

MINUTES
Wallingford Inland Wetlands and Watercourses Commission

Special Meeting
Wednesday, July 26, 2023, 7:00 p.m.
Robert F. Parisi Council Chambers
Second Floor, Town Hall
45 South Main Street, Wallingford, CT

Chair James Vitali called this Special Meeting of the Wallingford Inland Wetlands and Watercourses Commission to order on Wednesday, July 26, 2023, at 7:05 p.m. in the Robert F. Parisi Council Chambers, Second Floor of Town Hall, 45 South Main Street, Wallingford, CT. It had been rescheduled from the Regular Meeting of July 19 until tonight.

PRESENT: Chair Vitali, Vice Chair Deborah Phillips, Secretary Nick Kern, Commissioners Jeffrey Necio and Michael Caruso, and Alternate Commissioners James Heilman and Aili McKeen, and Environmental Planner Erin O'Hare.

ABSENT: Alternate Commissioner Mrs. Caroline Raynis.

There were 10 persons in the audience.

A. PLEDGE OF ALLEGIANCE

The Pledge was recited.

B. ROLL CALL - As above.

C. CONSIDERATION OF MINUTES

1. Regular Meeting, June 7, 2023

Chair Vitali asked Mr. Heilman to vote here because he had served as Alternate for Commissioner Caruso at this Meeting.

MS. PHILLIPS: **MOTION THAT THE MINUTES OF THE REGULAR MEETING OF JUNE 7, 2023 BE APPROVED AS SUBMITTED.**
MR. NECIO: **SECOND.**
VOTE: **MS. PHILLIPS - YES; MR. KERN - YES; MR. HEILMAN - YES; MR. NECIO - YES; CHAIR VITALI - YES.**
ABSTAINED: **MR. CARUSO.**

D. OLD BUSINESS

1. **#A18-12.2 / 32 Barnes Road - Rowland Industries - request for release of bond**

Ms. O'Hare said no action has been taken at the site.

2. **#A23-5.5 / 10 Mansion Road - Joe Flamini (Lost & Found Ventures LLC) - commercial development - restaurant**

Appearing were Mr. Christopher Juliano, P.E., Juliano Associates, 405 Main Street, Yalesville, and Mr. George Logan, Wetlands and Soil Scientist, REMA Ecological Services.

Mr. Juliano said, The proposal is for a restaurant at 10 Mansion Road. The topographic existing conditions: Mansion Road is at the bottom of the plan and on the right is South Turnpike. The property is approximately two acres. The topographic survey shows a wetland watercourse flows from the west and serpentine to the east to a headwall that goes under South Turnpike. Also, there's a drainage course from existing drainage on Mansion Road to a drainage ditch here before connecting to the wetlands here. Here is Extended Upland Review Area: When we have steep slopes over 50% in the URA or adjacent to it, we have to add those to the Upland Review Area on the map so those wetlands are protected.

Mr. Juliano continued: Proposed is a 3,000-square-foot restaurant with outdoor seating and parking. The restaurant is to be here. An existing garage will be torn down. The parking lot is in the middle, and there is lawn area for seating and stationary food trucks will be located in that area. As to grading, we'd have a three-season porch cantilevered on piers at the north side of the building so as not to disturb the steep slopes. The parking lot is on the flat with very little grading. We're filling in this lawn area slightly for a flat area for outdoor seating and also to extend the existing storm drainage along the side and down to this area.

Mr. Juliano continued: Storm drainage is designed for a 10-year storm as required by the Engineering Department. We also analyzed for a 100-year storm to meet requirements and not to have issues of erosion at the pre-formed scour bowl that we propose. There is minimal grading here with a wall and drainage ditch. As to wetland impacts, wetlands and watercourses are in green and blue; the yellow is previously disturbed URA that we will be disturbing. Red hatches are areas that are currently undisturbed or virgin Upland Review Area. Does the Commission have questions?

Commissioner Heilman asked Mr. Juliano to explain how he calculated the additional 50-foot setback for the top of the slope.

Mr. Juliano said, By the regulation, if steep slopes are located and stop within the existing Upland Review line (so within 50 feet of the wetlands)—and here the blue steep slopes stop before the 50-foot traditional URA. So we have to extend the URA Review Area 50 feet from where we change from 50% slope to less than 50% slope. So here we'll have 100 feet. In other areas, we'll add area to have 84 feet.

Chair Vitali asked for detail on the Stormwater Management Plan.

Mr. Juliano said, There are two parts to the storm drainage system. The first part takes driveway stormwater that runs into Mansion Road by two catch basins at the property line. Stormwater goes from here to the manhole at the former outlet, and it goes to the pre-formed scour hole. The majority of stormwater from the parking lot is collected in a catch basin here at the northeast corner of the parking lot and goes to the underground detention system made of plastic leaching units. Groundwater will leach into this fill, which is porous, with good infiltration rates, and it will slow down in the system and come out to the north and tie into the extended drainage system at the second manhole. So we'll maintain and decrease flows for up to a 100-year storm and infiltrate water for wetland growth and use the pre-formed scour hole to reduce erosion there.

Chair Vitali asked, Is the existing drainage open swale to continue?

Mr. Juliano said, We are filling over it in this area as part of the project. Just past where our proposed lawn is and the pre-formed scour hole, the drainage ditch will remain, so about 30 feet from the 50-foot regulated area will be open.

Chair Vitali asked, What will be piped?

Mr. Juliano said, Piped from this location here to the existing outlet here by Mansion Road.

Two additional persons arrived in the audience at this time.

Mr. George Logan, Soils Scientist, Certified Senior Ecologist, and Professional Wetlands Scientist with REMA Ecological Services, said, There is a report in the record dated November 25, 2022, about the wetland/watercourse delineation that was done. We have an incised ravine. It's in an erosional/depositional system of about 141 acres per USGS StreamStats. I showed the point at the culvert under the roadway to the east on this one-page exhibit given to you. It says this is a 2.2 square-mile area on the 141 acres where the percentage of urban development is 40% and impervious area is 12.5%. But it is the erosional/depositional system that has pretty intense flows at times. You have a culvert on the upside and a culvert on the downside. I provided aerial photos to show what the system looks like. If you have questions, let me know. One question: Is this a perennial or an intermittent watercourse? You typically rely on USGS. If you have a blue line, usually they consider that a perennial watercourse. There is a blue line, but it just comes out of a pond and goes under the road. This one does not have a blue line—however, I was there yesterday and, as you can see in the photographs that have greenery, there's water flowing through the system—I would say maybe a couple of inches of water. In a couple spots, it was a bit deeper. I looked for aquatic benthic organisms, and the ones I saw would probably fly in--so some water striders. I saw a few green frogs; for wildlife, I had four robins come by me. There was some raccoon sign on the exposed sediment. So it could be in between a perennial watercourse and not. People sometimes say semi-perennial watercourse, which means either a lower-order perennial or a high-order intermittent. It's somewhere in there based on the watershed and what I've seen.

Mr. Logan continued, The other question was on soils. Anytime you have sandy soils and steep slopes, they're prone to being erosive. I went into the web Soil Survey and did the K factor, which is the erodibility factor for rock-free whole soil. And you have a little sketch--but if you turn over to the ratings for K Factor Rock Free, that table, and you go to Manchester Gravelly Sandy Loam, and you go to 15% to 45% slopes, which we definitely have here—the rating is 0.24. That's Low to Moderate for erodibility. The reason is that we have enough cohesiveness even in steep slopes and good infiltration capabilities, so that the soils are not prone to erode as much—doesn't mean they won't. So we're about in the middle of the scale for Penwoods--even though they don't have the Penwoods that are more than 8%, again it will be lower than what they say here as a little more erosive if they had the east slope. But I don't think they classify Penwoods with these slopes.

Mr. Logan continued, The other thing from Erin's memo is whether we can do some mitigation. The entire corridor is replete with invasive species. In my view, trying to do anything to remove invasives probably would cause more problems than not because you'll be exposing sandy soils that are prone to flash flooding. The slopes are pretty steep, even though on some sandy soil slopes they are stable because there's not much of a watershed to it. So whatever water falls on the slopes readily infiltrates, and I didn't see any scouring. Along the watercourse it's different because of the flows that go through. So my advice was not to do anything. You have Japanese knotweed, but it's almost impossible to get rid of. I don't think it's worth it. Other invasives line the slope, but they're stabilizing it: firebush, Japanese barberry. If you get rid of them and put something else in, you're risking an issue to the watercourse. On the flip side, you would say this particular watercourse is low functioning on the functions and values analysis. So if something happens and you get erosional deposition in the watercourse, well, it's an erosional/depositional watercourse. If the Commission wants some removal and plantings with native species in these droughty soils, we could.

Chair Vitali asked for questions.

Commissioner Kern asked, How much outside material and what type is going to be brought into the lot?

Mr. Juliano said, The fill material is going to be brought in to fill where the lawn area is proposed. It's about 7,000 cubic yards, and it will be clean fill for infiltration purposes. We'd create a drainage package under it. Some may come from areas because of the existing driveway and building, unless the material is deemed inappropriate—then we'd haul it off and dispose of it.

Commissioner Kern said, He talked about invasive species, to take them away or leave them—what's going to keep this material that you're bringing in from eroding down and heading for the mini brook?

Mr. Juliano said, Along this northern edge of the lawn, we have a retaining wall. That's why there's very little grading here. Over here, where we do have some grading in the former drainage ditch—we'll stabilize that with an erosion control blanket until it's vegetated with grass. So we're holding the material back, short term, with the retaining wall for the lawn; and this area to the west of where the retaining wall will be stopping will be taken care of with an erosion control blanket.

Commissioner Kern asked, Because of the terrain and soil types, what extra measures are you taking for S&E control?

Mr. Juliano changed to another drawing and said, For erosion control, we're predominantly doing work at the bottom in the drainage ditch. We have three rows of silt fence and the pre-formed scour hole. During construction, per the latest Wetland Impact Plan submitted on the 18th, during the removal of trees in the drainage ditch we added stone checkdams. So, after we clear some trees or even after we remove the stumps, if a storm occurs we do have controls in place to slow the water down and prevent erosion. As I said earlier, here's the three-season porch, and we're using construction methods to limit the impact; and adjacent to the steep slopes, at the request of the Environmental Planner, we're going to be using erosion control blankets. With predominant grading being here, we went along our tree and clearing limit to protect the drainage ditch during construction. In the other areas we're using silt fence and erosion control fence.

Commissioner Kern asked, What about the concerns for the contractor who uses excavators and knocks the fences down, and the atypical storms we've had? Is there going to be construction fence?

Mr. Juliano said, We can definitely add construction fence. My office, after any rainstorm we go out and do an inspection, and we can report back to the Environmental Planner. If things need to be fixed, we'll document and make it known and give the contractor 72 hours to repair it and then continue on.

Commissioners Phillips and Caruso had no questions.

Commissioner Necio asked about a plan for parking lot snow removal.

Mr. Juliano said, The lawn area will not be used in the winter—no outdoor seating—and we're going to pile snow here at a 1% grade from the parking lot heading east. It's large, and we'll pile snow there and let it melt. It'll infiltrate into this area: Any snow that doesn't because of topography--some rain or snowmelt may come into Mansion Road, where it will be picked up by the storm drainage flow north. Other snowmelt will come down and flow through what was the original drainage ditch, over the pre-formed scour hole, and continue to the wetlands. All those flows will be minor and slow.

Commissioner Heilman said, I'm concerned about the drainage ditch, which must have had lots of water prior, or it wouldn't have eroded to the contour lines we're seeing here. Would you agree?

Mr. Juliano said, Yes, based on the slope of the pipe coming out of the existing catch basin. That's about 23 cfs coming out of there, quite large. I don't know, prior to formalized town drainage in the road, if it took more stormwater through here. But there has been erosion historically.

Commissioner Heilman said, That ditch was there prior to the road, and it probably did convey water; but since the road was put there long ago, I suspect that that whole drainage system has been altered by the road and doesn't serve as a primary conveyance except from the road at this point.

Mr. Juliano said, This piece of drainage here takes water from Mansion Road. There's also a pipe that goes to the northwest offsite and picks up some water from offsite beyond the road. But the majority of stormwater does flow and come out this culvert and flow through.

Commissioner Heilman said, For a long time it has been a ditch and not what you see to the west on your diagram. The western area is a watercourse, shown and identified. Our concern is watercourses and wetlands—the wetland in this application is truly minimal in its utilization as a wetland for purification of water. Water transfers through this channel very quickly, not sitting and percolating into the ground. So I am much less concerned about the steepness of slopes that feed into it. I don't see any major concerns with the filling of the ditch that was a former course of water—it hasn't for a very long time. Also, in the pictures I see very young trees. Did you observe older trees, or is this secondary growth? The ravines have been there since the end of the glacial period.

Mr. Logan said, There are some larger trees in the aerial photos, but they're at the top of the slope.

Commissioner Heilman said, I don't see any major concerns with the wetlands now. I want to review this a bit more in terms of our regulations.

Mr. Logan said, One interesting thing I failed to mention: When I delineated the edge of the regulated area, I went up into the swale/drainage ditch about 30 feet, and I turned around because there were no longer soils or characteristics. Just above it, there's bedrock.

Commissioner Heilman asked, Are you referring to sandstone or igneous?

Mr. Logan said, Igneous.

Commissioner Heilman said, These are not lava flows like we would see on the east side of town, but these are intrusives. When they were implanted into the lower sandstone, the pressure of the intrusion created the structural deformation of the sandstone there. It fractured it, concentrically and radially, and so we have these steep ravines. At Cheshire/Wallingford Road, where Lufbery Park is, that was actually a volcano, and you can see the intrusion there.

Mr. Logan said, Photo #1 is a rock face, inclined. It's probably 40 feet from the lowest point to the highest.

Chair Vitali asked, Chris, the 7,000 yards is a fair quantity. Is that also for filling in the house basement?

Mr. Juliano said, No. For the existing garage, shed, and driveway, that material might be taken off. I'm figuring that might not necessarily be counted in the 7,000 calculation. We'd need material brought in.

Chair Vitali said, O.K. Second, to you and Commissioner Heilman: The drainage pipe from Mansion Road

out to where it opens up again--what do you think about using perforated pipe there to get some recharge in that area?

Commissioner Heilman said, I don't know what the soil conditions are there. Once it gets to bedrock, it's pretty shallow--I think that's where the penetration fails.

Chair Vitali said, By the test borings. the closer you get to Hartford Turnpike, more and more it's sand.

Mr. Logan said, It absolutely does.

Chair Vitali said, And I think you're right on the edge of the slope of the red rock, similar to Yalesville in front of Loring's. This may be an area to get recharge—if not vertically, possibly laterally. Give it some thought. All right, Erin, what questions do you have?

Ms. O'Hare said, My comments went out earlier in July and then the Environmental Planner's Report to you. I would like to propose a site walk. These ravines, they're fairly unique--and to see them and to get a sense of, especially the large ravine in the back--it's like a mini-Grand Canyon, a vast opening. That's why the Owner wants to put his restaurant cantilevered over this to get the view. So--for this Commission to get a sense of the erosion, which I stressed in both my comment letter and the Environmental Planner's Report. As far as removal of trees on that slope and getting so close to the slope and grading, which is a highly erosive soil. As everyone knows here: Once you start erosion at the top of a slope—50% slope or greater—it's very challenging to get it under control. So, if we could talk about that and how it could work. I went out there, and I'd show pictures. The slope starts right behind the old garage, and there's no flat—you could fall down there--and it keeps on going. And they're going to take out trees 30 feet horizontally back below the garage, 50-60 foot trees. So when you take them off that slope, what's going to happen to that slope? I trust they are going to be stumped, cut at ground level. Still, those trees' roots are holding that slope in. Those roots will decay over time, five to seven years, that's one concern. The other big concern is regarding the big drainage ditch, which in 2003 (before I got here) was approved for a subdivision for a few properties: 8, 10, and later 12 Mansion Road. Now with this zone change they merged the 8 and the 10. Going back into that file, this "drainage ditch" was termed an intermittent watercourse by Tom Petrus, their Wetlands Scientist, who used to come before the Commission a lot. On the Town Engineer's topo maps, the symbol is "intermittent watercourse". I'd like to talk more about it. In George Logan's report, he says it's a "drainage ditch", but he doesn't articulate why it's not an intermittent watercourse or how wide it is.

Chair Vitali asked, What effect does this Application have on this intermittent watercourse?

Ms. O'Hare said, If it's an intermittent watercourse, you are filling a watercourse. The Wetlands Commission doesn't normally permit filling of watercourses.

Chair Vitali asked, Their Application is for filling in a watercourse?

Ms. O'Hare said, No. They're calling it a "drainage ditch". I would recommend to the Commission, before it allows this to be filled, that we do discussion about the previous Applicant on the same piece of property.

Chair Vitali asked, What are we filling?

Ms. O'Hare said, I have photographs (shown to Chair Vitali and the Commissioners).

Chair Vitali said, I thought they were only filling in the grassy knoll. I'm more concerned about how many

trees are you taking down to fit the deck of the restaurant?

Mr. Juliano showed and said, On the Wetlands Impact Map, you can see. The area in red shows where the proposed building is and shows exactly the amount of trees that we're taking down for that structure. That is the natural, or virgin, Upland Review Area.

Ms. O'Hare asked, Do I have this one, Chris?

Mr. Juliano said, It's a Wetlands Impact Map that was submitted. It was also updated and resubmitted on the 18th. It's been submitted twice because after my colleague was here in June, Mr. Heilman noted I didn't have topography on it. So I submitted it as Revision A with topography; and it got revised again; and we resubmitted it just recently addressing your comments. It would be the same as the old one, that has not changed. The red-hatched area is where the proposed building is going.

Chair Vitali said, In this red-hatch area, is there just one tree coming down? How many?

Mr. Juliano said, It's a treed area.

Commissioner McKeen said, It's all treed. This is the existing garage.

Mr. Juliano said, We mapped out the tree line. To fit the proposed building we have to remove trees.

Ms. O'Hare said, I didn't count them—about 30.

Chair Vitali said, Well, that would be a major issue if there's this massive tree area is coming down. Have they got ribbons on them, anything that identifies them? Plus, your pictures, Erin—they're not filling that area, are they?

Commissioner McKeen said, Yes.

Chair Vitali said, Why, just by the corner of the garage?

Mr. Juliano said, We're not filling in that area.

Ms. O'Hare said, No, the first set of photographs--I have about eight photographs of the quote/unquote "drainage ditch".

Chair Vitali said, They're filling that?

Ms. O'Hare said, They're filling that, yes, with 7,500 cubic yards of fill.

Mr. Juliano said, I think issues are getting mixed here. We are cutting trees in that corner for the portion of the building that's going to be a three-season porch. The filling of the drainage ditch is this area located over here. The proposed building is going over in this—

Chair Vitali said, O.K., go back to the first. The drainage ditch is there?

Mr. Juliano said, Correct.

Chair Vitali said, The stormwater off of Mansion Road?

Mr. Juliano said, Correct.

Chair Vitali said, And they're piping that.

Ms. O'Hare asked, For 130 feet of pipe?

Chair Vitali said, That's what they're suggesting.

Ms. O'Hare said, Yes.

Chair Vitali said, So is that what you're referring to as filling?

Ms. O'Hare said, And filling 7,500 cubic yards on top of the pipe. It's a ravine; it goes like this.

Chair Vitali asked, So you say it shouldn't be piped?

Ms. O'Hare said, No. I'm suggesting it might be an intermittent watercourse, just to give the Commission pause to say, "Is it?" Tom Pietras thought it was.

Chair Vitali said, Well, what if it is a watercourse, do we pipe it or not?

Ms. O'Hare said, Typically, this Commission doesn't; but if you feel this is important to build this lawn area for their food trucks, etc., then you would approve the piping and the filling of 7,500 cubic yards—which, by the way, I don't think you've applied to Planning and Zoning for a Special Permit for that fill. You're going to need a Special Permit for that, an Excavation Permit.

Mr. Juliano said, That's part of the Site Plan process.

Ms. O'Hare said, I thought it was only up to 100 cubic yards.

Mr. Juliano said, I'm here talking about earth excavation filling and not as part of a site plan—two different things. Kevin has the application; he's not commented on it.

Chair Vitali said, So whether it's a drainage ditch or an intermittent watercourse, they're requesting to pipe it and cover it with 7,500 yards of fill. That's one of your issues.

Ms. O'Hare said, Oh, yes. And there was a discussion about big trees. You can see in photographs number 2 and 3, two large trees, 3 feet in diameter, at the bottom of the channel. So I didn't know at the time that the existence of these large trees was significant, but photograph 2 (I didn't number them, but it's the second and third photographs in that packet) with the ravine and with the so-called drainage ditch in the first packet I passed around. The second packet only has two pictures in it.

Chair Vitali said, So you have a few things going on there. What else is going on there?

Ms. O'Hare said, That's the most important thing--to understand, to get to the bottom of why this is an intermittent watercourse or not—and I'd like George Logan to tell me why it is not an intermittent watercourse.

Chair Vitali said, Well, I don't think it matters whether it is or it isn't. Either way, they want to pipe it; and the question is whether we want to let them pipe it or not. If we don't want to let them pipe it, then it's a dead issue.

Ms. O'Hare said, Intermittent watercourses are regulated. I believe maybe a drainage ditch isn't--I'm not clear, but it's a pejorative term, whether or not it's regulated. I believe it could be regulated as a waterway.

Chair Vitali said, So your feeling is, if they call it a drainage ditch they can pipe it?

Ms. O'Hare said, No, I didn't say that. I think it's an intermittent watercourse, and I'd like to hear why it's not. Because I took pictures of their other property they're going to present in a few minutes on Church Street—and for that one George Logan called something an intermittent watercourse, and the pictures are pretty closely aligned.

Chair Vitali said, The camera people mentioned to me before that they would have no objection to going out with Erin and taking a movie of any application. Does the group want to go try that out, or does the group want to make a site investigation? It's up to the group. Aili?

Commissioner McKeen said, I'm partial to a site visit with Commissioner Heilman.

Commissioner Kern said, Yes.

Commissioner Phillips said, A site investigation.

Commissioner Caruso said, Site.

Commissioner Necio said, Site visit.

Chair Vitali said, Jimmy, you're requested.

Commissioner Heilman said, I'm indifferent.

Commissioner McKeen said, Yes, you've got to be there.

Chair Vitali said, Okay. When's the likely candidate for this?

Commissioner McKeen said, I have next Wednesday open.

Chair Vitali said, That would be August 2nd. Five o'clock is good for everybody? O.K., five o'clock August 2nd. Now Erin, didn't you also say that they should have had a Wetland Permit to take down the garage?

Ms. O'Hare said, That was surprising. The garage is being demolished, and they need—I talked to Building, and they don't yet have a Demolition Permit. And then they need a Wetland Permit to demolish the garage. As you know, any activity within the 50 feet—or in this case, the Extended Upland Review Area—which is, I don't know 100, whatever it is, feet—would need a Wetland Permit.

Mr. Juliano said, To comment, the regulation with respect to wetlands is for the removal or deposition of material. If they took down the structure of the garage and left up the slab, it would be the same thing as cutting a tree and leaving the stump. I don't believe that counts.

Ms. O'Hare said, I was trained to—maybe I'm wrong, but any activity. Because when people go in to do activities, construction, sometimes they make a mess, so then they need erosion controls, etc.

Mr. Juliano said, I understand that. But the regulation, statutory regulation is “deposition or removal of material disturbing the soil.” If they just took down the structure, I don't believe that would require a Wetlands Permit. Now, if they touch the slab or they muck up around it within your Upland Review Area, I believe you're 100% correct. I haven't been out there to see what the situation is. Why don't we deal with that during the site walk?

Ms. O'Hare said, O.K., so by definition, and we're looking under the "Regulated Activity" definition 2.1.Z.3: “Activities within 50 feet of a wetland or a watercourse”—in this case, you're extended but-- “likely to impact or to affect wetlands and watercourses including but not limited to any clearing, grubbing, filling, grading, paving, excavating, construction, erection of a structure, deposition, removal of material or indigenous vegetation, landscaping, discharge of stormwater.”

Chair Vitali said, All right. We'll deal with it August 2nd.

Ms. O'Hare said, But you definitely need a demolition permit. Building told me—

Chair Vitali said, That's not our—that's their business, a demolition permit.

Mr. Logan said, Mr. Chairman, I have a question.

Chair Vitali said, Yes.

Mr. Logan said, Number 1, do you want me to talk about whether this is an intermittent watercourse or not? And/or, should I be at the site and I think we can talk about it at the same time?

Chair Vitali said, I think probably it would benefit at the site.

Ms. O'Hare said, Mr. Chairman, at the site it might be 89 degrees and we're going to be spread out. I would like him to do a short description right now. It might be helpful and it'd be on the record.

Chair Vitali said, If you could give an extremely short definition, I'll entertain that.

Mr. Logan said, Sure. Intermittent watercourse has certain several characteristics. The first one is you have a channel and bank. So no one's going to argue you have a channel and bank. Then you have to have two out of three characteristics. One is to have a hydrophytic vegetation community—so 50% or more--you don't have it. The second part is to have the deposition of detritus or alluvial material. It has to be something that's broken up very finely—detritus or alluvium. Then the last thing that comes into play is whether you have flowing water or ponded water for a duration greater than a storm event. That's as far as they go. The reason they did all this--and I've talked to the original founders, if you will, of the definition--is an intermittent watercourse has to have base flow. It cannot be surface-driven only. And in my personal view, this is only driven by surface water. Therefore, it cannot be an intermittent watercourse.

Chair Vitali said, O.K.

Ms. O'Hare said, So in your opinion, Tom Pietras was incorrect in 2003 when he said this was an intermittent watercourse.

Mr. Logan said, We--we won't know because Mr. Pietras is not here.

Ms. O'Hare said, Just for the record, I'd like to say there's letters from Linda Bush saying no one can ever develop this property and no one can ever fill this intermittent watercourse. And that was the reason given to deny different applications that Mr. Shalom Elmkiess wanted. It was denied. I'm just telling you that—I'm not saying it's not an intermittent watercourse.

Chair Vitali asked, It was denied for what reason?

Ms. O'Hare said, Because of the intermittent watercourse they couldn't fill it. They wanted to fill it, and they were denied—not the Wetland Commission—for the Planning and Zoning Commission. She said, "Don't even apply."

Chair Vitali asked, Who was the applicant who was going to put a subdivision in here?

Ms. O'Hare said, Shalom Elmkiess—not a big subdivision, just split it in two.

Mr. Juliano said, Can I give you some history?

Chair Vitali said, Yes.

Mr. Juliano said, This was all one property at one point. Mr. Elmkiess owned it. He split it into three parcels because the zone line between commercial and residential basically went through it. So we had commercial located here along South Turnpike, a residential lot, and then we have a second residential lot. Obviously, since he did that—80s, 90s, maybe 2000s—no development has taken place on this side on this commercial property. So my client wants to put a restaurant in, and he manages to convince the owner to sell to him, and we go through the process basically to do both the zone change and to combine the properties to develop for commercial use. The Planning and Zoning Commission granted us the zone change, and that's why now we're here, the second step, before you. Whether it was one piece, split in three

Chair Vitali said, I recall a lot of projects that came before this Commission but this one I don't recall. And I don't recall denying this application, and I was just trying to pull out where the rest of this area came from or who it was.

Mr. Juliano said, I don't know. The only design drawings I saw were done by Bob Amantea when this was split into two lots—actually split into three different lots. It sat dormant. So obviously, as far as a commercial property, the eastern portion—no one had any sight to deal with the rock or trees and everything that's there. I would like to just ask: For the site walk, would you like me to have the area flagged so you could see the limit of trees to be cleared for the three-season porch?

Chair Vitali said, Yes.

Mr. Juliano said, Would you like anything else flagged out, any other limits of clearing? But I think the area to the east where we are doing the lawn area, since the majority of that is beyond the Upland Review Area, I don't know if it's as important to you.

Chair Vitali said, I think that area is very seen—you don't need to guess about it. It's there in front of you. I think the tree area is a bigger issue.

Mr. Juliano said, OK, so the tree area behind the proposed building, you want to see it flagged.

Chair Vitali said, Where the deck is going.

Mr. Juliano said, Perfect. I'll make that happen.

Chair Vitali said, All right. So we're set for August 2nd on site, 5:00 p.m. Thank you.

3. #A23-5.6 / 898 Church Street – Vincent Perretta – (apartment complex)

Appearing were Mr. Christopher Juliano, P.E., P.L.S., of Juliano Associates, 405 Main Street, Yalesville, and Mr. George Logan, Professional Soils Scientist and Professional Wetlands Scientist, REMA Ecological Services.

Mr. Juliano said, This property is at the corner of Route 68 (Church Street) and Highland Avenue here. It's about 7¼ acres, very gentle topography. With this site we have three wetland areas. The first is located here along the east/northeast portion; adjacent to Highland Avenue is a small pocket of wetlands right here; and there is a larger wetlands in this area along the western portion. What is being proposed is a two-building multi-family residential development. We're doing affordable housing. This is the site layout. We're proposing two buildings in this area, a parking lot with access off Route 68, some passive recreation behind the buildings for the residents, and a detention basin in this area. Other than the wetland pocket here, we are skirting the edge of the Upland Review Area to minimize disturbances. Prior applications on this property have tried to come in off Highland Avenue. I chose not to, for two reasons. First, I didn't want to impact the neighbors on Highland Avenue. Second, if I bring a driveway along the northerly property line here between the two wetlands it would actually result in more wetlands, more URA disturbance than what we proposed.

Mr. Juliano said, The Wetland Impact Map is in color. The purple is a small wetland that we are going to be removing, approximately 340 square feet. The majority of our Upland Review Area is around that little pocket. Then we have three fringe areas: one right here where we have to clear some trees within the URA for the parking area; second, here to the northwest of one of the buildings, to get trees away from the building; and the third is our outlet area where the detention basin will be going. We're planting the wetland detention basin with New England wetland mix, so when this takes hold we will actually be creating 2,800 square feet of wetland area, almost eight times what we're removing. So very little wetland impact, and wetland creation along with the project.

Mr. Juliano continued, We're working to minimize grading along the fringe of the buildings and the parking area. We do have removal of material for the detention basin, which is two feet deep. Then the majority of grading as it impacts the wetlands is actually to maintain or get grades so we can discharge our stormwater from the detention basin so it can flow to the natural wetland course that flows to the west and south into the drainage system in Route 68. Utilities will come in off Highland Avenue outside of the URA, so there should be no impact from bringing in the utilities. Stormwater from the back of the building is going to be collected in yard drains and brought into the detention basin. Even

though it is clean, we want to control it. So we do have very little impact overall.

Mr. Juliano continued, This site, with respect to erosion controls, is much different, much easier than the last site. Since we don't have a lot of elevation change, I don't anticipate a lot of sediment transport. So we went with a single row of silt fence around the site and along Route 68 because we will be required to put sidewalks along our frontage. At the construction entrance, Erin mentioned using the detention basin as a sediment pond during construction--that is fine. The standpipe will be located here, so we'd clean out the detention basin and install the standpipe when construction is done and it functions as intended. To handle and clean runoff from the parking lot, we're installing a biofilter per the Connecticut DEEP Stormwater Quality Manual. That will remove pollutant loads from the parking lot. Along with the wetland vegetation, we'll meet water quality and volume for detention basin sizing. Not a lot going on with this plan--the big issue here is just the amount of wetlands on site. I believe my office has minimized those impacts to the maximum extent possible. I'd answer questions.

There were no questions from Chair Vitali and Commissioners Kern, Phillips, Caruso, and Necio.

Commissioner Heilman said, Your basin along the parking lot along the road, that 266' elevation you chose from the wetlands to the west?

Mr. Juliano said, The elevation was so that I didn't get too deep into the ground. Right now it's existing at 268'. I needed to get stormwater out from that to the wetlands on the west, and you're correct. So what I had to do is make sure that I had enough pitch in elevation. That's why I have some grading here as I'm wrapping the contour, so I get down to 265', 265.5' for my outfall. I do have about a half-foot of elevation change, so it does drain out.

Commissioner Heilman said, I saw that. Did you do any test pits at all, or is this all on a slab?

Mr. Juliano said, Buildings are on a slab, so we have no basements—only two feet into the soil. I don't believe I'm going to be hitting groundwater. We've been out there. The design for the church in 2000 had a lot more impervious surface. They were much closer to the wetlands here, and their basin was approximately 3, 3½ feet from their existing grade. So, since that didn't appear to be a problem then, I believe I will be fine at 2 feet. If there is an issue, we could technically pick this up along with some of the site. If, during construction, we find that the groundwater is closer than two feet from the surface, we could lift the entire project up and get out of any groundwater issue. I don't anticipate that based upon what we have proposed.

Ms. O'Hare said, Based on what?

Commissioner Kern said, Chris, I've been chasing deer out of here for 30 years; and, I don't care when you go out there, it's wet. In that area is something we've talked about in this Commission: There's no more land that's dry. So with your footprint with the green with the wetlands, you're implementing something that you know isn't going to work because it's just so wet out there. I can't support something like this. And you just said it, if you see you're going to have a problem, you'll raise it up. Of course you're going to have a problem, because for the last 20 years it's always wet. I don't care if you're coming in from Highland Avenue or from 68. There's one little spot, maybe 10' x 10', that you'll see a deer way down there asleep. Otherwise, they just commute through because it is so wet. And we're not talking the same—that lot to the lot the next street down. That's a little higher up. There's a little drier land, so we allowed to develop that. But I just can't support this. You're saying you're going to raise it up. You find you've got a water problem, you're already talking about

raising the elevation up.

Mr. Juliano said, It would be a solution if—I mean, we’re two feet into the ground with the detention basin. That’s not much. I’m not disagreeing with you that the site in general is wet. I grew up in this general area, so I understand. A lot of people have looked at this.

Commissioner Kern asked, How can we give you approval to put these two buildings in, and then you find out it’s wet and you need to raise the elevation another foot or two just to get it dry enough so they can drive in and park their cars? It’s not a feasible lot as far as I’m concerned.

Mr. Juliano said, Understood. I understand your opinion.

Chair Vitali said, I think I share some of Nick’s concerns, because if you’ve got to raise it up, that means you’re bringing fill in. And you’re not going to fill just what you’re raising. You’re going to have slopes going back. Driveways are going to be similar. I travel that area a fair amount, and I agree with Nick. No matter when you look in there, it’s wet. It’s standing water right from the corner in. If I had to say why I wouldn’t vote in favor, because you’re filling that wetland in the center because you’ve satisfied the setbacks on the 50-foot perimeters. Erin, your comments?

Ms. O’Hare said, Yes. I trust everybody got my comments from a while ago, and the Environmental Planner’s Report that was written on Friday. Both went out in the packet along with some of the Juliano Associates responses to my various comments. Chris, minor point: I had asked in your Stormwater Management Maintenance Plan for the biofiltration strip to be in there. And the answer was, “That change is superfluous and does not add any value for the end users. As such, we have not made.”

Mr. Juliano said, No. I think you’re mixing something up. You asked for maintenance information about the biofilter, about maintenance of it. So did the Town Engineer. That change has been made.

Ms. O’Hare said, This is dated July 19. We got it on the 19th. On the back of my Environmental Planner’s Report I attached a copy of the church approval back in the year 2000. That’s before I got to Town. But just to show—because I was curious—how the layout is the same. So on the back of my EPR, that layout was approved in 2000 by this Commission. Pretty much the same—the entrance was off Highland Avenue, that’s the biggest difference really.

Mr. Juliano said, Unfortunately, Erin, it appears that I do not seem to have Romeo’s response to you regarding that, but--if I may look?

Ms. O’Hare said, Here it is—I have it.

Mr. Juliano saw it and said, Okay. You’ve asked me to change labels on the Stormwater Management Maintenance Plan. I had them originally as a “catch basin”. I can’t remember the second one. You wanted them labeled as “stormwater inlet and outlet”. I’d rather have it labeled as a “catch basin”.

Ms. O’Hare said, So did I. You misunderstand: I wanted it as a “catch basin”.

Mr. Juliano said, O.K., that’s what it was labeled originally—and we took it as you asking us to call it a stormwater inlet and outlet. And I was saying that it’s superfluous because the lay person understands what “catch basin” is. To say it’s a “stormwater inlet and outlet” could mean a drain, a catch

basin, a culvert in or out.

Ms. O'Hare said, Chris, in your first one, June 2nd, you called it a "storm basin inlet and outlet". And I said, could you please call it a catch basin?

Mr. Juliano said, No. If we misinterpreted, then that's on us, and I apologize.

Ms. O'Hare said, So I asked for the biofilter to be put in as maintenance. It's not in there yet.

Mr. Juliano said, O.K. Again, I thought it was. With the last revision to you or to the Town Engineer, I will make sure it's taken care of. This definitely isn't moving forward tonight, I understand. I believe I have to go out and have some deep test pits done. It is wet enough out there so we can confirm. And we'll tighten up all the issues and the way we may or may not have addressed those.

Ms. O'Hare said, And the Engineer's comments that went out to you on July 19th—if you could fold everything back in, fold all the revisions back, answer her and all that.

Mr. Juliano said, She's been answered. You got a copy of the letter without the enclosures. Most of hers dealt with the drainage and computations. Once I know that Allison is satisfied with my responses and the date with the information that we got her—all that will be wrapped back in for you here.

Ms. O'Hare said, Oh, thank you. The other thing: If you're putting in that sidewalk, that's a regulated activity. There's wetlands all along there, along Route 68. That's a regulated activity—it's not your wetlands, it's State of Connecticut wetlands--but you're building a sidewalk within 50 feet of those.

Mr. Juliano said, We are depicting a sidewalk on the plan. We anticipate Planning is going to require it because this is residential connecting to a residential area that already has sidewalks to our west. It could be required to be installed by Wallingford and then denied by State. I don't visit the State until the Town has voted to approve. So I will end up back in front of this Commission once I know the status. But I know the Town Planner is going to request it.

Ms. O'Hare said, O.K., so why don't you just propose it?

Mr. Juliano said, Sidewalk is proposed.

Ms. O'Hare said, No, propose it as a regulated activity? Some of it's on your property—most of it, the majority, is on the State property.

Mr. Juliano said, Sidewalk here is likely within the Upland Review Area—yes, that is State property. In this area here, it's outside the Upland Review Area, so this is what we're talking about on the west. That's fine. I'll add—

Ms. O'Hare said, For about 80 feet on your property, O.K. Turning to the intermittent watercourse, George Logan said, "This is an intermittent watercourse." We're talking about on state property now.

Mr. Juliano said, O.K.

Chair Vitali asked, Where are we?

Mr. Juliano said, O.K., it's got to be that that goes into the drainage culvert, then down south and out.

Ms. O'Hare said, O.K., I took pictures of it. And, by his definition for the previous project, this shouldn't be intermittent watercourse. So could you look at my pictures and tell me why it's an "intermittent watercourse"? In your report, you said it was.

Mr. Juliano said, Yes.

Mr. Logan said, I'll take a look at it, that's not a problem.

Ms. O'Hare said, Because I'm getting confused--it doesn't have hydrophytic vegetation. It's dry after a storm.

Mr. Logan said, O.K., I'll look at it. And the only other comment I had--apart from the fact that I was the actual delineator--is that little isolated 300-plus or minus, square-foot wetland is manmade. That's an excavation. I don't know why. Someone wanted a skating pond or something, manmade.

Chair Vitali asked, Where are you referring to, in the center?

Mr. Juliano pointed to it on the drawing.

Mr. Logan said, The little isolated wetland right in the center—if and when you go look at it—it has very steep slopes and they're regular. And if you dig down in the soil, there's no topsoil to speak of.

Chair Vitali said, They knew there was wetlands underneath it, so they excavated to get their ice skating rink. One question: The outlet to the retention area flows down to Shire Drive?

Mr. Juliano said, No, the outlet for the detention basin flows under our driveway. Stormwater will enter into the existing low area of the wetland, flow westerly, and then flow south to the existing headwall in the State right-of-way, goes under Route 68, and then continues south through what was Iannini's property and now is Wadsworth.

Chair Vitali said, You stand up there, you can see where the water originally flowed right across 68 and down through Wadsworth and Marion Turf Farm and over to McNally. So you can see how the land lays in that way. Erin, you're still looking for information from them?

Ms. O'Hare said, Yes. Can I ask two more questions, please? There's no emergency spillway for the detention basin, and your response was that you're putting extra protection on the outlet structure or riser pipe/standpipe.

Mr. Juliano said, The top of the standpipe is the emergency spillway. The detention basin was designed to hold up to and including the 100-year storm and still have a foot of freeboard area from that to the berm or top of embankment for the basin. As noted in the Drainage Calculations, we ran a scenario where all the perforations on the standpipe were clogged, not functioning, which I would call a failure due to no maintenance. The basin still functioned. The water from the 100-year storm stayed in the basin, and the grate at the top of that 24-inch diameter standpipe handles all the flows.

Ms. O'Hare said, I don't know why they require an emergency spillway, but I guess the Town Engineer does.

Mr. Juliano said, She mentioned it, and I answered exactly how I did to you. It does have an emergency spillway to handle a 100-year storm, that's the regulation. If she wants something more, I will discuss with her.

Ms. O'Hare said, My last question was, and I shared this with the Town Engineer: When that water comes out of that detention basin and goes under your proposed driveway and spills out, it spills out five feet from the property line. And we were wondering if you could move it away? We don't like to spill stormwater that close to a property line.

Mr. Juliano said, That was one of the comments, yes, and I think it was part of your original. Outlet protection was slightly over the property line—we did move it. We'll look to adjust a little bit more and get it further away. But, as based upon topography, we're discharging here. The water is going to flow onto our property, more onto our property before hooking around. It's higher in this area than on our property, so it's going to stay on our property. I will make some more tweaks and adjustments.

Chair Vitali asked, How is it outletting five feet from the property line? Outletting to your own?

Mr. Juliano said, On my own property. We're very close to the property line in this area. And they're concerned that it's going to flow directly to the State's property.

Chair Vitali said, Well, O.K. Are Commissioners interested in tabling this? The consensus of opinion seems to be "Yes." O.K. Table till next month.

Mr. Juliano said, Thank you.

E. NEW BUSINESS

1. 55 Kondracki Lane - Fifty-five, LLC - Discussion and possible action regarding 2018 Cease & Correct Order

Chair Vitali said, The nursing home facility had a washout in their driveway in 2018. They asked for an Emergency Administrative Approval. I was not at that meeting, but you guys worked out and gave them Approval with Conditions. One of the conditions they never did. The condition was a map of what they were going to do, a plan of what they were going to do to correct the problem. And Erin chased them and they ignored her, and there was no action taken. Really, a Cease and Desist could have been issued back then because they didn't submit the plan that was required as a Condition of Approval. So now some of the neighbors five years later are saying, "Oh, what they corrected was undersized from what was originally approved." Now they're down to 36 inches on one side and maybe a little more on the other. Supposedly it comes out as a fire hose, so somebody's getting some erosion and other people got some other problem. So now there's this issue, and the Town or Erin's been in discussion with the new Owners, which is Fifty-five, LLC, and they're saying, "You got to fix it" , "We're not fixing it", and "If you didn't take care of it five years ago—deal with it five years ago, we're not dealing with it." Now, according to Erin, Janis is waiting for what this Commission is looking to do.

Chair Vitali said, This is the first time I've brought this up: I always felt the Town had various properties that were natural holding areas, flood storage areas. I don't think it's the worst thing going on, providing it's not doing any harm to anybody. From what I understand, the majority of the flooding is on their own property. It's having some effect on one gentleman, but he hasn't been the one that

responded here. The other issue is downstream: Some people are getting washed out, supposedly because of the high volume coming out of the smaller pipe. There's also a gentleman down there that did some wetland activity on his property without a permit, and there was some talk about an after-the-fact permit. So I think that brings us to this question: In what direction are we going to send the Town? Is it the Town's fault that this wasn't done five years ago? Erin's fault it wasn't done five years ago? Was it the contractor that should have been held liable? Should we change our policy and such things be recorded on the Land Records? This could have been resolved had it been recorded on the Land Records and when they did a title search it surfaced. So those are the concepts here tonight. But I'll turn it over to Erin right now and see if I've described it accurately.

Ms. O'Hare said, O.K. What brought this to light is that a new Owner came along and applied to Planning and Zoning for a Special Permit Change of Use from a Nursing Home to 72 Apartments. So it got referred to me. I went out there and determined it did not need a Wetland Permit. They were doing minor changes, say, adding a few more parking spaces. But it didn't rise to the level of needing a permit in terms of impervious surface, and they weren't changing any discharges to the river or doing anything within 50 feet of the river. So it didn't need a permit, but it unearthed this: There were complaints coming in, probably woken up by this Special Permit Application. So the neighbors started calling the Planning Office, and then I got pulled into it. And we have a new Town Engineer, and she said, "What's going on with this culvert?" Because it was a different Town Engineer at the time. And then she says, "You know, it's slip-lined and all these things are unfolding. Well, where is the plan for this slip-lined culvert?" Well, there was no plan. Originally back in June or May 2018, their driveway failed, and the Fire Department couldn't get trucks in there. It was a nursing home with people—there were emergencies where people had to go to dialysis, etc., and one of the lanes failed on their two-lane driveway. We now know the reason it collapsed is one of the culverts collapsed underneath, so everything collapsed on top of it. And there's utilities, gas and electric and sanitary and water going through there—so everything was in jeopardy. And so they ran in, they asked—they didn't have time for a regular permit—for a Cease and Correct Order. They actually asked for it. As opposed to a Cease and Desist, when you stop—this was Cease and Correct. These are used in emergency situations. So the Commission was on board with this: "O.K., we can help you out. We'll do a Cease and Correct Order." And a copy of it's in there attached.

Ms. O'Hare continued, The first thing I handed out tonight was what the Planning and Zoning Commission requested I write. They requested to the Town Planner, "Please have her write this. This is so confusing. Please lay it out to us what all went on." So I did a chronology so that they would understand. So what happened? So we gave them the Cease and Correct Order, and they were going to build it within a month--correct this. They needed a plan, they needed calculations. Months went by; now it's October, I'm talking to the Law Department. We're going to do an injunction. They got their Cease and Correct Order, they haven't done anything. They haven't given us a plan; they haven't given us calculations. And, as a courtesy, I called the Executive Director and said, "This week we're sending out an Injunction Order." And he said, "For what?" I said, "For the culvert." He said, "It went in last week." And I said, "Pardon me?" And he said, "It went in last week. We did it last week." I said, "I'll be right out to see it. But you were supposed to hand in a plan. It's in your Order, a plan and calculations so my Town Engineer could review the plan and calculations. It's right there in the Order, before that thing went in." They didn't comply with the Order. But the good news is, they did repair work. They did repair work, and then the fire trucks could get through. We still don't know what was built out there. You can look at it. I have photographs. We don't know the condition of this culvert—these two, it's two culverts. We don't know how they've changed the hydrology. I chased them for five months to get that thing built. And I guess I knew it was a fool's errand to chase them for five more months for a plan and calculations that they would never, ever

give me because they didn't exist.

Chair Vitali said, Well, you should have given them a Violation then because, in theory, work was done with no conditions of approval.

Ms. O'Hare said, It was brought in front of the Commission. You extended the Corrective Order till February; and then we—yes, I dropped it and it was never mentioned again after February. But it was sent to them.

Chair Vitali said, If we—if we approved it, it's because you said everything was O.K.

Ms. O'Hare said, No. You approved it in June.

Chair Vitali said, In June, but with Conditions of Approval with that Approval. Plans? And you had to be notified?

Ms. O'Hare said, Yes.

Chair Vitali said, And they didn't do anything?

Ms. O'Hare said, And they were sent letters all through the summer and the fall and into February. And then it was dropped after February, I guess because we knew it was hopeless getting them to give us plans and calculations.

Chair Vitali said, Well, I don't know what we knew. We just—it was dropped. It wasn't followed through with.

Ms. O'Hare said, The contractor—they couldn't get anyone to do it. They finally got somebody from Maine to do it. I don't know the name. Anyway, so now we've had many hours of meetings on this with the current Owner, the current Owner's attorney, the Law Department, the Town Planner, Town Engineer—everybody. And we wanted them to give us a status report: "What is the condition of this culvert? Tell us from an engineering point of view." And, you know, they weren't going to do it now, but through discussions it would be done as a Condition of Approval. That that would be a Condition of Approval for their Special Permit that the Planning and Zoning Department/Commission would ask them to do, among other things: a hydrologic report of the status of this culvert—not just the status of how it was built, how it's functioning, but its effect because it wasn't built to the original standards. The culverts are smaller. The impact upstream and downstream--from the fact that when they did the repair work, they made it smaller. And no one gave them permission to, but they did. We thought that was fair, and but they don't want—it's going to cost \$40,000 or \$50,000 to do—just to satisfy that one Condition of Approval. So we're exploring other options. I've been meeting with the Law Department. And I also agree that we should follow it—the Wetlands Commission should pursue its own line of inquiry, separate from whatever Planning and Zoning does. Even if they withdraw from Planning and Zoning—let's say, they're not going to go to Planning and Zoning--I would suggest to this Commission to pursue it, some way. One would have to decide how are we going to pursue it? They didn't comply with the terms of a 2018 Cease and Correct Order. They did some of the things, put in a repair, but they didn't give us the plans and the calculations. By the way, I can't see it—it's so covered with vegetation. I asked them to clear away the vegetation so people—engineers, inspectors, whoever--can look. And they have not yet done that.

Ms. O'Hare continued: I failed to give you that photograph. In the middle of one of these culverts, when you get down on your hands and knees--there's a protrusion in the middle of this smaller culvert. I don't know what's causing that. So somebody should look at that. I don't know how that's functioning or affects the functioning. So I wanted to ask for the Commission tonight is: Where do you want me to take this? I can write a letter to the current Owner saying something like: "We understand you're the current owner. It has come to our attention that the culvert that is out there today may or may not be functioning adequately and may or may not be causing downstream erosion, which is being reported by property owners downstream, and may or may not be causing upstream flooding, which is being reported by the folks living upstream. So we're trying to get to the bottom of this, and would you please supply calculations and a brief report about the condition of this crossing?"—which wouldn't require all sorts of calculations, and then we can go from there. Here's another alternative: We could hire a consultant to do it, rather than waiting for this new property owner to do it. And I understand they honestly didn't know that there was this problem when they bought the property. So we could hire a consultant. We have money. We have a budget, a line item.

Chair Vitali said, What's the consultant going to do? You're looking at \$40,000 to do something that, I think, we got \$2,000 in our budget. And is this what we want to spend it on? I've got a little bit of trouble looking at Wetlands standpoint. I mean, this really ends up to be an engineering problem. Now it is washing out down below, so maybe that erosion falls under our purview, but I don't see it as a real clean-cut Wetland situation. Is it a whole-town problem because it didn't get done in 2018? If we're guilty of anything, it's just not getting a plan submitted--what they were going to do. So, if they submit a plan with what's been done, and Engineering says, "Oh, that's not satisfactory," then what happens? Who's going to take it out? I hate to see money thrown away and then spend money to fix it, if that's what's going to be done. So other comments, Aili?

Commissioner McKeen said, I think that when you buy a house and something's terribly wrong with it that you didn't notice before you bought it, that's not on anybody else's problem but your own. So they've got to comply, and I do think it's a really good idea for us in the future--to attach violations to Land Records so that nobody stumbles into this again.

Chair Vitali said, I agree.

Commissioner Kern said, I'm concerned, Erin, about the size, the pictures you just showed us. They downsized the flow through those pipes. It looks to me as though they just sleeved them and left the original. The headwalls were there, but then they slid plastic pipe in to fix everything.

Ms. O'Hare said, Yes.

Commissioner Kern said, Which isn't the way you fix it. Second, they're too small. Why is one smaller than the other when there was already a water problem out there? The picture you showed us has got debris on the north side--it would be the water-flow side. So there's continuous problems with branches, trees, limbs, whatever, damming up and causing a water backup. So, if there were people complaining because of the water before the driveway, I can understand that because the culvert's not cleaned, the headwall is not cleaned. Downstream, we're going to open up a can of worms when we tell them to bring it back to—originally, it was 48"—48" or 46" and 46". Right now, I think it's 46" and 32"?

Ms. O'Hare said, 46" and 36", the opening—the actual opening.

Commissioner Kern said, Right--who made the decision to do this, put the 46" and the 36" in there?

Ms. O'Hare said, We have no idea.

Commissioner Kern said, All right. So, as far as we're concerned, they came to us, and they went and did what they wanted to do and left us high and dry. Nobody ever contacted you to come out there and prove it? There was no bond—yes or no?

Ms. O'Hare said, No, no bond.

Commissioner Kern said, O.K. So you never went out there after the work was complete?

Ms. O'Hare said, Oh, I did.

Commissioner Kern asked, And you signed it off?

Ms. O'Hare said, No, no. I went out to—I was curious. I ran out there to see what they had done.

Commissioner Kern asked, And where did it go from there?

Ms. O'Hare said, Then I brought it to the Commission, and then there's—there's a lot of correspondence. Then I asked the Town Engineer to go out there with me, and then it was not pursued after February. They put it in November 2nd, and we dropped the trail in February.

Commissioner Kern said, So then we need to notify them through Legal that it wasn't done properly and we didn't receive the prints of what they were doing. They didn't have our approval to do it and, as far as I'm concerned, they need to start over and do it right. And the bulge you're talking about is a boil that's going to pop again. It's a bulge there that's in the driveway, and that's because something drove over it heavy enough to wound that piece of plastic pipe. Because you got to have a certain amount of fill over those pipes to be strong enough to hold up. So fire truck, the delivery man, whoever it was, drove over those pipes and caused a bulge. Because pipes are great if you have the proper and adequate fill over top of them, they're just like concrete. So I believe we need to get Legal involved and have them send a letter that we need a print of what they're going to do, and it needs to be done correctly.

Commissioner McKeen said, So that's really a dangerous thing, though, when they take a construction vehicle over that—then that could cause another collapse.

Chair Vitali said, Right.

Commissioner Phillips said, I think we have a multi-department failure, not only Wetlands but Engineering. So I think we do have to look at it legally to do some fixes.

Commissioner Caruso said, My question was going to be with Commissioner Phillips – I don't know how it falls on us. This should be an Engineering—even the Fire Department has to approve these bridges. We've had this in the past where people have put the pipes in and other departments have to approve it. I don't think this falls on us. Pretty much overall, I think it's a failure of other departments. We didn't approve to begin with.

Ms. O'Hare said, Meaning Engineering?

Commissioner Caruso said, As far as the buyer goes, it was probably represented to them that the bridge was fine. It's part of the purchase, so you should be looking back at the company they bought the building from. It probably represented that the bridge was fine.

Ms. O'Hare said, Probably. Did everyone get the memo from the Engineering Department today I got on this subject? Did I hand that out yet? I would have handed it out tonight.

Commissioner McKeen said, I have it.

Ms. O'Hare said, Town Engineer Alison Kapushinski did put that together today from an engineering point of view, what her position was. And she was not here when this happened.

Chair Vitali said, Jeff?

Commissioner Necio said, I'd agree with Mike. It seems to be more of an engineering issue.

Chair Vitali said, Jimmy?

Commissioner Heilman said, No comment.

Chair Vitali said, That's why it's a whole town—like Mike has brought it in together. We're getting pinpointed, I think, because we gave them the first approval to redo—to fix the pipe; and then we didn't follow. They didn't do the Conditions of Approval, and we dropped the ball from there. But I think it's a Town—the whole Town is going to be at issue with this. So it goes back to Janis, and it's to deal with what the Town departments want to do.

Ms. O'Hare said, O.K., I just want to clarify why we gave the Cease and Correct Order is that this Commission regulates activities in wetlands and watercourses. And, to fix this bridge, they had all sorts of equipment in the channel. So we knew that—that's why we had to give the Order--that's why it fell on us to give the order.

Chair Vitali asked, But the order was a good order that you got to submit plans.

Ms. O'Hare said, Yes, but I'm just thinking, if something is in the public health, safety, and welfare, you would think that maybe there would be somebody else giving the order—so, I don't know—Fire Department, or I don't know where that would fall.

Chair Vitali said, You would suppose that they were going to fix it right. They put a bandaid in there.

Commissioner Kern said, We're not interested in pointing fingers here, Erin. We want the corrective action. I believe the Building Department has the authority not to give them a C.O. to change it from senior housing to apartments or whatever you just said they're going to do. So, before he can get his C.O. to let anybody move in, he's got to comply to what we're asking him.

Ms. O'Hare said, That's the way the Planning Department has framed it, that it is hinged on the C.O.—getting the C.O. is hinged on doing this hydrological study and making it right.

Commissioner Kern said, That's great, but the money and time they're going to spend on that, they could probably take that money and put it towards fixing it the right way and get rid of the 36" and the 48" and put the two 48s back in there.

Ms. O'Hare said, Right. I'm told it's a \$300,000 fix.

Chair Vitali said, Well, aren't you also told that if Planning and Zoning doesn't give them approval, they're going to sue the Town because of the conditions—

Ms. O'Hare said, I don't know. They are really in a bad position right now. The new owners are really up against it right now. They're looking at a \$300,000 fix that they didn't even know they had a problem? I mean, it is a difficult problem.

Chair Vitali said, O.K. I think you've got your direction.

Ms. O'Hare said, O.K., could you repeat my direction?

Chair Vitali said, Sounded to me like the direction of the Commission said this is a town-wide problem, not just Wetlands; and it goes back to Legal with the decision of what the department heads want to do.

Ms. O'Hare said, O.K., because Legal had directed me to—

Chair Vitali said, O.K. Legal wants a direction from Wetlands. Wetlands says, "Go back to the rest of the departments because everybody's got a piece of it." Wetlands hasn't got the engineering ability to decide if the fix was correct or not.

Ms. O'Hare said, O.K., yes, I will do that—that's my directive. And, at this point, we have people calling up the Planning Department and my department saying, "I'm getting flooding" or "I'm getting erosion." And we—no one is certain if those narrow culverts are the cause, or maybe we're getting bigger storms, or maybe they're always flooding. Maybe these properties always flood, and they're just paying attention. So I got to this idea of a consultant who would say, "Given this water—"

Chair Vitali said, I don't think the consultant is going to provide anything more than what any of us know, and that is the pipes are too small. If the Law Department says, "We need a consultant"—and maybe it should be an Engineering consultant, not a Wetlands expert—because the next step could be a legal battle, and you need experts with credentials to testify. So I think it's a discussion that you need to have with Janis on what is it that you want to do next here? What answer are you looking for from an expert?

Ms. O'Hare said, Well, there's another element to this: This is private property. If this was a public crossing, a road, Engineering Department would be all over it. They do not enter private property situations.

Chair Vitali said, But all of our plans usually get reviewed by Engineering. Anything like a driveway crossing or a Wetlands retention pond is Engineering gets to review it.

Ms. O'Hare said, Correct.

Commissioner Caruso said, Yes, that's what we've done that in the past. We've had it with the Fire Department and Engineering.

Commissioner Kern said, You just answered your own question. It's private property. The Town of Wallingford should not be involved there—only to approve of what's going to be installed.

Ms. O'Hare said, Yes.

Commissioner Kern continued: And that means a set of plans, a print, and a construction sequence. All we're here for is to make sure it's done right. And it hasn't been done right yet. So we're not involved in this until we see a set of plans come in front of us.

Ms. O'Hare said, Right, but this is where we get into the circular thing going on.

Commissioner McKeen said, Right. But the thing is bigger than the water. In this particular case, this is a public safety issue with whether or not he's even going to be able to have apartments in there—or whether the first truck that goes to deliver drywall collapses the bridge. And to convert a hospital into residential apartments is a monumental task. It's unfortunate if the new landowner doesn't have the funds to make that happen. And that is another issue, aside from whether or not the water backs up. If you want to know if the water—if that's due to the pipes being too small, just go out there on a big rain and see how much the water has puddled up behind the bridge or how fast—you can observe it. Is there deep standing water? Is it above the culvert? Is it shooting out the other side?

Ms. O'Hare said, The original engineer who came before the Commission, Mike Ott, did say that a 100-year storm would back it up 15 feet. But the good news is, you've got the 15 feet before the driveway. So it would back it up, yes, in a 100-year storm, but you got the 15 feet. And I'm talking to engineers that say, "No, you do not account for that—you do not let it build up 15 feet."

Chair Vitali said, You know, the people that you made reference to are complaining, are private citizens, and this is on private property, so maybe this is a civil matter. Maybe this is between the people that are getting erosion in and Fifty-five LLC?

Ms. O'Hare said, Or we send them a letter, and they never respond to our letter, meaning the new Owners--but we have taken action. We have requested, "You never complied with, so give us a plan." At least, we tried.

Chair Vitali said, Well, I think this is a huge legal issue. And at this point I don't think we're ready to hire consultants.

Commissioner Phillips said, No.

Commissioner Kern said, We don't need to hire consultants.

Chair Vitali said, Is there calculations when the original bridge went in? To solve it?

Ms. O'Hare said, No. They can't find them. It went in, like in 1978 or something like that, and it's not in the file. They looked.

This discussion ended.

F. RECEIPT OF NEW APPLICATIONS

1. **#A23-7.1 / 6 McNabola Lane - Pepe Malangone - (in-ground pool, patio, patio surround, fencing, temporary access route) - Request for Administrative Approval -Granted 7/19/23**

Chair Vitali noted this Administrative Approval.

G. REPORTS & COMMUNICATIONS

1. Discussion of proposal to adopt fines for violations - Not discussed.
2. Farm Hill Road Detention Basin - Not discussed.
3. Notification of Pesticide Application - 10 Martin Trail/Spring Lake, received 6/12/23, The Pond & Lake Connection - Noted
4. **#A20-7.1 / 5 & 21 Toelles Road - Notice of Pesticide Application (as required), IMM, Inc.;** received 6/21/23 - Noted
5. Notice of Public Meeting and Comment on Agrivoltaics (siting clean energy on agricultural land), zoom meeting, held by DEEP Sustainable, Transparent & Efficient Practices for Solar Siting (STEPS); 7/24/23, 9 a.m.; contact: DEEP.Energy Bureau@ct.gov; forwarded 7/13/23; received in office 7/17/23 [cancelled/to be re-scheduled via email notice dated 7/19/23]

H. VIOLATIONS - (Items were taken out of numerical order here.)

Chair Vitali took up Items 5 and 6 briefly:

5. **Notice of Violation - 24 Mapleview Road - Patricia Clarke, c/o James W. & Patricia Clarke, Trustee of The Clarke 2022 Living Trust - (alteration and filling within wetlands and within Upland Review Area on 24 Mapleview Road & on 13 Rolling Meadow Drive) - issued 4/21/23; tabled 5/3/23; Special Meeting at site 5/16/23**

Chair Vitali summarized the Violation issue to date. He invited Mr. Tim Clark, Owner of 11 Rolling Meadow Drive, to speak about his plan to pipe the water.

Mr. Tim Clarke stated that he is pursuing an arrangement with the Owner of 15 Rolling Meadow to pipe his water across to that property and from there to the marsh.

Chair Vitali told him to submit the pipe plan soon. (See Motion below.)

6. **Notice of Violation - 19 Tamarac Swamp Road - William Schubert - (clearing, grading & filling in wetlands and within Upland Area); issued 4/24/23**

Ms. O'Hare distributed photos of this site which she had taken today with the Owner, Mr. Schubert.

Mr. William Schubert said that he is progressing with work but needs direction from Ms. O'Hare as to: What type of seed mix to use and whether he can put in topsoil for the seed?

Chair Vitali directed Ms. O'Hare to go out to the site again with Soils Scientist Roman Mrozinski and Mr. Schubert to wrap this up. (See Motion below.)

Then Chair Vitali turned to Item 3:

3. **CEASE & DESIST – 67 Schoolhouse Road – Michelle Millican & Michael Gerace – (new**

filling); issued 4/25/23; decision 5/3/23; revised decision 6/7/23

Ms. O'Hare reported, Mrs. Gerace brought in a letter with a quote from a Contractor to remove the existing unapproved fill, being about 13,000 pounds of brick.

After brief discussion, this Motion was made:

MS. PHILLIPS: **MOTION ON VIOLATION #3 AT 67 SCHOOLHOUSE ROAD TO EXTEND THE TIME TO REMOVE THE FILL TO NOVEMBER 1, 2023.**

MR. NECIO: **SECOND.**

VOTE: **MR. KERN - YES; MR. NECIO - YES; MR. CARUSO - YES; MS. PHILLIPS - YES; CHAIR VITALI - YES.**

Then as to H. Violation Items 1, 2, 4, 5, and 6 tonight, this Motion was made below:

1. Notice of Violation Remains - 1245 Old Colony Road & Quinnipiac River - Jerzy Pytel - (unpermitted clearing & filling near river)
2. 340 & 346 Quinnipiac Street - Southern CT Pallets - (possible violation)
4. CEASE & DESIST - 67 Schoolhouse Road - Karl Kieslich - (new filling) issued 4/25/23; tabled 5/3/23; and on 6/7/23 Chair Vitali said, "This Cease & Desist Order remains."
5. Notice of Violation - 24 Mapleview Road - Patricia Clarke, c/o James W. & Patricia Clarke, Trustee of The Clarke 2022 Living Trust - (alteration and filling within wetlands and within Upland Review Area on 24 Mapleview Road & on 13 Rolling Meadow Drive) - issued 4/21/23; tabled 5/3/23; Special Meeting at site 5/16/23
6. Notice of Violation - 19 Tamarac Swamp Road - William Schubert - (clearing, grading & filling in wetlands and within Upland Area); issued 4/24/23

MS. PHILLIPS: **MOTION THAT ANY OF THE REMAINING VIOLATIONS (ITEMS (#1, 2, 4, 5, AND 6) TO REMAIN IN EFFECT.**

MR. NECIO: **SECOND.**

VOTE: **UNANIMOUS "YES" BY MR. KERN, MS. PHILLIPS, MR. CARUSO, MR. NECIO, AND CHAIR VITALI.**

I. ADJOURNMENT

MS. PHILLIPS: **MOTION TO ADJOURN THE MEETING.**

MR. NECIO: **SECOND.**

VOTE: **UNANIMOUS TO ADJOURN.**

J. NEXT SCHEDULED REGULAR MEETING: September 6, 2023

The Meeting was adjourned at 9:15 p.m.

Respectfully submitted,

Kathleen L. Burns
Recording Secretary