

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

ATTENDANCE

X	Paul Best, Secretary
X	Curt Chadwick
A	Jeremy DeCarli
A	Dan Iwanicki, Vice Chairman
X	Joe Stephens
X	Mark Stephens, Chairman
X	Tom Worthley (7:08 p.m.)
A	Dave Costa, Alternate
X	Gail Reynolds, Alternate
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 7:02 p.m. and all regular members were seated.

2. Additions/Corrections to the Agenda

None.

3. Public Comment

None.

4. Old Business

None.

5. New Business

None.

6. Public Hearing

The Commission will Hear an Appeal of a Wetlands Permit #IW06394 for Activity in the Upland Review Area on Property Located 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, and Michael and Jamie Sciascia, applicant/owners of 81 Arkay Drive, were present.

Mr. Geraghty stated this is an appeal of the administrative approval of the Inland Wetlands permit as the Land Trust has a number of issues with the approval of the permit. Mr. Geraghty also stated there are no plans in place other than the Nathan L. Jacobson report that makes some recommendations; but, it should have been a decision of the Commission to monitor the approval.

Mr. Geraghty submitted photos (taken 02/20/2018) showing the material that has been placed over top of the fill that is already washing out and taking out the silt fencing. Mr. Geraghty noted the silt fencing is basically the boundary line of the Land Trust's property. Mr. Geraghty stated the Land Trust is looking for the Commission to require the applicant to submit a remediation plan that will be reviewed by the town engineer and then implemented with the Commission's oversight. Mr. Geraghty also stated he's very concerned about the impact from the construction debris as a substantial portion of the Land Trust property is wetlands.

Vincent Madore, contractor for the Sciascias, asked who Mr. Geraghty was representing. Mr. Geraghty stated the Haddam Land Trust. Mr. Madore asked Mr. Geraghty if he had any knowledge or degree in materials. Mr. Geraghty stated no, but he does have experience with it. Mr. Madore stated Mr. Geraghty just called the material "construction debris". Mr. Geraghty stated it was his understanding that a lot of the material had come from the Aetna site in Middletown. Mr. Madore asked Mr. Geraghty if he was aware that a material test report had been submitted to the town and it is not debris. Mr. M. Stephens asked Mr. Puska if the report had been received with Mr. Puska responding yes. Mr. Madore stated the material is suitable to do what is being done.

Mr. Sciascia, property owner, asked what is being appealed – the right to get a permit or what was done. Mr. M. Stephens stated the appeal is for the approval of the permit. Mr. Sciascia stated the photos have nothing to do with the appeal as they have nothing to do with a permit. Mr. Sciascia stated the photos are a part of something that was done and not whether or not he's allowed to have a permit.

Mr. M. Stephens stated something like this has never happened before where a person has mistakenly deposited material onto someone else's property and an appeal has come through after the fact and after a permit was approved. Mr. M. Stephens also stated the approval is not a done deal and that there's a time frame in which an appeal can be placed; that appeal was made. Mr. M. Stephens stated the Commission needs to hear what has been done, what needs to be done, and what needs to be remediated and then the Commission will render a decision. Mr. Sciascia stated that would be a civil matter. Mr. Madore stated this is going to Superior Court. Mr. M. Stephens asked Mr. Sciascia if he had a lawyer present with Mr. Sciascia responding no.

Mr. Geraghty explained what the statute provides for in regard to the appeal. Mr. Geraghty stated the position being taken by the Land Trust is that a permit should not have been issued instead a Cease and Desist or Notice of Violation should have been issued and the Sciascias required to come before the Commission to make an application or address the Cease and Desist. Mr. Geraghty also stated at that point, the Commission would be able to take appropriate action by either upholding the Cease and Desist or having a remediation plan put into place. Mr. Geraghty stated this is not a civil action, but an administrative appeal and this is the first step before any party would go to Superior Court.

Mr. Sciascia stated Mr. Geraghty contradicted himself. Mr. Geraghty stated he would not argue with Mr. Sciascia. Mr. M. Stephens again asked the public to direct questions through the Commission.

Given the previous discussion, Mr. Cowan stated he was bewildered as to what he's to present and left with the Commission two photos of the site. Mr. Cowan stated the material was deposited on Mr. Sciascia's site right on what was thought to be his lot line but, unfortunately, at that time the lot line was not known and the material was dump over the lot line and onto the Land Trust's property in part. Mr. Cowan stated there's a lot of material, hundreds of tons that have been deposited, and not necessarily all on the Land Trust's property. Mr. Cowan also stated he characterizes the fill to be 20 feet in height and the width of the lot - approximately 200 feet. Mr. Cowan stated not all of the material is on the Land Trust

property, but a substantive portion is and the Land Trust does not want it on their property. Mr. Cowan noted there are wetlands on the property. Mr. Cowan stated the reason they are before the Commission is because the administrative action required the Land Trust to accept the fact that the material was on their property and to take legal action of some sort. Mr. Cowan also stated it is the Land Trust's view that the Commission should have reviewed this as it was a substantive action in terms of what's happening on the lot and the Land Trust feels their right to effect what would have happened (ability to request the work be engineered or it not be put on the Land Trust's lot) have been taken away. Mr. Cowan stated the Land Trust is looking for this matter to go through the Commission for review in order to have the right to say "yes, this is not acceptable to us for the following reasons"; and the Land Trust would like the Commission to possibly include engineering of the entire slope especially since the material is already there and remediation of their property as a condition of the permit or to not permit the work at all.

Mr. Geraghty stated if this matter had come to a public hearing, the Land Trust would have had input as to what would happen and that's what's being asked. Mr. Geraghty also stated if the Commission were to overturn the approval, it would effectively require a Notice of Violation and a public hearing which would require the applicant to come in with a remediation plan to address the Cease and Desist. Mr. Geraghty stated tonight's hearing is only to see whether or not the Commission will uphold the administrative approval of the wetlands officer.

Mr. Cowan stated in that view, the photos would be relative as it shows the surface is sloughing off and the material is still on Land Trust property.

Mr. Madore stated the Land Use has never been there. Mr. Madore also stated when the filling was taking place, there was a concerned person who did call Mr. Puska and Mr. Puska notified him that the boundary from the back of the house to that property line wasn't really that much. Mr. Madore stated he contacted the chairman of the Land Use who came up while filling was taking place and a tape measure was run to try and figure out the boundary as there's no A-2 survey with the Land Trust. Mr. Madore also stated the town had hired a surveyor as the wall next to the road was supposedly on town property and had to be moved two feet and there is an A-2 survey of the whole property. Mr. Madore stated when the Sciascias bought the property seven years ago the former owner told them where the boundary lines were and he took care of it the best he could. Mr. Madore stated the town approved a building permit for a house which they shouldn't have 20 years ago as the foundation and garage piers are sticking out with no frost protection. Mr. Madore stated when the chairman came up he asked for a surveyor and Mr. Puska requested filling be stopped towards the property line and they did. Mr. Madore also stated they did fill between the property line and the house and that Mr. Sciascia was unaware of his property line until the property was surveyed. Mr. Madore stated the material has been cleaned up, silt fencing installed, and wood chips placed down as well as grass seed.

Mr. M. Stephens asked if Mrs. Reynolds was going to recuse herself. Mrs. Reynolds stated she thought she only had to do that for the vote; apologized, and recused herself. Mrs. Reynolds left the meeting.

Mrs. Sciascia asked for an explanation of the process when an appeal is filed and how would be someone notified. Mr. M. Stephens stated there should be notification. Mr. Geraghty stated the aggrieved takes an appeal notifying the Commission, the Commission schedules a public hearing and notice would be given to the applicant. Mrs. Sciascia asked Mr. Geraghty if he should have notified them since he filed the appeal. Mr. Geraghty stated no, not under the statute. Mr. Sciascia asked why a letter wasn't sent from the town stating there was an appeal process. Mr. M. Stephens stated neighbors should be notified of the hearing with Mr. Sciascia stating no one was notified of the hearing.

Mr. M. Stephens recommended the matter be stopped and a proper hearing be scheduled. Mr. M. Stephens stated if going to court is the way the applicant wishes to go, but it may be less expensive by working with the applicant's engineer. Mr. M. Stephens also stated he was of the understanding that the Commission had someone who was willing to work with both the Land Trust and the Commission.

Mr. Sciascia stated Mr. Puska contacted Mr. Madore who in turn contacted him; several phone calls were placed to Mr. Cowan, who came out to the site and indicated that it wasn't big deal. Mr. Sciascia stated no further work was done in the area and about a month later a Cease and Desist was received from the Land Trust. Mr. M. Stephens stated only the Commission can issue a Cease and Desist. Mr. Sciascia continued by stating additional phone calls were made to the Land Trust and finally Mr. Cowan responded. Mr. Sciascia stated he attended a Land Trust meeting in which the matter was discussed and has done everything the Land Trust has asked for – survey, town brought in an engineer, material removed.

Mr. M. Stephens stated the matter before the Commission is a wetlands matter. Mr. Sciascia requested a copy of the photos as they contain his house and the Land Trust has been asked by an attorney not to take pictures that include their house.

Mr. Sciascia stated the reason the dirt has fallen down is because the back is not sloped properly which is something they wanted to do. Mr. Sciascia also stated that once the Cease and Desist was received, they removed the dirt and stabilized the area. Mr. M. Stephens asked how can the slope be made proper and worked out to the approval of the town.

Mr. Geraghty stated the Land Trust is willing to cooperate; however, there's a process and the Land Trust was left out of that process. Mr. Geraghty also stated there's a wetlands issue here and not just on the Land Trust's property and the best way to handle the matter is to have a public hearing where everyone can have input. Mr. Geraghty explained in response to the appeal either a Cease and Desist needs to be issued or an application for a permit needs to be filed as the dirt is already on site.

Mr. M. Stephens stated the first application wasn't done properly and a new application should be filed, a public hearing needs to be scheduled as well as posting/notification to the neighbors. Mr. Geraghty suggested the hearing be continued for 65 days if the Commission is going to ask the property owner to file an application. Mr. Geraghty stated the matter before the Commission was noticed, but only for an appeal; and an application would have to have a separately scheduled public hearing and notice.

MOTION: Paul Best moved that the Commission schedule a full public hearing with proper notification to abutting property landowners. **Motion was modified as outlined on page 6 of the minutes.**

Mr. Chadwick asked if the lack of notification is what the dispute is at the moment. Mr. Sciascia stated he received no notification other than a phone call from Mr. Puska. Mr. Puska stated this hearing was noticed. Mr. Geraghty stated the statute doesn't require any specific notification to an applicant whose permit is being appealed; therefore, if the appeal hearing were tabled within the 65 day limit, the Commission wouldn't need to render a decision as to whether the permit should be revoked or not and the applicant could submit a new permit application. Mr. Geraghty also stated if the Commission were to render a decision tonight, either party would have appellant rights that start within 20 days. Mr. Sciascia stated this is a civil issue and he will not file a new application.

Mrs. Glidden asked if a public hearing is automatically scheduled when an application is received. Mr. M. Stephens stated correct. Mrs. Glidden stated a public hearing would also be scheduled either by petition of 25 names or more or an issue that the Commission deems is significant. Mr. M. Stephens stated also if there were public interest. Mrs. Glidden asked if the applicant did file an application, would the process then be that the Commission would bring it to their next meeting and schedule a public hearing for the meeting thereafter. Mr. M. Stephens stated it would be scheduled for the next meeting.

Mr. Geraghty stated since the homeowner isn't willing to file a new applicant, he asked the Commission to uphold the appeal by overturning Mr. Puska's decision to issue this matter administratively and go to Superior Court. Mr. Geraghty also stated the Land Trust is trying to avoid this by coming before the Commission.

Brian Gaynier, 75 Arkay Drive, asked what's the next step in trying to get all parties to work together to develop a remediation plan and how will people agree as to what's an acceptable remediation. Mr. Best stated an engineer would be required. Mr. M. Stephens stated an engineer's report indicating the slope won't slide onto the Land Trust's property would be needed. Mr. Sciascia stated he's willing to do the work, but to what extent. Mr. Worthley stated the questions that the Commission would deal with are those that have mostly to do with impact on the wetlands. Mr. Sciascia asked if none of the fill was there, would the application be approved. Mr. M. Stephens stated if it looked proper; however, the Commission will probably hold a site walk, ask the applicant to get a soil scientist to establish where the wetlands are, and to have the pins put back in. Mr. Sciascia stated it was an agent approval. Mr. M. Stephens stated it was an after the fact approval and probably should not have been granted. Mr. M. Stephens stated the Commission is trying to get things worked out.

Mr. Madore asked who the Land Trust is. Mr. M. Stephens stated it's an organization in town. Mr. Madore asked if everyone who pays taxes is a member of the Land Trust. Mr. M. Stephens stated no, it's private. Mr. Best stated it's an entity for public good. Mr. Madore asked if anyone had asked what Mr. Jacobson's opinion is regarding this matter – more devastating to the wetlands to remove the material or leave it and let it set into place. Mr. M. Stephens stated the landowner is not at that point. Mr. Madore stated the landowner is trying to fix the problem and that they are in the upland review area.

Mr. Best stated there is a physical thing about the angle of the fill and in his opinion it will continue to slough off and an engineer is required. Mr. Madore stated the town's engineer looked at the property.

Mr. Gaynier asked if the landowner is going to submit a new application.

Mrs. Sciascia stated a mistake was made and they tried their best to appease the Land Trust. Mrs. Sciascia also stated she's unsettled with people walking around the property taking pictures; concerns addressed to the Land Trust have gone without response, that this whole process has been frustrating, and no one is maintaining the preserve. Mrs. Sciascia stated they were not notified of the January meeting. Mr. M. Stephens questioned the lack of notification with both the Sciascias stating they received no notification. Mr. Sciascia stated it may not be required, but it is common place for the attorney of the other party to contact the other party. Mrs. Sciascia asked where the pictures containing their house were, as it's an invasion of privacy, and these pictures have nothing to do with the fill. Mr. Sciascia submitted a letter from their attorney regarding the pictures.

Mr. Puska stated there was no intent of anything being done under the table or trying to create any short cuts. Mr. Puska stated his job requires he ascertain a situation and try to develop a common sense approach to correct a situation. Mr. Puska also stated when he was notified of the matter – there was fill being brought in for a septic repair and he contacted Mr. Madore who explained what was taking place. Mr. Puska stated when asked not to bring any more fill in, Mr. Madore complied. Mr. Puska explained at that point, he and Mr. Jacobson reviewed the site as well as all the maps and determined all the houses in the area are within the upland review area. Mr. Puska further explained that they discussed how the slope would be stabilized, how it would be compacted, what would be put on top of it, and especially the civil matter – the material on the Land Trust property. Mr. Puska stated he received what he needed from the landowner and the contract. Mrs. Sciascia stated she appreciates what Mr. Puska has done for them. Mr. Chadwick asked when was the last time he was on site. Mr. Puska stated approximately three weeks ago, that the site isn't a mess, and it never was a mess.

Mrs. Sciascia felt this was a minimal issue that could have been rectified from the beginning. Mr. Puska asked why would he have the landowner hire a wetlands scientist for something that is already done. Mr. Chadwick asked if there was a precedent for issuing an agent approval - how often is that done v. bringing it before the Commission. Mr. Puska and Mr. M. Stephens stated more often than bringing it before the Commission. Mr. Chadwick asked Mr. Puska how he decides when to bring it before the Commission or just sign off on the matter. Mr. Puska stated if he knew he was putting fill in a wetland he would have

brought it before the Commission. Mr. Chadwick voiced concern over setting precedent. Mr. Puska stated it is in the upland review; and asked how often the Commission wants to meet. Mr. Best stated the problem is the material sloughing off the hill and going over the property line. Mr. Sciascia stated that's not what the appeal is about; and what has been done is a civil issue.

Both parties discussed at length what has taken place to date, the process, trying to work things out amicably, taking the matter to court, refiling an application, both parties still having the right to appeal, and holding a site walk.

Mr. J. Stephens asked if there was an option to amend the existing application. Mr. M. Stephens and Mr. Puska stated it could be amended. Mr. Puska suggested the existing application be amended and a site walk be scheduled to determine what the next step would be. Mr. Sciascia asked what would happen if the Commission approved the application and then the Land Trust appeals the approval.

Mrs. Glidden stated with Mr. Puska having grant agent approval, there really is no record. Mrs. Glidden also stated by going through the application process the Commission will conduct a site walk; and if there is a meeting, there will be a written record in the event this matter should go to court. Mrs. Glidden stated a public hearing would allow evidence being entered into the record. Mr. Worthley stated the Commission administers the laws as set up by the state and federal governments.

Mr. Sciascia agreed to file a modification to the existing application, but will not file a new application. Mr. Puska stated the Commission is trying to clear up the muddy water as everyone seems to be unhappy about the administrative approval. Mr. J. Stephens suggested the amended application include some remediation and stress what from an engineering perspective was done or could be done to stabilize the slope. Mr. Madore stated those items have been addressed. Mr. J. Stephens stated if there is still material on the abutting property and they don't want it there, it hasn't been addressed. Mr. Worthley stated all of those items have been discussed, but there's a need for a plan and the protection of the wetlands will have been addressed as well as the concerns of the neighbor. Mr. Worthley also stated as a Commissioner he doesn't feel he's been involved in the process and he would like to be.

MOTION: Paul Best moved to table this matter to look at an amended application, schedule a site walk and a public hearing, and to notify the neighbors and all interested parties. Curt Chadwick second. Motion carried unanimously.

SITE WALK – Saturday, 10 March 2018, 9:00 a.m.

7. Public Meeting

The Commission will Hear an Appeal of a Wetlands Permit #IW06394 for Activity in the Upland Review Area on Property Located at 81 Arkay Drive, Haddam, CT and Shown on Assessor's Map #36, Assessor's Lot #7-12

Tabled.

8. Wetlands Enforcement Officer's Report

Candlewood Hill Road, Installation of 18 Foot Above Ground Pool – Agent Approval – Mr. Puska reported an application for an 18 foot above ground pool to be installed in the spring has been received. Mr. Puska stated it appears as if the proposed location is 50-60 feet from a stream and prior to conducting a site visit, he will be asking the applicant to stake out the location of the pool. The Commission will be notified if their involvement is required.

81 Arkay Drive - A brief discussion followed in regard to the ability to take photos to substantiate a claim or to support an application and the benefits of being able to air grievances.

Mrs. Glidden stated a comment was made that Mr. Jacobson came out for the town; and although Mr. Jacobson is contracted by the town, the Land Use Dept. paid Mr. Jacobson to be there. Mrs. Glidden stated the intent was not to gang up on the Land Trust or to have Mr. Jacobson take sides; there were no preconceived notions; and that she wanted the opinion of a professional engineer. Mr. Worthley stated when he read the report it was straight forward and that Mr. Jacobson wasn't taking sides. Mr. J. Stephens asked if it would be acceptable to have the amended application either quote information from the Jacobson report or cite Mr. Jacobson's name. Mrs. Glidden stated no, the report should just be included with the application and then it becomes a part of the record. A brief discussion followed in regard to the record being messy and by submitting an amended application it will clear it up. Mr. J. Stephens asked if the Land Trust could appeal the Commission's decision. Mr. M. Stephens stated yes. Mrs. Glidden stated if there's an appeal, new information cannot be entered only information that was heard at the hearing is deemed evidence.

Mr. Best asked what would happen procedurally should the hillside slide down in the future. Mr. M. Stephens stated the Commission can only do the best job they can. Mr. Worthley stated there could always be an event that wasn't planned for.

Mr. Best asked if the town has a regulation regarding volume of material before a permit is required. Mrs. Glidden stated the regulations address 300 cubic yards being removed, but not deposited; and it should be changed to reflect both removal and deposited.

9. Election of Officers

MOTION: Paul Best moved to approve the slate of officers as presented – Mark Stephens, Chairman, Dan Iwanicki, Vice Chairman, and Paul Best, Secretary. Curt Chadwick second. Motion carried unanimously.

10. Approval/Correction of the Minutes

Corrections to the 16 January 2018 minutes: page 3, second paragraph, first sentence – “be” to “being”; page 3, seventh paragraph, eighth line – change “stated” to “asked”; page 4, second paragraph, first sentence – change “there are some trees” to “that the fill had some cracks on top”; page 6, third paragraph, first sentence – insert “the” between “to” and “matter”; and page 6, fifth paragraph, last sentence change – change “stated” to “started”.

MOTION: Curt Chadwick moved to approve the 16 January 2018 minutes as amended. Tom Worthley second. Motion carried unanimously.

11. Adjournment

MOTION: Paul Best moved to adjourn. Joe Stephens second. Motion carried unanimously.

The meeting was adjourned at 8:50 p.m.

Respectfully Submitted,

Bunny Hall Batzner

Bunny Hall Batzner
Recording Clerk

The next meeting is scheduled for Monday, 19 March 2018.