

**EAST LYME INLAND WETLANDS AGENCY
SPECIAL MEETING MINUTES
July 30, 2018**

MINUTES

Members Present:

Gary Upton, Chairman
Ann Cicchiello, Vice Chairman
Phyllis Berger, Secretary
Peter DeRosa
Jessie Baldwin
Theodore Koch, Alternate


Members Absent:

Harry Clarke
Jack Chomicz
Todd Bellucci, Alternate

Also Present:

Gary Goeschel, Director of Planning/Inland Wetlands Agent
Paul Dagle, Board of Selectman
Edward O'Connell, Town Attorney

FILED

Aug 6 2018 AT 2:00 AM/PM

EAST LYME TOWN CLERK

CALL TO ORDER:

Chairman Gary Upton called the Inland Wetlands Agency meeting of July 30, 2018 to order at 7:13 pm.

PLEDGE OF ALLEGIANCE: Observed

Chairman Upton welcomed the audience and agency members to the meeting, and thanked them for attending.

Chairman Upton seated Ted Koch, Alternate.

I PENDING APPLICATIONS

Twin Valley 23-Lot CDD Re-subdivision, Green Valley Lakes Road and Spring Rock Road; Frank & Rajko Maric Owners, Real Estate Service of CT, Inc., c/o Bob Fusari, Jr., Applicant; Application to conduct regulated activities within the 100-foot upland review area from wetlands and watercourses associated with the construction of a road.

Chairman Upton advised the agency and public that this is deliberations on this application, and the public comment portion of the application is over. He continued that this would be a fairly informal discussion of the application.

Mr. Goeschel started with his memo a copy of which is attached. He stated these are his findings in regarding to this application.

Mr. Goeschel noted his finding in accordance with Section 7 of the Inland Wetlands Regulations that the application appears to be complete.

In accordance with Section 7.6 of the Inland Wetlands Regulations the Agency required additional information.

Mr. Goeschel further noted that the Agency may find this application in conformance with the Inland Wetlands Regulations as to:

- The application was received from RES of CT and the Agency commenced review of said application at a regular meeting on May 7, 2018. The Agency received a petition to hold a Public Hearing signed by at least 30 persons age 18 and over who reside in East Lyme.
- The Agency scheduled a public hearing at a special meeting of June 25, 2018 and published notice in the Day Newspaper on June 13, and June 21, 2018.
- The Agency continued the public hearing to a Special Meeting on July 2, 2018 and closed the public hearing on July 16, 2018.
- Town staff provided comment regarding the application. Testimony was received from the applicant's professionals and from the Intervener, his professionals and the general public.
- The application submitted includes all information required under Section 7.5 of the Inland Wetland Regulations, and is in accordance with Section 7.1 of the Inland Wetland Regulations.
- There is no direct impact on the wetlands or watercourses, all construction activities will occur within the 100-foot upland review area. There are no irreversible and irretrievable losses of wetlands or watercourse caused by the proposed regulated activity.
- The project has been designed to protect the wetlands and watercourse as the structures and systems are situated outside of the wetlands, in the upland review area. Public utilities are being installed within the upland review area.
- Mitigation measures to minimize and mitigate potential impacts will pre-treat and control runoff, promote groundwater recharge and reduce thermal pollution.
- Potential impacts are mitigated by erosion and sedimentation control measures and stormwater controls during construction.
- The upland review process does not forbid activity based solely on proximity to wetlands; it provides a basis for determining if the activities will have an adverse impact, and regulating them.

- In accordance with Section 10.5 of the Inland Wetland Regulations, the term “wetlands and watercourse” includes plant and animal wildlife and habitats means areas in the environment where an organism normally lives.
- Pursuant to Section 10.5 of the Inland Wetland Regulations, the Agency shall not deny or condition an application for a regulated activity in an area outside wetlands and watercourses on the basis of an impact or effect on aquatic, plant or animal life, unless such activity will likely impact or affect the physical characteristics of such wetlands and watercourses.

Mr. Goeschel continued his review of his memo regarding the drainage report, drainage features, water quality basins, and erosion and sedimentation control.

He mentioned the site suitability determination by Ledge Light Health District, the 2017 Wetlands Report from Robert C. Russo, Soil Scientist and the engineering reviews of Steven D. Trinkaus, P.E., and Stephen Danzer, PhD.

Mr. Goeschel stated the application and proposed plans, including the previous records, which propose several different alternatives, in the current plan there are no feasible and prudent alternatives. He further stated this was his review of the record for their discussion and deliberation. He took questions, there were none offered.

Chairman Upton thanked Mr. Goeschel for his review.

Chairman Upton asked to recount Exhibit CC the existing vernal pool and whether it did or didn't exist. We touched on our Regulations and how a vernal pool is considered a wetland, and there is no discrepancy that there is a wetland in that area, and how it is regulated like a wetland. Please point to that in our regulations so we can get that into our record.

Ms. Cicchiello in July 2, 2018, Mr. Wren stated there is no road going through the vernal pool, it is located in lots 14, 15 and 16 within the wetland. Mr. Baldwin stated it is not located within the lots; it is west of the lots. It is in the wetland area to the west. Chairman Upton said it doesn't matter if it is or isn't.

Chairman stated immaterial whether there is, Section 10.6 of our regulations and is one of the findings in Mr. Goeschel's memo. Mr. DeRosa asked is a vernal pool regulated differently than wetlands. Whether it exists or not, it is regulated.

Mr. Baldwin noted discussion about other municipalities regulating vernal pools separately. Perhaps this is something this Agency may consider in the future but our current regulations don't allow for special treatment of vernal pools, they are treated like a wetland. As it stands now, we can't make a special consideration

for it. Chairman Upton mentioned potential changes to our regulations down the road for changes to upland review distance.

Mr. Baldwin further noted that based on DEEPS vernal pool definition, which he read, it is obvious there were egg masses in what is being discussed as a vernal pools. In his opinion it is likely a vernal pool; however we have no authority to do anything other than treat it as a wetland.

Mr. Koch noted that if it were a vernal pool, we would have to find that this would impact the physical characteristics of it. Mr. Goeschel noted that while the proposed development may impact the species, there was nothing in the record, and no information in the reports of Mr. Trinkaus or Mr. Danzer, to connect how it will change the physical characteristics of those wetlands. The impact to the species doesn't change the physical characteristics of the wetlands.

Mr. Baldwin said last year the Agency asked for a conservation easement because it had concerns, and they were added on the backside of the lots. The easements are adjacent to the wetlands. In order to determine, he's having a hard time, whether there would be impact to wetlands when there is still a 25' conservation easement. It would have to demonstrate that runoff coming through the easement would be detrimental to the wetlands. Chairman Upton added or the removal of the canopy, 25' canopy, Mr. Baldwin said the canopy width would or would not be enough.

Mr. Goeschel suggested the Agency review f exhibit CC, Mr. Russo's response that there is enough canopy and note if you look at the open space around the wetlands, you have several feet up to several hundred between each lot and the wetland, added to conservation easement tree canopy the tree canopy will be larger in scope and size, and there were be no adverse thermal pollution.

Mr. Baldwin stated if we talk about pollutants, in regard to the lawns up to easement area, is 25' enough, or not enough. Mr. Goeschel said it is sufficient; he looks for a 10' vegetative buffer in most cases, primarily with woodchips, because they help reduce nitrogen. He was not sure it's ever studied other than in the riparian corridor. The applicant doesn't need to provide the 25' easement but doing so to increase buffer. Mr. Baldwin said to provide filtration to wetlands. Mr. Goeschel said yes, for bio-remediation.

Chairman Upton stated it was important to put on the table as to the health code as to the septic, stormwater infiltration, sewage, and the setbacks provided, 100' from the property line for drinking water. Mr. Baldwin that is human health standard not wetland health, we talked about nitrogen uptake, etc. Can the standards for human health be applied to a wetland? Mr. Goeschel in regard to health of wetland, a wetland is a nitrogen sump, whereas a watercourse is not.

While have the buffers adjacent to watercourse, you have in addition to the 25' conservation easement you have the open space in the wetland, prior to water infiltrating the stream, you have a good area for nitrogen uptake. There is no other evidence in the record that speaks to that.

Ms. Cicchiello reminded Mr. Baldwin about his discussion on July 2, with Mr. Russo about the canopy and lot 13. Mr. Russo indicated that the trees are mature, that the applicant can't clear any further because it is part of the open space. Mr. Goeschel noted if concerned about that location, his suggestion was you have two flag lots, they could share a driveway off the cul-de-sac, you could move the clearing, needs the strip of land for frontage, but could keep. Mr. Baldwin said lot 13 is the furthest from the wetlands.

Chairman Upton asked to go back to the canopy. The erosion control showed the limits of clearing, does it align with upland review area. Mr. Goeschel said the closest 3-22 wetland flag on lot 13, is 25' from the property line. If took the 15' wide driveway and slide over 20' potentially and run down the side yard the setback of lot 12 to increase the buffer. Mr. Baldwin asked if you could rotate the driveways around the cul-de-sac a bit and reduce lot 11. That would move the lot line.

Chairman Upton had asked Mr. Wren about rotating the road to not be in the review area, he said it could be done. Mr. Baldwin said what he was trying to do was split the wetlands. Splitting the distance you could move it further in either direction, moving it closer to one of those wetlands. Chairman Upton noted that lot 14 was a detention basin, that made the road elbow out, but now that it isn't a detention basin it has more than 2x the surface area of lots 18 and 17, you could move the road and stay in subdivision regulations and keep the impervious road surface outside of the review area. Ms. Cicchiello said that Mr. Wren said it was possible but it would push the road into the wetland to the south.

Chairman Upton said looking at sheet 14 of 41 on the big plan; Mr. Baldwin said so snaking the needle. Chairman Upton had a marked up sheet showing an alternative road. There was discussion about oval rather than circular cul-de-sac. Ms. Cicchello noted the concerns for emergency vehicles and their needed width. Mr. Baldwin noted that this would push the detention basin into the review area. Chairman Upton noted it would take it out of the regulated area, get the road out of the regulated area. Mr. Baldwin you would have to push the road so far to the west to get cul-de-sac circumferences, but can't go any further because already at 2000'.

Mr. Goeschel noted you could shorten the road and bring back up then would have longer driveways' to those lots. Some portion of the road will be in the

regulated area though. Mr. Baldwin said you could have gravel driveways to those lots.

Mr. Baldwin asked Mr. Goeschel if this is something the Agency can do, condition the plan. Mr. Goeschel stated yes, you can but they can appeal. The applicant's proposal is not illegal, it is regulated. It is not direct impacts. If you impose a condition that is far beyond reasonable, the question is what will the court do, are you forcing him to do something he doesn't need to do?

Chairman Upton expressed his concern about the road east of the cul-de-sac.

Mr. Goeschel noted that islands in cul-de-sacs are required by all of the regulations now. Chairman Upton asked if we can reduce the diameter, Mr. DeRosa said no we need the circumference for emergency vehicles and plowing.

Mr. Koch asked without a finding of impact to the wetlands, do we have the authority to make these changes. Mr. Goeschel responded that is the question, without evidence in the record, you are conditioning the applicant without evidence as to why.

Mr. Baldwin said there was lots of discussion about dividing those wetland systems. If have a gravel road that would be a benefit rather than impervious paved surface, that would be a benefit but not to a great degree.

Mr. Goeschel said in regard to separating the wetlands systems could do a critter crossing, it is something rather than nothing, Mr. Baldwin thinks the Cape Cod curbing is enough. Mr. Baldwin was concerned about kids as well.

Mr. Baldwin likes idea of not having a cul-de-sac between wetlands, if it could be pulled back, and the Agency could mandate gravel driveways to those three lots, it would be less impervious surfaces. Ms. Cicchiello asked if each owner would share in maintenance of that gravel driveway and would not be able to pave it; this would require a deed restriction. Mr. Baldwin and Mr. Goeschel confirmed that this would be a deed restriction. Chairman Upton said this was based on moving the cul-de-sac 150' to the northeast. Mr. Koch noted if you keep where it is and mandate gravel driveways that would also be helpful.

Mr. Baldwin also noted that the access road to stormwater basin has to be maintained, a homeowners association would be responsible, the town has to maintain the pipe, homeowners would maintain the basin, and the access could be gravel. Chairman Upton said you could keep all of that outside of the review area. Phyllis Berger asked if the driveway could be pavers. Mr. Goeschel said yes, Mr. Baldwin said yes.

Ms. Cicchiello asked some further questions; Chairman Upton said this is just a theory. Mr. DeRosa asked if we are within our purview to do this. Chairman Upton responded yes, we could also throw it all out and say go away. Mr. Koch noted our decision has to be based on substantial evidence. Chairman said if we believe there is substantial evidence of thermal heating of the wetlands in the area of the cul-de-sac, in theory, because significant clearing would need to be done for that cul-de-sac, significant sun exposure would occur. Mr. Baldwin, if no lots are lost the engineer may be able to do it.

Chairman Upton said he asked the engineer and he did say it could be done, Mr. DeRosa said you didn't ask about shortening the road. Mr. Ms. Cicchiello quoted that Mr. Wren said it is a trade but could be done.

Mr. Goeschel he was concerned about road being lengthened by moving it, he may have to shorten it. Chairman Upton asked what is the maximum length of a gravel driveway to access a building lot, what is the length.

Mr. Koch said in regards to connectivity, Mr. Trinkaus who was an expert for the Intervener said he was in favor of lots 11 12 and 13 said he was ok with the way they are, the intervener's expert was good with it, said ok with them as long as drainage was improved. Ms. Cicchiello noted that the intervener's expert was ok with that design as long as drainage was improved. Mr. Baldwin thinks it's an improvement to lessen clearing, the Chairman agreed and Mr. Baldwin further stated the farther you can get from clearing trees in this area the better.

Mr. Daigle stated they would have to discuss all of this with their engineer; if you sharpen the bend in the road; the bend would be tighter than it is now. You don't have a plan, make a condition without knowing effects on the rest of it; it may change something more for something else. Reminder decision and deliberation is based on facts as presented not on theory. Mr. Baldwin outside of window to ask for more information we must rule based on what is presented to date. Chairman Upton said they need to come up with a cohesive idea.

Mr. Goeschel he needs direction to draft a formal resolution of findings and conditions, in favor, against or both. Previously the Agency had requested he draft both. As to pulling the cul-de-sac back it changes the trajectory of the road, and would then need Fire Marshal review and engineering review; does making the bend change the regulated activities and is it safe to travel on that bend? He went back to Mr. Koch's comment about what the applicant is proposing is within the regulations, are we imposing a condition that is above and beyond. Mr. Koch responded he was concerned with over reach. Mr. Baldwin thinks there is enough testimony in the record about connectivity, and reduction of canopy, so thinks it could be supported.

Mr. Goeschel stated in his opinion, we have it documented in the record from applicant, the existing as proposed; we have it in the record that there is no impact. That is Mr. Russo's report. Further, Mr. Trinkaus, the expert for the intervener, has no problem with lots 11, 12 and 13.

Mr. Koch asked Mr. Baldwin if everything stayed in its present location but there was a gravel driveway how much would that mitigate your concern about drying out the wetlands? Mr. Baldwin said he is worried about reduction of impacts in upland review area, and pulling back the large paved area from between the two wetlands, those are both good things.

Chairman Upton said if draw on letter from Mr. Danzer, who did not testify in person, he says a lot of can and may, he does say will increase the temperature of the vernal pool or whatever is there. That is on the fringe of factual, but is logic. Mr. Koch There is a lot of conflicting information, and we have to decide what to go with, and we have Mr. Goeschel's report.

Mr. Koch is concerned to extent trying to keep out of upland entirely, out of concern for wetlands, if over reach it will end up coming back here again. Mr. Baldwin doesn't see that as over reaching, if reasonable, not reducing the number of lots, less road and less cost, lot 14 would be slightly smaller. Mr. DeRosa said but we don't know what it does to the road.

Mr. Goeschel said if impose a condition like that and planning says it does meet the regulations, there is no harm but if it doesn't, then they may have to come back because they can't meet the subdivision regulations. Ms. Berger asked can't we find out before. Mr. Goeschel said no because the public hearing is closed. Mr. Baldwin said so we do that, put in that condition and then see if Planning accepts. Ms. Cicchiello said could we just take out that condition if they don't accept it?

Attorney Edward O'Connell reminded the Agency there is not back and forth. One of the things they are doing is making a report to the Planning Commission regarding a subdivision application and the Planning Commission considers that report along with others, and either accepts or rejects or modifies. There is no dialogue back and forth, you make your report.

Mr. Baldwin said approval of the wetland permit is contingent on that condition. Attorney O'Connell said that is a different function, you're doing both. Mr. Goeschel responded that typically the permit is used to create the report to Planning. Planning couldn't change the conditions of the wetlands permit.

The applicant would then be forced to design a road that meets the conditions imposed by wetlands and the subdivision regulations, but if planning denies it, then the applicant would have to come back to wetlands because they have regulated activity. This speaks to Mr. Koch's point that these are regulated activities, may be ideal to move cul-de-sac but that isn't a reason that he can't put it there. Mr. Baldwin sees this as a feasible and prudent alternative. Chairman Upton said keeping in mind the prior application as completely shot down.

Mr. Baldwin said the applicant has stated that this is reasonable and prudent alternative. Feasible by definition means able to be constructed with sound engineering principles; prudent means economically feasible.

Attorney O'Connell reminded them they need substantial evidence for their findings. Mr. Koch said we didn't hear evidence about this as a proposed alternative. He isn't an engineer so can't just move things around and think going to work, its speculation. Mr. Baldwin said it's not speculation; there was tons of testimony about thermal impacts to the vernal pool/wetlands. If you reduce the canopy within the wetlands area with standing water, there will be thermal impact. If we can reduce thermal impact by increasing canopy size, no lawyer would lose that argument.

Mr. Baldwin and Chairman Upton discussed the width of a gravel driveway back to those three lots, which would typically be 12' wide.

Mr. Dagle reminded them there has to be utilities and snow shelf it is not 12' wide gravel driveways with only trees hanging over, they have to get power to the homes and get snow out of the way. Mr. Goeschel said you would typically have a 14' wide access. Chairman Upton recalled testimony of 30' to the base of the larger tree would keep canopy. The water access to lot 13 is right down the middle of the driveway, so not off the driveway.

Mr. Goeschel wished to review evidence in the record, Exhibit U, page 2 of 9, re vegetative removal – in proximity to the driveway and cul-de-sac, he read from this section. He doesn't indicate will the clearing of the vegetation affect the area? The evidence doesn't say the wetland will experience any thermal pollution as a result. He states facts. Ms. Cicchiello asked what he could have said. Mr. Goeschel said he didn't connect it; the existing tree canopy that remains in place may shade it. Mr. Baldwin there is enough evidence that it would be a benefit to the wetland, Mr. Goeschel yes, but it isn't enough evidence in the record to support the change, no evidence in the record that there is a adverse impact. Mr. Goeschel said he is just saying there is a possibility, it is a claim, and it is not a statement of adverse impact.

Mr. Baldwin stated as an engineer if I could get a permit by reducing the road length and keeping the same number of lots I would not fight it. Chairman If I could do that while addressing the community concern by reducing the canopy to protect vernal pools, and the developer would recoup the cost of the road. Chairman Upton agreed.

Mr. Goeschel stated just so we are clear, going to look at reducing the length of cul-de-sac back and moving center of cul-de-sac north by northeast 150' keep cul-de-sac out of review are entirely. With access through shared gravel road that spawns off to the three lots.

Mr. DeRosa asked does this allow for discussion between developer and agency. Mr. Goeschel NO we are past that. Mr. Goeschel said he can discuss it with the developer, but can't report back of any private conversations.

Mr. DeRosa said we do not want to resolve this through appeals.

Mr. Goeschel said the conversation can happen, if you condition the approval that the cul-de-sac to be located outside of the 100' upland review area. Mr. DeRosa said but if it doesn't agree with other regulations, Chairman Upton stated he thinks it will, while Mr. DeRosa stated that isn't the point, there are regulations about roads and things outside of our purview. Mr. Goeschel responded that the public hearing for planning is still open; the applicant could revise the plan at that meeting to accommodate the Wetlands conditions. If they then can't meet the Planning regulations, they will make it so they can. They would then come back to this Agency for a site plan modification because the conditions imposed couldn't meet the planning regulations.

Mr. Baldwin asked counsel how that would work; Attorney O'Connell if your permit won't work for the Planning Commission, the Planning Commission would not draft a subdivision plan that incorporates that. They would have a new plan. When the time for that lot to be built on, they would come back to wetlands for a permit for that lot. It doesn't go back and forth.

Mr. Goeschel applicant would come back here with this plan or modified because couldn't get approved by planning; Mr. Baldwin would be a whole new application, new public hearing, etc. Mr. Goeschel responded it would be a whole new public hearing, etc.

Attorney O'Connell wanted to remind the agency that as Mr. Goeschel writes this up, he has to find quantifiable evidence in the record which constitutes substantial evidence, not logic, it is what was it like before, what it will be like after this happens. This is where agencies get frustrated with the record before you but you have to work with what you have.

Mr. Baldwin so would have to be in record so 100' of clearing creates x amount of thermal impact, and then we could make calculations and assumptions.

Mr. Koch said he is looking at Section 22a-41 of the Connecticut General Statutes, subsection d, "municipal inland wetlands agency shall not deny or condition an application for a regulated activity in an area outside wetlands or watercourses on the basis of an impact or effect on aquatic, plant, or animal life unless such activity will likely impact or affect the physical characteristics of such wetlands or watercourses". So what we would have to say is there is substantial evidence on the record we have that this cul-de-sac is going to dry out the wetland or otherwise affect them physically. Mr. Baldwin doesn't think we have to go that far. Mr. Koch stated it would have to be some kind of impact like that. The thing about animals that is a whole other thing. Mr. Baldwin said but it is in our purview. Mr. Koch responded we have to say someone told us this cul-de-sac is going to be physically impact, and we would have to find that. Mr. Baldwin is comfortable with that, and felt Ms. Moch said as much.

Ms. Cicchiello read a portion of Ms. Moch's statement from a letter regarding Twin Valley Subdivision Supplement comments of Steven Danzer, PhD, dated June 29, 2018, page 2 of 2, section 3, regarding the fragmentation of the ecological corridor, "During the public hearing of June 12, 2017, the Applicants wetland expert stated that the proposed location of the cul-de-sac was desirable because the proposed cul-de-sac did not fragment the small upland corridor between the wetlands that fringe the Four Mile River and the wetlands that contain the vernal pool complex. It should be noted, however, that the proposed cul-de-sac does in fact fragment another corridor not mentioned by the Applicant's experts; the upland corridor between the wetlands that contain the vernal pool complex, and the wetlands located south of the proposed cul-de-sac. The wetlands located south of the cul-de-sac are more substantial in size than depicted on the plans since they extend off site. (The site plan sheets are limited to the property itself). If the Applicant truly wishes to avoid fragmentation to this ecologically valuable landscape, then the cul-de-sac, the adjacent water quality basin, and lots 10-13 should be eliminated from this current plan."

Chairman Upton said this is a fact. This is one expert versus another. Ms. Moch's credentials were professional soil and erosion sedimentation control.

Mr. Dagle stated it is a fact they are going to intersect, but is it a fact that there is a quantified adverse affect. Does it have an adverse affect on those wetlands, can you pull that from the testimony. Is there testimony that bisecting the two wetlands will cause an adverse affect on the wetlands?

Chairman Upton stated potential adverse; Attorney O'Connell said no, adverse affect. Attorney O'Connell said it is reasonably likely to have an unreasonable adverse affect. Ms. Cicchello said that Ms. Moch proposed to remove the cul-de-sac and basin from the site plan.

Mr. Baldwin would like to get to the stormwater basin.

Mr. Baldwin asked that Mr. Goeschel develop a resolution with that language and without that language. There were two resolutions last time.

Mr. Goeschel will provide language with the cul-de-sac and without it. Ms. Cicchiello is there any other evidence in the record regarding impact of the cul-de-sac. Mr. Baldwin asked if Mr. Goeschel would comb the desert and find language where evidence.

Chairman Upton stated that our concern is we have expert testimony that is contradictory. Mr. DeRosa responded not entirely contradictory, but subjective.

The Agency took a break at 8:38 p.m.

The Agency reconvened at 8:45 p.m.

Chairman Upton continued with the potential to move the cul-de-sac north 150'.

Mr. Goeschel wanted to be on record as saying while logic says clearing of vegetation may cause thermal pollution, that is the evidence that was submitted by Mr. Danzer, he did not quantify it, he didn't support it, he relied on logic to get us to that point that clearing causes thermal pollution but he did not specify that it would in fact create thermal pollution, so while it might bifurcate the two wetlands systems by the cul-de-sac, but he did not indicate how the wetlands or watercourses would be adversely impacted. It has to have not just an adverse affect but it has to have a reasonable likelihood to have an unreasonable adverse affect.

The issue is that the evidence submitted by Mr. Trinkaus and Mr. Danzer hasn't determined an unreasonable adverse affect/impact.

Mr. Goeschel continued that Mr. Russo goes back to Exhibit CC; Chairman Upton interrupted to ask wasn't that the case on the past application that was denied.

Mr. Goeschel said the prior application was denied, you have to look at the specific reason was denied, doesn't believe that clearing was one of the reasons for the denial. Mr. Koch read Exhibit Q, the prior application denial. There was no denial for clearing.

Mr. Goeschel will move forward and draft language for both. Mr. Baldwin asked to move to other concerns.

Mr. Baldwin is concerned with the detention basin on lot 24; there was lots of evidence and testimony that it was designed properly from applicant, and not designed properly from intervener. What are other member's interpretations? That is his only other big concerns.

Mr. Goeschel stated in his memo he indicates the town engineer in exhibit L reviewed the proposed report and plans and found them consistent with the subdivision regulations and stormwater requirements. He indicated "that proposed drainage features will substantially result in a net balance of volume draining to the wetlands on site for the 2 through 100-year storm events, will enhance stormwater runoff quality and recharge the groundwater". He further goes on to state that "the proposed water quality basins have been sized to retain, attenuate and infiltrate stormwater runoff. Further, the outlet structures will meter outfall volumes and peak rates of runoff; and will be seeded and planted with the intent of bioremediation through nutrient uptake thus, enhancing stormwater quality".

There was discussion from Mr. Trinkaus about the stormwater basins not being designed properly, or not in compliance with the DEEP Stormwater Quality Manual. Please note like any manual this is a guide, it is not required to be followed to the letter. It is a recommendation; it does not negate professional expertise. We heard from Mr. Wren that these basins achieve infiltration and storage. We had some discussion from Mr. Wren about lowering the bottoms into the groundwater table and discussed the trade off; Mr. Russo said that might be favorable, Mr. Goeschel feels it is at the discretion of the Agency. He noted to keep in mind that as designed, the Town Engineer and the applicants engineer have reviewed the design, that is two licensed professionals, and both have stated it will do as is proposed. It will mitigate the stormwater; it will address water quality volume. Mr. Goeschel said he doesn't know to what degree Mr. Trinkaus would want water quality volume treated further.

Chairman Upton said going into groundwater doesn't make sense to me. Mr. Baldwin said that is the micro pool extended detention basin is designed to have a wet bottom, but Mr. Wren in his experience was that having an open water detention basin having with sun would create potential thermal impact so raise above groundwater table so less thermal impact, also if it was open to the water table there is no filtering of contamination.

Chairman Upton said on July 16, he asked Mr. Wren, would you testify that the proposed stormwater system is in compliance with the Connecticut DEEP

Stormwater Quality Manual and he said yes. Mr. Baldwin stated but Trinkaus said no. Mr. Baldwin agreed this is a guidance manual. Chairman Upton noted the town engineer is agreeing with the design. Ms. Cicchiello noted that on that night Mr. Goeschel commented that the volume of water being treated is significantly more than what is required by the manual.

Ms. Cicchiello asked for clarification on the topsoil liner. They could either lower the basin or add top soil. Mr. Baldwin said the topsoil will serve as a liner. Mr. Goeschel said this will cause water to be held in the basin longer for more infiltration, so it doesn't dump into the groundwater. Specifically this was noted sheet 40 of 41. Chairman Upton explained the concept for the liner and the lowering the basin. The basin is designed with a topsoil liner.

Chairman Upton called for other stormwater concerns. Mr. Baldwin stated that the stormwater was designed by the engineer in direct response to the concerns in the first application. It does provide treatment which was one of the agencies concerns.

Mr. Baldwin spoke to the alternative proposed by the intervener of the road on the other side. He said he can't get past an alternative that increases impacts in the upland review area; Mr. DeRosa and Ms. Cicchiello concurred. Mr. Baldwin felt that there is enough problem with the wetness of the soils, dewatering etc., in that location for it to not be a feasible and prudent alternative. Chairman Upton noted that the denial also suggested the applicant get rid of the emergency access road and shorten the road.

Mr. Goeschel noted that Ms. Moch was in support of the gravel emergency access driveway, which conflicted with Mr. Trinkaus who wanted to relocate the road and with Mr. Danzer who agreed with Mr. Trinkaus proposal.

Mr. Baldwin is planning reviewing the location of the entrance, Mr. Goeschel that is their purview. Mr. Baldwin stated so they could potentially require the entrance to be moved; Mr. Goeschel it is plausible.

Chairman Upton asked about the theoretical reduction of a few hundred feet of road, how much more shorter does the road need to be to get rid of emergency access road, Mr. Goeschel said it is based on the number of houses, not the road length. The number is 20, we are at 23. Mr. Baldwin doesn't have a problem with the gravel access road. Mr. Goeschel reminded them that Mr. Wren mentioned that utilities were not contemplated by Mr. Trinkaus and Mr. Danzer in the alternative option. Mr. Goeschel advised that utilities will be underground; the 50' swath is part of subdivision regulations.

Ms. Berger asked about the deed restrictions, the requirements for rain gardens. Also deed restrictions on cutting trees. Mr. Goeschel responded that right now there is a conservation easement area, there will be restrictions there. Currently based on what is proposed, it is associated with the road; so clearing is limited to the road, once the applicant starts to clear lots that will require a separate permit to be reviewed by the Agent or Agency, they could make it a condition to come back to the Agency or allow agent to review.

Chairman Upton noted there was discussion from Mr. Baldwin as to sheet 37 of 41, he discussed on the north side of the cul-de-sac moving the silt fence; just note that if they move the cul-de-sac it is a non issue. Mr. Baldwin was concerned about wetland marker 3-28, move south. So if the cul-de-sac was pulled back it would be a non issue.

Mr. Goeschel noted the limits of clearing on sheets 16, 17 and 18 they all show approximate locations of septic, the approximate limits of clearing are shown there. To give an idea of where they would clear to those sheets indicate the existing vegetation and where they would clear to. Keep in mind that in easements the Wetlands or Conservation tags are required to be posted. Ms. Berger stated so they can't touch those trees.

Mr. Goeschel within easement they preserve the trees, unless it is a health hazard. Ms. Berger asked who is contacted to remove trees, Mr. Goeschel responded they typically contact Mr. Goeschel then he suggests they contact an arborist. One tree is not a big deal. Ms. Berger asked about a deed restriction on the gravel driveways; Mr. Goeschel responded they would remain gravel and it would be up to the three lots to maintain it, or HOA. Chairman Upton stated he would propose the 3 back ones come before the Agency. Mr. Baldwin stated he can trust Mr. Goeschel to refer to commission if there are any issues. Mr. Goeschel stated the septic on those lots are out of upland review area, others are in the upland review. So if septic end up in the review area, he would kick them back to commission because so close to the wetland.

Chairman Upton noted concerns about the variability in conditioning if we do as we are suggesting, as these lots happen. We would then get our eyes on how the lots are and how road went in.

Chairman Upton said as to the septic in review area, Mr. Baldwin felt it was hard to dig into it is conceptual, all proposed, Chairman Upton said it is inevitable, Mr. Baldwin said but the location isn't inevitable, they could be engineered to be further out of those areas. Mr. Goeschel stated that due to the change in health code five bedroom systems, the septic could be smaller. Ms. Cicchiello asked if in upland review area would you kick it back to agency, Mr. Goeschel said most

likely on the lots I mentioned but not on lots with limited disturbance and activity is nominal, I would require a permit but it would be administrative.

Mr. Baldwin stated his areas of greatest concern are those closest to Four Mile River because they have the most direct connectivity. Chairman Upton noted that based on what is flagged, there are nine lots proposed with septic in our review area, they do meet the health code setbacks.

Mr. Baldwin said we are talking about 2 different things. Concerns for environmental issues, having septic close to Four Mile River, nitrogen issues into the river are the areas concerned about in terms of impacts that are more easily measurable. Those areas have no wetlands, but a watercourse.

Mr. Goeschel there is a stream within the wetlands. Mr. Goeschel can kick those lots back here if need be, looking at conceptual drawing there are some outside or borderline within upland review area. Mr. Baldwin doesn't think they would have to be kicked back, but want to look at Four Mile River. Chairman Upton reminded them to stay factual, is it in the review area or not in the review area.

Ms. Cicchiello mentioned the applicant did the nitrogen analysis on lots 3, 11, 12, 13 and they met the guidelines, as the prior agency requested. Chairman Upton stated his concern is in theory, a person buys lot, the drawing shows where house and septic goes and that is probably what I'm going to do. Mr. Baldwin said we discussed that. Mr. Goeschel said if they propose it, if they propose exactly as you see, that is covered by the permit. Chairman Upton said the septic could be put where it is on the plan. Ms. Berger reminded them this is for the road. Mr. Goeschel said we are contemplating the activities made inevitable by the proposed road but we are not regulating them. Meaning if they have regulated activities will come back and we will regulate them. Mr. Goeschel said even if this proposed plan is applied for, we are NOT permitting this right now. They still need a permit.

Mr. Goeschel said they will need a wetlands permit from the agent or agency, he uses 100 cubic yards or 25' from a wetlands, then Mr. Goeschel sends it to the Agency.

Mr. Baldwin asked Chairman Upton if he is trying to mandate that all of the lots come back before the Agency. Chairman Upton said when the septic is entirely in the review area he wants it to come back before the Agency that is what he is saying, if it fails there would be an issue.

Ms. Cicchiello read from a prior meetings notes that the applicant agreed where possible they could move the rain gardens 25' from septic and will move the septic out of the review area as well if possible. So the applicant agreed to move the septic out of the review area if possible. Mr. Goeschel thinks he can handle it with town attorney to create language that is acceptable and not too over reaching. Attorney O'Connell asked that they remember it must be supported by substantial evidence, they went on the record.

Mr. Baldwin said he is not worried about some of the septic in the upland review area on the western side; he is worried about those in upland review area adjacent to Four Mile River. Concern is area around river. He doesn't want to say no septic in upland review area. Mr. Goeschel said they could condition to say lots on west side of road abutting the river want to come back before agency. Chairman Upton said let's just say if in upland review they come here, a wetland is a wetland.

Mr. Baldwin doesn't think we should condition to not be in upland review area at all. Ms. Cicchiello is just saying they offered to do that. Ms. Berger responded we are approving a road. The septic is something that will come back if required. Why discuss it? Ms. Cicchiello said this is what they offered to do. Ms. Berger said they are the road people not necessarily the lots.

Mr. DeRosa said they will need to come back for review.

Mr. Goeschel asked if there was anything else. There was some discussion about the rain gardens. Mr. Goeschel responded that rain gardens do contribute to some of the water quality volume, it is in the drainage calculation, so each lot will have to be reviewed to make sure it collects the appropriate amount of water.

Chairman Upton asked if there were any other concerns or questions. Mr. Baldwin is all set. Ms. Cicchiello is all set. Mr. Goeschel is all set.

Mr. Goeschel recommends they go back and look at exhibit items, U, environmental comments from Mr. Danzer, Exhibit U from previous record, Exhibit CC, Exhibit Z, and exhibit Y, as well as Exhibit M and L. Many exhibits were submitted into the record but these are sited in record, and he points to those because they are by documented experts. He will draft language and report back to the commission with draft resolutions. Our next regularly scheduled meeting is August 13, 2018.

Mr. Goeschel noted the Agency also needed a Resolution and vote on the Intervener status. Any specific questions about that should be directed to counsel while he is here.

Attorney O'Connell stated that he has reviewed the petition; it is acceptable as to form, under oath, sites sufficient detail for what they consider the harmful effects. It is a low bar to intervene. The court allowed in the court proceedings in last application. He suggested they consider granting the motion to intervene.

Chairman Upton asked is the interpretation, an intervener's purpose is one that wouldn't otherwise have standing. Attorney O'Connell asked here or in court. In Court you have to be granted as an intervener to have standing. Here have to have motion to intervene to be a party. Once you are a party you have certain aspects you can bring up as a party which you would not be able to bring up as a member of the public. Chairman Upton said so they have to be focus on environmental issues. Mr. Koch asked about the lowness of the bar, would be based on the language about unreasonably destroying the public trust.

Attorney O'Connell responded the language is reasonably likely to do unreasonable harm to environment. Mr. Koch said there is also something about public trust. Attorney O'Connell said it is a vague term. Mr. Koch said based on disagreement among ourselves it would go in favor of granting the motion.

Chairman Upton said in lay mans terms to interpret he could understand if parties lived elsewhere, but parties are a party and have presented all argument as members of the public and doesn't see further information given different status or standing that what would go outside of what has already been presented. Attorney O'Connell said a person can present evidence but as party status can present evidence and cross. Chairman Upton asked why did their counsel cross what was stated. Attorney O'Connell responded because he expected to be granted intervener status.

Mr. Baldwin asked why it has taken us so long for us to move on this. Attorney O'Connell said it could have been granted on the first night. Mr. Goeschel said we heard what they had to say and didn't act on it that evening because Attorney wanted to take a closer look at it, subsequently meetings we collected data. Chairman Upton said to be granted under CEPA it is the point of discussion whether there is significant impact or not.

Mr. Goeschel noted that on the previous application it was denied. Under CEPA there was no impact. Court granted it based on abutting land owner status; it was not an environmental concern.

Attorney O'Connell said being abutter is different than living in another town and intervening.

Mr. Koch move to grant Brian A. Lepkowski, of 27 Green Valley Lakes Road, East Lyme, Connecticut, Intervener status. Mr. Baldwin seconds the motion.

Ms. Cicchiello asked if granted, and the application is granted, do they have a right to appeal? Mr. Goeschel responded it doesn't matter they can appeal either way.

Motion passed 5-0-1 (Chairman Upton abstained).

II. ADJOURNMENT

Ann Cicchiello moved to adjourn the East Lyme Inland Wetlands Agency meeting at 9:42 p.m. Phyllis Bergersecond. Motion passed 6-0-0.

Respectfully Submitted

Jennifer Lindo Dashnaw
Recording Secretary

****These minutes are subject to approval at the next monthly meeting**

