

**TOWN OF HADDAM
INLAND WETLANDS COMMISSION
REGULAR MEETING
ONLINE VIA GOTOMEETING
MONDAY, 17 AUGUST 2020
UNAPPROVED MINUTES
*Subject to Approval by the Commission***

ATTENDANCE

A	Paul Best, Secretary
X	Curt Chadwick
A	Jeremy DeCarli
X	Dan Iwanicki, Vice Chairman (Arrived 7:10 p.m.)
X	Joe Stephens
X	Mark Stephens, Chairman
A	Thomas Worthley
A	David Costa, Alternate
X	Gail Reynolds, Alternate – Seated (Recused – 81 Arkay Drive Discussion)
X	Jim Puska, Wetlands Enforcement Officer
X	Bunny Hall Batzner, Recording Clerk

1. Call to Order & Attendance/Seating of Alternates

Mr. M. Stephens, chairman, called the meeting to order at 7:10 p.m. All regular and alternate members were seated.

2. Additions/Corrections to the Agenda

Correction: Under Meeting Notice, Agenda, change date from “Aug 20, 2020” to “Aug 17, 2020”. The Commission was agreeable to the correction.

3. Public Comment

There was no one from the public who made comments.

4. Old Business: 81 Arkay Drive, Follow Up Discussion

Present: Michael Sciascia, owner/applicant; Michael Harkin, P.E., representing Mr. Sciascia; Bill Cowan, President, Haddam Land Trust (HLT); Paul Geraghty, Esq., representing the Haddam Land Trust (HLT).

Mr. Harkin reported he had sent out a set of plans as discussed at last meeting via email. Topography, hydro seeding, wall height and length have been added and the property line has been staked out every 50 feet. As previously discussed, Mr. Sciascia can remove the material and constructed the barrier wall. Mr. Sciascia has already removed the back deck and trees as approved on 18 March 2019. Mr. Harkin stated the plan can be implemented soon with the Commission’s approval.

Mr. J. Stephens asked if the slope will be up on the height of the three foot wall or will it be at the base and if the barrier will prevent any erosion from encroaching on the boundary line. Mr. Harkin stated once the property was staked every 50 feet, it was easy to see the areas that have eroded and had extra fill placed on the property. Mr. Harkin stated the intent is that approximate-

ly two feet in on Mr. Sciascia's property excavation will take place for the installation of the wall with some minor grading of the slope to get the three feet. If the slope is cut into too deeply, it too will cause issues.

Mr. Harkin stated as previously discussed, there's to be a document filed on the land records indicating that the owners of the property, whether it be the Sciascias or anyone else, will have to maintain the wall in perpetuity.

For clarification, Mr. J. Stephens asked when the project is completed on the house side of the wall, the slope will come up to the top of the wall in certain areas. Mr. Harkin stated yes.

Mr. Chadwick asked what the slope will look like from the top of the wall to the beginning of the grade. Mr. Harkin stated it will retain the same grade that is currently there - it will not change that much. Mr. Harkin noted that the slope is fairly stable. Mr. Chadwick stated one of his concerns is the wood wall; and asked how long it may be expected to last. Mr. Harkin stated if it's maintained, a pressure treated wall could last 25 to 30 years, but having the note on the land records will put the burden of maintenance and requirement of maintenance on the property owner (would run with the deed and not with the person). Mr. Chadwick asked what the maintenance would look like. Mr. Harkin compared the maintenance of the wall to that of a deck; general visual maintenance - when you see a problem, you fix it.

Mr. M. Stephens asked when the project could be done. Mr. Harkin stated although it's time consuming, it is a simple plan and envisions 30 to 45 days without an issue, but turned the question over to Mr. Sciascia. Mr. Sciascia stated he can implement the project in 30 to 45 days (increase of 15 days is due to the time of year). Mr. Harkin stated fall is a good growing season for grass. Mr. M. Stephens stated the last this would be completed is the end of November. Mr. Sciascia stated yes, and that as soon as the Commission approves the modification, he'll order the materials noting that pressure treated wood takes approximately 4 to 5 weeks to get in. Mr. Harkin stated the extra 15 days is due to the difficulty in obtaining lumber in light of the pandemic. Mr. Harkin also stated Mr. Sciascia should be able to get going right away in terms of removing the material off the HLT site and the trees and debris out of the bank.

Mr. Geraghty asked what's the plan for getting the material off of the HLT property (how will it be accomplished) given the slope. Mr. Harkin stated where the existing three car garage is located, Mr. Sciascia will come along the back side of that with the adjacent property owner, there's a roadway that is already cut down there and into the back. Using this as a haul road, he can get the silt fence installed. Mr. Harkin noted that Mr. Sciascia has already had machines going back and forth and the material would be removed up the access road. Mr. Geraghty asked if he would use a backhoe or some type of bucket equipment to remove the material. Mr. Harkin stated yes, or a Bobcat.

Mr. M. Stephens asked Mr. Harkin and Mr. Sciascia if permission has been received from Mr. Cowan and/or Mr. Geraghty to remove the fill from the HLT property and install the silt fencing. Mr. Harkin stated the last approval stated approval was needed to gain access onto the HLT property and believes Mr. Geraghty has reviewed this and that a letter was provided granting removal of material on the HLT property.

Mr. Geraghty stated although he has not seen a letter from the HLT, there had been discussion about allowing access at one point. Mr. Geraghty stated he would need to discuss this with Mr. Cowan; however, if HLT wants the material removed, granting permission is something that will have to be done.

Mr. Cowan stated after looking at the proposed plan, the HLT will not agree to it calling it outrageous. Mr. Cowan stated with respect to Mr. Harkin there is no engineering on the plan, that it's merely a landscape plan. The wooden wall has no detail on it and there's no reason for the HLT to expect anything than what has already been received. Mr. Cowan stated no permission

will be given to allow access to HLT property to do the work. Mr. Cowan also stated HLT is still waiting for the Commission to recognize what has happened – acknowledge this is a violation and issue an enforcement order; and instead of asking Mr. Sciascia nicely to remove the material to demand he remove all of the material. Mr. Cowan stated at this point he would like to see all of the material removed. Last year it was agreed to compromise to grade it back, but unfortunately, Mr. Sciascia did not do it, and a year later everyone is back at the table talking about the same thing. Mr. Cowan stated from his perspective and the HLT's the Commission hasn't done anything – hasn't told Mr. Sciascia to remove the material; he's been asked to, but he's not under any obligation to do so and he's decided not to for whatever reasons he has. Mr. Cowan stated he's waiting for the Commission to do something and every time the Commission doesn't do something it puts the HLT at greater risk. Mr. Cowan noted it's been three years this has been going on and the slope could collapse or erode onto the HLT property; and since Mr. Sciascia has no money, who's going to be responsible for cleaning up the mess.

Mr. M. Stephens stated if the plan were implemented, would it not hold up the bank, which has not sloughed off. Mr. M. Stephens stated the Commission has tried to be accommodating to someone who does not have the funds to do the major plan to removing the material. Mr. M. Stephens asked Mr. Harkin to address the matter.

Mr. Harkin stated Mr. Cowan is correct that it has been three years; however, the bank has been in place for three years and during that time there have been some monsoon rains and the bank is still in place. Mr. Harkin stated from a landscaping perspective once grass is applied, it will lock the slope in. Mr. Harkin stated the plan can be implemented; however, if a line is drawn in the sand, it will end up in court and nothing will be done. Mr. Harkin stated this is a plan Mr. Sciascia can implement. At this time the decision lies with the Commission and Mr. Cowan.

Mr. Chadwick asked if the new plan will remove the trespass material. Mr. Harkin stated yes, 100 percent and is noted a couple of times within the plan. Mr. Harkin also stated the requirement for the wall is to get rid of the trespass. Mr. Harkin stated within a week or two Mr. Sciascia can remove the material, but he needs permission to enter the HLT's property and without permission he's unable to clean it up. Mr. Harkin stated until there's an agreement in place, Mr. Sciascia cannot remove the material from HLT property.

Mr. J. Stephens stated he would like to see more detail in the plan in regard to the wall and its construction. Mr. J. Stephens stated he envisions the repair of the wall to be more difficult when there's three feet of material packed up against it. Mr. J. Stephens stated the potential for this plan to work is reasonable and the expectations are within reason. If the slope fails, then everyone is back to square one; however, it doesn't mean an attempt shouldn't be made. Mr. M. Stephens agreed; otherwise, the matter ends up in court which is something he'd like to not see happen.

Mr. M. Stephens stated everyone is so far into this matter and then it took a year to find out funds were not available. Mr. M. Stephens stated he was willing to give the new plan a chance as there is a second plan should it fail. Mr. M. Stephens also stated he has seen these types of walls stay up for 25 years (not pressure treated material) and proper maintenance/repair. Mr. M. Stephens stated given how long the slope has been there without proper vegetation and it has not sloughed off, this new plan would get the work done quickly.

Mr. Harkin stated everyone is not taking into consideration that Mr. Sciascia can do the work himself and if it works and it should, fine everyone walks away and the site is monitored for a couple of years. However, if it doesn't work, the Commission still has the recourse of the other plan. It's not that the project is over after Mr. Sciascia does the work.

Mr. Cowan stated no, with respect, that's not what happened. Mr. Cowan stated if in five years from now it fails and with a Commission who won't enforce it now and won't enforce anything later, the HLT would have agreed to something on their property; and if the HLT tries to go to

court, the court will say the HLT had agreed to it. Mr. Cowan stated the HLT is in the position of being harmed by this and are taking all of the risk of the entire fill moving down the slope and there is no reason why the Commission would ever make a decision that impacts a neighboring property. The Commission has no business doing that. The HLT is taking the risk and by the Commission not doing anything is effectively giving approval by default and it's unacceptable.

Susan Bement, HLT member, stated she took the wetlands scientist out to the site and he was unable to determine where the wetlands ended because in some parts the fill is on top of the wetlands; therefore, it was impossible for him to tell how far it went in towards Mr. Sciascia's property.

Mr. Iwanicki asked if there is presently a permit in place. Mr. M. Stephens stated yes. Mr. Iwanicki then asked if the HLT give an o.k. to that permit. Mr. M. Stephens stated he's not exactly sure, but he thinks so. Mr. Geraghty stated no, as the HLT filed an administrative appeal with the Wetlands Commission. Mr. Geraghty reviewed the history – a permit was issued administratively and no notice was given to the landowners as required by statute; therefore, it was invalid. Then a second permit was issued, notices were sent out, and the HLT issued an appeal that a public hearing needed to be conducted on this matter. The administrative permit is not effective due to it being challenged. Mr. Geraghty stated the procedure is more than mottled, however, Mr. Sciascia did submit a third application and that's when Mr. Harkin became involved. Mr. M. Stephens stated those plans were accepted. Mr. Geraghty stated no, as there hasn't been a public hearing conducted. Mr. Geraghty stated there have been hearings, but they have not been noticed as hearings to the best of his recollection.

Mr. M. Stephens stated he thought the Commission had an approved application and asked Mr. Puska his opinion. Mr. Puska stated he thought there was an approved application as well. Mr. Geraghty stated this is why the Commission should get some legal advice, which Mr. Puska is against, to see how the Commission should move forward. Mr. Puska stated he never heard anything mentioned to him. Mr. Geraghty stated the Commission's counsel (Matthew Willis, Esq.) attended one of the initial meetings. Mr. M. Stephens stated he thought there was an approved plan that everybody had agreed to remove all of the material.

Mr. Sciascia asked if Mr. Geraghty's argument is that there is no permit issued. Mr. Geraghty stated yes, and that both permits were issued administratively in November 2017 and January 2018. The first permit, as it's an administrative permit, requires under the statute that notice be published in the newspaper and it was not. Therefore, the permit was invalid. When the second permit was done, it was published in the paper, and HLT did file an appeal which stopped the permit from becoming effective. Subsequent to that, hearings were conducted with Mr. Madore present at one and then Mr. Harkin appeared and a new application was submitted. Mr. Geraghty stated even if that application was approved, this would be a modification of that approval. Mr. Geraghty stated it's unclear if the Commission did approve it; and now there's discussion of a modification, which HLT is not in agreement with. Mr. Sciascia asked why then did he take down the deck and the trees and put up the silt fence as it was done in accordance with the permit that was approved and with permission from HLT to put up the silt fence, to do the work required to install the silt fence, and to get the plans that Mr. Harkin had drawn up done.

Mr. Cowan stated the only thing HLT gave permission to do was to put up silt fence.

Mr. Harkin stated he has a letter dated 24 April 2019 from the Town of Haddam to Jamie and Michael Sciascia, Notice to Proceed Permit #IW19002, which indicates the property owner may proceed with the removal of fill material and regrading of the existing slope,. Mr. Harkin read the various citations and noted that permission from the Haddam Land Trust must be granted for any work on the HLT property. Mr. Harkin stated he believes the Commission put it to a vote and approved it and that the Sciascias received the letter telling them to start on the original plan.

Mr. Geraghty stated that may be so, but for this meeting discussion is about a modification, essentially a new application. Mr. Geraghty stated the HLT is not finding this new plan acceptable and will not grant permission. Mr. Geraghty stated HLT's biggest concern is the potential for the wall to fail or even the removal of it. Mr. Geraghty questioned whether the site will remain intact once construction for the wall begins. Mr. Harkin stated he can design anything, but if the slope is the point of contention and all parties cannot come to an agreement, it's not going to matter what he puts on his plans. Mr. Harkin stated he's developed a plan that would allow Mr. Sciascia to proceed with the cleanup at minimal costs and there's really nothing else he can do at this point.

Mr. M. Stephens stated the Commission could leave it with the approval received on 18 March 2019 for the full plan; however, Mr. Sciascia will need to figure out how he can implement it. Mr. M. Stephens stated he was willing to go with the modified plan.

Mr. Puska stated everyone is arguing about what's going to happen if; however, everyone is well aware of the problem out there now. Mr. Puska stated the HLT and their attorney could see what happens in court if they are willing to walk away; however, the burden of responsibility of the wall will be the property owner, which will be on the town land records, and if that doesn't work, everyone will still end up in court. Mr. Puska stated he sees an opportunity for something to happen.

Mr. Sciascia stated if the issue is what happens if the bank sloughs off; and the HLT wants to take him to court, the time frame at a minimum will be four years to get the case heard and started and before a decision is made seven to ten years from now. Mr. Sciascia stated if the new plan is implemented and it doesn't work, the HLT still has the recourse of going to court. In the interim, the problem has been rectified – getting the trespass off HLT property and keeping the slope in place.

Mr. Iwanicki stated his concern is what the HLT will allow Mr. Sciascia to do. Mr. Iwanicki stated if the HLT has agreed to the permit that's in place, that Mr. Sciascia can go on their property, then that's it right there. However, if the HLT is now saying no, then Mr. Puska needs to call the town attorney to find out where the Commission stands. Mr. M. Stephens stated he agrees; and asked Mr. Puska to contact the town attorney.

Mr. Sciascia asked why would it matter if the HLT is going to allow him to come on their property to approve the plan. If the Commission were to put the plan to a vote and it's approved then it would be on the HLT to either allow him to come on their property to do the work or not, but they cannot have it both ways. Mr. Sciascia stated as a Commission, the plan should be put to a vote.

Mr. Iwanicki asked if the HLT disputes the present permit that's in place. Mr. Sciascia stated HLT is saying he does not have an approved plan. Mr. Iwanicki requested a legal search as to what the Commission did and whether or not it acted appropriately and whether or not the HLT gave the Commission and Mr. Sciascia permission to go forward with this permit. Mr. M. Stephens stated this needs to be cleared up.

Mr. Geraghty asked Mrs. Batzner if the town hall was open in order to review files. Mrs. Batzner stated yes, but recommended calling to make sure that the department he's interested in is open. Mr. Puska confirmed that the Land Use Dept. is open.

Mr. Geraghty stated it's been over a year since that meeting and it may be that it was approved and now we're talking about modify that plan which is not necessarily what the HLT agreed to. Mr. Geraghty would like to look at the documents and speak to his client a bit more about the matter. Mr. Geraghty stated Mr. Sciascia is right that litigation will take time in this time of COVID – courts are barely functioning. Mr. Geraghty also stated the discussion has been about a different application and his client isn't agreeable based on what he's seeing at the moment. Mr. Geraghty stated he like to review the plans Mr. Harkin has developed and suggested the Com-

mission speak to counsel to see where they stand from a procedural standpoint as he believes there are a number of issues in that regard.

Mr. M. Stephens asked the Commission who was in favor of tabling this matter in order to speak to the town attorney in order to straighten the matter out. Mr. Harkin stated the Commission has to do it right and told Mr. Geraghty if he needed anything in regard to the differences in plans to call or email him. Mr. Harkin also stated before he goes back to the drawing board both parties have to come to an agreement.

Mr. Sciascia stated he understands if the Commission wants to speak to their counsel, but if this project does not start by November, there is no way it can be implemented this year whether it be the approved plan or a modified plan.

Mr. M. Stephens called a vote to see if the Commission was in agreement to have Mr. Puska speak to town counsel. Chadwick – yes; J. Stephens – yes. Mr. M. Stephens and Mr. Iwanicki had previously stated they felt town counsel should review the matter. Mrs. Reynolds recused herself from this matter.

Mr. Chadwick asked if what is before the Commission tonight is a new proposal or a modification of the existing plan. Mr. M. Stephens stated that would be a question for the town attorney. Mr. Chadwick also asked if the Commission gets into dollars and cents normally. Mr. M. Stephens stated this too would be a question for the town attorney.

MOTION: Dan Iwanicki motioned to table this matter. Curt Chadwick second. Motion carried unanimously.

5. New Business

There was no new business to report on.

6. Forestry Regulations Discussion

Nick Zito, Forest Practices Act Forester, Division of Forestry, Bureau of Natural Resources, CTDEEP, was present.

Mr. M. Stephens reported that Mr. Iwanicki reviewed the Willington forestry regulations and made notations. Mr. Iwanicki asked Mr. Zito if Haddam's forestry regulations have any standing at this point in time and if the Willington forestry regulations are the ones that should be followed. Mr. Zito stated the Commission can act on their regulations; however, due to the fact that the State never approved them, an individual can say he's not going to follow them. Mr. Zito stated he has been going through Willington's regulations for two years and they're great. Mr. Zito also stated a lot of people in the timber harvesting industry are not fans of Willington's regulations; however, the Division of Forestry does not see any issues with the ones that were submitted to the Commission for review.

Mr. Zito stated Haddam's regulations are rather light, they do open themselves up to some interpretation; but in terms of regulating practice Willington is the one to consider as well as Stafford (less prescriptive). Mr. Zito stated if Haddam chose to use Willington's, they would go through the process easily.

Mr. M. Stephens stated that would probably be the best way for the Commission to go rather than reinventing the wheel. Mr. M. Stephens talked about an email from Mr. Zito, dated 24 June 2020, where he outlined what's missing in Haddam's regulations. Mr. M. Stephens asked if the 2012 Connecticut Field Guide: Best Management Practices is the latest edition. Mr. Zito stated yes; and noted that he reviews proposed regulations that come through.

A brief discussion followed in regard to the definition of “conversion of forest land” and agriculture. Mr. Zito stated the forest practices are strictly for forestry operations and should not be confused with agriculture. Mr. Zito also stated the wetlands commission is the only agency that can enforce forest practices, however, separate applications are required – wetlands and forestry; and both can be heard/approved at the same meeting.

Mr. M. Stephens asked if the Commission decided not to have their own forest regulations, what would the town lose and would the forester go to the state to get an application for forestry. Mr. Zito stated an applicant would come before the Commission with anything related to wetlands (stream crossings, deposit materials, use of portable bridges, etc.) and the Commission would determine whether or not a wetlands permit is required.

Mrs. Reynolds asked if State Forester Emery Gluck would need to come before the Commission if he wanted to cut within the Cockaponset state forest. Mr. Zito stated the state is exempt.

Mr. Zito stated what the Commission could lose is the ability to have any control over the forestry itself outside of the wetlands if the Commission should decide to let it go. Mr. Zito asked if the Commission wants to have control over the cutting of the trees as well as the wetlands.

Mr. J. Stephens asked if DEEP has its own regulations for managing timber harvests on state property and do towns have to have their own regulations or can they default to the state regulations. Mr. Zito stated the state regulations give all the power. At one point there were a number of towns that had some form of forestry practice regulations; however, when the Forest Practices Act was enacted, these towns had a one year window to say yes they wanted to continue regulating forest practices on lands other than that owned by the state or no, we’re going to let it go and just stay with inland wetlands.

Mr. J. Stephens asked if the Commission is at a point where it needs to decide whether to create its own regulations (mirror Willington’s) or let the state handle all of Haddam’s forest activities. Mrs. Reynolds stated there is no permit by the state, the state doesn’t get involved. Mr. Zito stated Mrs. Reynolds is correct; the State does not regulate forest practices. Mr. J. Stephens stated if the Commission doesn’t have regulations, people can do as they please. Mr. Zito stated only as long as they are following the wetlands regulations. Mr. Zito stated if there is an issue with the wetlands, logging without a license, or something that’s within the Forest Practices regulations, he is currently the only individual handling enforcement.

Mrs. Reynolds asked if anyone would check to see if the forester has gained their certification. Mr. Zito stated that’s where it would come to the Commission and spoke in regard to the Timpro form (Timber Producers Association of Connecticut) that highlights what should be looked for in a wetlands approval. Mrs. Reynolds stated Haddam can be more succinct with their regulations.

Mr. M. Stephens asked Mr. Zito the time frame on this matter. Mr. Zito stated there really isn’t one, but sooner rather than later would be beneficial. Mr. Zito noted this was brought to his attention by a licensed practitioner. Mr. Zito suggested reviewing Stafford’s regulations as they’re much more succinct and will email them tomorrow (Tuesday, 18 August 2020).

Mr. Iwanicki stated he believes historically that the timber harvests conducted within the town have gone well and when they came before the Commission they would submit a boiler plate form of activity. Mr. Iwanicki stated Willington spelled out a lot of items especially cords or board feet that can be removed, but does realize there are some conflicts – definitions, abutting property owners including those across the street needing to be notified. Mr. Zito stated in his experience in working with Haddam it has been the same way as other towns have handled the matter; however, Haddam has functioned without forestry regulations with backing. So, the Commission needs to decide whether to continue or drop them

Mr. M. Stephens and Mr. Iwanicki asked about the Gateway Commission. Mrs. Reynolds stated they are merely suggestions, they do not come in and enforce anything, and they want the towns to incorporate their regulations within the zoning regulations. Mr. Zito stated he's aware that the Gateway Regulations exist, but is not familiar with them (Darcy Winthur would be familiar with them).

Mr. Zito stated if the Commission should decide to move forward with the regulations, at least one commissioner will need to attend training every year (statutory requirement) that DEEP will provide.

Mr. M. Stephens thanked Mr. Zito for speaking to the Commission.

7. Wetland Enforcement Officer's Report

Kitchen Addition, Beaver Meadow Road – Agent Approval – Mr. Puska reported this is the second house passed the commuter parking lot on Beaver Meadow Road and that the property borders a brook. The owners will be utilizing a portion of the existing deck as part of the addition. Discussion followed as to whether or not this property is within a flood zone or a wetland. Mr. Puska stated the parcel is not within a flood zone.

8. Approval/Correction of Minutes

The Commission agreed to table the approval of the 14 July 2020 Special Meeting minutes and the 20 July 2020 Regular meeting minutes.

9. Adjournment

MOTION: Dan Iwanicki motioned to adjourn. Gail Reynolds seconded. Motion carried unanimously.

The meeting was adjourned at 8:38 p.m.

(Recording Clerk's Note: After the adjournment, Mr. M. Stephens realized he had not recorded the meeting via GoToMeeting and expressed his apologies for having not done so. Mrs. Batzner stated she had an audio recording of the meeting; however, she missed the first five minutes of the meeting.)

Respectfully Submitted,

Bunny Hall Batzner

Bunny Hall Batzner
Recording Clerk

The next regular meeting is scheduled for Monday, 21 September 2020.