

**TOWN OF HADDAM
INLAND WETLANDS COMMISSION
TOWN HALL
21 FIELD PARK DRIVE, HADDAM, CT
TUESDAY, 16 JANUARY 2018
PUBLIC MEETING
UNAPPROVED MINUTES
*Subject to Approval by the Commission***

ATTENDANCE

X	Paul Best, Secretary
X	Curt Chadwick
X	Jeremy DeCarli
A	Dan Iwanicki, Vice Chairman
X	Joe Stephens
X	Mark Stephens, Chairman
X	Tom Worthley (7:13 p.m.)
A	Dave Costa, Alternate
X	Gail Reynolds, Alternate - Seated
X	Jim Puska, Wetlands Enforcement Officer
X	Liz West Glidden, Town Planner
X	Jeff Jacobson, Nathan L. Jacobson and Associates, Town Engineer
X	Bunny Hall Batzner, Recording Clerk

1. Call to Order & Attendance/Seating of Alternates

Mr. M. Stephens, chairman, called the meeting to order at 7:00 p.m. and all regular and alternate members were seated.

2. Additions/Corrections to the Agenda

None.

3. Public Comment

None.

4. Old Business

None.

5. New Business

Discussion: Agent Approval of Inland Wetlands Permit for Activity in the Upland Review Area for the Filling of the Area Behind a Two Car Garage for the Reason of Backfilling Frost Protection Piers, Making Rear of Garage Accessible, and Obtaining More Usable Back Yard Area at 81 Arkay Drive, Haddam, CT and Shown on Assessor's Map #36, Assessor's Lot #7-12

Paul Geraghty, Esq., representing the Haddam Land Trust, and William Cowan, President, Haddam Land Trust, were present.

Mr. M. Stephens reported he had sent out a packet (Chronology of Events from 10/04/2017-12/07/2017; memo and photos from Jeff Jacobson, Town Engineer, dated 11/03/2017; GIS map of site, dated

11/03/2017; and a letter from Bill Cowan, President, Haddam Land Trust to Jim Puska, Zoning and Wetlands Enforcement Officer, dated 11/13/2017) to all Commissioners. Mr. M. Stephens also provided the Commission with a copy of an email from Mr. Cowan, dated 10/31/2017. Mr. M. Stephens apologized for not bringing this matter to a meeting in December.

Mr. M. Stephens reported the Jacobson memo, dated 11/03/2017, was a report made for the owner. Mr. Jacobson stated the report was made for Jim Puska, Zoning and Wetlands Enforcement Officer. Mrs. Glidden reported when she spoke to Mr. Puska and Mr. Cowan there was some miscommunication and unhappiness; and as a courtesy, she asked the town engineer to go out and do a site walk. Mrs. Glidden stated the reason for the request was due to the town trying to partner with the Land Trust and to be supportive in their efforts. Mrs. Glidden stated if the Land Trust had not been involved, the town probably would not have asked the engineer to look at the site. Mr. Jacobson stated it is not unusual for him to be called in by other towns to assist in violations.

Mrs. Reynolds reported she is a Land Trust Board member, and although not involved primarily, as Mr. Cowan did all the work, she felt the Land Trust's property rights were being diminished in favor of a private land owner. Mrs. Reynolds stated she would have liked to have seen at least a small review meeting sooner so this matter didn't fester. Mr. M. Stephens again apologized.

Mr. Chadwick asked if there will be a conflict of interest especially with some Commissioners being Land Trust members. Mr. M. Stephens stated not tonight as the meeting is merely for discussion.

Mr. M. Stephens stated as soon as he reviewed Mr. Jacobson's report, he spoke to Mr. Puska informing him the property owners of 81 Arkay Drive must respect the property line of the Land Trust. Mr. Puska stated the 81 Arkay Drive property owner is 100 percent in compliance. Mr. M. Stephens noted the property owner may need to use some of the Land Trust property to finish the cleanup, remove the silt fence, etc.

Mr. Geraghty submitted a letter, dated 01/16/2018, and a copy of Connecticut General Statute (CGS) 22a-42a to the chairman and stated the Land Trust is concerned about the process. Mr. Geraghty stated the letter is being filed as an appeal under CG 22A-42a (c) (2) (applicant needs to publish notice in a paper of general circulation) and as there was no notice published, any permit is not valid at this point in time. Mr. Geraghty admitted that some of the content in the letter may be moot as some of the work has been done; however, he wanted to preserve the record and talk about the process. Mr. Geraghty stated there was an illegal filling of conservation property which is significant given the stated purpose of the Land Trust and the purpose of conservation property; and there is the feeling of disregard from the neighbors as to the Land Trust's property as well as being left out of the process and there should have been a public hearing. Mr. Geraghty noted that Mr. Jacobson's report suggested there were certain ways to go about doing this. Mr. Geraghty stated he's unclear what work remains to be done, noting there is snow on the ground making it difficult to determine how much work had been done and whether there are any problems which remain on the property; however, Mr. Cowan had been on site last week.

Mr. Chadwick asked if the property owner of 81 Arkay Drive was present. Mr. M. Stephens stated no.

Mr. Puska reported the property owner was contacted after Mr. Jacobson had filed his report to go over what was required to stabilize the slope and to remove any other fill that may have gone into the Land Trust's property. Mr. Puska stated the work was done to raise the area behind the garage (10 foot pilings to the back of the garage that were eroding and needed to be filled). Prior to the filling of the pilings, a new septic system was installed and after the installation, the homeowner discussed with the contractor if the area could be filled behind the garage to stabilize the garage and to allow for additional room in the backyard. The property owner and contractor had a map and according to what was on their map, they thought they were inbounds with the property owner and not over the Land Trust property line. When notified of activity on site, Mr. Puska stated he called the property owner to discuss the matter and using the survey map on file in the Land Use Dept. it was determined the property lines did not match with the homeowner's map. Mr. Puska explained options to the property owner – get back line surveyed, which he did, and at that point it was discovered how much fill was on the Land Trust's property. After the

survey was done and discussion of different measures to correct the matter, the fill was all removed from the Land Trust's property and the slope was stabilized (backfilled, compacted in sections, grass seed, hay, and silt fence installed).

Mrs. Reynolds stated she disagreed with the engineer's report in regard to the fill be good. Mrs. Reynolds stated when the property owner attended a Land Trust meeting, he had reported the fill came from the Aetna site (all sand stone, erodible). Mrs. Reynolds voiced concern, especially with water, in light of the fact the property owner had informed the Land Trust he had a lot of erosion down the slope and a part of the work was to stabilize the slope. Mrs. Reynolds stated if the work is not done correctly, it will only wash down.

Mr. Puska stated he understood Mrs. Reynolds concern; and after the initial fill was done and before it was removed, there was a heavy rainfall and nothing moved. Mr. Puska stated the property owner has also indicated in the spring the backyard will be regraded and hydroseeded; and if there is any kind of erosion or anything washing onto the Land Trust property, he will get it taken care of.

Mr. Geraghty stated the issue is that an operation was taking place initially without consent for depositing material and there's only been conversation between the ZEO and the property owner. Mr. Geraghty also stated it's still unclear whether or not there are remaining issues on the Land Trust's property, because if the material is being scraped out from above, the contractor is scarifying the land which is an issue as the Land Trust's property is a wetland. Mr. Puska stated it hasn't been determined if the fill was in a designated wetland soil as the maps on file show it being in the upland review area and that's why it wasn't brought to the Commission in the first place. Mr. Puska also stated once he became aware of the work that was done, he notified the property owner that a permit was required. Mr. Puska stated there were no visible signs of the fill being in wetlands when he and Mr. Jacobson did the field inspection.

Mr. M. Stephens stated it's somewhat moot because an application is needed. Mr. M. Stephens also stated a letter did not go out because the property owner admitted to the error and asked how to correct the matter. Mr. Geraghty stated any property owner should have been notified; however, it's more paramount when dealing with conservation properties.

Mr. Best asked if this is a 20 foot escarpment. Mr. Cowan showed the Commission pictures of the area showing the original issue. On one of the photos, there is a red line and Mr. Cowan explained that it indicates a best guess as to where the property line is located as the fill is coming down. Mr. Best asked if it was 20 feet from bottom to top. Mr. Cowan stated it's approximately 20 feet. Using a property map with topographic lines (two foot), Mr. Cowan pointed out there is a substantial grade change and from the back corner of the house down to the swamp is approximately 14 feet in 30 feet (substantial grade).

Mr. Cowan reported a considerable amount of the stone has been cleaned up, without consent, and they still have work to do. Mr. Cowan stated the grade line, the toe of the slope, is still not beyond the Land Trust's property line. Mr. Cowan admitted that it's not very much, but he had to step out four to five feet from the pin on one side to see the property pin on the other side (200 feet of slope that's approximately 20 feet high and the fill is sitting on the grade). Mr. Cowan stated the Land Trust is worried about the material staying there because it's on the property line and if it should slide, it will slide onto Land Trust property creating a mess. Mr. Cowan stated the Land Trust feels very strongly that the owner, whoever it may be at the time of the slide, will not take responsibility and it's not acceptable. Mr. M. Stephens stated shouldn't the property owner be responsible. Mr. Geraghty stated the argument would be the property owner should be responsible as they're required to stabilize their slope; however, the Land Trust, as a non-profit, doesn't want to sue over an issue such as this. Mr. Cowan stated the next owner could potential say this is where they thought the land was. Mr. Cowan stated there is no engineering, the material was just dumped, material of unknown quantity or grading quantity, or engineering quality. Mr. Geraghty stated according to the Jacobson report, there was no known stabilization as they had recommended. Mr. Cowan stated the material has been pulled up and there is a more severe face to the slope. Using one of the photos, Mr. Cowan pointed to a tree holding some of the grade back and stated it is not a good situation and clearly the work is not finished. Mr. Cowan stated the concern is surface runoff – the whole side will slide off and the Land Trust would like the project engineered.

Mr. Geraghty stated much of the slope has trees in it which are now buried and will ultimately die and destabilize the slope as they rot off. Mr. Cowan explained the time frame of the pictures – the ones without snow taken months ago and the ones with snow taken last week. Mr. Cowan stated there was a lot of miscellaneous stone rolled out onto the Land Trust's property due to the manner in which it was dumped onto the property and it's unclear what is underneath the stone.

Mr. Geraghty noted the Jacobson report indicates there are some trees with cracks on the top and due to there being no analysis of the material, compacting of the slope, etc., there is an ongoing concern that there may be something on his client's property.

Cindy Sullivan, Haddam Land Trust Board of Directors, reported she was on the property yesterday (Monday, 01/15/2018) and the snow is gone and it appeared as if there were chunks of fill from the bank that had fallen and collapsed the silt fence since the rain. Mr. Worthley stated silt fence by itself will not hold this material back.

Mr. Worthley asked under what circumstances the Commission would require a soil test (an auger examination) to determine modeling for whether there is a wetland soil at any particular location. Mr. Worthley asked if there is anything in general. Discussion followed in regard to a request could have been made if an application had been submitted; and whether it makes any difference or not as material is going onto someone else's property. Mr. Worthley stated he feels there is a distinct difference between an upland review area and actual wetlands soils. Mr. Best stated it doesn't make any difference whether it's upland review or wetlands review as the fill has been placed on someone else's property and it doesn't belong there. Mr. Worthley agreed and stated his point is, if fill is placed on wetland soil, it would be a worse action.

Mrs. Glidden stated if there weren't wetlands involved, this would be a trespass issue because the concern that the slope may slide onto Land Trust property is a civil issue. In regard to the wetland issue, the applicant has come in after the fact and applied for a permit to disturb wetlands and that's what's before the Commission. Mr. M. Stephens stated he's concerned about the civil engineering issue as it seems to be the strongest worry.

Mr. Geraghty asked if a certain amount of fill doesn't require a permit as he didn't recall the town having any particular regulations on backfilling, but it requires a permit from DEEP as it's a solid material. Mr. Geraghty stated if someone applies for the permit, they get the review from DEEP and that's the issue that's missing. Mr. Geraghty also stated there is a civil trespass, but there's also a process when that much fill is being deposited (triggers the Statute that gets the review process going to make sure everyone is involved in the process).

Mr. Jacobson stated he's not aware of any DEEP requirement; however, this would be classified as a regulated activity which requires a permit from the Wetlands Commission; and if the applicant exceeds a certain amount of fill, it would also fall under the Earth Excavation and Filling portion of the Zoning Regulations. Mrs. Glidden stated its just removal. Mr. Jacobson clarified by stating he meant the original placement of fill; and that he's not aware of what the volume of fill material was. Mr. Best stated the information presented indicates 40 truckloads. Mr. Cowan and Mr. Geraghty stated that was a neighbor's observation; however, given what is on the site, it's probably not unreasonable. Mr. M. Stephens stated there must have been material brought in for the septic system. Mrs. Glidden stated yes, but she didn't see anything within the Zoning Regulations or the Wetlands Regulations that would regulate the deposit of that much fill (regulations talk about the removal) and that may be a problem that should be addressed at a later date.

Mrs. Reynolds stated the Land Trust pursued the wetlands angle as it's assumed there are wetlands soils due to the red maple swamp which is a wetland. Mrs. Reynolds also stated the Land Trust would have been happy if an application had been filed, a hearing held, and a permit with restrictions issued. Mr. M. Stephens agreed. Mr. DeCarli stated he thinks everyone needs to take a step back and think what would the Commission want had the work not already been done. Mr. DeCarli stated the homeowner should

probably be told to work out a remediation plan with the Land Trust because they've encroached on their property. Mr. DeCarli also stated he would look at the balance of the matter in terms of where the work is in relation to the wetlands and how to proceed forward.

Mr. M. Stephens asked how the Commission should move forward (ask for an engineering report, have the material removed, engineered, and reworked). Mr. Jacobson stated typically it would be the responsibility of the violator to develop a remediation plan and do whatever that takes (the Commission could instruct him to have a soil scientist to delineate the wetlands as it appears that no one really knows where the wetlands are located; develop a plan to stabilize the slope, and removing whatever needs to be removed from Land Trust property. Mr. Chadwick asked how does the Commission make this happen. Mr. Best asked how do you stabilize 20 feet of material unless concrete pilings are installed.

Mr. DeCarli asked Mr. Puska if he had issued an upland agent approval. Mr. Puska stated yes, he had. Mr. DeCarli clarified that it had not been posted in the newspaper. Mr. Puska stated no, it had not been posted; and noted that everything happened after the fact. Mr. Puska again apologized for not letting the property owner know that he had to post the decision and due to the lack of the posting not taking place, another permit was issued and that one was posted in the papers. Mr. Geraghty asked Mr. Puska when was the decision posted. Mr. Puska stated Friday, 01/12/2018, in The Middletown Press. Mr. Geraghty stated he will provide a letter of appeal to the Commission tomorrow, Wednesday, 01/17/2018, and this will be an opportunity for the Commission to call a hearing.

Mr. DeCarli asked Mr. Puska if the scope of work submitted with the application was only to remediate. Mr. Puska stated it was to remove material on the Land Trust property, stabilize the fill as discussed when he, Mr. Jacobson, and the property owner met, and as far as he's concerned that was done. Mr. Puska stated the embankment looks fine to him, but he is trying to get as much compliance as possible from everyone. Mr. Puska asked where is the line drawn noting a number of variables such as what will happen in five years, how long will the property owner live there and agree to take care of the matter, make repeated inspections.

Mr. Geraghty stated from the Land Trust's perspective, the line is drawn by the Commission after a hearing when the Land Trust has an opportunity to have input; otherwise, the Land Trust is in the dark and that's what fosters problems. Mr. Puska stated there was no intent to bypass anything in the beginning from this. Mr. Geraghty stated he doesn't think there was any ill intent, which is not being suggested, only that the process failed and it needs to be corrected. Mr. Puska stated he works for the Commission and based on the information he had and what had happened, he followed protocol the way he would normally do things. Mr. Geraghty stated the Land Trust is merely asking the Commission to deal with the matter at hand and the fact that the Land Trust can take an appeal will get this back before the Commission as well as the applicant to rectify the matter.

Mr. Worthley stated there's no fault in following procedures or protocols that have been used in the past; however, with any particular situation there is always more than one answer or type of action. Mr. Worthley stated in his opinion, the right thing to do would have been to issue a Cease and Desist and bring it directly to the Commission right away, especially where there's the possibility of a neighbor being impacted. Mr. Worthley stated as a commissioner, he felt he would have liked to have had some input on the matter. Mr. M. Stephens agreed.

Susan Bement, Haddam Land Trust Board member and realtor, stated she believes there's a regulation that if any work is being done within 50 feet (Mr. M. Stephens noted 100 feet) of a wetland a permit is required. Ms. Bement stated there may be wetlands under the fill, but there certainly are wetlands the minute you step off of the fill. Ms. Bement also stated the fill is an eyesore. Mr. Geraghty stated he would presume there would be no objection to having a soil scientist go on the property to make those determinations. Mr. Worthley stated a hearing will allow other neighbors to speak.

Peter Smith, Haddam Land Trust Board member, stated to give a perspective on the steepness of the slope he doesn't believe you can walk up the slope. Mr. M. Stephens noted that when a slope is a certain percent another 50 feet is added to the regulated activity. Mr. M. Stephens also stated it's clear the entire

activity is a regulated activity, but it's unclear as to whether it's in a wetland. Mr. Worthley stated if that's the case, when topsoil is brought in the homeowner will need to get a permit for that. Mr. M. Stephens stated the homeowner will need a new permit or drastically modify the existing one.

Mrs. Glidden asked what the Commission's feelings are about having an agent administratively sign off on permits; and if there are parameters when Mr. Puska should bring the application before the Commission and when he does not have to. Mr. M. Stephens stated no; however, Mr. Puska usually lets the Commission know ahead of time when he has an application before him that is close to the wetlands, but this didn't happen. Mr. M. Stephens also stated he wishes the Commission had been involved in the matter sooner and Mr. Puska is aware of this. Mrs. Glidden asked how this would normally take place – would the Commission meet to discuss the application. Mr. M. Stephens and Mr. Chadwick both stated yes. Mrs. Reynolds asked if abutting landowners are supposed to be notified. Mr. M. Stephens stated for lumbering, but not for normal work. Mr. Geraghty stated the only notice to the neighbors for a public hearing is publication of the Legal Notice.

Mr. Puska stated he didn't call right away in regard to matter as he went out to the site himself and then he called Mr. Jacobson to look at the site and meet with the property owner. At that time he was looking at trying to get the slope stabilized and work within the upland review area. Mr. Puska stated normally if he has concerns, he would address them with the Commission; however, in this matter, it was his decision to look at it as work in the upland review area within 100 feet of a wetland.

Mr. Jacobson stated what Mr. Cowan presented was what was in the report. Mr. Jacobson asked Mrs. Reynolds what her exception was within his report. Mrs. Reynolds stated she feels the material that was put down is erodible. Mr. Jacobson stated that was indicated in the report as there was already erosion onsite. Mrs. Reynolds stated she thought the report had stated otherwise.

Mr. Jacobson stated in fairness to Mr. Puska, an individual created a violation, it was brought to his attention and he made a good faith effort to get the violation corrected. Mr. Jacobson also stated it's obvious the process wasn't followed as spelled out in the regulations, but there was no ill intent intended as Mr. Puska tried to take appropriate action by calling him for professional input and he dealt with the property owner who was willing to cooperate. Mr. Jacobson stated although he was not making excuses for not following the process, the Land Trust was aware of the matter, as Mr. Cowan wrote a letter, and Mr. Puska tried to make a good faith effort to resolve the situation. As a point of clarification, Mr. Cowan stated the Land Trust was made aware well after the fact and they were not informed in a timely fashion. Mr. Geraghty stated the original permit was granted 11/01/2018 and the appeal process would have expired but for the fact that the applicant failed to publish the decision which stated the clock over again.

Mr. Best asked if there was a term angle of subsidence which would tell how high vertically a fill could be made before it starts to slide. Mr. Worthley stated it's call angle of repose. Mr. Jacobson stated it depends on the type of material being used and the general rule of thumb is to try for two horizontal to one vertical slope. Mr. Best asked if the existing slope is that. Mr. Jacobson stated he didn't measure while onsite. Mr. Cowan stated the slope has been modified since Mr. Jacobson was onsite.

Mr. Chadwick asked Mr. Jacobson if the property owner has addressed the recommendations within his report. Mr. Jacobson stated he has not been back onsite. Mr. Chadwick asked if anyone knew if the recommendations had been addressed. Mr. Puska stated everything has been done.

Mr. J. Stephens asked Mr. M. Stephens if he would highlight what the Commission will be doing going forward. Mr. M. Stephens stated once the appeal is filed, a hearing will be scheduled (Tuesday, 02/20/2018), testimony will be taken, and a decision will be made.

Mr. M. Stephens stated although he's gotten better over the years in terms of obtaining permits for his clients, Vinnie Madore is one of the last contractors to obtain permits for his clients. Mr. Puska stated Mr. Madore has been more vigilant about contacting him.

Mr. J. Stephens asked if the town at any time had leveled a fine against anyone for not obtaining a permit in a timely manner. Mr. M. Stephens stated the Commission has tried at other points, but it's difficult. Mr. Geraghty agreed. Mr. M. Stephens stated the only one required to pay a fine was WFS and that was through a court order. Mr. Worthley suggested some discussion take place with P&Z in regard to triggers for volumes of fill. Mrs. Glidden will pass the information along to P&Z.

6. Wetlands Enforcement Officer's Report

81 Arkay Drive - Agent Approval – Previously discussed.

Tony Salomone's Property, 310 Saybrook Road – Agent Approval – Mr. Puska reported he issued a permit to remove the existing septic system and to install a 2,000 gallon holding tank. The plan was brought in by Roger Nemergut, P.E., and they discussed what will be done and how it will be done. As there is no work within the wetlands, administrative approval was granted.

Beaver Meadow Road – Tree Cutting – Mr. M. Stephens asked for an update on this matter (previously discussed at the 6/12/2017 meeting). Mr. Puska stated the property owner only cut some trees, there was no excavating or removal of tree stumps, and it is not within the wetlands.

7. Approval/Correction of the Minutes

MOTION: Paul Best moved to approve the 12 June 2017 minutes as submitted. Gail Reynolds second. Motion carried with Mr. DeCarli abstaining.

7a. Miscellaneous

Mr. J. Stephens asked if the Commission will be contemplating revising the Wetlands Regulations in light of the 81 Arkay Drive matter. A brief discussion followed in regard to the addition of wording concerning volume of fill which is a zoning matter (P&Z).

8. Adjournment

MOTION: Joe Stephens moved to adjourn. Gail Reynolds second. Motion carried unanimously.

The meeting was adjourned at 8:07 p.m.

Respectfully Submitted,

Bunny Hall Batzner

Bunny Hall Batzner
Recording Clerk

Due to Presidents' Day, the next meeting is scheduled for Tuesday, 20 February 2018.