

**CORNWALL INLAND WETLANDS AND WATERCOURSES AGENCY
MINUTES OF THE SPECIAL IN-PERSON MEETING MAY 2, 2023**

Present: Regular members D. Stevenson Hedden, Debby Bennett, Peter Demy and William Hurlburt, alternate members Jeffery Morgan and Robert Nethery and IWWEO Karen Griswold Nelson.

Absent: regular member Alan Bahn.

Chairman D. Stevenson Hedden called the meeting to order at 7:00 PM with a quorum established. Alternate member Jeff Morgan was seated for regular member Alan Bahn.

APPROVAL OF MINUTES: March 4, 2023 regular meeting minutes and April 4, 2023 regular meeting minutes.

Motion made by Mr. Demy seconded by Mrs. Bennett to approve the minutes of the March 4, 2023 regular meeting; unanimously approved.

Motion made by Mr. Hurlburt seconded by Mrs. Bennett to approve the minutes of the April 4, 2023 regular meeting; unanimously approved.

NEW APPLICATIONS:

App#665 – Keith Bodwell/dba Bodwell Engineering and Surveying/- Construction of a new single family residence with activities within 150 feet of a stream and a wetlands crossing for access as approved Permit No: 632 issued: October 1, 2019 - Expiration date: October 2023 – 27 Day Road.

Information made part of the record/

- Mapping entitled Site Plan Day Road, Map Co1, Block 02 – Lot 10 prepared for Gene and Eileen Black, prepared by Bodwell Engineering and Surveying dated April 2023.
- Wetlands Permit for App#632 – William Lynn owner – Activities with regulated areas for the construction of a driveway to a single family residence ... with approved access from both Prichard and Day Road) with excerpts from the August 6, 2019 September 6, 2019, and October 1, 2019 regular meetings.

Keith Bodwell, PE with an office in Cornwall, CT was in attendance to represent the application. With note made that Commission members in attendance, including Mr. Hurlburt, Mrs. Bennett, Mr. Demy and chairman Hedden, had been on the site for the approval of the original application approved, the floor was opened to Mr. Bodwell for his presentation. With note made that the new activities were within the upland area and based on the recommendation of Griswold Nelson that the application be considered an Upland review

Motion made by Mrs. Bennett, seconded by Mr. Hurlburt to approve **App#665 – Keith Bodwell/dba Bodwell Engineering and Surveying/- Construction of a new single family residence with activities within 150 feet of a stream and a wetlands crossing for access as approved Permit No: 632 issued: October 1, 2019 - Expiration date: October 2023 – 27 Day ROAD AS AN UPLAND REVIEW as** per the oral and written testimony of the applicant and the record of the file with the following conditions:

1. The name and telephone number of the persons or entity responsible for the erosion and sedimentation control measures is to be provided and made part of plans on file.
2. The Land Use office shall be notified prior to the start of construction.
3. All erosion and sedimentation controls are to be installed prior to the start of the construction and the E&S controls are to be inspected by the Inland Wetlands Enforcement officer/ZEO prior to the start of work.
4. The site design engineer Mr. Bodwell shall be responsible for the supervision of the site during all phases of construction for activities within regulated areas including maintenance of the erosion and sedimentation controls as shown.

Motion unanimously approved.

App#666 – Jonathan & Celina Stein owner/John Tyson applicant - Installation of an underground propane tank within 150 feet of wetlands soils – 3 Hart Hill Road. (Modification to permit #659 for activities within same wetlands setbacks).

Information made part of the record.

Copy of Application #659 including:

- Mapping entitled “Site Development Plan Guest/Pool House and Re-build Garage – Property of Jonathan and Celina Stein, 3 Hart Hill Road, West Cornwall, CT prepared by Colby Engineering, Goshen, dated 04/25/2022.
- April 26, 2022 report from George Malia, Certified Soil Scientist, dated April 26, 2022.
- Mapping showing 04/2023 TAHD approval for the location of the proposed underground propane tank within upland areas.

Griswold Nelson, stating that she was representing the application, addressed the addition of an underground propane tank to the site plan as previously approved. There was general discussion as the procedure for the installation of a propane tank and any impact to wetlands (none) with agreement that the application could be modified.

Motion made by Mr. Demy, seconded by Mr. Hurlburt to determine that **App#666 – Jonathan & Celina Stein owner/John Tyson applicant for the Installation of an underground propane tank within 150 feet of wetlands soils – 3 Hart Hill Road. CONSTITUTES A Modification to permit #659** for activities within same wetlands setbacks; unanimously approved,

App#667 – Daniel and Susan Van Doren – Construction of a new foot bridge across the stream – (all wetlands information being brought forward as part of previous permits approved) – 11 Bradford Road.

Information made part of the file:

- Copies of **App# 644 and PDR-02-20** – David and Susan VanDoren owners/C Webb Associate’s applicant – Dam/pond maintenance - 11 Bradford Road as approved June 2, 2020.

Griswold Nelson stated that she was representing the application for the owners and recommended that the Application be accepted with review and discussion at the June meeting based on the timing for Commission members and staff to be able to visit the site and review the request for a second foot bridge over a stream.

Motion made by Mr. Hurlburt, seconded by Mrs. Bennett, to accept **App#667 for new proposed activities for the construction of a second foot bridge across a stream – 11 Bradford Road** and table discussion until the June 6 meeting; unanimously approved.

PDR-11-2023 – D. Stevenson Hedden applicant/Donald S. Hedden Jr. Owner – Activities to maintain and improve access on a pre-existing farm road near Mill Brook – 87 Cream Hill Road.

Chairman Hedden recused himself from the application with Vice Chairman William Hurlburt assuming responsibilities as chairman.

Information made part of the record.

PDR -11-23 Application with mapping and photographs supplied by the applicant/owner.

May 1, 2023 Email correspondence received from Marc Sgaraglino and Maria Ginsburg (105 Cream Hill Road) forwarded to Commission members.

Email correspondence from the Land Use office to Marc Sgaraglino and Maria Ginsburg. (Keith Bodwell, PE with an office in Cornwall, was in attendance to address the activities proposed as part of the Petition.)

In response to questions (Mr. Demy), the May 1st email correspondence from the neighbors was acknowledged as received and read by commission members in attendance.

There was general discussion of the (PDR) declaratory right status with input from commission members (Mr. Demy) as the “agricultural” uses (as addressed in Section 4.1a of the Inland Wetlands and Watercourses Regulations). In response, Mr. Hurlburt addressed fields out back being reclaimed for “young blood” in the family, dead hemlocks to be cleaned up to create pasture land (Griswold Nelson) and horses on the land. In response to questions, Demy regarding the process and qualifications for “declaratory rulings”, the process was discussed regarding the Commission’s authority. Note was made that application did not propose activities within wetlands but activities near the brook. Mr. Hurlburt stated that there “clearly see a road there”.

With note made that Mr. Bodwell was in attendance, Griswold Nelson addressed information made part of the file, including emails from the Land Use office to Mr. Sgaraglino (with excerpts read into the record) regarding “woods road”, and mapping for properties that does not include the details found in the Sgaraglino mapping. Griswold addressed conversations with Mr. Sgaraglino regarding details showing the woods road on his mapping, the location of his residence 40 foot from the Hedden property and the right to clear and reclaim forest land for pasture land despite lack of activity for (20) years.

In response to questions from Mrs. Bennett, and protection of the watercourse and obligation to protect the waterways, there was conversation regarding (with input from Mr. Hurlburt and Mr. Bodwell) as the existing water patterns into the brook from the existing logging road and the improvements to the existing flattened driveable dirt road being made to protect erosion from going into the brook. In response to concerns as to the need to “tidy up” silt fence, Griswold Nelson addressed case the language in the Cornwall regulations that allowed conditions including maintenance of silt fence.

In response to questions from Mr. Demy as to documentary evidence on the location of the woods road, there was discussion (Griswold Nelson) of the evidence similar to the recent Town Street application walked by the Commission that “you can see it in the landscape” Mr. Bodwell) addressed the trees next to Hedden woods road that haven’t changed and “reading of the forest” (Demy/Bodwell). Details in mapping by Brian Neff (/Griswold Nelson/Hurlburt) that supported the findings of woods road historically existing in the area and connectivity to similar woods roads on abutting properties including the Sgaraglino/Ginsberg property and evidence of clearing and horses on the property in historical photographs.

Mr. Demy, indicating his belief that there is sufficient evidence to suggest that there this is an existing farm road, Mr. Demy indicated his understanding that the Commission would be required to “determine” (as opposed to approve/Griswold Nelson) the PDR (as a use of right.)

In response to questions (Morgan), it was clarified that the Sgaraglino’s had built their property on the 40 feet setback line, that the setbacks for a three acre zone were 40 feet, or 80 feet in total (between structures on abutting properties). In response to concerns raised by Mr. Morgan, Mr. Bodwell stated that this woods road was not near the neighbor’s house and that their concerns were most likely related to tree removal, change of view shed, and “temporary” noise (Bennett/Hurlburt) from trees being cut down and machinery. There was clarification as to the Hedden properties (Steve and Don) and any consideration of a possible future subdivision (Griswold Nelson) not being part of the discussion of the current PDR and any future subdivision having to comply with subdivision rules.

There was clarification by Griswold Nelson as to tree clearing on residential properties and the lack of jurisdiction from a land use perspective for anyone to be stopped from clearing land and changing the view shed relating to surrounding property owners.

In response to questions regarding similar situations (Bennett) regarding woods roads, Griswold Nelson addressed a similar situation (Lake Road/Prentice) in which LIDAR mapping showed the contours of an old town road exceeding 25% percent slope and that the engineer of record was allowed to create a new buildable lot with areas of 25% slope as the regulations did not exclude constructed contours only natural contours.

There was additional clarification that the contours of this existing woods road could be seen in the landscape, horse paths could be seen in the landscape and were related to the agricultural “as of right” determination being requested.

Motion made by Mr. Demy, seconded by Mrs. Bennett, to determine that **PDR-11-2023 – D. Stevenson Hedden applicant/Donald S. Hedden Jr. Owner – Activities to maintain and improve access on a pre-existing farm road near Mill Brook – 87 Cream Hill Road** constitutes a use as of right for agricultural purposes as per Section 4.1a with the condition that the silt fence as shown in the photographs be maintained: unanimously approved.

Mr. Hedden returned to the proceeding and resumed his position as chairman.

PDR-12- 2023 – James Fishman applicant/owner – Activities to address flooding and drainage issues on residential property related to beavers – 60 Cream Hill Road.

Karen Griswold Nelson and Steve Hedden represented the application on behalf of and at the request of the applicant/property owner.

Griswold Nelson (and Mr. Hedden) addressed the situation being created by beavers and beaver management on abutting property flooding the barn around the Fishman barn. Mr. Hedden recommended that the ditch be dug along the wall, that filter fabric with stone and a pipe be installed to divert the water back into the brook 50 feet away.

Motion made by Mrs. Bennett seconded by Mrs. Morgan to determine that **PDR-12- 2023 – James Fishman applicant/owner – Activities to address flooding and drainage issues on residential property related to beavers – 60 Cream Hill Road** constitutes a use as of right for maintenance of residential property as per Section 4.1d: unanimously approved.

PENDING APPLICATIONS; None

ENFORCEMENT ACTIONS:

Notice of Violation/Show Cause Hearing – Gonzales Landscaping Inc. owner- Activities within regulated areas with a permit – 18 Frederick Drive.

Keith Bodwell, PE with an office in Cornwall, addressed the Notice of Violation, stating that he had been on the site that day and provided current photographs of the status of the site under the violation notice. (Photographs made part of the record)

Mr. Bodwell addressed the photographs including details as to areas including the logging road/old woods road, areas of disturbance on the roads and overall site and the intermittent watercourses redirected and corrected to address the situation to the abutting neighbors downhill. Mr. Bodwell addressed the plans being worked on to site a residential house (and location of a code compliant septic) with the understanding that no additional excavation and/or removal of any earth materials from the site not related to the site design for the residence was allowed as part of the order.

Griswold Nelson addressed visits with NWCD soil scientist Cynthia Rabinowitz and the matter of the downhill neighbor's issues being a civil matter and not the Town's issue. Based on the recommendations of IWWEO Griswold Nelson that this was the first time that the Commission had been supplied information and had discussed the Order with the engineer of record

Motion made by Mr. Hurlburt, seconded by Mr. Nethery, to keep the **Notice of Violation - Gonzales Landscaping Inc. owner- Activities within regulated areas with a permit – 18 Frederick Drive to UPHOD and KEEP the order in place:** unanimously approved.

Notice of Violation/Cease and Correct – Dark Entry Forest Inc/ property owner and Anthony Macchiaroli /non-property owner for work within regulated areas without permits – Cook Road.

Information made part of the record. Email correspondence from David Colbert

Sent: Thursday 4/26/2023 7:33AM To: Karen Nelson cwlanduse@optonline.net

Subject: Statement for 2023 IWWA meeting

Dear Cornwall IWWA,

Litigation is still pending as to the Macchiaroli case. Regarding the current E&S status, as you know, DEF has installed hay bales and silt fencing, which it will continue to monitor. If you have any questions, please feel free to contact DEF.

Thank you,

David Colbert

President, Dark Entry Forest, Inc.

INLAND WETLANDS OFFICER REPORT.

Griswold Nelson addressed ongoing work to address the draft communications from the Housatonic Herbicide Working Group sent to the Commission was addressed with corrections and suggestions for verbiage change to be addressed by the IWWE0.

CORRESPONDENCE AND COMMUNICATIONS RECEIVED.

OTHER BUSINESS PROPER TO COME BEFORE THE COMMISSION.

ADJOURNMENT

Motion to adjourn by Mr. Hurlburt, seconded by Mr. Demy, at 7:45PMPM; unanimously approved.

Respectfully submitted by recording secretary Karen Griswold Nelson, for Mr. Demy,
Commission secretary