Jennifer Lindo

From: Hollister, Timothy <THollister@goodwin.com>
Sent: Monday, July 13, 2020 11:50 AM
To: Gary Goeschel; Jennifer Lindo
Cc: 'Glenn Russo'
Subject: FW: Copier 18N
Attachments: 0713209453.pdf

Gary and Jennifer - attached is a letter to the Inland Wetlands Agency which I ask be read aloud into the record at tonight's hearing, thanks. Please confirm receipt of this email

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July 13, 2020

Via email to Gary Goeschel, Wetlands Enforcement Officer
ggoeschel@eltownhall.com

Gary Upton, Chair, and Members
Town of East Lyme Inland Wetlands Agency
East Lyme Town Hall
PO Box 519
East Lyme, Ct 06357-1510

To the East Lyme Inland Wetlands Agency:

We represent Landmark Development Group and Jarvis of Cheshire, owners of 236 acres adjacent to Calkins Road. As you know, Landmark has been pursuing development of its property for many years. We are writing to strenuously object to the Agency's proposal to extend its wetlands upland review area to 500 feet from wetlands and watercourses.

This proposal is illegal and invalid for several reasons. First, there is simply no statutory authority for such a review area. The Agency's statutory jurisdiction in limited to wetlands and watercourses. Upland review areas, by definition, *are non-wetlands*. Upland review areas are allowed at limited distances to allow for evaluation of potential impacts of construction on wetlands and watercourse. A 500 foot review area would bring under the Agencies review lands that have no conceivable geographic and hydraulic connection to wetland or watercourse impact. In addition, the proposal would result in enormous and unnecessary cost to applicants, who would be required to conduct soils and other investigations in non-wetlands, even if no impact on a wetlands or watercourse was possible.

Second, the 500 limit is unnecessary. It is well established that if a proposal calls for construction upgradient from a wetland or watercourse, the agency may ask for evidence that there will be no substantial adverse impact, regardless of the distance.

Third, such review area will violate the holding of the Connecticut Supreme Court in *Tilcon, Connecticut vs Commissioner of Environmental Protection*, a 2015 decision.

Though that case dealt with water diversion regulation and permits, the issue was identical to East Lyme's proposal. The court's own description of that case states that the Court invalidated DEEP's attempt to use its authority to regulate water diversions to demand studies of all environmental resources on the property of an applicant for a water diversion permit, even though a large percentage of those resources were "hydraulically unrelated to the proposed water diversions for which [Tilcon] requested permits."

Finally, the 500 foot proposal is plainly inconsistent with DEEP's model wetland regulations for local agencies, which although not binding state regulations, represent DEEP's guidance as the limits of local wetlands authority.

If this regulation is adopted, Landmark will join other parties in appealing it, and we are certain that a court will invalidate it. The Agency would be well advised, legal and financially, to not adopt this regulation.

Very truly yours,

Timothy S Hollister

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