

# Town of Colchester, Connecticut

127 Norwich Avenue, Colchester, Connecticut 06415

Website: [www.colchesterct.gov](http://www.colchesterct.gov)

## COLCHESTER CONSERVATION COMMISSION

### Regular Meeting

Wednesday, June 10, 2020

Town Hall, 127 Norwich Avenue

### Minutes of Meeting

- A. **MEMBERS PRESENT:** Falk von Plachecki; Chairman, Darryl York, Vice Chairman, Michelle Kosmo, Rebecca Meyer, Sue Bruening, Michael Rogers, Jay Gigliotti, Wetlands Enforcement Officer, Denise Turner, Board of Selectman liaison, and Kamey Cavanaugh Clerk. Applicant and Applicants representation.

### CALL REGULAR MEETING TO ORDER

Chairman von Plachecki called the Regular Meeting to order at 7:00 p.m.

- B. ADDITIONS TO AGENDA – None

- C. APPROVAL OF MINUTES – May 13, 2020

*Motion made by R. Meyer to approve the minutes of May 13, 2020 as written. Motion was seconded by S. Bruening. Motion carried UNANIMOUSLY.*

- D. PUBLIC COMMENTS – None

- E. PENDING APPLICATIONS –

- A. W2019-3050- 13 Reservoir Road, Double Down, LLC- Applicant/ Owner, Assessors Map 02-02 Lot 012-000, proposed 4-Lot Subdivision.

J. Gigliotti reported to the commission the applicants request to table this application

*Motion made by D. York to TABLE Application W2019-3050- 13 Reservoir Road, Double Down, LLC Applicant / Owner Assessors Map 02-02 Lot 012-000, proposed 4-Lot Subdivision. Motion was seconded by R. Meyer. Motion carried UNANIMOUSLY.*

- B. W2020-3052- 220 Chestnut Hill Road, Chestnut Hill Development, LLC- Applicant/ Owner, Assessor's Map 4E-05 Lot 003-000, proposed 7- Lot Subdivision

J. Gigliotti reported to the commission the applicants request to table this application

*Motion made by R. Meyer to TABLE Application W2019-3052- 220 Chestnut Hill Road, Chestnut Hill Development, LLC- Applicant / Owner , Assessors Map 4E-05 Lot 003-000, proposed 7-Lot Subdivision. Motion was seconded by S. Bruening. Motion carried UNANIMOUSLY.*

- F. NEW APPLICATIONS – None

### MINUTES

Wednesday, June 10, 2020

Colchester Conservation Commission

RECEIVED  
COLCHESTER, CT  
2020 JUN 11 PM 4:00  
Darryl York  
CHAIRMAN  
Denise Turner  
TOWN CLERK

**G. OLD BUSINESS – None**

**H. NEW BUSINESS – None**

**I. ENFORCEMENT –**

**956 Middletown Road-**

J. Gigliotti reported to the commission of a complaint received from a neighboring property of 956 Middletown Road, stating the property owner was doing work within a wetland. Mr. Gigliotti stated the property owner, Devara Lambert and Andrew Day were present along with their Attorney, Mr. Edward Moukawsher.

J. Gigliotti reported on a complaint that was received in March regarding work being done in/near a wetland without permits being obtained. The area of discussion was viewed from a neighboring property and staff saw what appeared to be work that would in fact require a permit. A letter was sent to the property owner of 956 Middletown Rd advising of the complaint. J. Gigliotti met with the property owner at their property in March and the issues were discussed and the property owner felt there was confusion on what the Wetlands Commission could have jurisdiction over this area. Town Staff hired a soil scientist and the report has been received stating there is the present of inland/wetland soils.

D. Lambert property owner of 956 Middletown Road, stated they moved into the property about a year ago. When moving into the property it was found to have several dead shrubs and trees adjacent to the area being discussed. The dead trees and shrubs began to be removed over the time frame between August 2019 through March 2020. Ms. Lambert stated the activities they were performing are permitted activities by right.

D. York stated the discrepancy between Ms. Lambert stating there is not a wetland on the property is and the Town obtaining a soil scientist who has in fact confirmed there is wetland soils directly adjacent to the area at 956 Middletown Road.

Ms. Lambert stated the Colchester Inland Wetland map does not show this area as an identified wetland or watercourse. J. Gigliotti stated to the property owner that a permit would be required if work was being done within 75' of this area. Ms. Lambert disagreed stating these activities are permitted by right if they are in the wetland, but since they are outside the wetland they do not require a permit.

Attorney Moukawsher asked staff to show the overlay map of Colchester showing the area where work was done and the distance to the wetland and doesn't appear to be flagged.

M. Rogers asked if excavation or installation of a drain pipe within a wetland area would require a permit. J. Gigliotti stated yes a permit would be required if the excavation work has the potential to affect the wetland.

**MINUTES**

Wednesday, June 10, 2020  
Colchester Conservation Commission

Chairman Falk von Plachecki noted for the record a non-regulated activity and as of right are determined by the commission within 75' of a wetland. It was also clarified that the map that is being referred to is used for planning purposes only. A letter posted on ListServ written by Darcey Winther, on April 3<sup>rd</sup>, addressing the issues with inland wetland maps in town for planning purposes. (See Attached)

D. York expressed concern with a pipe being installed without review is concerning and would like clarification. Andrew Day stated there is a pipe that has been installed to collect the heavy rain from the hillside and direct it off the driveway. Mr. Day said the pipe is about 60' from the wetland.

Attorney Moukawsher stated the work has completed and there will not be any more activity in that area. M. Rogers stated based on that comment, hoped the property owner would not have any issues with an independent investigate how the pipe was installed and confirm that it is not effecting the wetlands. D. York said, due to Mr. Days comment of the pipe being placed within 60' of the wetland and the upland review area being within 75' of a wetland. The commission needs to confirm this pipe is not going to result in the wetland being drained. It is suggested that a soil scientist be obtained to lay out exactly where the wetland is and the upland review area is located. Chairman Falk von Plachecki suggested allowing staff to visit the property to confirm what Ms. Lambert is stating in that the pipe is well over 60' and is for a driveway repair. That request was declined by the property owners that staff is not be allowed on the property.

***Motion made by D. York to direct the property owner to contact a soil scientist to have the area of question located at 956 Middletown Avenue delineated and a description of work that was done in and around the area in detail. Location and details surrounding the said pipe. Motion was seconded by M. Rogers. Motion carried UNANIMOUSLY***

**J. CONSERVATION** – The grant for the Middletown Road project is continuing.

**K. CORRESPONDENCE** –

A. Administrative Permits - J. Gigliotti issued 1 administrative at for an above ground pool.

**L. ADJOURNMENT**

***Motion made by R. Meyer to adjourn at 8:23pm. Motion was seconded by D. York. Motion carried unanimously***

Chairman von Plachecki adjourned the June 10, 2020 Conservation Commission meeting at 8:23pm.

Respectfully Submitted,

*Kamey Cavanaugh*, Clerk

MINUTES

Wednesday, June 10, 2020  
Colchester Conservation Commission

## Re: Wetlands Question

Connecticut Planning Professionals <CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU>

on behalf of

Winther, Darcy <Darcy.Winther@CT.GOV>

Fri 4/3/2020 1:39 PM

To: CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU <CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU>

\*Message sent from a system outside of UConn.\*

Good afternoon ListServ,

As DEEP's inland wetlands management program staff and coordinator of DEEP's municipal inland wetlands agency training, I hope it will be helpful if I attempt to clarify this issue.

The jurisdiction of a municipal inland wetlands agency is NOT determined by a map. Municipal inland wetlands agencies regulate *activities* likely to impact or affect inland wetlands or watercourses within their territorial limits, whether or not such inland wetlands or watercourses are depicted on a map. If the inland wetlands agency or its duly authorized agent finds that any person is conducting or maintaining any activity, facility or condition which is in violation of the CT Inland Wetlands and Watercourses Act (IWWA) or of the regulations of the inland wetlands agency, the agency or its duly authorized agent may conduct an enforcement action.

The IWWA was first passed in 1972. To assist newly formed municipal inland wetlands agencies, it was deemed helpful to create a wetlands map that depicted inland wetland and watercourse resources within each municipality. At the time, DEEP had the geographic and mapping capabilities to provide this information, which was based on the NRCS soil survey. Due to scale and other mapping limitations, a disclaimer was provided that small wetland or watercourse areas may not be depicted on the map and that the boundaries of such resources may not be precise.

The concept of a map carried over to the DEEP model regulations, which guided municipal inland wetlands agencies to establish a map. However, it became apparent that maps are problematic for a number of reasons: maps become outdated, there are issues associated with scale, inaccuracies in the transfer of information while creating the map, and other limitations. Recognizing this, DEEP has recommended for years, and continues to recommend, that an agency's regulations and map provide a disclaimer that the map shows the general location of inland wetlands and watercourses and that the precise location of inland wetlands and watercourses is to be determined by the actual character of the land, the distribution of wetland soil types, and the location of watercourses. I am not an attorney, but believe this follows well established case law (e.g. *Aaron v. Redding*, 1981 - "...it is the type of soil which is determinative of whether certain land is a wetland..."). Most municipal inland wetlands agencies have established permit application requirements, in regulation, that a soil scientist delineate the inland wetlands and watercourses associated with the proposed regulated activity. Further, most municipal inland wetlands agencies have a regulation that states a person may petition the agency for an amendment to the map, and that the agency *may* amend the map as more accurate information becomes available.

The IWWA is, first and foremost, an environmental conservation and protection statute. Remember, municipal inland wetlands agencies do not regulate wetlands or watercourses, they regulate *activities* likely to impact or affect such resources. When conducting an enforcement action, the burden of proving the violation (an unpermitted activity) lies with the inland wetlands agency. Unless a property owner is willing to work with the agency to remedy a potential violation, it may be difficult to accurately determine the location, boundary, or presence of inland wetlands or watercourses. In these instances, various maps and aerial photos may assist. Just

5/14/2020

Mail - Jay Gigliotti - Outlook

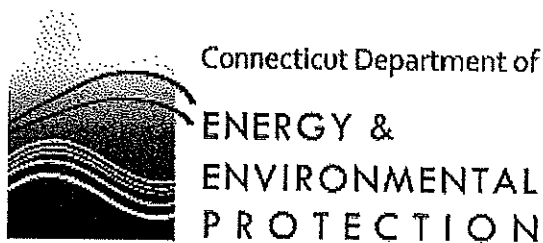
because an inland wetland or watercourse is not depicted on a map or aerial photo, does not mean one does not exist on the landscape. Again, maps and aerial photos have limitations. Landscapes are dynamic and a map or aerial photo may not depict current conditions. A municipal inland wetlands agency may need to be creative in order to accurately document a violation (e.g., look through other department files for soils information, review previous permit applications for soil scientist reports, observe from a neighboring property, etc.).

Healthy wishes,

*Darcy Winther*

Inland Wetlands Management Program  
Land and Water Resources Division  
Bureau of Water Protection and Land Reuse  
Connecticut Department of Energy and Environmental Protection  
79 Elm Street, Hartford, CT 06106-5127  
P: 860.424.3019 | F: 860.424.4054 | E: [darcy.winther@ct.gov](mailto:darcy.winther@ct.gov)

[www.ct.gov/deep/inlandwetlands](http://www.ct.gov/deep/inlandwetlands)



[www.ct.gov/deep](http://www.ct.gov/deep)

*Conserving, improving and protecting our natural resources and environment;  
Ensuring a clean, affordable, reliable, and sustainable energy supply.*

-----Original Message-----

From: Connecticut Planning Professionals <CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU> On Behalf Of Mary Ann Chinatti  
Sent: Friday, April 3, 2020 6:37 AM  
To: CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU  
Subject: Wetlands Question

\*Message sent from a system outside of UConn.\*

Good morning all -

First I hope all are staying safe and healthy.

Now, our Friday test:

5/14/2020

Mail - Jay Gigliotti - Outlook

A resident working within a channelized stream to pipe/stone the channel for residential (already built property) improvement of water issue, and the WEO and IW Commission Chair state that if the area doesn't appear on the town's IW map (which is based on DEEP mapping) then it isn't considered a wetland. How do you, as an IW Commissioner, deal with this if your Chair tells you it's a civil issue that needs to be dealt with in superior court because it's not a wetland/watercourse if it's not on the town's IW map???

Thanks in advance!  
Mary Ann Chinatti  
Town Planner  
Town of Plainfield

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<http://s.uconn.edu/ctplanner>.