUSLY.

New Business:

- a. **Request for Modification, Whispering Glen, 73 Meadowbrook Road, Uniglobe Investment LLC, PZC File #1284-2**

Linda Painter, Director of Planning and Development, reported that this modification to a special permit was received on 1-14-2014 and will be reviewed by staff for the 2-2-2015 meeting.

Mansfield Tomorrow:

- a. **Public Hearing Scheduled for Monday, March 2, 2015 at 7:00 p.m.**

Director of Planning and Development Linda Painter will provide the Commission with a summary of the comments received at the informational sessions. She will also remind informational session participants that these meetings are not public hearings, and that if residents wish to make public statements, they must attend the public hearing to be held on 3-2-2015.

Reports from Officers and Committees:

- a. **Chairman's Report** - No comments offered
b. **Regional Planning Commission** – S. Westa reported CROG is working on an analysis of trends in walking and biking as a means of transportation.
c. **Regulatory Review Committee** – Members are currently meeting as part of the Zoning Focus Group.
d. **Subcommittee on Infrastructure** – Heading to be removed from agenda.
e. **Planning and Development Director's Report** – L. Painter reported a consultant has been identified for the Corridor Study.

Communications and Bills:

Noted.

Adjournment:

The meeting was adjourned at 9:09 p.m. by the Chairman.

Respectfully submitted,

Katherine Holt, Secretary

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DRAFT MINUTES
MANSFIELD PLANNING AND ZONING COMMISSION
Regular Meeting
February 2, 2015 adjourned to Tuesday, February 3, 2015
Council Chamber, Audrey P. Beck Municipal Building

Members present: J. Goodwin (Chairman), B. Chandy, R. Hall, G. Lewis, K. Rawn, B. Ryan, P. Plante
Members absent: K. Holt, B. Pociask
Alternates present: V. Ward, S. Westa
Alternates absent: P. Aho
Staff Present: Linda Painter, Director of Planning and Development

Chairman Goodwin called the meeting to order at 7:47 p.m., appointing alternates Ward and Westa and to act in the absence of K. Holt and B. Pociask. B. Ryan was appointed to act as Secretary in the absence of Holt.

Minutes:

- a. 1-20-15 Meeting Minutes –Painter distributed corrected minutes. R. Hall MOVED and V. Ward seconded to approve the 1-20-2015 meeting minutes as corrected. MOTION PASSED UNANIMOUSLY with the exception of P. Plante who was disqualified.

Zoning Agents Report:

There were no questions or comments on the Zoning Agent's monthly report.

Old Business:

- a. **Scenic Road Alteration, 140 Codfish Falls, S. Guyette, PZC File #1010-1 and 1329**
B. Ryan MOVED and V. Ward seconded to communicate to the Town Council that the Planning and Zoning Commission has no objection to the removal of two trees and the relocation of a stone wall and fence as depicted in the Guyette Estates Subdivision Plan dated September 25, 2014 and revised through January 6, 2015 as the proposed alterations will not significantly alter the scenic character of Codfish Falls Road. MOTION PASSED UNANIMOUSLY with the exception of P. Plante who was disqualified.
- b. **New Subdivision Application, 140 Codfish Falls Road, S. Guyette, PZC File 1329 -**
Painter reviewed her January 29, 2015 memo, which included the responses of the Town Attorney to various questions, and the revised plans submitted by the applicant. Members discussed the recommendation of the Inland Wetlands Agent that a conservation easement be delineated around the vernal pool. Based on the two notes being added to the plan regarding the vernal pool as explained by the applicant's engineer, there was xxx general consensus that a conservation easement around the vernal pool was not needed. R. Hall volunteered to work on a motion for the next meeting.
- c. **Re-Subdivision Application, 101 East Road, C. & L. Niarhakos, PZC File #293-2;**
Item tabled pending 2-17-2015 continued public hearing.
- d. **Request for Modification, Whispering Glen, 73 Meadowbrook Road, Uniglobe Investment LLC, PZC File #1284-2**
Item tabled to 2/17/15.

New Business:

- a. **Proposed Modification to Special Permit for new tenant (Mike's Pizza), 1659 Storrs Road, OMS Development LLC, PZC File #1319**

G. Lewis recused himself from consideration of this request and left the table. Painter reviewed the modification request and the recommendations of Curt Hirsch, Zoning Agent. Goodwin questioned whether the recommended condition regarding future parking is enforceable if the adjacent property is sold. Alan Lamson, representing the owner, who is the owner of both the subject property (1659 Storrs Road) and the adjacent property (625 Middle Turnpike), represented that his client is willing to provide an easement over the Middle Turnpike property for excess and employee parking.

B. Ryan MOVED and R. Hall seconded to grant the 1/16/15 Request for Modifications from Mike LaMothe, for an additional retail food service use on property owned by OMS Development at 1659 Storrs Road. This modification is granted because there is no change in the retail floor area of the building and is conditioned upon the following:

1. No Certificate of Compliance shall be issued until the Eastern Highlands Health District has approved the food service use; and
2. The owner of 1659 Storrs Road shall obtain an easement on the adjacent property at 625 Middle Turnpike for employee and/or overflow parking. The number of required spaces shall be determined by the Zoning Agent.

MOTION PASSED UNANIMOUSLY.

Mansfield Tomorrow:

a. Public Hearing Scheduled for Monday, March 2, 2015 at 7:00 p.m.

G. Lewis returned to the table. Painter updated the Commission on the community information meetings held to date and on the progress of the Zoning Focus Group. She distributed copies of a draft schedule for zoning revisions, preliminary table of contents and list of regulatory changes recommended in the draft plan. Members discussed the review process and stated that they would prefer to review draft chapters as they are available, rather than reviewing an entire draft at one time. It was also questioned whether the public hearing could be held in September due to summer vacation schedules; Painter noted that the schedule is based on completing the revised regulations by August to meet the grant deadline from HUD.

Reports from Officers and Committees:

- a. **Chairman's Report** - No comments offered
- b. **Regional Planning Commission** – No updates.
- c. **Regulatory Review Committee** – Members are currently meeting as part of the Zoning Focus Group.
- d. **Planning and Development Director's Report** – Painter noted that the PZC had been invited to appoint a non-voting liaison to the Economic Development Commission. No members expressed interest at this time.

Communications and Bills:

Noted.

Adjournment:

The meeting was adjourned at 8:33 p.m. by the Chairman.

Respectfully submitted,

Bonnie Ryan, Secretary

MINUTES
MANSFIELD INLAND WETLANDS AGENCY
SPECIAL MEETING
January 20, 2015
Council Chamber, Audrey P. Beck Municipal Building

Members present: J. Goodwin (Chairman), B. Chandy, R. Hall, K. Holt, G. Lewis, B. Pociask,
K. Rawn, B. Ryan,
Members Absent: P. Plante
Alternates present: P. Aho, V. Ward, S. Westa
Staff present: Jennifer Kaufman, Inland Wetlands Agent

Chairman Goodwin called the special meeting to order at 7:00 p.m., appointing Ward to act in Plante's absence.

Review of Minutes

12-15-14 Meeting Minutes – B. Ryan moved and R. Hall seconded to approve the minutes of the 12-15-14 meeting as presented. B. Pociask noted that he listened to the audio of the meeting. MOTION PASSED UNANIMOUSLY.

1-14-2015 Field Trip Minutes – B. Ryan moved and K. Holt seconded to approve the minutes of the 1-14-15 field trip after amending the minutes to correct V. Ward's name and the adjournment time to 3:20 p.m. MOTION PASSED with Holt, Ryan and Ward in favor and all others disqualified.

Communications

The Monthly Business Memorandum and Conservation Commission Minutes were noted.

Public Hearings

Niarhakos, 101 East Road, 3-Lot Re-subdivision, IWA File #W1545 – Chairman Goodwin opened the Public Hearing at 7:09 p.m. Members present were J. Goodwin, B. Chandy, R. Hall, K. Holt, G. Lewis, B. Pociask, K. Rawn, B. Ryan, and alternates P. Aho, V. Ward, and S. Westa; V. Ward was seated. Jennifer Kaufman, Inland Wetlands Agent, read the legal notice as it appeared in the Chronicle on 1/14/15 and noted a 1/20/15 letter from Jean Perry Phillips, a 1/15/15 email from Liz Vitullo, an undated letter from George and Jean Norman, a 11/25/14 letter from Mary Harper, a 4/25/14 letter from Donald Aubrey, a 3/13/2014 Soil Test from Geoffrey W. Havens, and a 4/17/14 letter from Robert Thorson. K. Holt MOVED and B. Ryan seconded to continue the Public Hearing to 02-17-2015. MOTION PASSED UNANIMOUSLY.

Guyette, 140 Codfish Falls, 3-lot Re-Subdivision, IWA File #1542 W1545 – Chairman Goodwin opened the Continued Public Hearing at 7:11 p.m. Members present were J. Goodwin, B. Chandy, R. Hall, K. Holt, G. Lewis, B. Pociask, K. Rawn, B. Ryan, and alternates P. Aho, V. Ward, and S. Westa; V. Ward was seated. Jennifer Kaufman, Inland Wetlands Agent, read the legal notice as it appeared in the Chronicle on 1/14/15.

Present was Ed Pelletier of Datum Engineering and Surveying, on behalf of the applicant, who discussed the revised plans which addressed the comments of Director of Planning Linda Painter and Assistant Town Engineer Derek Dilaj. Mr. Pelletier agreed with Dilaj's request for an easement giving the Town a right-to-drain across the northern end of the property, and that it be added to the plans. Mr. Pelletier also agreed that the testimony from this IWA hearing may be entered in the Planning and Zoning Commission record.

Steven Guyette, the applicant, provided a family history of the use of the property and stated that the family intended to keep most of the property as undisturbed forest land, other than the proposed lots.

Quentin Kessel, Codfish Falls Road (member of the Conservation Commission and Open Space Preservation Committee but appearing as an individual), spoke in support of the project, but requested that an open space dedication be included in the plan. Mr. Kessel noted that a common driveway is not a right but a privilege and that it is important to keep the area pristine.

V. Ward MOVED and B. Chandy seconded to close the Public Hearing at 7:31 p.m. MOTION PASSED UNANIMOUSLY.

Old Business:

- a. **Niarhakos, 101 East Road, 3-Lot Re-Subdivision, IWA File #W1545**
Item continued to 02-17-2015 meeting.
- b. **Guyette, 140 Codfish Falls, 3 Lot Subdivision, IWA File #W1542**
The IWA discussed the project, focusing on issues such as the common driveway, drainage easement, and authority of the IWA to require an open space dedication under the circumstances of this application. The IWA requested a legal opinion from its attorney on the statutory language regarding open space dedications in family transactions. A motion will be prepared for the next meeting for possible consideration.
- c. **Renwood Apartments, 20 Dartmouth Road, New Septic System for Building #20**
K. Holt MOVED and B. Ryan seconded to grant an Inland Wetlands License pursuant to the Wetlands and Watercourses Regulations of the Town of Mansfield to Renwood Apartments, LLC (File #W1546) for the construction of a new septic system on property owned by the applicants and located at 20 Dartmouth Road as shown on plans dated 10/27/2014 and as described in application submissions.

This action is based on finding of no anticipated significant impact on the wetlands, and is conditioned on the following provisions being met:

1. Appropriate erosion and sedimentation controls shall be in place prior to construction, maintained during construction and removed when disturbed areas are completely stabilized;
2. All tree debris and stumps shall be removed from the site or placed them no closer than 50 feet from the edge of wetlands; and
3. All construction activity shall occur between October 1 and April 1. If this is not feasible, then all recommendations pursuant to the CT DEEP Natural Diversity Data Base Determination No.: 201411747, dated December 19, 2014, shall be followed to protect the species of concern.

This approval is valid for five years (until January 20, 2020) unless additional time is requested by the applicant and granted by the Inland Wetlands Agency. The applicant shall notify the Wetlands Agent before any work begins and all work shall be completed within one year. Any extension of the activity period shall come before this Agency for further review and comment. MOTION PASSED UNANIMOUSLY.

New Business:

- a. **J-3 Request for Jurisdictional Ruling-166 Moulton Road – Small Scale Waterwheel**
Item has been withdrawn.

Reports from Officers and Committees

Inland Wetlands Agent Jennifer Kaufman reported that a field trip is not needed before the next meeting.

Other Communications and Bills: No comments offered.

Adjournment: The Chairman declared the meeting adjourned at 7:33 p.m.

Respectfully submitted,
Katherine Holt, Secretary

DRAFT MINUTES
MANSFIELD INLAND WETLANDS AGENCY
REGULAR MEETING
February 2, 2015 adjourned to February 3, 2015
Council Chamber, Audrey P. Beck Municipal Building

Members present: J. Goodwin (Chairman), B. Chandy, R. Hall, G. Lewis, P. Plante, K. Rawn, B. Ryan
Members Absent: K. Holt, B. Pociask
Alternates present: V. Ward, S. Westa
Alternates absent: P. Aho
Staff present: Linda Painter, Director of Planning and Development; Jennifer Kaufman, Inland Wetlands Agent

Chairman Goodwin called the meeting to order at 7:35 p.m., appointing Ward and Westa to act in the absence of Holt and Pociask. B. Ryan was appointed to act as Secretary in the absence of Holt.

Review of Minutes

1-20-15 Special Meeting Minutes – R. Hall MOVED and V. Ward seconded to approve the minutes of the 1-20-15 special meeting as presented. MOTION PASSED UNANIMOUSLY with the exception of P. Plante who was disqualified.

Communications

Kaufman distributed a memo regarding proposed aquatic controls at Eagleville Lake and provided an overview for the Agency. The Conservation Commission Minutes were noted.

Old Business:

a. Guyette, 140 Codfish Falls, 3 Lot Subdivision, IWA File #W1542

B. Ryan MOVED and B. Chandy seconded to grant an Inland Wetlands License pursuant to the Wetlands and Watercourses Regulations of the Town of Mansfield to Steven Guyette (File #W1542) for 3-lot subdivision on property owned by the applicants and located at 140 Codfish Falls Road as shown on plans revised through 1/27/2015 and as described in application submissions.

This action is based on a finding of no anticipated significant impact on the wetlands, and is conditioned on the following provisions being met:

1. Appropriate erosion and sedimentation controls shall be in place prior to construction, maintained during construction and removed when disturbed areas are completely stabilized;
2. A note shall be placed on the subdivision plan indicating that any new regulated activity in the upland review area or in the wetlands or watercourse will require the owner to submit an inland wetlands application as required by the Town of Mansfield's Inland Wetlands and Watercourses Regulations;
3. A note shall be placed on the subdivision plan that no future work shall occur with 100 feet of the vernal pool;
4. The portion of the driveway, in immediate proximity of the wetland, shall be constructed from small diameter stone to allow for water infiltration during storm events and reduce siltation; and
5. Plans for driveway construction shall be reviewed, approved, and monitored by the Assistant Engineer in conjunction with the Inland Wetland Agent to ensure that there is not significant impact to the wetlands.

This approval is valid for five years (until February 3, 2020) unless additional time is requested by the applicant and granted by the Inland Wetlands Agency. The applicant shall notify the Wetlands Agent before any work begins and all work shall be completed within one year. Any extension of the activity period shall come before this Agency for further review and comment. MOTION PASSED UNANIMOUSLY with the exception of P. Plante who was disqualified.

New Business:

- a. **W1547 – Rossi, 212 Davis Road, Driveway Improvements and Septic System Repair**
B. Ryan MOVED, K. Rawn seconded to receive the application submitted by Marilyn Rossi (IWA File #1547) under the Wetlands and Watercourses Regulations of the Town of Mansfield for driveway improvements and septic system repair on property located at 212 Davis Road as shown on a map dated 1/27/2015 and as described in application submissions, and to refer said application to staff and the Conservation Commission for review and comments. MOTION PASSED UNANIMOUSLY.

- b. **W1424 – Uniglobe Investments LLC, 73 Meadowbrook Lane, Whispering Glen 50 Unit Apt.**
K. Rawn MOVED, R. Hall seconded to receive a modification submitted by Uniglobe Investment, LLC (IWA File #1424) under the Wetlands and Watercourses Regulations of the Town of Mansfield for new development on property located at 73 Meadowbrook Lane as shown on a map revised through January 15, 2015 and as described in application submissions, and to refer said application to staff and the Conservation Commission for review and comments. MOTION PASSED UNANIMOUSLY.

Reports from Officers and Committees

Due to snow cover and the nature of the pending applications, it was determined that no field trip was needed.

Other Communications and Bills: No comments offered.

Adjournment: The Chairman declared the meeting adjourned at 7:45 p.m.

Respectfully submitted,
B. Ryan, Secretary

The Habitat

A newsletter of the Connecticut Association of
Conservation & Inland Wetlands Commissions, Inc.

Winter 2015

volume 27 number 1



DEEP Open Space Grants

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March 1, 2015

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line due to Storm Colbie.*

Interplay of Federal and State Permitting Programs with Local Inland Wetlands & Watercourses Regulation

by Mark K. Branse Esq.

Editor's Note: As advisory agencies, Conservation Commissions should have knowledge about federal and state permitting programs for inland wetlands regulations.

US Army Corps of Engineers

The legal authority for federal oversight of wetlands and watercourses by the US Army Corps comes from the Rivers and Harbors Act, and the Clean Water Act:

- Rivers and Harbors Act Section 10: prohibits unauthorized obstruction or alteration of any navigable water of the U.S.¹
- Clean Water Act: regulates discharges of dredged or fill materials into waters of the United States²

"Category 1: less than 5,000 sq. ft. of fill, less than 200 linear feet of bank stabilization, or other standards. Requires a state CT DEEP permit, does not require an Army Corps permit."

The Army Corps is a federal agency, and they have jurisdiction over federal waters. They find ways to make many waters (interstate waters, tidal waters, wetlands) federal, but there are limits. The question is "whether the specific wetlands and issue possess a significant nexus with navigable waters."³ However, the U.S. Supreme Court found the Army Corps had no jurisdiction over an abandoned sand and gravel pit, even though it was used as a habitat for migratory birds, saying to do so would result in a significant impingement of the States' traditional and primary power over land and water use.⁴

The Army Corps has overlapping jurisdiction with local wetlands agencies: because of the different definitions of wetlands, there will be situations that are only under local jurisdiction, situations that are only under Army Corps jurisdiction, but the majority will be under both.

Further, the Army Corps uses different standards in granting applications. One standard used to evaluate a PGP (see below) is "minimum direct, secondary, and cumulative impacts."⁵ Another standard used by the Army Corps is called a "Public Interest Review" which evaluates "the relative extent of the public and private need for the proposed structure or work, whether

permitting, continued on page 14

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www.caciwc.org

CACIWC News

CACIWC has been closely following ongoing activities being conducted by the State of Connecticut Department of Energy and Environmental Protection (DEEP) to implement goals of the **Climate Preparedness Plan**. These include activities that are especially relevant to our members, such as incorporating careful consideration of sea level rise and other climate change-related impacts on the 2013-2018 Plan of Conservation and Development, along with proposals to support municipal commissions and staff efforts to develop local adaptation plans.

It was in this spirit of helping to support our member's climate change preparedness efforts, that CACIWC organized our **37th Annual Meeting and Environmental Conference** with the theme of *Preparing Connecticut for the Impact of Global Changes*. This conference, held Saturday, November 15, 2014 at the spacious Villa Capri Banquet Facility in Wallingford, featured DEEP Commissioner Rob Klee as our keynote speaker. An entire new track of several climate change preparedness workshops was included in the schedule.

1. The CACIWC Annual Meeting Committee has been reviewing the various comments and suggestions submitted on the survey distributed at our 2014 annual meeting. If you did not have an opportunity to complete the 2014 meeting survey, please contact us with your comments and suggestions at AnnualMtg@caciwc.org. We also welcome early suggestions for workshop topics and speakers that you would like us to recruit for our **38th Annual Meeting and Environmental Conference**, tentatively scheduled for Saturday, November 14, 2015. Please send your ideas to us at AnnualMtg@caciwc.org along with any other suggestions. Watch for additional conference news in upcoming issues of *The Habitat* and on our www.caciwc.org website.

2. The CACIWC Board of Directors has also begun reviewing the many responses to our revised one-page **conservation commission and inland wetlands membership survey** that was mailed to each commission in September. Your responses to this survey will make valuable contributions to the development our new **strategic plan** and help us develop new educational programs. If you have not yet done so *please complete and mail in your survey*.

3. The Board of Directors appreciated the large number of commissions who renewed their CACIWC membership prior to our annual meeting. For those who have not yet done so, it is not too late to send in your **2014-15 membership dues**. A

CACIWC news, continued on page 15

CACIWC's 37th Annual Meeting & Environmental Conference; Connecticut Commissioners and Staff Discuss Ways to Prepare Connecticut for the Impact of Climate Change

The CACIWC Board of Directors and its Annual Meeting Committee extends their appreciation to the many members and guests who were able to attend our 37th Annual Meeting and Environmental Conference, held on November 15, 2014. The conference featured DEEP Commissioner Rob Klee as the keynote speaker. The Board of Directors and Annual Meeting Committee worked to bring attendees a wide variety of informative workshops and exhibitors, as well as an expanded lunch buffet.

The conference was held at a new location, the Villa Capri Banquet Facility in Wallingford. The new location was especially welcomed by our many workshop leaders, who enjoyed the facility's spacious meeting rooms. The initial responses from our conference evaluations suggested that most thought the new location was a good match for our conference needs.

Keynote Speaker

Conference attendees were excited to welcome DEEP Commissioner Rob Klee as our 2014 keynote speaker. Klee was appointed DEEP Commissioner by Governor Dannel P. Malloy in January 2014. Commissioner Klee holds a PhD from Yale's School of Forestry & Environmental Studies in industrial ecology, a law degree from Yale, and an undergraduate degree from Princeton in geology and environmental science.

In his keynote address Commissioner Klee emphasized the joint role of DEEP and CACIWC member commissions is supporting our 2014 conference theme of *Preparing Connecticut for the Impact of Global Changes*. The challenges to our members from these global changes range from preparing our towns for the impact of climate change on our state's important habitats to balancing the regional and global needs for food and energy with local environmental conservation and protection.

Our member commissions, along with land trusts and other organizations, are already facing increasing local challenges in their efforts to appropriately balance the growing demands for development with the long term goals of habitat preservation. Expected changes



DEEP Commissioner Rob Klee: Keynote address
Photo courtesy of Rod Parlee, CACIWC

related to climate along with regional and global economic pressures will further challenge our members. Lessons learned from this year's conference will help our members commissions maintain their role as effective stewards of wetlands and open space lands within their towns.



Dan Stepanek, Chairman New Canaan Inland Wetland and Watercourses Commission, presenting Dr. Sven Englund with CACIWC's 2014 "Lifetime Achievement Award"
Photo Courtesy of Kathleen Holland, Director, Inland Wetlands and Watercourses Commission, New Canaan

Awards

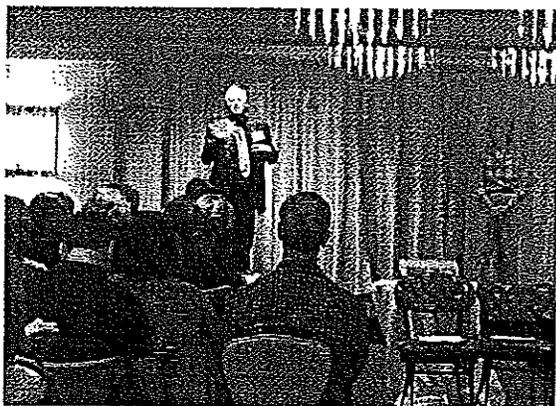
A special CACIWC awardee was honored at the Saturday, November 15, 2014 conference ceremony. Sven Englund, PhD received the CACIWC 2014 "Lifetime Achievement Award"
annual meeting, continued on page 4

annual meeting, continued from page 3

Achievement Award” for his three decades of service in the protection of inland wetlands and watercourses in the Town of New Canaan.

Dr. Englund has served for 30 years as an active and dedicated volunteer on the Inland Wetlands and Watercourses Commission in the Town of New Canaan, with nine of those years as Chairman. In addition to the hundreds of hours of Commission meetings required, Dr. Englund understood the importance of participating in the many training opportunities offered by the State of Connecticut Department of Energy and Environmental Protection (DEEP), CACIWC and many other partners who are versed in the protection of wetland resources. Dr. Englund felt that these additional training opportunities bolstered his knowledge and ability to effectively and competently navigate technical and sometimes difficult decisions required by the Commission.

Dr. Englund was always ready and willing to share his years of experience and knowledge with new Commissioners. In addition, Dr. Englund actively participated in the monthly site visits to view pending applications. As Chairman, he conducted the meetings with a keen sense of fairness. Dr. Englund’s review and helpful comments on revisions to the regulations were always well thought out and directed towards making the regulations as user-friendly as possible.



Attorneys Janet Brooks, David Wrinn, and Mark Branse present workshop on “2014 Wetlands Law Update with Question & Answers Session”
Photo courtesy of Rod Parlee, CACIWC

Trained as a Chemical Engineer, Dr. Englund as active in early industrial pollution abatement for chemical processes. He was appointed to the Environmental Commission of New Canaan at or close to its founding in 1972. He has been a New Canaan resident since



Clare Cain, Trail Stewardship Director, Connecticut Forest & Park Association (CFPA), presents workshop on “Open Space Management: Creating & Managing Trails”
Photo courtesy of Rod Parlee, CACIWC

1958. As many know, Sven is of Swedish extraction and often travels, with the most recent visit at 93 years of age this summer for two weeks to see relatives.

As Dr. Englund resigns from the Commission in December, 2014, it was widely acknowledged that his extensive experience and depth of historical knowledge of the Town of New Canaan will be missed and difficult to replace. CACIWC was
annual meeting, continued on page 5

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annual meeting, continued from page 4
honored to recognize his years of dedicated service
with this Lifetime Achievement Award.

Workshops & Displays

Four workshop tracks were provided at the 2014 annual conference: Open Space & Conservation Biology, Land Use Law & Legal Updates, Wetlands Science & Engineering, and a *new track*, entitled Climate Change and Planning. The workshops covered a variety of topics relevant to Connecticut commissioners including creating and managing trails in local open space parcels, new approaches to pond monitoring & management, and issues surrounding identification of aquatic invasive plants & spreading bamboo. Wetlands law updates were provided along with updates from a survey of municipal wetlands regulations. Our new climate change track included workshops

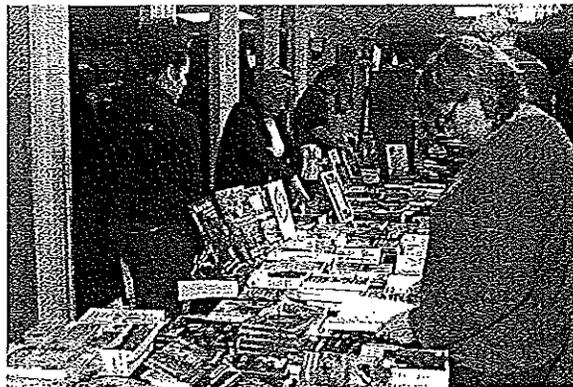


Display Table: Bolton Conservation Commission
Photo Courtesy of Rod Parlee, CACIWC

on climate change and wetlands, the value of riparian corridors, planting for storm defense, and a review of a study on coastal adaptation efforts. Other new topics for this conference included stormwater management & control and the latest information on Connecticut's growing black bear population. We thank all the workshop leaders for their time spent preparing and presenting these well received forums. Many commercial entities and non-profit groups also provided a variety of displays to further inform visitors of current issues relevant to their work and volunteer efforts.

Evaluations

The CACIWC Board of Directors has already begun a review of the evaluations forms submitted by participants of this conference. In addition to opinions, valuable suggestions for workshop topics for next



Display Table: DEEP Bookstore
Photo Courtesy of Brenda Cataldo

year's conference were also given by participants. To allow all of our members the opportunity to submit ideas for workshop topics and other suggestions throughout the year, the email AnnualMtg@caciwc.org will remain available for your input. Please keep your suggestions coming.

The Board of Directors extends its sincere appreciation to our 2014 conference sponsors and looks forward to seeing all of you at our 2015 Annual Meeting and Environmental Conference, tentatively scheduled for Saturday, November 14, 2015. ⚡

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New England Wild Flower Society is actively seeking volunteers for its Plant Conservation Volunteer (PCV) Corps. Participants in this program collect data on the status of rare plant populations throughout New England and assist with invasive and habitat management projects.

The requirements are motivation, discretion, and a basic knowledge of native flora. It's a great way to learn more about plants, meet others with similar interests, and make an impact in conservation.

Training sessions will be held on a weekend in March in all New England states. For more information and an application visit our website at www.newenglandwild.org/docs/pcv-application.doc

URGENT!

Your Input Is Requested on Connecticut's Wildlife Action Plan

DEEP's Wildlife Division needs your help to update the state's Wildlife Action Plan, which serves as Connecticut's blueprint for conservation action. Participation by conservation partners, academic institutions, municipalities, and the public is a key to making the revised Wildlife Action Plan an effective tool for conserving Connecticut's diversity of wildlife resources for future generations.

You can submit comments on the revised list of species of greatest conservation need, an updated description of key habitats found in Connecticut, and revisions to chapters of the original 2005 plan (called the Comprehensive Wildlife Conservation Strategy). All of the revised documents can be found on the DEEP's Wildlife Action Plan webpage.

You are encouraged to check the website often, as more updates and revisions become available for review. Comments can also be submitted to deep.wildlifeactionplan or Connecticut Wildlife Division, Sessions Woods W.M.A., P.O. Box 1550, Burlington, CT 06013.

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Remembering Penni Sharp

Penni Sharp, 76, died peacefully December 14, 2014 at her home in Northford, CT. Penni was a talented and creative botanist and wetland biologist who volunteered her passionate voice for protecting wetlands and native plants to leadership roles for a number of environmental organizations. She was an active member of CACIWC's Board of Directors for 15 years, including service as the Secretary from 1996 to 2003. Penni also contributed as a periodic advisor to the Board including serving on various Nominating Committees, and served on the Northford Inland Wetlands and Watercourses Commission.

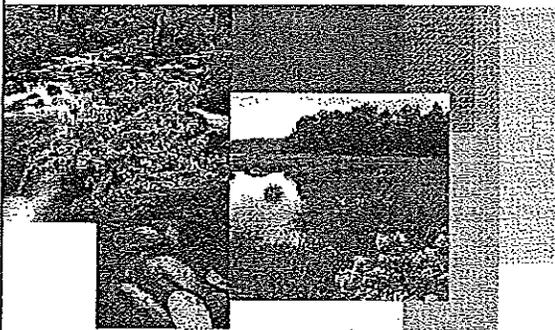
Penni also held leadership positions in the Connecticut Association of Wetland Scientists, the Connecticut Botanical Society, and was active with the Connecticut Invasive Plant Working Group. She was also the principal author of *Trap Rock Ridges of Connecticut; Natural History & Land Use*. In 2009, she was given the Connecticut State Award by the New England Wildflower Society.

A graduate of Miss Porter's School and Sarah Lawrence College, Penni also studied at Yale University School of Forestry, receiving a Master of Forest Science degree.

Professionally, Penni served as the Director of Conservation for the Town of Wilton for ten years and then worked until her death as a consulting biologist for many municipal and private clients in Connecticut. Penni's excellent reputation as a botanist was the reason the Westbrook Conservation Commission hired her to conduct a plant inventory for a 5 acre coastal open space. Completed just before Tropical Storm Irene battered the Connecticut coast, her comprehensive botanical inventory will now serve as a baseline for documenting climate change impacts.

Penni will be remembered by the many people that her friendship and passionate voice for conservation touched, and for her achievements as a professional botanist and wetlands biologist. 🍂

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Tips for Conservation Commissions: How to Be Effective in the Land-Use Review Process

by Mark K. Branse, Esq.

These comments relate to the conservation commission's role as an *advisory body*. Even if the conservation commission is also the Inland Wetlands and Watercourses Agency, the role of conservation commission is *separate*.

By Statute (Conn. Gen. Stats. §8-131a) one of the eight functions of a Conservation Commission is to advise other land use agencies. It may make recommendations to zoning commissions, planning commissions, inland wetlands agencies and other municipal agencies on proposed land use changes.

Many towns have separate conservation commissions, i.e., not combined with an Inland Wetlands and Watercourses agency having regulatory powers for wetlands permits. A combined commission wears two "hats" (see *Habitat* Vol. XII, No. 4, January, 1999), and has the advantage that applicants *must*, in most cases, at least appear before the commission and get a permit. The separate conservation commission has no such leverage and is purely advisory to other land use agencies. How do you make that advice count?

Can the Other Agency Heed Your Advice?

There is no case law concerning the weight to be given to a conservation commission recommendation, but the courts have held that it is not an abuse of discretion for a land use agency to act upon the advice of an agency that is statutorily authorized to render such advice. In *Arway v. Bloom*, 29 Conn. App. 469 (1992), affirmed 227 Conn. 799 (1993), the Redding Inland Wetlands and Watercourses Commission granted a permit and transmitted its decision to the Zoning Commission per its duty under Conn. Gen. Stats. §8-3(g) and 8-3c(b) to file a report with that Commission, which in turn, was required to give "due consideration to the report" of the Wetlands Commission. *Id.* The Zoning Commission approved the use subject to a number of conditions, the first of which was drawn verbatim from the Wetlands Commission's approval. Neighbors appealed the Wetlands and Zoning approvals, and the trial court sustained the Wetlands appeal on procedural grounds. The trial court then sustained the Zoning appeal on the grounds that since the Wetlands decision was void, the Zoning Commission had acted illegally in giving "due consideration" to that permit when

approving the site plan. The Appellate Court overturned the trial court decision:

Here, the zoning commission acted on the applicants' site plan and special permit application with a favorable final report from the wetlands commission in hand. The fact that the wetlands decision was later reversed by the trial court on procedural grounds did nothing to disturb the zoning commission's jurisdiction to render its own decision at the time it considered the wetlands report. *Id.*, pp. 479-480.

So it would appear that other land use agencies can heed the advice you are Statutorily authorized to give them and the courts will support that.

Getting Them to Listen

OK, the other agency *can* heed your advice. But why *should* they?

Know the Ground Rules: In order for your advice to be effective, you have to know the scope of authority and discretion of the receiving agency to accept it. What kind of application is being heard—text or map amendment for wetlands or zoning, subdivision text amendment, special permit, wetlands permit, subdivision, or site plan review? They all have different levels of discretion that the agency can exercise, and they are arranged in the preceding sentence from highest to lowest levels of discretion. If it's a permit application, what are the criteria of the regulations that the agency is applying? To the extent that you can couch your recommendations by reference to *the words used in the regulatory criteria*, you increase the agency's confidence that it can heed your advice, and you also boost the agency's chances for being upheld on appeal. The worst thing you can do is recommend that another agency do something that, by its own regulations, it is not authorized to do. You lose credibility and, if they heed your advice, you expose them to a successful court appeal.

Know the Facts: Unlike the combined wetlands commission, you have no way to *force* an applicant to come in and make a presentation to you. Some zoning and/or subdivision regulations include a requirement for referral

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free advice, continued from page 8

to the conservation commission, and I would certainly urge you to seek such regulations. Without that, you have two options: invite the applicant before you (with adequate notice) and hope that they will appear; or get the facts from town staff members. But whatever it takes, know what you are talking about.

A relatively recent case is helpful, *Unistar Properties, LLC v. Conservation & Inland Wetlands Commission*, 293 Conn. 93, 120-121 (2009). In that case, the wetlands commission requested a wildlife inventory of the site, and the applicant refused to provide it. The applicant argued that since there were no proposed activities in the wetland (only the upland review area), the commission had no jurisdiction over wildlife and therefore could not request a wildlife inventory. The Supreme Court upheld the commission's denial, noting that activities in the upland review area *could* adversely impact wildlife, and if those adverse impacts impacted the physical characteristics of the wetland, they the commission would have jurisdiction. Without the wildlife inventory, the commission was unable to *determine* its jurisdiction. The possibility that wildlife could affect the physical characteristics of wetlands was left hanging in the *Avalon Bay v. Weston* case, but was addressed in the case of *River Sound Development, LLC v. Inland Wetlands &*

Watercourses Commission of Old Saybrook, 122 Conn. App. 644, 653 et. Seq. (2010) (held that evidence from the *plaintiff's* expert supported the conclusion that wood frog tadpoles remove detritus from vernal pools and protect water quality.)

So the wetlands agencies authority to *request information* may be broader than its jurisdiction. Asking for the information provides you with the facts that you need.

Know the Schedule: A last-minute recommendation is less likely to be heeded by either the applicant or the receiving agency. I represent applicants, and they always try to accommodate every possible concern *if they hear it early enough*. Once the final drainage calculations are completed, it is a lot more expensive and time-consuming to make what would otherwise be a small tweak in the stormwater management plan. So try to get into the process at the earliest possible moment.

Be Honest: Let's face it, a lot of the opponents who appear at a public hearing and waive the flag of "environmental protection" never gave a damn until there was an application in their own back yard. Don't get sucked into that. Treat all applicants and applications equally. Adopting a set of guidelines (such as criteria for open space) will help you to be consistent and demonstrate to both the agency and the applicant that you are playing fair.

Be Specific: A recommendation that is vague is less likely to be heeded. State *as precisely as you can* what should change about the proposal and why. Recommendations like, "the development is too dense" or "the open space is located in the wrong place" are sure to be ignored—and they *should be*.

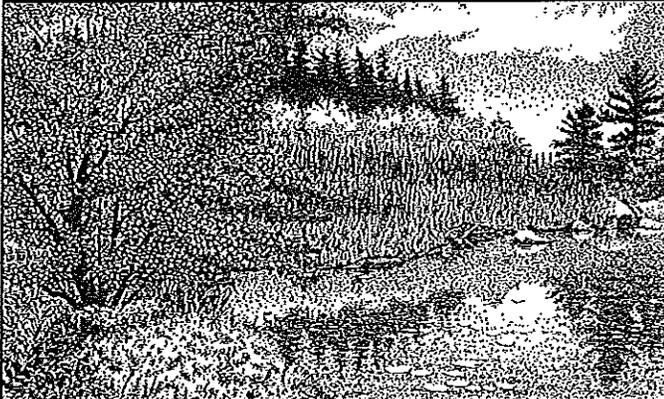
Be Constructive: Wherever possible, specify the changes that you are seeking. The authority of a land use agency

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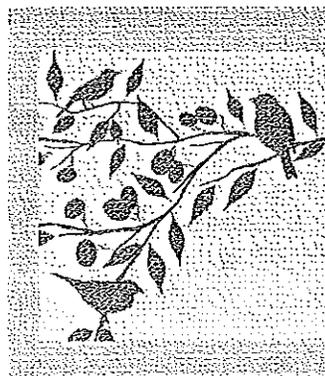
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to just deny an application is much lower than its authority to modify or condition one. Seek ways that the proposal can reasonably be modified to achieve both your goals and the applicant's. Remember: An applicant would like to go to the regulatory agency with a positive recommendation from you, so if they can make changes to their plan to achieve that, they will.

Be There: Letters and e-mails are great for setting forth a joint position of your commission, but the applicants will be at the agency hearing in person, with their entourage of experts. If you really want your advice to be taken, you need to be prepared to send one or more live bodies to attend the hearing and present your letter, amplify on it if need be, and respond to questions or comments.

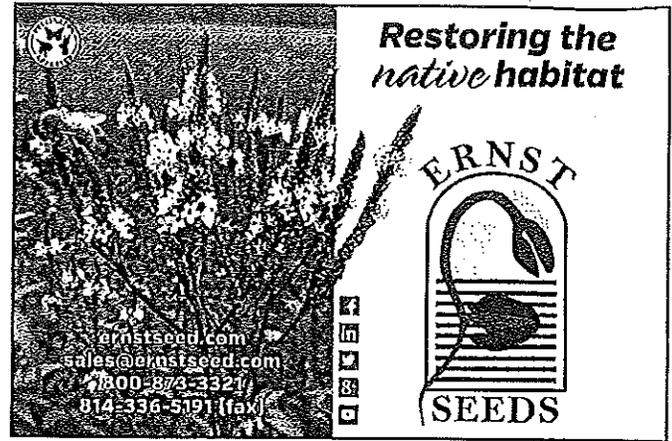
Be respectful: The problem with being "just" an advisor is that there will be times when your advice is ignored. Don't get mad! Always give the agency a face-saving way out if you can: "We felt that open space in the northwest corner made sense for the reasons articulated in our letter, but we understand the agency giving a higher priority to an active recreation field in the southwest corner." Throwing a tantrum will not increase your credibility with the agency and will almost surely decrease it.

Be Watchful: There is a fine line between "I told you so" and "please note what happened on that other project when you didn't heed our advice. Gosh, it would be good not to have *that* happen again!" In Glastonbury, we were able to persuade the Council to hire the Town's first environmental planner because of a costly and destructive error that would have been easily avoidable by proper review. Use past mistakes to make your point, but don't humiliate the ones who *made* those mistakes—they're probably the people whose support you are seeking.

Infiltrate: Many land use agencies have trouble getting volunteers to serve, and with the long hours, lack of public gratitude, and low "wages," it's no wonder. *You* are prime candidates. Volunteer!

You *can* make a difference in the process! Know the rules, be constructive, be alert!

Mark K. Branse practices law with Branse & Willis, LLC in Glastonbury, www.bransewillis.com.

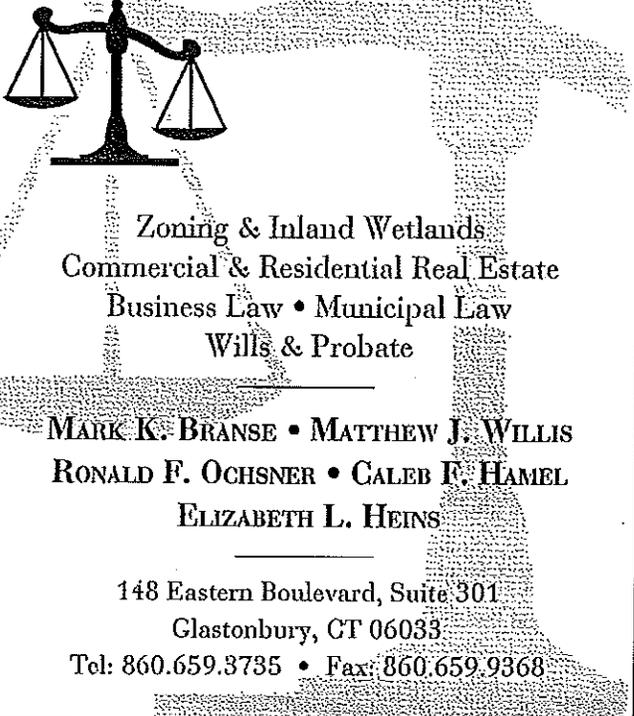


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Community Farms Preservation Program

By Katherine Winslow, Property Agent, CT Department of Agriculture

The Community Farms Preservation Program (CFPP), made possible by Public Act 08-174, is a voluntary program of the State's Department of Agriculture (DoAg) to preserve small farms of local economic importance, with a demonstrated level of community support.

The Department of Agriculture established criteria for the CFPP in consultation with the Farmland Preservation Advisory Board and preference is for human-food producing farms. CFPP was designed as an alternative for farmers whose land may not qualify, or is a low priority, for funding through the longstanding Farmland Preservation Program.

Agriculture Commissioner Steven K. Reviczky in 2011 announced a \$2 million CFPP pilot program that is currently underway with Community Investment Act (CIA) funding. Towns completed basic eligibility requirements prior to submitting farm applications. The DoAg considered nine applications for the pilot. Currently six farms are under contract for the purchase of development rights, of which three are at the closing stage, one at survey stage, and two pending State Properties Review Board approval. One farm is at the offer stage, pending review by the town. Two farm applications were withdrawn, but may reapply for future consideration.

Our first farm closed through the pilot of CFPP is Kassman Farm in Columbia and Hebron, comprised of 53 acres. The five heirs of the Estate of Morris Kassman desired to fulfill their uncle's wish to preserve the farm. Kassman Farm contains 30 acres of prime and statewide important farmland soils with cropland in corn and hay for dairy and livestock support. A conservation plan prepared in consultation with the U.S. Department of Agriculture's Natural Resources Conservation Service (USDA-NRCS) shall

guide agricultural practices. The farm is adjacent to two preserved farms known as 113-acre Szegda Farm and the 43-acre Robinson Farm, preserved by the State of Connecticut through its Farmland Preservation Program in 2013 and 1987, respectively. This block of preserved open land is the picturesque landscape one sees to the north and south of Connecticut Route 66 at the town border of Columbia and Hebron. Both Kassman Farm and Szegda Farm were preserved through a partnership of the State of Connecticut's Department of Agriculture, Town of Columbia, and Connecticut Farmland Trust, Inc. of Hartford. Joshua's Tract Conservation & Historic Trust of Mansfield made a financial contribution to the town's share.



"Facing east at northern hayfield, Kassman Farm, Columbia & Hebron." Photo: Courtesy of William Ryan of Flanagan Associates

If funding is left over from the pilot, or new funding is designated, DoAg would be able to preserve additional small farms through CFPP. The Commissioner of

Agriculture encourages additional CFPP applications and will base funding decisions on the quality of applications received, success of the pilot program, and funding availability. DoAg is working with the Farmland Preservation Advisory Board to encourage greater participation by municipalities with small

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community farms, continued from page 11

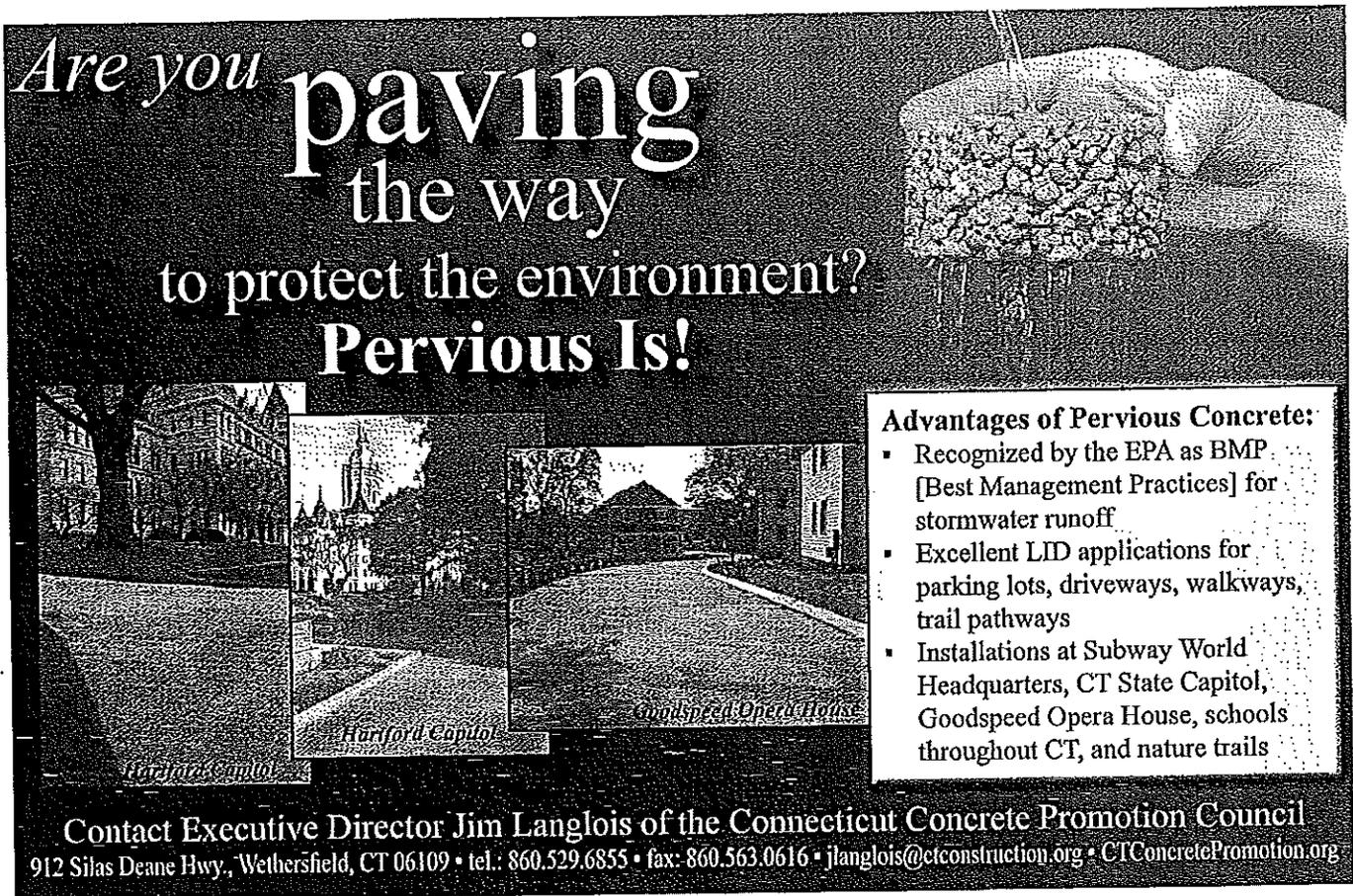
farms in urban areas. Such farms sell directly to the consumer, typically through Community Supported Agriculture operations or an on-site farm market. Also communities with a strong land trust, whose mission is to preserve agricultural lands, would be encouraged to participate and augment town participation.

Currently there are 26 towns representing all eight counties in Connecticut that have completed eligibility requirements for the CFPP. Additional towns are in progress and encouraged to do the same. The basic eligibility requirements are designed to increase local capacity to participate in agricultural lands preservation both functionally and efficiently. For additional guidance, please see the *Planning For Agriculture: A Guide for Connecticut Municipalities*, a publication of American Farmland Trust and Connecticut Conference of Municipalities. Towns may submit documentation of the following basic town eligibility requirements listed below to establish eligibility for CFPP:

1. Recognize farmland preservation in the town plan of conservation & development. (This may be an interim town plan or amendment).

2. Establish an agricultural commission. (This may be combined with a conservation commission or, less optimally, a sub-committee of an existing commission).
3. Establish a funding mechanism for agricultural lands preservation. (At least \$1 must exist in the account, and this account may be combined with open space preservation, if desired).
4. Inventory farmland in town. (This may be a Public Act 490 list, combined with any other farms of interest).
5. Determine criteria for prioritizing the farms in town. (Town may consider various factors which at a minimum would consider extent of prime, statewide important, and locally important farmland soils).
6. Apply to the USDA-NRCS for farmland soils of local importance designation.
7. Enter a cooperative letter of joint partnership for the preservation of agricultural lands between the State and Town. (This agreement

community farms, continued on page 13



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does not obligate a town to preserve any particular farm but signifies its readiness to participate in joint projects with the State).

Once a town has completed its eligibility requirements, the town may work with willing local farmers to submit one or more CFPP applications for specific farms in town. Applications would be evaluated by DoAg staff, and if qualified and funding permits, entered into the process for purchase of development rights. The process is comparable to joint state-town projects of the Farmland Preservation Program.

The number of towns capable of working on joint state-town projects to preserve development rights has more than doubled since the announcement of the pilot of CFPP in December 2011 by Commissioner Steven Reviczky. The 26 towns with state-town cooperative agreements in place for joint partnership include:

Litchfield County	New Hartford
	New Milford
Fairfield County	Shelton
New Haven County	Bethany
	Southbury
Middlesex County	Cromwell
	East Haddam
Hartford County	Canton
	East Windsor
	Granby
	Rocky Hill
	Suffield
Tolland County	Columbia
	Coventry
	Ellington
	Mansfield
Windham County	Ashford
	Brooklyn
	Canterbury
	Eastford
	Hampton
	Pomfret
	Woodstock
New London County	Colchester
	Lebanon
	Sprague

In addition, multiple towns have requested locally important farmland soils status and are in the process of becoming eligible. Some are working together through their regional council of governments to apply all at once. A useful tool for planning purposes, as well as eligibility for state and federal programs, towns may request of the Office of Policy and Management to have all farmland soils be depicted in the Locational Guide Map of the *Conservation & Development Policies: The Plan for Connecticut 2013-2018*.

A broad coalition of stakeholders, including Working Lands Alliance, Connecticut Farmland Trust, Inc., and the Connecticut Farm Bureau Association, recognized Connecticut's diverse and small farm operations and the critical role they play in local food systems. Connecticut agriculture depends on the viability and sustainability of its farm businesses and prime and important farmland soils resource base. Preserving farms, and investing in these farms, helps to protect the State's agricultural heritage and support Connecticut agriculture's future adaptation to a changing climate – a strategy that will deepen the strength, diversity and resilience of Connecticut agriculture.

CFPP Applications may be mailed to:

CT Department of Agriculture
 Community Farms Preservation Program
 165 Capitol Ave, Rm G-8
 Hartford, CT 06106

Questions regarding the CFPP may be directed to Katherine Winslow, Property Agent, at katherine.winslow@ct.gov or Cameron Weimar, Director of Farmland Preservation Program, at cam.weimar@ct.gov, by regular mail at the address above, or by phone at 860-713-2511.



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permitting, continued from page 1

reasonable alternative locations and methods exist, and the positive and negative effects which the proposed structure or work will have on the public and private uses to which the area is suited.”⁶ For this reason, the Commission may grant a permit the Army Corps denies, and vice versa.

The burden is on the applicant to obtain all necessary permits; the burden is not on the Commission to monitor the decisions made by the federal agency.

The Army Corps administers its Programmatic General Permit [“PGP”] through CT DEEP. Most applications that are before local wetlands agencies will qualify for a Category 1 PGP.

- Category 1: less than 5,000 sq. ft. of fill, less than 200 linear feet of bank stabilization, or other standards. Requires a state CT DEEP permit, does not require an Army Corps permit.⁷

- Category 2: between 5,000 sq. ft. and 1 acre of fill, between 200 and 500 linear feet of bank stabilization or other standards. Requires a state CT DEEP permit and an Army Corps permit.⁸

The Connecticut General Permit general conditions state on the very first page:

“1. Other Permits. Authorization under this General Permit does not obviate the need to obtain other federal, state, or local authorizations required by law.”⁹

FEMA

There is very little case law on the role of FEMA for local wetlands agencies. A 2008 Superior Court case held that an Inland Wetlands Commission could require the applicant to provide a more detailed topographical map than required under FEMA—it was up to the discretion of the Commission.¹⁰

If the Army Corps or FEMA are involved, the Commission should continue to process the application under their local regulations and Connecticut Statutes. It is inaccurate to say you “have to” or “can’t” approve a permit because of Army Corps determinations. You do not “have to” approve a project the Army Corps has permitted. You “can” approve a project, even if the Army Corps does not. Again, it falls to the applicant to obtain the permits, not to the Commission to make a determination based on a federal agency’s decision.

State Permits: Areas of Exclusive State Jurisdiction

Unlike the concurrent jurisdiction shared by local wetlands agencies and the U.S. Army Corps of Engineers, there are areas of exclusive Connecticut state jurisdiction:

- tidal wetlands,¹¹
- the determination of stream channel encroachment lines that had been established by DEEP,¹²
- the inspection, construction, and licensing of dams¹³
- Shoreline flood and erosion control structures including breakwaters, bulkheads, groins, jetties, revetments, riprap, seawalls, and the placement of concrete rocks or other significant barriers to the flow of flood waters...¹⁴

Tidal wetlands are defined as areas which border on or lie beneath tidal waters, including areas now or formerly connected to tidal waters, and whose surface is at or below an elevation of 1 foot above local extreme high water and upon which may grow vegetation listed in section 22a-29(2).¹⁵ As of 2014, statutes define a “coastal jurisdiction line” which is the location of the topographical elevation of the highest predicted tide from 1983 to 2001, as defined by the National Oceanic and Atmospheric Administration, and is now defined in terms of feet of elevation.¹⁶

Note: This document and all reference documents are available at <https://www.dropbox.com/sh/yhuob9tmyh82lkp/AAB97xsp6G0nCd-LZtmyRE4va?dl=0>

Mark K. Branse practices law with Branse & Willis, LLC in Glastonbury, www.bransewillis.com

End Notes

¹33 U.S.C. 403

²33 U.S.C. 1344

³Rapanos v. United States, 547 U.S. 715, 717 (2006).

⁴Solid Waste Agency v. United States Army Corps of Engineers, 531 U.S. 159, 174 (2001).

⁵DEPARTMENT OF THE ARMY GENERAL PERMIT STATE OF CONNECTICUT & LANDS LOCATED WITHIN THE BOUNDARIES OF AN INDIAN RESERVATION, 1 (July 15, 2011).

⁶FULLER, ROBERT, LAND USE LAW AND PRACTICE, Section 13.4, State, Federal and Other Agencies Regulating Land Use (9 CTPRAC § 13:4, 2013).

⁷DEPARTMENT OF THE ARMY GENERAL PERMIT STATE OF CONNECTICUT & LANDS LOCATED WITHIN THE BOUNDARIES OF AN INDIAN RESERVATION, Appendix 1, p. 4 (July 15, 2011).

⁸Id. at Appendix 1, p. 7-8.

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⁹Id. at 1.

¹⁰ Oven Rock Partners v. Inland Wetland Comm'n of Bethel, No. HHBCV064011322S, 2008 WL 2068205 (Conn.Super Apr. 28, 2008).

¹¹CGS § 22a-29.

¹²CGS §§ 22a-340 and 22a-342 to 22a-348, however Public Act 13-205 altered this section. Before 2013, the language was that DEEP shall establish stream channel encroachment lines, now the language is that DEEP may establish the lines. Section 22a-344(b) revoked any lines established on or before October 1, 2013. Practically, DEEP has discontinued this function.

¹³CGS §§ 22a-401 to 22a-411.

¹⁴CGS § 22a-109. This is part of the Coastal Site Plan review that is the jurisdiction of DEEP and the municipal zoning commissions.

¹⁵CGS § 22a-29, see also FULLER, ROBERT, LAND USE LAW AND PRACTICE, Section 13.5, Tidal Wetlands; Departments of Environmental Protection (9 CTPRAC § 13:5, 2013).

¹⁶CGS § 22a-359(c). But see Sams v. Department of Environmental Protection, 308 Conn. 359, 378 (2013) for the old definition "[t]he term high tide line as used in § 22a-359(c) refers to the highest point at which the water's surface intersects with the land over the course of the entire yearly tidal cycle, excluding only storm surges caused by a hurricane or other intense storm." ❄

copy of the renewal form and additional information can still be found on our website: www.caciwc.org. Would you or your company like to provide additional support to CACIWC? The website also provides a description of additional individual and business membership categories. Please consider making an additional contribution to support our planned CACIWC education and outreach efforts!

4. The officers and members the Board of Directors have begun the second year of their two-year term following the elections that took place at our 2013 annual meeting. Although we were able to fill several vacancies during 2014, the New London County director and a number of other CACIWC board vacancies remain unfilled (please see the list in this issue of The Habitat and on www.caciwc.org). Please submit your name to us at board@caciwc.org if you are interested in serving as the New London County representative, one of the vacant alternate county representatives, or as one of the alternate at large representative positions.

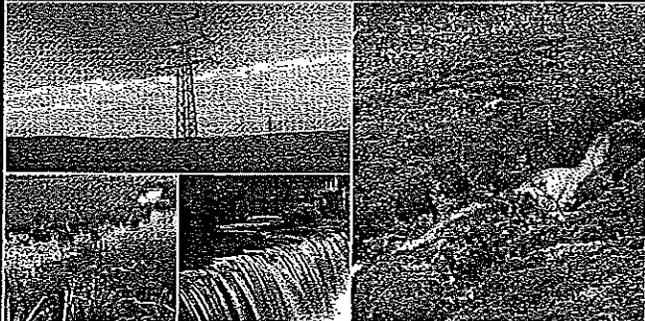
5. Is your schedule too filled to join the board but you would like to contribute to CACIWC initiatives? We are organizing several 2015 CACIWC advisory committees to help us plan our education and outreach efforts, select new goals and objectives for our updated strategic plan, or participate in the review of Connecticut environmental legislative initiatives being conducted in cooperation with other statewide environmental and land use organizations. Let us know of your interest area by emailing us at board@caciwc.org.

We look forward to a productive year in support of all of you, the dedicated members and staff of Connecticut's conservation and inland wetlands commissions. Please do not hesitate to contact us at board@caciwc.org if you have questions or comments on any of the above items or have suggestions for your board of directors.

We thank our members for all of your efforts and wish you a safe, healthy, and happy new year!

~ Alan J. Siniscalchi, President ❄

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