

**EAST LYME INLAND WETLANDS AGENCY
REGULAR MEETING MINUTES
October 15, 2018**

MINUTES

Members Present:

Gary Upton, Chairman
Ann Cicchiello, Vice Chairman
Peter DeRosa
Jack Chomicz

Members Absent:

Harry Clarke
Todd Bellucci, Alternate
Theodore Koch, Alternate

Also Present:

Paul Dagle, Board of Selectman
Gary Goeschel, Director of Planning/Inland Wetlands Agent

FILED IN EAST LYME
CONNECTICUT
OCT 23 2018 AT 2:40 AM/PM
Brooke Brown ATC
EAST LYME TOWN CLERK

CALL TO ORDER:

Chairman Gary Upton called the Inland Wetlands Agency meeting of October 15, 2018 to order at 7:17 p.m.

PLEDGE OF ALLEGIANCE: Observed

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

I. Additions to the Agenda - None

Ann Cicchiello moved to re-prioritize the Agenda with New Business and Enforcement first. Second by Peter DeRosa. Motion passed 4-0-0.

II. Ex-Officio Report – Mr. Dagle reported the Board of Selectmen appointed Attorney William Willets to examine the indices of the Land Records for 2018. The Town wide purchase plan, and the Harbor Management Ordinance and Plan were both tabled until next month.

III. New Business –

A. Application of Thomas and Kristen Chantrell, 13 Green Valley Lake Road, East Lyme, Connecticut; Request for a dock, platform, stairs/access, play area and beach at 13 Green Valley Lake Road, East Lyme. East Lyme Assessor's Map 14.0, Lot 62.

Mr. Goeschel stated this started as an enforcement action, a dock the owners constructed extended 20' into the abutter's property. The owners were advised they needed a permit but a portion of the dock wasn't on their property. In response the owners made an application for clearing, associated with a children's plays cape and a dock. The commission approved the clearing and children's plays cape. The owner's are now returning for the portion of the dock on their property. There was discussion when the commission approved the first application, because it included the dock, should the

fee be waived for the second portion of the application? It is up for discussion if they owe the fee because the dock portion was removed from their approval.

The applicant is here to present her application, the dock extends 10' or so along the beach area adjacent to the watercourse. Information is in the agency's packet. It does have pictures of what it looked like initially but the dock has been removed, there are four posts remaining in the watercourse. Chairman Upton asked Mr. Goeschel if he had inspected the current dock in place. Mr. Goeschel responded that the dock was removed to the landward side of the watercourse, assuming it is on their property, it is in the picture, less the portion eliminated. Mr. Goeschel showed a picture from his phone to the Agency showing the platform and four posts. Chairman Upton asked as to the structural integrity. Mr. Goeschel responded that would be up to the building official, but he had never seen one inspected by a building official.

Ms. Chantrell, 13 Green Valley Lake, stated that there were stairs dug out of ground when they moved in. The children running on it caused erosion, so they put rip rap on the existing stairs, added new staircase above and a platform to limit erosion or water flowing from our property to the water. She did check with the building official who confirmed they didn't need a building permit for the dock. The four posts go over their property and their beach, the neighbor's survey marker is there. Chairman Upton stated his concern about the construction and the lack of hand rail. Ms. Chantrell said it follows the land and the stairs are steep, and there will be a hand rail. Chairman Upton is concerned about saying ok and then someone gets hurt. Ms. Chantrell noted it is a stable site, from a wetlands perspective. This reduces the impact. Chairman Upton asked what the plan for the posts in the water is. Ms. Chantrell said they hope to put a dock back; the issue is the developer wouldn't work with them, they hope when he no longer owns the property to move forward. The removal of the 4" posts would cause damage to the wetlands. There are other owners encroaching on the land that the developer didn't pursue. They removed the dock, hope to have it be done and over with. Chairman Upton asked and Ms. Chantrell confirmed that everything on the property has been removed other than the posts. Mr. DeRosa asked how the posts were installed. Ms. Chantrell explained that PVC pipe was used, and installed with a pressure washer, about six feet below ground and cement was poured into the pipe. The posts you see are on the dock they don't go down further. Chairman Upton asked if the landing and steps are still there. Ms. Chantrell responded yes, and that this was her property. They removed the dock that extended past that about 25'. Ms. Chantrell offered a color photograph. Ms. Cicchiello stated she was unclear what they were asking for. Ms. Chantrell responded they are asking for a dock, and the platform and stairs to be approved as this permit which are on her property.

Mr. DeRosa asked if the property owner is ok with the four posts remaining in the water. Mr. Goeschel stated in talking with Mr. Fusari, the developer in the Twin Valley application, indicated that the Maric's sent a letter to the Chantrell's saying they would pursue further legal action for the removal of the dock.

Chairman Upton noted the action of this Agency was to remove the dock. Mr. Goeschel noted that as to how they would be removed (the four posts) would disturb the bottom. The Town received a copy of the Maric's letter, they don't want the posts there but this is a civil issue between neighbors. This Agency is concerned with what took place in the

water. Mr. Goeschel stated he would like to see them removed. He understands that Ms. Chantrell would like to come back when the land is owned by someone other than the Maric's. The Maric's however cannot close on the land transaction if there is an encumbrance, such as these posts. He believes the Maric's will pursue it further. Ms. Cicchiello asked if they would have to come before this Agency to remove the posts. Mr. Goeschel said yes, they would need a plan for removal. The Agency cannot vote on this item tonight as it has to be on the agenda for 15 days. The next site walk is November 3. Mr. Goeschel suggested the item be placed on the site walk agenda and the regular meeting agenda for November 5.

Mr. Chomicz wanted to clarify that there are posts legally on the Chantrell property, but there are four more on the neighbor's property. Mr. Goeschel confirmed there are four posts remaining on the abutting property. Ms. Chantrell indicated they will receive further legal notices from the abutter, the four posts are legally on his property, however they feel they have warping out rights and recreational use of the water. She went to the Army Corp, not the Wetlands Agency.

Mr. Goeschel stated the filing fee and the four posts should be considered between now and the next meeting. The filing fee would be \$210.00. The activities have already occurred it is an area that is less than 5000'.

Mr. Chomicz felt it should be brought up to code and have railings and everything else. This has been hanging around a long time. He stated the agency should look at it.

- B. Request of Lance Hall and Debra Palladino, 46 Scott Road, for a Bond Release;** Request for release of bond in the amount of \$2,726.00 for the construction of a detached garage and installation of a subsurface sewage disposal system including re-vegetating a previously cleared area on property at 46 Scott Road, East Lyme. East Lyme Assessor's Map 29.0, Lot 12-1 and Lot 12-2.

Mr. Goeschel noted the re-vegetation is successful as he has inspected the site and he recommends they release the bond back to the property owners. This bond was for the detached garage. The agency asked for a buffer, which has now gone through two full growing seasons, and in his professional opinion has an over 80% survival rate as required by the bond.

Ms. Cicchiello moved to release the bond in the amount of \$2,726.00 for the construction of a detached garage and installation of a subsurface sewage disposal system, including re-vegetating a previously cleared area on the property at 46 Scott Road, East Lyme. Peter DeRosa second. Motion passed 4-0-0.

- C. Application for Determination of Permitted/Non-Regulated Activity, Elizabeth Farrugia, 24 Green Valley Lake Rd, East Lyme;** Application for vessel that floats inside property owners boundaries but moves with the tide at 24 Green Valley Lake Rd, East Lyme. East Lyme Assessor's Map 14.0, Lot 94.

Ms. Cicchiello recused herself from this discussion. Chairman Upton noted that they do not have a quorum for this item, however because the applicant is here, they would allow for clarification of the issue. Mr. Goeschel noted they could not vote on it,

however they could discuss it, because they have no quorum, and that they could site walk it with the proximity to Ms. Chantrell's.

Jeremy Seidel for the applicant stated they were trying to clarify, and had some questions for the agency. He noted that the State definition of a vessel less than 12' and made out of wood, could be considered a boat, with no motor, because it is inside of those sizes, it has less impact or the same impact than a row boat. He stated the owner believed no permit was required because it is not affixed to the ground. It is a homemade wood structure, 10' x 11'9", it floats on the water, it is tied to a tree, it is within the owner's boundary lines, and does not encroach on anyone's property. After checking the state statutes, a person can own the bed of the water body, but not the water itself. You can walk to it from her property to get onto it, there is a wooden walkway.

Mr. Seidel stated he met with Joe Smith, the building official, when they had to remove an approximately 10' x 14' structure from the back of the property built by the pool company. There was no inspection required because it was not affixed to the ground, and neither is her pathway. The pathway was a worn pathway with erosion that they put down wooden planks, the landscape company also planted other wetland plants along the pathway.

Mr. Upton said they are dicing a technicality to call a dock a vessel. Mr. Seidel stated it is within the parameters of the statute and they are eager to be compliant with the Town but staying within the parameters of the Statute. Mr. Upton said he would imagine the Chantrell's could say it's not a dock, they could do the same thing. Mr. Seidel stated if it is under the 12' it is not required to be registered. It floats on her property so it is not an encroachment. It can be a row boat. It has been paddled. If you untie the rope, you can stand on it and maneuver.

Mr. DeRosa said he would need to see it. Mr. Seidel clarified it is not attached to the ground, it is not permanent. Mr. Goeschel inquired if it was a raft? Mr. DeRosa stated a raft is intended to move and be paddled around, a dock is not intended to move. Mr. Upton asked if you can put a motor on it. Mr. Seidel said no then you would have to register it. Mr. Seidel stated it is not pinned to the ground, based on what Joe Smith told me a permit wasn't required. Mr. DeRosa suggested they read the float/vessel definition.

Mr. Dagle, Ex-Officio stated so basically it is moored in her property boundaries. Mr. Seidel responded yes, it floats inside of her property line. Mr. Upton asked so when get onto this thing, it is no different than a ramp onto a boat; a gangway onto the raft. Mr. Seidel stated their intention was not to be intrusive, or impact the wetlands. Mr. Upton asked if there were any modifications. Mr. Seidel stated no there were no modifications, they are not opposed to a permit for a dock, but may not get approved for that, but that is not what they have.

Mr. Goeschel recommended they visit the property at the next site walk and place the item on the next regular meeting agenda.

Mr. Seidel wanted to clarify that Ms. Farrugia's property boundary extends into/under the water. Mr. Goeschel noted that approximately ten feet of the water is on her

property. Mr. Seidel noted that one corner of the vessel does rest on the bank of the water, which is her property, it is not anchored or secured.

Mr. Dagle, Ex-Officio noted that the Harbor Management Plan does allow floating docks without permitting on the Niantic River and that while it doesn't directly apply here, the Agency may want to look at it on whether it is a boat or a dock.

Mr. Seidel stated he saw that rule and in fact noted that is where he learned the water was considered navigable because it is a part of the Four Mile River and you can get from one body of water to another. Mr. Dagle noted the Harbor Management Plan doesn't apply here.

IV. Enforcement

1. **Cease, Desist and Restore Order; 13 Green Valley Lakes Rd; Thomas & Kristen Chantrell, Owner;** Installation of a dock which encroaches approximately 20-feet into a watercourse located on an abutting property and the clearing, grading, removal and deposition of material on the land within 100 feet of a watercourse without an Inland Wetlands Permit. (Agreement to remove by August 31, 2018).

Mr. Goeschel stated this remains until the Chantrell's get a permit for the dock and there are still 4 posts in the water.

2. **Cease, Desist and Restore Order, Roxbury Road;** for the clearing, grading, removal and deposition of material on land within 100-feet of a wetlands and watercourse at the above referenced address without any permit under the East Lyme Inland Wetlands and Watercourses Regulations authorizing the regulated activities on property located on the southwest side of Roxbury Road across from the entrance of the Town's Municipal Transfer Station, Assessor's Map 16.1, Lot 43, Niantic, Connecticut.

Mr. Goeschel reminded the Agency that the issue was the plan was stamped by the engineer and land surveyor. The agency wanted a signature from a Certified Soil Scientist. Mr. Weiss has submitted a letter, which was read into the record from Mark H. Sullivan, Certified Soil Scientist; stating he flagged the wetlands and that the stockpile is outside of the upland review area. Mr. Goeschel stated that as it stands now for the Cease & Desist, he has come into compliance.

Chairman Upton asked if he flagged the wetlands. Mr. Goeschel responded yes, the stockpile is approximately 108', from the flagged wetlands. The plan shows all of the activity several feet outside of that, wetlands flag #4 is closest.

Chairman Upton asked if the septic is in loam pile. Mr. Goeschel responded no, the septic is east of the loam pile. The loam pile is approximately 13' from the 100' upland review boundary at its closest.

Mr. Goeschel showed the signed plan to the Agency with the single family dwelling and the septic, identifying the wetland flag and the distance to it of the closest activity. Chairman Upton questioned the location of the flagged wetlands and whether or not all of the wetlands need to be flagged. Mr. Goeschel stated this is not an application, it is a response to a Cease and Desist.

Mr. Goeschel stated he has not approved the building permit application yet. He reminded the Agency that if there is any regulated activity for future activities the owner would have to come back before the agency. Mr. Goeschel stated he has to rely on the stamp and signature of the professionals. Chairman Upton felt the Agency was reaching past their comfort level, as there were several thousand yards of fill. Chairman Upton felt it was a massive pile of fill this gentleman put in there. Mr. Goeschel stated the letter is from the soil scientist identifying the location of the loam pile and stating he flagged the wetlands. In his opinion he is currently compliant. Chairman Upton said he wanted to stay congruent, we have a person putting in thousands of yards of fill and we say ok go ahead and build a house.

Mr. Goeschel stated if it is outside of the upland review, he is entitled to the activity. The loam pile was not present at time of delineation and no wetlands and watercourse is present where loam pile is presently located. Chairman Upton wanted some further information as to the proposed two bedroom residence and septic. Mr. Dagle reminded the Agency that there is no house permit in front of them right now. Chairman Upton stated we do. Mr. Dagle said no, he has not made application. Mr. Goeschel stated the application would go to him for agent approval; most likely he will approve it, based on that he would not ask for a wetland permit, unless for some reason there was a steep slope with erosion likely, with a strong likelihood of material washing into the wetlands.

Chairman Upton stated the Cease & Desist was regarding extensive filing. Mr. Dagle stated you have evidence from the owner that it didn't encroach on the wetlands or the upland review area, your staff are telling you they concur based on the letter from the soil scientist and the engineer. The Agency needs to either concur or ask for additional information. Chairman Upton stated it was a little willy nilly. Mr. Goeschel stated he could ask for further additional information. However, as presented it is compliant, whether the Agency like or not. Mr. Goeschel recommends lifting the Cease and Desist Order. Mr. DeRosa agreed.

Ms. Cicchiello moved to lift the Cease, Desist and Restore Order, Roxbury Road; for the clearing, grading, removal and deposition of material on land within 100-feet of a wetlands and watercourse at the above referenced address without any permit under the East Lyme Inland Wetlands and Watercourses Regulations authorizing the regulated activities on property located on the southwest side of Roxbury Road across from the entrance of the Town's Municipal Transfer Station, Assessor's Map 16.1, Lot 43, Niantic, Connecticut. Mr. DeRosa second. Motion passed 3-1-0.

Chairman Upton stated he was opposed to this motion, sorry, it doesn't stand, thank you. A stamp on there in his opinion is important, people are listening thinking he's being a ball buster over three foot limitations, see we have a smile

in the back, and here we are saying go for it, have at it, and I don't like that it doesn't feel right it's not fair, sorry.

V. **Public Hearings:**

GDEL Residential B, LLC., and Gateway Development/East Lyme LLC; Application for construction of 120 residential units, including but not limited to road improvements and construction of parking areas at property located at East Society Road, 286 Flanders Road (26.0/2), Flanders Road (31.0/1).

Before we open the public hearing this evening for the GDEL Residential B, LLC and Gateway Development/East Lyme LLC, I would like to inform the audience and the Commission of the Ground Rules we will be following this evening to conduct the public hearing.

The purpose of a public hearing is an opportunity for the Agency to gather evidence and testimony, including public comment, regarding the pending application. The Wetlands Agency encourages all in attendance to offer comments and ask questions. However, a successful public hearing requires some simple rules be followed. These ground rules will ensure that all in attendance are treated in a respectful and courteous manner, and that all who desire to speak will have the opportunity to be heard. As such, the rules are as follows:

1. The applicant or his representative will make a formal presentation to the Agency stating the proposed regulated activities, the wetland and watercourse impacts, and any alternatives which were considered by the applicant. The Agency may, during the presentation, ask questions of the applicant for clarification.
2. After the applicant's presentation is completed, the Chair will ask for members of the public who wish to speak in favor of or in opposition to the application to address their comments to the Agency from the podium.
3. We ask that no one speak unless recognized by the Chair for that purpose. This is necessary to ensure that only one person at a time speaks on any issue, making it easier for everyone to understand as well as for clearer legal transcription. Upon recognition by the Chair, the individual addressing the Agency must identify themselves by clearly stating their name and address for the record. If necessary, an individual may be asked to spell their name for the record.
4. Anyone choosing to speak must address their remarks to the Wetlands Agency and not to other members of the public or the applicant. Any debate between those in favor and those opposed the proposal must be strictly avoided. Oral comments can generally be delivered in 5-minutes. If there are a large number of individuals who wish to speak, the Chair reserves the right, in its sole discretion, to enforce a 5-minute rule in order that all who wish to speak may have an opportunity to do so. Individuals who wish to be heard multiple times may return to the podium but, only after everyone who wants to speak has spoken. To assist us in reducing lengthy public hearings, please be mindful to avoid repetitive comments. If you are in favor, simply tell us and give us your reasons why; and likewise, if you are opposed.

5. As the Wetlands Agency is here to listen to the public's comments about the subject of the hearing, the Agency is NOT here to express its own views or opinions thereon. The Agency will NOT participate in a debate of the issues. No person has the right to demand an answer to a specific question from a member of the Agency. As noted earlier, questions should seek clarification and information. Questions should not lead to a debate of the issues.
6. All questions are to be directed to the Chair, who may either answer them or refer them to a Commission member, the Town Attorney, Town staff, or the applicant. The answer may be deferred and subject to further review or study and answered at a later date.
7. No member of the public shall engage in any demonstration, booing, handclapping, or otherwise disruptive behavior.
8. The Chair will be responsible for ensuring that these rules are followed. Anyone violating these guidelines will be asked to refrain from doing so, and may, in the sole discretion of the chairperson, be asked to leave the public hearing.
9. The Wetlands Agency has 35-days from the date the public hearing commences to complete the public hearing. During that time, if the commission requires additional information beyond that which has been or will be submitted, the Agency may ask the applicant for an extension of the public hearing period.
10. Upon the close of the public hearing, the Inland Wetlands Agency has 35 days from said date to render its decision. If the Agency requires additional time to render its decision, it may ask the applicant for an extension of the time in which to render a decision. The extensions mentioned above are granted by the applicant and can not to exceed a total of 65 days.

GG entered **Exhibit M** the extension of time to close the Public Hearing from Attorney Harris.

Attorney Harris representing the applicant. This public hearing was previously opened regarding 120 residential units and what we didn't get into at the last meeting, is the sidewalk along E Society Rd, there are two areas of wetland activity related to the sidewalk. BL Companies went through some of the engineering attributes, the Agency heard from Scott Rabideau about the wetlands implications for design. There was also some discussion about the Army Corp and DEEP regarding the crossing of the wetlands and the crossing of the Pattagansett River, which is not part of this application.

Attorney Harris stated that Mr. Rabideau had forwarded the Functions and Values Analysis that was part of the Army Corp and DEEP application. They recently had a staff meeting within the town hall, where there was a request for some technical changes, which will be completed within a few days and be reviewed by staff. Attorney Harris has provided an extension of time to the next meeting to continue the public hearing for the revised plan sets.

Jessica Bates from BL Companies, Senior Engineer, spoke to review the sidewalk with respect to wetlands. Starting at the Western roundabout where it abuts East Society Rd, the plan is to construction a 5' wide concrete sidewalk along East Society Road to Society Road. There are two instances of wetlands impact. One has a direct wetlands impact that is 97' sq ft of wetlands impact. There is a 6' extension of a culvert and

headwall that goes under East Society Road. The second impact is upland review, where the sidewalk gets into the review area, no disturbance to the wetland.

Chairman Upton asked for more information on the review area and the sidewalk. Ms. Bates noted the first crossing with the direct impact, the existing pipe doesn't extend far enough for the 5' sidewalk, so they will remove it and extend the pipe and install a new headwall. That has 97' of direct impact. The other is in the upland review, together they have 13,000' of upland review area. The wetlands review area is quite long, the upland review area follows along the sidewalk, and it is minimal impact. Chairman Upton asked if there would be any lighting or infrastructure in there. Attorney Harris responded that as part of the Zoning submission, there is and will be, the Zoning Commission has required the sidewalk. The prior residential phase required the complete reconstruction of East Society Rd from Dean Rd into the site. This area was substantially improved as well.

Scott Rabideau, Professional Wetland Scientist, of Natural Resource Services Inc, has been involved with this project since 2008 and has extensive knowledge of the wetlands on site. He displayed an aerial graphic which shows the existing development with the proposed development superimposed over it. The green area is wetlands and blue are vernal pools. Total proposed wetland impact is 1,992 sq ft of direct wetland impact which includes the 97 sf of the sidewalk, and 2,945 sf of temporary wetland impact that is direct, which is the roadway crossing in order to construct it, need to go out into the wetlands a little more, once construction complete will be restored and re-vegetated. The upland review area impact for the project is 218,550 sf, just under five acres.

Mr. Rabideau discussed previously how that upland review area impact affects wetlands functions and values. He previously shared the analysis used in preparing for Army Corp and DEEP; the Army Corp of Engineers Functions and Values Statement for Proposed Wetland and River Crossings Prepared for KGI by Natural Resource Services Inc and Army Corp of Engineers Connecticut Addendum Report Supporting Environmental Document Prepared for KGI by Natural Resource Services Inc, which were provided to the staff and agency. What goes into these is the analysis of wetland function and the impact the proposed wetland crossing would have on each standard that is suggested, he recommended the Agency look at table of contents for an idea of subjects studied.

Mr. Rabideau listed some of the items that were reviewed and analyzed based on the table of contents. The affect to wildlife is in these reports. They did receive a permit from both the Army Corp of Engineers and Connecticut Department of Energy and Environmental Protection, where they documented that the project had no significant adverse impact to the functions and values of the wetland or watercourse. That decision did have some mitigation measures associated with it that goes to the Town standards in Section 10.2 of the regulations and how the Agency makes decisions.

The second graphic shows the orange and brown area in the northwest corner of the property which is an existing conservation space that is an upland habitat, it is a 12.8 acre conservation easement.

Chairman Upton asked if that was a past easement of approximately 40 acres. Attorney Harris responded it was a Zoning requirement and a Wetlands requirement. Chairman Upton asked if it was based on the size of the project being presented now or the prior. Attorney Harris said it didn't have any relation it was a requirement of Zoning.

Mr. Rabideau continued that the area to the East is a conservation easement they are proposing for wetland alterations. The one the Agency is seeing today and the crossing of the Pattagansett River which will be a later application. This is a mitigation plan for both; the 12.8 acres of mitigation is upland, the conservation measures will be applied to both. The uniqueness of it from a wetland, wildlife and environment perspective is the entry to the Laurel Wood Subdivision trails, it is an effort to match the conservation easement areas.

The other mitigation measure proposed is the invasive species management plan. There was a lot of discussion at the last hearing, they have identified areas, especially along the CL&P easement, where there are a lot of invasives, Bittersweet, Privet, Autumn Olive and Multi-flora Rose. It was suggest by Army Corp to mitigate by performing invasive species management, using the cut stem technique. If they have re-growth would re-do the treatment. If there is no re-growth, they would re-plant the area, with native species in wetland areas.

Ms. Cicchiello asked if they had to do any of this mitigation plan in the first phase, the cut stem invasive species management plan. Mr. Rabideau responded there were no direct wetland impacts in phase one, so no mitigation was proposed with it. There are direct wetland impacts in this phase.

Chairman Upton asked if any consideration to replace the 1,992 sf of wetland in any of these areas. Mr. Rabideau stated the science of wetland replacement, if not done properly can cause basic areas that are all invasives. The Army Corp of engineers is much more satisfied with conservation easements that are put over both upland and wetland areas to mitigate impacts. That way you are taking areas that could be used and protecting them, we only have in total only 5000' sf of wetland impact, but have 2 acres of conservation easement in review area to never be developed, that is quite a ratio.

Mr. DeRosa noted that if they were to create wetlands to offset what taken away, if not done correctly it could be bad or worse. Some people are saying it's just better to take the conservation and leave it be. Mr. Rabideau noted that a 3:1 mitigation would look good but if it is not done properly it would be all invasives.

Chairman Upton asked why the delineation of the eastern section, since we can consider the potential further development made by what would be a road, what are the other plans for phase three or phase four, are you giving away land that matters. Mr. Rabideau stated the roadway E Society Road is required to be constructed and permitted as part of the original Gateway Development. We are tied into location and tied into doing it, it is a necessary. They chose the narrowest point to cross. They picked the best location to do this. In the development scenario, in the Gateway Master Plan we have 120 units to put here, that's what is left to put here, maximize the

distance as best can from upland review area, with no direct wetlands impacts. Attorney Harris confirmed this is the last of residential units.

Mr. Rabideau summarized by saying he tried to present a good foundation. It was peer reviewed by federal and state government. He went through the significant impact criteria in his last testimony. He wanted to touch briefly on the 10.2 criteria, decision making criteria from the regulations.

The first is the environmental impact on the wetlands and watercourses. He has tried to be very clear, that in the upland review area with development in his opinion there is no adverse impact to functions and values of wetlands based on information put together. They have a direct wetland crossing and have mitigated that crossing, explained they are using an open bottom box culvert, basically a footing and box over it, room for critters to go under it.

Ms. Cicchiello asked for the road, is it required by zoning and how wide is it. Attorney Harris responded the width by zoning requirement is 24'. Mr. DeRosa asked with or without the sidewalk. Attorney Harris responded not included the sidewalk but there is one proposed.

Mr. Rabideau stated the next criteria is the applicants purpose for the project which was put forward and the feasible and prudent alternatives; they have tried to make clear that the road needs to go through, the town is looking for it. He has identified areas where they minimized impact for the road, this is a vast improvement with the changes to the culverts. There will be 120 units developed as part of this planned unit development, putting them in a location, there are other iterations, but all have impact to upland review area, so they are trying to maximize separation distance where possible. After meeting with the Town staff they will be coming back with more reductions to upland review area impact. They feel they have met the feasible and prudent alternatives requirement, which is in his narrative of August 2018 based on the East Lyme Regulations.

Mr. Rabideau continued with the next item in the regulation, the relationship between long term and short term impacts on the regulated activity on wetlands and watercourses. He has tried to address this in report and testimony. From an Erosion and Sedimentation and water quality impact perspective, both plans were prepared by BL Companies, have been vetted by state and federal agencies, and the current plans for the residential units are being vetted by town engineers.

Mr. Rabideau continued with the next criteria which are irreversible and irretrievable loss of wetlands or watercourses caused by proposed regulated activity. Demonstrated 5000' sf of direct wetlands loss, and their mitigation plan protects more upland than altering, and are placed conservation easement on Pattagansett River, everything about this project is about protecting and enhancing the value of that wetlands, vernal pools, the Pattagansett River for the fish habitat, this is also the soil strata that is best quality for recharging groundwater, so want to protect to the highest degree possible.

Chairman Upton stated in regard to section 10.2; there is 5000' sq ft of direct impact of wetlands, 2900' sq ft of which is temporary. Mr. Rabideau stated the direct impact and loss is 1992' with sidewalk. Chairman Upton back to Section 10.2 D restore enhance protect to create productive wetlands. It seems you are opposed to replacement wetlands. Mr. Rabideau isn't opposed but didn't think it was the best plan. There is a protocol to follow, not difficult to design, document the water table, dig below water table, create an organic soil mixture that is highly organic, would spread that in, with the height of the new ground at seasonal high water table, then just plant. He doesn't think it would be difficult to propose or do but not necessary for federal or state permit.

Chairman Upton noted that they have the three year mitigation plan so you could monitor that area. Mr. Rabideau noted there is a 5 year monitoring requirement in the Federal Approval. All you're doing after the first year is looking for invasive. There is a 5 year requirement.

Mr. Goeschel noted that the history of the commission requires monitoring for 5 years; but they also may hold the bond set for the plantings for the entire 5 years. Mr. Goeschel feels after 2 years can release the bond because the vegetation is established, his position is at odds with the agency position.

Mr. Rabideau stated he can have option available for replacement at the November meeting, but what he would do is create another vernal pool in the mitigation area. He demonstrated where he would put the vernal pool, with 100' circle around it, good location, sandy soil, easy to design and construct and get the hydrology in that location, requires good monitoring.

Mr. Goeschel said regarding the conservation easement adjacent to the emergency access road, is it problematic if it needs repair or maintenance. Is that a problem? Mr. Rabideau said no.

Attorney Harris said he would be at the next meeting to review changes to the plans based on staff review. He noted there will be some pull back of areas from wetlands. Attorney Harris stated they are finished with their presentation tonight, will have more at the next meeting.

Mr. Goeschel asked if the construction as going to be phased or opened up at one time speaking to erosion and sedimentation control.

Dave Yetton, stated it would be one phase construction, they have applied for and are at DEEP with SWIP as part of Costco, went ahead and put the SWIP in with this phase and Costco and offsite mitigation. In front of DEEP now. Sediment and Erosion control approval needed from the State that defines where hay bales and erosion and sedimentation control plans and inspections done by BL etc. Comment period was over and then will have approval to show you. They are trying to tie some of the work together with Costco will have work going in and around together so to have some synergy with the road going through and interior driveways and will be alternating buildings. They will start the foundations and then every 45 days a building will open.

Mr. Goeschel noted for the Agency that with phase one, the swip reports were done weekly and provided to him along with his own observations.

Mr. Chomicz asked when they plan to start.

Mr. Yetton responded once they have the approval from them, Costco is already approved, should have permits through OSTA within 30 days, once have those have all site approvals from the Town, can start filling the pit, and roadside utilities, and will hopefully start in December. The construction of the sidewalk on East Society Road and the road is a town requirement. We are permitting to do this on the Town's behalf, we would not build it if we didn't have to, and it is on behalf of the town.

Chairman Upton asked are we continuing the public hearing. Mr. Goeschel and Attorney Harris said yes because they will want to show revised plans and go over them at the next meeting with staff comments.

Mr. Chomicz asked if they were apartment houses. Attorney Harris responded yes, these are apartments, there are 120 units, that are three stories, fourteen buildings, with a different configuration than phase one. These are a different product. These are all we are allowed in the master plan, we had 280 units, then 120 units, then Costco. Then phase 2 commercial if and when the DOT roadwork gets done. He further explained that the Phase 2 Commercial project will be where the golf course is located, which will happen after the I-95 corridor infrastructure improvement, which will allow retail development of approximately 285,000 sf on that piece of land. All of this will come back to the Agency, as the crossing is mandated at phase 2 commercial.

Mr. Chomicz asked if they would finish Costco first before they construct the rest of the commercial. Mr. Yetton responded no, because we don't own it, and there is no more traffic allowed until permanent infrastructure goes in to widen Flanders Rd and I-95. Mr. Chomicz asked when will state do all of that, Mr. Yetton currently to be constructed by 2024, it might accelerate.

Mr. Yetton wanted to help the Agency understand the application before them, identifying there is not a hint of water in the crossing, it is hemmed in by the road and topography. If you would like Mr. Rabideau, if you want to walk it, if see where E Society rd has to be and then see the amount of land and how it topography, and the wetland, you will see our effort to put the retaining walls far away and the topography and the land lends itself to this layout. If you want to see it, will open it up to have you walk it again if you would like, either November 3, or another day. Would help the agency to understand where the Costco is going and the emergency road, etc.

Chairman Upton stated that completed presentation for the evening. Chairman Upton asked if there were any members of the public who would like to speak for or against the application. There were none.

Mr. Goeschel asked Mr. Rabideau about the potential for a mitigation area in the place that was spoken of is that the best location, his concern is the invasives, you're going through the process of mitigating invasives, but opening up this area to plant 1500' sq ft

are we opening this up for invasives. Mr. Rabideau stated that in the potential mitigation area, that is the best location for it because there are no invasives there. Mr. Rabideau said he would try to do a review but if don't bring in stock it would be fine. No seed bed in the ground. Mr. Rabideau noted it is a 3:1 ratio is federal standard, with a minimum of 6000'.

Ms. Cicchiello asked if he would explain the 3:1 standards. Mr. Rabideau stated the federal standard for creating a wetland is for every 1 sf you are taking you plant 3 sf. Mr. Goeschel asked Mr. Rabideau for his recommendation, would it be to follow the same standard. Mr. Rabideau responded that that is the minimum. We are also trying to save trees, so this may be a little thing we are doing, but by nature we may be higher, but he wouldn't come back with anything less than 6000' sf.

Mr. Yetton stated they are not averse to mitigating a vernal pool; wasn't their discussion because of the wetlands and vernal pool and topo they were trying to keep upland habitat for vernal pool species. Mr. Rabideau said there is enough area in this location, this is why didn't use for this location for floodplain because would take out too much upland review.

Mr. Goeschel asked on proposed road need a critter crossing? Mr. Rabideau responded no because we have the big one, and the smaller pipes. Ms. Cicchiello asked about the 2900 sf of temporary impact. Where is that exactly? Mr. Rabideau indicated that where the crossing is there is no water.

- A. Ms. Cicchiello moved to continue the Public Hearing for **GDEL Residential B, LLC., and Gateway Development/East Lyme LLC; Application** for construction of 120 residential units, including but not limited to road improvements and construction of parking areas at property located at East Society Road, 286 Flanders Road (26.0/2), Flanders Road (31.0/1) to the next regularly scheduled East Lyme Inland Wetlands Meeting. Second by Mr. DeRosa. Motion passed 4-0-0.

VI. Public Delegations - *Public Delegations is the time when members of the public are invited to speak to the Commission about certain matters. Issues or concerns related to approved wetland permits and in-house proposals or general topics of discussion are open to comment. Agenda items, referrals, applications subject to a decision by the Commission, a public hearing, or in litigation may not be discussed. The members of the Commission will not directly answer questions or make comment during delegations. NONE*

VII. Acceptance of Minutes-

- A. Mr. DeRosa moved to approve the Regular Meeting Minutes of September 17, 2018 with the following corrections;
Page 3, paragraph 1, line 1, change "effect" to "affect".
Page 10, paragraph 1 line 6, change "verses" to "versus".
Page 14, Item #3, 5th line add word "name" after "stating their".
Page 23, paragraph 2, 3rd line, change "of" to "off".

Jack Chomicz Second; Motion passed 4-0-0.

VIII. Pending Applications –

- B. GDEL Residential B, LLC., and Gateway Development/East Lyme LLC;** Application for construction of 120 residential units, including but not limited to road improvements and construction of parking areas at property located at East Society Road, 286 Flanders Road (26.0/2), Flanders Road (31.0/1).

IX. Old Business -

VIV. Reports

- X. Chairman's Report – no report.
XI. Inland Wetlands Agent Report
 1. Administrative Permits Issued –
 2. Commission Issued Permits - None
XII. Correspondence –

Adjournment

Ms. Cicchiello moved to adjourn the East Lyme Inland Wetlands Agency meeting at 9:12 p.m. Mr. Chomicz second. Motion passed 4-0-0.

Respectfully Submitted

Jennifer Lindo Dashnaw
Recording Secretary

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

