

**STEVENS, HARRIS & GUERNSEY, P.C.**

ATTORNEYS AND COUNSELORS AT LAW

351 MAIN STREET

P. O. DRAWER 660

NIANTIC, CONNECTICUT 06357

RONALD F. STEVENS  
THEODORE A. HARRIS  
PAUL M. GUERNSEY

TEL (860) 739-6906  
FAX (860) 739-2997  
E-MAIL [shg-realestate@snet.net](mailto:shg-realestate@snet.net)

July 13, 2020

Gary Upton, Chairman  
East Lyme Conservation Commission  
PO Box 519  
Niantic, CT 06357

Re: Public Hearing - Modification of an Upland Review Area to 500 feet

I would ask that this letter be included in the exhibits for the Public Hearing.

I am writing in opposition to the increase of the upland review area from one hundred (100') to five hundred (500') feet. Such a change, in my opinion, is neither legally or factually supported.

First, Section 10 of the East Lyme Inland Wetland Regulations prohibits the Commission from denying activity within an upland review area "unless such activity will likely impact or affect the physical characteristics of such wetlands or watercourses." This provision is a codification of Connecticut Supreme Court case in which our Court expressed the limitations as follows:

"It is apparent that the commission may regulate activities outside of wetlands, watercourses and upland review areas only if those activities are likely to affect the land which comprises a wetland, the body of water that comprises a watercourse or the channel and bank of an intermittent watercourse. The legislature did not adopt broad definitions of wetlands and watercourses that would protect aspects of the wetlands apart from their physical characteristics, such as, for example, the biodiversity of the wetlands or wildlife species that might be wetland dependent. We conclude, therefore, that the act protects the physical characteristics of wetlands and watercourses and not the wildlife, including wetland obligate species, or biodiversity." Avalonbay Communities, Inc. vs. Inland Wetlands Commission of the Town of Wilton, 266 Conn. 150, page 163 (2003).

In addition, a five hundred (500') foot regulated area would increase the area required for inspection by twenty-five (25) fold, encompassing nearly twenty (20) acres of land which would require inspection to determine if proposed activity is within five hundred (500') feet of a wetland

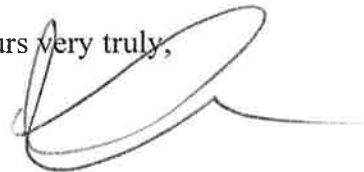
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or watercourse. This is extremely impractical and costly, particularly in largely developed areas. Moreover, inspection of private property may require permission of the property owner before soil scientist could enter the property to make a determination.

The end result of such an increase would be in the development, extraordinarily costly, impacting individual homeowners, and commercial development alike. Moreover, it is five (5) times what is currently being recommended by the Department of Energy and Environmental Protection. Its Guidelines for Upland Review Area Regulations Under Connecticut's Inland Wetlands and Watercourses Act states "At some point, impacts from the activity on wetlands and watercourses would be expected to become de minimis and not measurable... DEP (DEEP) believes that a 100 foot-wide upland review area is sufficient for reviewing construction."

Finally, the enactment of such a wide upland review area is likely to generate litigation as to the authority of the Commission to have such a wide range of review, including Connecticut Supreme Case Law, has limited the authority to regulate upland review area as expressed in Section 10.6 of the Regulations. You should note that Section 10.6 is DEEP's interpretation of the case law which describes the authority of a wetland agency to regulation the upland review area.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Theodore A. Harris', with a long horizontal flourish extending to the right.

Theodore A. Harris