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CITY OF SHELTON  
INLAND WETLANDS COMMISSION  
REGULAR MEETING MINUTES  
Thursday, June 12, 2008  
7:00 P.M., Room 302

Chairman Zahornasky called the regular meeting of the Inland Wetlands Commission to order at 7:05 P.M.

**I. PLEDGE OF ALLEGIANCE**

All in attendance recited the Pledge of Allegiance.

**II. ROLL CALL:**

- Gary Zahornasky, Chairman
- Celeste Beattie, Commissioner
- Ken Nappi, Commissioner
- Jack Goncalves, Commissioner
- Norman Santa, Commissioner
- Randy Szkola, Commissioner
- Charles Wilson, Jr, Commissioner

Absent: Neil Hayes, Commissioner

Also Present: John Cook, WCEO  
Marianne Chaya, Interim Clerk

**III-A. PUBLIC COMMUNICATIONS** and request to addressed the Commission with non-agenda items.

*Jim Flood*  
*Boy Scout 28, Shelton*

*I'm here for my Eagle Project. The main idea for my project was to extend the shoreline on Hope Lake Reservoir on Nells Rock Road.*

**Commissioner Beattie motioned to add this item to the Agenda under Public Communication, #08-15 Permitted Use Proposal. Commissioner Santa seconded the motion.**

**A voice vote was taken; motion passed unanimously.**

*Mr. Flood continued:*

*The main idea would be so people passing through won't have to worry about getting their lines caught in the foliage in the area.*

John Cook responded that he met with a representative of the Trails Committee and Jim Flood this past week to go over it and to highlight some things were brought in. It is near the dam edge of the old reservoir. The only thing notes it that there is an area, aquatic plants in the area. I would suggest that there be latitude to shift it if field conditions warrant for maximizing fishing but to minimizing the impact to the plants because it is also going to be used to launch canoes and so forth.

Commissioner Beattie asked for a timeline on this permit. Mr. Flood responded that after this meeting he would have to go to Council with his troop and if approved, the project can begin. His plan is to be started by July.

Commissioner Szkola questioned how they would meet handicap accessibility. Mr. Flood stated that the way it is now, by the shoreline it is muddy, so by extending the shoreline they would be able to cast out farther and actually get into the water. They would not have to worry about their lines being caught. Commissioner Szkola questioned if there would be a ramp built. Mr. Flood had a diagram and pictures and showed to the Commission. It will be almost like a pier. There will be stone build up and then a wall and fill with gravel. On the top will be finer gravel that will be hammered for a smoother surface. There will also be woodchips half way.

The Commission requests that a sign be posted that this is an Eagle Scout project.

**Commissioner Beattie motioned to approve the acceptance of #08-15, Permitted Use Proposal. Commissioner Santa seconded the motion.**

**A voice vote was taken; motion passed unanimously.**

### III-B. OLD BUSINESS

#### 1. PERMIT 07-27, WELLS AVENUE EXTENSION – Final plan submittal as a result of Board of Aldermen abandonment.

Atty. Stephen Bellis  
Representing the Applicant

*This has come before the Board roughly six months ago, basically we had come here for an extension of Wells Avenue and to extend the cul-de-sac as you can see here in pink and what was purple, and the orange would have been the disturbance for the fill. This Board unanimously stated that you would prefer not to do that but rather go ahead and try to get an abandonment of the paper road as known as Wells Avenue from the Board of Aldermen. Then you asked John to write a strong letter to the Board of Aldermen recommending that they abandon the roadway, so that there would be less impact on the Ivy Brook headway. The wetlands on this project, the lots we're talking about are Assessor lots #146 and #147. At that time you approved lot #146 with one condition that we report back to you and have borings done on the lot and once that was done have a structural engineer state whether you can actually build on the lots, in case there were any questions or concerns about the prior use of that lot, some years back there might have been a problem. There were no wetlands on that lot. I have the report and will submit it. Basically, the summary of the report states that it is recommended after seeing the soil testing borings, that you remove 2-3 feet of soil and use 60 inch spread of footings with 2 rows of reinforced steel. That lot has already been approved. John did write his letter to the Board of Aldermen and we did take it up with the Board of Aldermen, the Board of Aldermen did vote, and they voted for the abandonment, they accepted your recommendations and what they did was abandon .10 acres. I've highlighted that I orange. You have the right of way on Wells Avenue, this was the paper road. Almost all of the wetlands were in that right of way. There was practically none or very little wetlands on the lots itself but it was the idea that if the road were extended then you were filling in quite a bit of the wetlands, so this was the plan that you people wanted. They did vote on it and you could see now that it is abandoned. I have just for the record a notice that was recorded on the land records that the Board of Aldermen approved the abandonment and as part of that abandonment, when you abandon property, half the road goes to this neighbor and half goes to this neighbor. The applicant had these two lots, someone else had that lot, that person Quit Claimed the property over to the applicant so the applicant now controls this whole piece. Just so everyone knows, these are pre-existing, non-conforming lots, the Planning & Zoning Commission has signed off that they are building lots. What we're here for tonight is this lot. I call it subdivision lot #172, in the prior minutes of the meeting it probably went by Assessor's lot #147. This is the site plan. This one is already approved. What I've done is highlighted in purple, which is the new lot #172, the one you approved last time. This is the one you said, come back to us after you've gotten the abandonment approved and show us your plan. That's what I'm doing here tonight. The plan is simply to construct a single family home, which is #172, that is in character with the one here and the one built over here. A 2200 square foot colonial. I can tell you that we've done some computations for the amount of fill that will be needed to extend the road versus abandoning the road and as you perceived in your last meeting, it is about 40% less fill needed by doing it this way than if you extended the road.*

*John Cook asked if that was a common driveway. Attorney Bellis responded that what I'm showing in orange is a one driveway coming off of Wells Avenue, it branches off to this lot #171 and when it gets to the property line goes to this. So yes, one driveway off of Wells Avenue. Again, if you had roadway it would be 12 feet of fill, now there's 6 feet. There is a significant reduction as you have perceived in asking us to do this. The last thing you had asked us to do was to give a Conservation Easement so that there would not be anymore development. In fact, this road will never again be extended. There's not going to be anymore development on Wells Avenue. The remaining lots, one has a deed restriction, it*

says right on the deed, you can't build. You had requested a Conservation Easement, I prepared a Conservation Easement and I gave it to Corporation Counsel, he reviewed it and I recorded it on the land records in Volume 2907, Page 313. So there is a Conservation Easement recorded as you had requested.

Commissioner Beattie asked where on the map that would be.

Larry Ellis  
E&E Quality Homes, LLC

Mr. Ellis responded, this dotted line, this whole half. This is one lot, and this whole lot has a Conservation Easement. Attorney Bellis stated that there is a home here, the dotted line, it would be a square parcel. So they can't build on it.

Commissioner Szkola asked what happens to the old road right of way. Where does that go? Attorney Bellis responded, this portion down here, it just stays. Commissioner Szkola asked under whose name. Attorney Bellis responded the part that was abandoned goes to the adjacent property. It's a right of way, it's called a paper road. Commissioner Szkola asked if they only abandoned twenty feet. Attorney Bellis responded more than twenty feet, .10 acres. Chairman Zahornasky asked if it was still under the City's control. Attorney Bellis responded yes.

Commissioner Szkola stated that he was under the impression that the Commission ask for the entire road to be abandoned from the end so it could never be extended. So say someone comes in 20 years from now, buys this lot and buys up this paper lot. Attorney Bellis stated you can't. I can explain it to you if you want. The Conservation Easement for this particular one says you can't build on it. This one says not a building lot by deed, when I checked the deed, it was purchased and right on it, it says restricted. The next one down the road, has a house on it, it's already built and that driveway comes out to Weybosset. this one has a house on lot #177, driveway to Weybosset. House #42, same thing, already built on with a shed. Here's the driveway to Weybosset and the last would be lot #36, has a house and driveway to Beecher. SO there is no more land. the only one you were concerned about was this one, that's why I did the Conservation Easement. I assume that was what you were concerned about. Now you can't build, the Conservation Easement says, so no one will be able to build on it.

John Cook's had some comments. The one thing that came up this evening, and I have spoken with the applicant on a couple of occasions that had to do with borings. As long as it was broached by Counsel, it should probably be confirmed so that we don't have to go through it at the administrative level. On the Commission's approval of the permit, the construction certification is needed from an engineer and the build lots in question. The question on the analysis was on both lots, lot #146. Parcel #146 was approved at that time because they have frontage so that would become most likely quickly in a time frame. This other part of the approaching of the Board of Aldermen was a much more time consuming process. Attorney Bellis stated I'll tell you why I did that, although John is right. Right after the motion, there was a discussion and it said "before approval for lot #146, it will be subject to borings and this Commission receiving a letter from a certified engineer stating that the design is sufficient supporting the house with no problems", that's why I did for #146. If the Commission wants both, I have no problems with that. That is Assessor's lot #146. There are subdivision lots and Assessor's lots, the numbers are different. What you were talking about was Assessor's #146 which translated to subdivision lot #176. Commissioner Beattie stated how about #171? Attorney Bellis responded, #171 has already been approved. #171 was approved and what I just read to you was, make sure you give us the borings and the engineers report on #171 and I handed than in tonight.

Commissioner Nappi stated that for the record, lots as indicated at the original meeting, #146 Assessors lot now is subdivision lot #171, and lot #147originally indicated on your plan is now lot #172. Attorney Bellis stated yes. Commissioner Nappi asked is lot #172 had been approved. Attorney Bellis responded yes, it was approved on October 11, 2007. Commissioner Szkola stated that the approval was based subject on the approval of the soil report which we received tonight, that there was a normal soil. John Cook stated that since the record established, at some point in time, there were some wetlands there, it was historically a pond. While the construction of that lot would fall in the shoulders of the Building Department, historically, when there has been question of unsuitable material, especially if it's unsuitable material that relates back to this Commission, the reason for having outside parties as that Consulting Engineer evaluate it, would be to protect the City's interest so that now there is better protection for whatever needed to be done to assure whatever construction takes place there is now being verified by this structural engineer.

Chairman Zahornasky stated that the applicant still needs to come back with the soil report for the other lot. Attorney Bellis stated that if it is asked he will. I didn't read it that way in the minutes, but just let me know and I'll be glad to.

**Commissioner Santa motioned for an approval for the site plan, lot #172 with the borings and engineering certification. Commissioner Nappi seconded the motion.**

Discussion:

Commissioner Szkola questioned the storm drain and how the flared end would be treated.

The borings handed in this evening were for lot #171, but on the handout it states #172. There was a typo and the applicant will work with John Cook to make the necessary changes on the report.

**A voice vote was taken; motion passed 6-1.**

## **WCEO REPORT**

**June 12, 2008**

### **PERMIT #07-27, WELLS AVENUE EXTENSION**

#### **PLANS: LOT 172 – WELLS AVENUE EXTENSION May 20, 2008**

**COMMENTS:** The plan is submitted per the Commission approval October 2007. The applicant was directed to approach the Board of Aldermen for abandonment of Wells Avenue and if successful return to the board for final approval. They were successful in this regard and staff asked them to provide documentation for the conservation easement created on the other parcel to further the goals of assuring protection of the remainder of the wetland in this vicinity. The applicant is also expected to show a comparison of regulated activities on the road extension versus the driveway only concept.

#### **III-C. NEW BUSINESS**

**1. PERMIT-APPLICATION #08-10 MARSHALL MEADOWS SUBDIVISION – NELLS ROCK ROAD.**  
Proposal to create a three-lot subdivision involving site line improvement within regulated area and sewer line construction within regulatory setbacks.

*Michael O'Bymachow*  
Surveyor

*I'm here tonight for a proposed 3 lot subdivision on Nells Rock Road. This is the old Marshall residence, the old white house. I'm sure everyone has seen this house. We're keeping the existing house and proposing 2 new single family homes. If you're familiar with this area here, there is a wetland corridor at the rear of the property, and there is a wetland corridor off the edge on the east side of the property. What we're proposing to do here is one rear lot coming access off of here to the rear lot here. Associated storm drainage, boring out meter drains here and proposed septic system on this side here just scurrying the fringe of the wetlands in this area here. There is already an existing system for the existing house and for lot #3, proposed septic here and proposed meter drains and what have you here. The heavy dash area is a 50 foot area basically, but what we are proposing for a lawn area basically this darker blue area, roughly 25 feet from the wetlands. They'll have some lawn in this area here and lawn in that back area. We will be doing some grading in this area here, for lot #2. Basically what we want to do for site line visibility or coming out of this driveway, we're going to have to associate some clearing and we're going to provide a shoulder in this area here. Basically that's it.*

*John Cook's comments:*

## **WCEO REPORT** **June 12, 2008**

#### **PERMIT-APPLICATION #08-10, MARSHALL MEADOWS SUBDIVISION – NELLS ROCK ROAD**

STATUS: 1. **New application**  
2. **65-day clock to decide action or schedule public hearing expires Aug. 16, 2008.**

**PLANS: MARSHALL MEADOWS – 151 NELLS ROCK ROAD**

Subdivision Plan 5/2/08

Overall Site Plan 5/2/08

Site Plan Sheets 1&amp;2 5/2/08

Details 5/2/08

**COMMENTS:** This new application is to create a 3-lot subdivision involving the construction of two additional dwellings. The application identifies two regulated activities: site-line improvement for lot-3 and force main sewer installation for lot-2.

The work is straightforward in concept. However, while the plan shows grading within the regulated buffer for site line improvement, it does not indicate the level of disturbance within the regulated area proper as noted in the application. Lot-2 shows all disturbances for the new dwelling outside of 50' however, unless this regulated area is classified also a watercourse, i.e. swamp, marsh etc. the regulations provide for the creation of yard space down to 25' off the regulated area boundary. The applicant should clarify the intent.

*Commissioner Szkola stated there is open space here. L'Hermitage is here. Mr. O'Bymachow stated that there is a quarter that comes down from here and butts up against the lot here. Commissioner Szkola asked what the square footage of the lot would be. Per Mr. O'Bymachow, lot #3 is 44,000, lot #2 is 87,000 and lot #1 is 40,000. Per Commissioner Szkola, there is no way you're going to run a driveway through here and just use this. Mr. O'Bymachow responded that basically the grade and then within the buffer, the grade gets pretty steep, this is like a swale, so it would have more of an impact instead of this area here. Forced rain is just a trench. I think this is less evasive than covering it with a driveway.*

*Per John Cook, a question that occurred to me now, did you look at grading the driveway for lot 3 which is what is triggering the regulated activity for sideline improvement and I see here it's going from 418 on Nells Rock Road as basically a starting elevation and going up to the proposed elevation of 432. Is there a way that you could come in near lot 1? Inaudible – everyone speaking at once. John Cook continued, starting at this location which is at 422, 424. Mr. O'Bymachow responded, I know what you're getting at, basically we looked at that but to get to the center grade for the driveway to get through to the house, we just assume have that. Per John Cook, if it's a paved driveway you could go to 15% which eliminates your sideline grading. Mr. O'Bymachow stated that grading is basically cleaning the shoulder and clearing some trees down, it isn't any major construction in this area here.*

*Chairman Zahornasky suggested he give them the details on why the driveway won't work moving that way and also give them a more definitive limit of disturbance for the clearing area, that would help everyone somewhat. Commissioner Beattie asked you won't do anything with that bend as the road comes up? The grading is being proposed somewhere here.*

*Commissioner Nappi stated that again he would like to know from staff; we had talked about this and asked you do a couple of things. One is that when the application comes in to meet with the people or discuss with them and if you find something missing, that when it comes to us, rather than having this gentlemen come her unprepared, which what you find as deficiencies instead of waiting months, since May 9 to June 12, and now telling him that is doesn't clearly denote this or that. If he was told earlier he probably could have been more prepared and at least show the Commission that he corrected that. Commissioner Szkola stated that John clarified it when he stated that it just occurred to me. That happens to me a lot of times too. Commissioner Nappi continued that if you had looked at that in detail and some of the other things you could have given him tips on coming in with an alternate of the driveway. If you had a work session with him had suggested last time. I could see how you could forget something, that there wasn't any time.*

*Commissioner Szkola stated that has Valley Health approved this? Mr. O'Bymachow stated that the applicant has not heard from Valley Health yet and also this was submitted to P&Z. Commissioner Szkola stated that he would like to do a site walk on the property. Commissioner Beattie wanted to know where the pipes for the septic would be. Mr. O'Bymachow stated that they would go along this lot line. Its 10 feet off of the property line. Chairman Zahornasky suggested that they put some erosive control to delineate those wetland boundaries on that side, and when you're digging that trench, that they be instructed to place the fill away from the wetlands on the other lot. Commissioner Nappi questioned if there would be a water line. Mr. O'Bymachow stated yes, lot 2 is coming here, lot 1 is coming through here. Water is already at this site with the existing house. Chairman Zahornasky stated that John Cook will be in contact to schedule a walk through.*

Tony Salerno  
Representing the Owners

*If you would contact me as well for the walk through.*

2. PERMIT-APPLICATION #08-13, ROTKO PROPERTY – LONG HILL AVENUE. Proposal to fill regulated area and buffer for construction of a single-family dwelling. Application previously denied without prejudice.

Brian Nesteriak  
B&B Engineering

*I'm sure everyone here was here the last time we were here for this application. I'll give you a refresher. This is about a half acre lot on Long Hill Avenue. It has been a lot since early 1900's. It's been under the same ownership since 1942. There is wetland that exists in the center of this lot which makes building on it prohibited. We went through a few different scenarios the last time. The first meeting we were at, you recommended filling in this area. We came back with this plan. Then there were some more items you wanted to see, one of them being a hydraulic analysis, we came back with that. Ultimately, you denied without prejudice. At the end you were asking a bit more about the wetland quality. For this application, we have Mike Nowicki, a Soil Scientist; he has provided an assessment of the wetlands, which I have included with the application. I'll pass it to him to explain.*

Mike Nowicki  
Biologist

*I'm Mike Nowicki, I'm a Biologist actually. I put together this functional analysis based on a couple of field visits, one with Brian. The methodology I used is one commonly used, for smaller wetlands especially, something that ends off the property, this wetland loops around, I don't think it travels further anymore off the property because of the backyard. So it pretty much is only in that one spot. So I chose this functional evaluation and Brian called before and said you might not have ever seen this before. So I brought the methodology with me. It's something that is semi-quantitative; it's typical for the Northeast. What it basically does is that it tries to put into, it's a model that you can run where you could come up with a number for a function, so that it's uniform. It's supposed to be more objective. What it looks at is biological, hydrological features of any particular wetlands. They're really good for smaller wetlands. The other methodology that I ever used is highway methodology. You couldn't run it for something like this; it wouldn't give you any information. So what I tried to do is, during the field visits, we walked it and took measurements of what is out there. What's the source of hydrology? Whenever you're looking at a wetland, that's the driving feature, what's the hydrology, that's going to plant what the biology of what's going on with amphibians, reptiles and anything else that could be utilizing that spot. We were out there this Spring, my concern seeing the map and not having been out there, it was bone dry. This wetland has no ground water source. There's no high water table that's percolating up and feeding this wetland. Its source of hydrology is the road drainage system, down a swale, right here. It dumps into this part of the wetland which actually happens to be the, not wanting to say the wettest part of the wetland.*

*Commissioner Beattie interjected and stated that someone was here at the original meetings and they were concerned with the Soshonko property and they were telling us that there is a definite pathway that goes from the right of your design through and out the top left of yours and goes down through Soshonko's, it goes under the cross road and goes down further.*

*Mr. Nowicki stated that they took a look at the property line, but it looked like it was built up. Mr. Nesteriak stated that what they had said was during high storm events, it fills up and goes up and over onto this person's lawn and that there is a well defined swale on the other side of this property where it collects again. So yes, when a lot of rain comes, this will fill up and it will go both ways. You're talking big storm events, probably less than 100 years, maybe 50. It does go both ways when there is a lot of water. He was more concerned that if we are going to do this work, maybe there is an opportunity to divert the water to a better place which is this enormous wetlands, maybe 10 acres. Mr. Nowicki continued that this was a red maple swamp, it has good hydrology. This fragment here, if it wasn't a wetland, I wouldn't know if it was natural or manmade. When I first walked into it I looked at Brian and asked where's the wetland? What you have is some upland evasive starting to creep into it, you've got Black Cherry, Garlic Mustard starting to creep in some pockets in it which indicates that it's a hydro soil, according to the Soil Scientist, but it is a dry spot. Maybe it gets wet during those high storms but this area is actually the part you see surface stain, you see dark clay at the surface and you see some good plant structure. There is some Sporangium in there, some dogwood on the sides.*

Chairman Zahornasky asked in your opinion, do you think that it might be something to consider where that road drainage is to maybe get that road drainage over to the other side of the wetlands.

#### END SIDE A, TAPE 1

Mr. Nesteriak continued, during typical storm events with this plan, as I draw up an analysis, I didn't submit it this time around, I can if you'd like. During a large storm event, not a huge storm event, the water will be diverted around this. So correct me if I'm wrong, it will be a pretty good pre-courser by the time it gets to the wetlands. It's going to end up down here, there is going to be ponding down here. But that is what that area is for, it's a wetland, it will be used for that purpose and there is still plenty of area for this property to have a yard and not encroach on that area. We put a buffer in here so that they will be able to easily.

Mr. Nowicki added, for this system, actually to divert more water to that area would help it. But you have the bypass also. Mr. Nesteriak added, the basic hydrology of it, it gets changed up a little bit, but nothing is really going to change that much from an elevation stand point. If it gets to this elevation it's going to go one just like before. Commissioner Szkola questioned that the whole hydrology is not going to change. Mr. Nesteriak responded not by any measureable amount. Commissioner Szkola stated, so the hydrology is not going to change, whatever you say is a wetland, that's it. Mr. Nesteriak responded, what the quality of a wetland. Commissioner Szkola stated that my concern is to set a precedent here, we're here to protect the wetlands, we're putting a house smack in the middle of wetlands is the way I see it. Mr. Nowicki responded that the functional evaluation is to kind of give you more support. I don't know if everyone gives you a functional evaluation, I don't know what Shelton does for wetland impacts on. Commissioner Beattie stated that this has been around for ages, and has not gotten approval from any of the other Boards previously. Mr. Nesteriak interjected, let me clarify that, this has been around since 1948, this is the first time they tried to do anything. I assume this is part of a much larger wetland network. These are the lots that filled prior to the wetlands were being created. Commissioner Beattie continued, going back is was part of the house that's to the left of you and we'd have to go through the records, but were probably encouraged to stay away from that part of the property, because that whole property was one piece of property. Mr. Nesteriak responded, this was part of a large farm and these lots were actually broken up by the father of the owner now for his children. This house was built before the Wetlands Commission existed so when they did it, I'm sure they just went in and filled in the wetlands. You could see it; if you walk on the site you could see it. This is a brother that lives here.

John Cook comments:

### WCEO REPORT

June 12, 2008

#### **PERMIT-APPLICATION #08-13, ROTKO PROPERTY – LONG HILL AVENUE**

STATUS: **1. New application of previously denied plan**  
**2. Request for fee waiver as plan is the same as that denied with additional information submitted.**  
**3. 65-day clock to decide action or schedule public hearing expires Aug. 16, 2008.**

#### **PLANS: LOT 5 – LONG HILL AVENUE**

Proposed Site Plan 11/26/07

**COMMENTS:** At the outset there are several points to address with this application.

1. There is a request to waive the application fee based on section 18.14 of the Commission regulations. Copy inserted below.
2. Staff understands the situation of the long-term ownership and existence of the parcel as stated during the previous proceeding (ref. February & March 2008 WCEO report).
3. Staff was not familiar the evaluation methodology submitted with the application used to help justify the encroachment. To this end, research is presently underway regarding the use of this method and it appears that a more detailed discussion is warranted.

## **FROM THE COMMISSION REGULATIONS**

18.14 WAIVERS: The applicant may petition the Agency to Waive, reduce or allow delayed payment of the fee required by Section 18 of these regulations. Such petitions shall be in writing and shall state fully the facts and circumstances the Agency should consider in its determination under this section. The Agency may waive all or part of the application fee if the Agency determines that:

18.14a The activity applied for would clearly result in substantial public benefit to the environment or to the public health and safety and the applicant would reasonably be deterred from initiating the activity solely or primarily as a result of the amount of the application fee, or

18.14b The amount of the application fee is clearly excessive in relation to the cost to the City for reviewing and processing the application.

18.14c The applicant is a municipal, state or federal agency or for any organization existing exclusively for scientific, educational, literary, historical or other charitable purpose.

The Agency shall state upon its record the bases for all actions under this subsection.

## **MARCH & FEBRUARY COMMENTS**

**COMMENTS:** This office received the hydraulic analysis report on March 11, 2008. A copy of the report was provided to City Engineers office for his review of the two plans. He will attempt to complete his analysis for the meeting.

The applicant presented an alternative at the February meeting out of the discussion in January. At the Commission review in February, some reservation was expressed towards this option. Pending the review of the City Engineer if the Commission prefers the first plan staff asks the Commission review the 2<sup>nd</sup> and 3<sup>rd</sup> options noted below. The second option may serve the long-term protection of the remaining resource by placing a conservation easement over the wetland instead of along the back property line. The third option would require a deed restriction for no further home expansion or reducing the size from that proposed as a condition of approval. This option recognizes the right to attempt developing the parcel but a reduced footprint helps reduce impact.

Alternately, there is the 1<sup>st</sup> and 4<sup>th</sup> options as well as a **5<sup>th</sup> no fill alternative**. The no fill option essentially precludes use of the parcel for development based on the existing zone. As stated by the applicant's agent the parcel was subdivided before there were any zoning or wetlands regulations. By the standards of today this property would not qualify for a building parcel. However, as stated in the past Corporation Counsel has advised the Commission apply its regulations, and if the Commission does not authorize a regulated activity, it is for other entities to deal with the issue of that restriction or denial not the Commission. If the Commission chooses this option then specific references should be made to the regulations for the limitation.

**COMMENTS FROM FEBRUARY:** As noted during the last meeting the narrow band of regulated area is separated per the soil delineation mapping.

However, it fundamentally may be evaluated as one unit. In so much as the horizontal distance is less than 50' and the elevation difference is approximately 0.1' between the two areas. It is also noted that in addition to the standard functions that may be associated with the regulated area its prominent function may in fact be serving as a buffer between the residential uses along Long Hill Avenue and the industrial use accessed from Forest Parkway. The Google Earth image attached demonstrates this feature.

To this end, the Commission stressed the applicant look to shift the proposed dwelling closer to Long Hill Avenue and provide an opportunity to protect vegetation along the rear property line. This goal also serves to minimize a potential problem for future owners. Along with this effort, exist several other opportunities as follows:

**First**, have the applicant approach the ZBA for a street variance. At first glance, a question arises as to why. The answer is that it serves to help minimize encroachment into or adjacent to regulated areas. The dwelling may be kept at a higher elevation with a walkout to minimize fill and or retaining walls. It also allows greater opportunity to save vegetation along the rear property line buffering the residential use from the industrial use both for a future homeowner and the streetscape. This approach was

most recently used just last month on Weybossett Street for a similar effort. Another benefit is to minimize building on unstable wetland soils.

**Secondly**, establish a conservation easement along a portion of the back property line to further guarantee the long-term commitment to maintain the remaining buffer in recognition for any authorizations given. This technique was also used on the previous application mentioned and others the Commission has considered recently and over the years.

**Thirdly**, restrict the size of the dwelling footprint to the size proposed or smaller for the future via a deed restriction. This technique also has been used several times to further the Commission goals. While the above measures have certain benefits, there are drawbacks as well. However, if the goal is to provide use of a property, per today's standards would not likely be considered as a viable lot, then these efforts may be fruitful. Ultimately, this lot has existed over multiple decades and without relief from the municipal regulations, it becomes extremely limited for residential development.

**A final option** though doubtful it has been explored yet would be to market the parcel to the owner of the industrial land west and north to expand the use as a buffer between the Long Hill Avenue residential uses and the industrial Forest Parkway uses.

*John Cook stated that I'd like to say diplomatically that I think this should be more a more detailed discussion. As I started to do the search on the Holland-McGee Method, an army of core engineers came up with a method, a listing of 40 or do methods, where they have links to the methodology in particular. Mr. Nowicki responded that it would run you \$10,000.00. If you use the Hydriatic Morphed Method (?), you'd be out there all year. Mr. Cook, interjected, that I'm not suggesting that, I spoke with Mr. Holland yesterday, he was very helpful, I was trying to ascertain this method. He actually was saying that this methodology has been updated by something called Rapid Assessment Procedure and that while it is used for small wetland resources, it is limited for small wetland resources and it's also a comparative model for which we have no. In the report, it talks about how it stacks up against the average. But we don't have an average here in Shelton. Mr. Nowicki responded, what they've done is taken the whole northeast, they took wetlands in the northeast. This was actually a Massachusetts wetland law or a method. It's adapted. Commissioner Nappi stated I think Mr. Chairman we getting to much into this to discuss the process, but it seems that John wants to look into this method a bit more. I don't have a problem with that. Mr. Cook continued, that whole it may be more suitable or it may be in fact, and I think I hit on this, with the February and March comments. This lot has been existing, owned by the same family, but their intent of what they want to do is quite clear, and in doing so some of the evaluation that is restricted in Massachusetts where Mr. Holland is from, they don't have certain luxuries that they have in the Connecticut method. So while this evaluation is helpful, I would like to educate myself a bit more and also meet with Mr. Nowicki and possibly some of the other Commissioners to go over what some of these things say, and this is from the core of engineers.*

*Chairman Zahornasky advised John Cook to set something up and since there is information tonight that the Commission didn't have, the Commission will need time to review it. He advised the applicant to include the Hydrology Report. Also the Commission will set up a walk through of the site.*

*Mr. Nesteriak stated that this is not a typical sloppy wetland. Chairman Zahornasky continued that the Commission does not want to open Pandora's box and allow this house to be built, it is going to be up to you to prove to this Commission that those wetlands are basically non functioning, low value, but we've never approved anything in this type of setting. Inaudible – everyone speaking at once. Mr. Nesteriak continued, that's why we're trying to give you as much information.*

*John Cook continued that because it was denied without prejudice, they have also a request as part of their packet, whether the Commission wishes to address it this evening or at another meeting, they have requested to waive the application fee based on Section 18-14 of the Commission regulations, I did insert a copy of those text for the Commission's benefit, because there were fees paid initially and there is an option for it. There's three criteria, Commission can have me read them now or digest them, but the agency may allow to waive, reduce or allow delayed payment of the fee required by Section 18. Commissioner Szkola, looking at Section 18 now, 18c- they're not municipal or federal, 18b, the only one that I can see that would apply is that the application fee is excessive, 18a is that it is for public benefit or benefit to the environment. So the only one that would apply to us would be B. How does the rest of the Commission feel about that? Inaudible – everyone speaking at once. John Cook continued it is discretionary of the Commission for the consistency, there was a gentleman that was in violation in the Housatonic River, his fees were waived on his particular circumstances. There was a builder that asked*

for a waiver, he was denied, actually several builders that were denied. One on River Road, and there was one on Maple Avenue. There have been churches and other organizations. Chairman Zahornasky stated why don't we wait until next meeting, you can give us some more information on what we did on other circumstances, and what their actual fees were and what are the fees on this application. John Cook continued, just to hit on those three points, I've attached the February and March comments so that topics came up they would be readily at hand. Some of the things that I've mentioned previously, did they ever consider reducing the size of home. It's not a overly sized home based on any standards, routinely we get footprints in the realm of 30x40, 26x40, while that would not make much difference, if we're looking at the absolute to try and balance any encroachments or justify encroachments versus protection, the better that one is able to achieve that minimization, certainly goes to further the Commission's stand.

Commissioner Nappi asked to see the first plan. Mr. Nesteriak stated that we pushed the house more to the back which is more of the developing rural area. We were able to limit the fill to about 15 feet from the front of the house and left these wetlands open. It doesn't give as much as a useable area for the homeowner and it does open up the possibility of encroachment, but we're certainly not taking this one off of the table by any means or any other limited, or developable one.

Commissioner Santa asked if the street could be diverted past the property to the wetlands on the right. Mr. Nesteriak stated that the only way that I know that we could do it would be either along the road to the wetlands or through this property, which we would certainly entertain, however, we would need permission from the property owner over here to divert that drain. And I'm not sure if he would be susceptible to it or open to it. I don't see how it would hurt him, but again he might not want it. But, we'd certainly be happy to do that, but I don't know how that helps the wetland cause. Chairman Zahornasky stated that in speaking for myself, I like this one better. Mr. Nesteriak added that this one reduces it down to about 1500 square feet. It's a much more sizeable, or a much smaller wetland fill. John Cook added that with this particular plan also, it looks like it would facilitate the cross movement of flow depending on the positioning of that pipe. Because of so little variation between the two portions of the wetlands and in one of my comments I was questioning whether or not, because that distance is so narrow, can they in fact be considered a single wetland. Years ago, in the training of the State of Connecticut, if there was a separation that was less than 25 or 50 feet, they would often refer to it as one contiguous. Mr. Nowicki stated that in real time, most of the time, in reality yes, they would be one wetland. This one is different. It's just different than the other side. If it was a remnant of the other piece, then I would yes. But it's completely different. Commissioner Szkola asked is there was a subsurface there at all. Mr. Nowicki responded no, it pockets, it's this little spot, where you could see it murky, a little bit muddier than anywhere else. The structures different than. Commissioner Szkola asked where the driveway is. Mr. Nowicki responded no. Inaudible – everyone speaking at once. Mr. Nesteriak continued, the water here is coming from , probably ground water. It's much lower and it also comes off of this road. All of this water kind of goes straight back here. The only time that this water will get under here is during high storm events. If you go out there and look at it, there's a lot of water that has to fill up in this area before it actually fills. I'm saying that it could be a ground water supply.

Commissioner Nappi asked what the wetland fill area would be. Mr. Nesteriak responded probably .02 and the other would be .1. The difference between the two is a more useable lot, but we decided in designing this lot, again we're not taking either one off the table, we've centered it around the area that is lower in quality of wetlands. This is the higher quality of wetlands, we're shaving it, we're buffering it, trying to keep everything away from here, which doesn't even look like a wetland.

Chairman Zahornasky stated alright, we'll schedule a meeting for a site walk.

**3. PERMIT-APPLICATION #08-14, GROVE STREET SUBDIVISION – 168 GROVE STREET.** Proposal to create a three-lot subdivision involving fill to a regulated area and construction within regulatory setbacks.

Attorney Stephen Bellis  
Representing the Applicant

This is 168 Grove Street, which is about half way up Grove Street coming from Howe Avenue between Coram. If you were coming from Howe Avenue it would be on your left hand side. There is an existing home which is right here, there is an existing garage and there was a shed and a patio and then in the middle of the property there is an existing pool with a concrete walk and a deck. The application on this one is it's in a R3 Zone, so the minimum lot has to be 12,000 square feet, 75 feet for the footage. Larry Ellis, for the record it was Santiago. Attorney Bellis continued, it's been abandoned, the fellow is in jail. In 1968 it was Raggazine. It's in bad disrepair. No one is living there, it doesn't look very good. So the applicant's plan is to leave the existing dwelling, leave the existing garage and his plan is to remodel that home, but leave it, not change any of the foundation. Just remodel the interior and then create two

additional lots. The whole parcel is 1.238. The existing house (inaudible), there is a brook that you can see here and it's channeled with rocks, not much wetland. This is all grassy area, a home over here. There is on parcel C, A is the existing, B is the middle, and C is the one on the right. There is some wetlands that comes down into the lots right here. Let me flip this over, it might help you. Now we have, this would be like a site plan, of the same thing that I showed you before. Existing, we're not touching that, home here, home here. This is what I was referring to, over here is wetland. What the applicant is proposing and I'm talking about parcel C. It looks like grass, it looks like someone's yard, and it's grassy. There is an area that I've highlighted in orange on the site plan. which we are proposing to fill, that's 1,000 square feet just to make a more level backyard and then the applicant is proposing to build a stone wall to protect the wetlands, there's nothing there now so that people don't go into the wetlands. Right now you can't tell, it looks like a lawn. Inaudible – cannot make out speaking, paper rustling in microphone. The plan is to move this existing pool, now as you can see, it's within the upland buffer but in the buffer zone. To remove the pool, patio and all the concrete, just get it out of there, it's in the buffer, it's not going to serve any purpose. The pool is about 50 years old, it's in total disrepair. So that's what our plan is, to get that out of there and also to give a Conservation Easement from the brook, approximately 40 foot all along the back of the property, and then in the upper left hand corner donate as Open Space because there's adjacent town property next to it. So that's our plan, to give to Open Space, to give a Conservation Easement and to build a wall to protect the wetlands and to remove the existing pool. The homes would be modest. They're small, about 4,200 square feet. So what we're asking the Commission to do is permission to go ahead and fill this, just as I said, build a wall, the house is not going in there. Commissioner Szkola asked if it would be a stone wall upgrade. It will be a physical barrier. Attorney Bellis replied yes.

John Cook comments:

**WCEO REPORT  
June 12, 2008**

**PERMIT-APPLICATION #08-14, 168 GROVE STREET SUBDIVISION**

**STATUS:** 1. New application  
2. 65-day clock to decide action or schedule public hearing expires August 16, 2008

**PLANS: E&E QUALITY HOMES LLC – 168 GROVE STREET**

Topographic & Boundary Survey 5/23/08  
Record Subdivision Map 5/23/08  
Site Development Plan 5/23/08

**COMMENTS:** This new application is to create a 3-lot subdivision involving the construction of two additional dwellings. The application identifies several regulated activities: filling a regulated area for house grading along with construction and grading within the regulated setbacks. There are also several beneficial components with the application. These include the creation of a conservation easement along the small stream including uplands. It also includes the removal of a former in-ground swimming pool.

The site is also the location of an application in 1989. This application #89-4, Grove Street Subdivision showed the same type of regulated areas but more extensive. In both cases the applicants generated soil reports. The applicant should clarify the matter of the differing boundaries at this time.

Staff suggests a staff or Commission field visit with the present soil scientist to demonstrate his findings of UD non-wetland versus the LC wetland soil certified with the other report. This confirmation establishes a clear record for any pending actions.

*Attorney Bellis continued I have Tom Pietras here. What John is referring to in his report is , this is the wetlands coming down, and it's not divided into parcels a, b, c. You could see over here it's the same, the only difference that I can see is that the rural boundaries are closer to Grove Street than what Tom found. Let him describe that.*

*John Cook stated that it is a 20 scale from the closest point previously to the town right of way was 38 feet. On the driveway here they have it at 71-72 feet. Chairman Zahornasky stated so from 38 to 71. Atty. Bellis stated yes, from 89. Commissioner Szkola added 2 versus 3. John Cook stated 89, because this was still wet, basically they had this one, this one and that one.*

*Inaudible – everyone speaking at once.*

*Larry Ellis addressed the Commission, to clarify this wasn't split off the Grove Street property. These two houses in 1989 were on one lot. This was all one lot, so for them to sell or transfer it, that's why they came in 1989. Now it's separate.*

*Tom Pietras  
Professional Wetlands Soil Scientist*

*Early April this year on the 10<sup>th</sup>, I did my soil wetland investigation and what I found was a stream that flows along the easterly part of the property line. Historically this stream has been channelized. A good portion of this stream has been retained by stone walls or a ditch channel. It looks like a lot of that channelization occurred 50 or more years ago, probably as residences had gotten built along Grove Street. The brook itself goes under Grove Street to the South, it flows very closely to two houses here. It flows right along the edge of two houses, behind this lot and then along the eastern property line. If you look at it, it comes at this direction, towards the wetland. When I went out there to do this investigation, the western part of this wetland didn't even look like a wetland. Basically it's been maintained as a residential lawn. I was out in early April, I had moist soils but I didn't have a lot of saturation. As you go closer to the brook you go lower in elevation, I did pick up some skunk cabbage and more wetlands. This area here has been maintained as a residential lawn, I called that a leister soil, a natural soil, but I believe that a lot of the drainage has been cut off just from the channelization of the brook and the development of Grove Street. I did find some shallow fill in there and the fact that it's been maintained mainly as grass and some scattered trees, the resident at this address has been using this as a lawn area. I noted in my report that because of the disturbance this has limited wetland value. When comparing the two maps, there's basically two differences, my line didn't come as close to the road and then it also went through here, there's a notable fill area and it appeared that when they excavated the ditch. There is a spoil fill pile. I found enough fill in there so that it doesn't qualify as wetland, the previous wetland report that was done back in 1999 they included that area fill with the amped wetlands. So that may explain part of the difference. Also I looked at when they did their report that soil investigation was done on January 13, 1989. It was done in the middle of January. I looked in the report to see if it had any mention of snow cover or frost, and there is no mention whether or not there was snow or frost at that time. There may have been but it doesn't say anything.*

*Commissioner Szkola asked how deep are the wetland soils closest to the residence. Mr. Pietras stated that there is a narrow soil. It's a glacial till soil. Eventually you'll hit ledge, but I don't know how deep. In this area here there is ledge in the far northeast part there is ledge, that's the only place on the site that I saw the ledge. John Cook stated that isn't it a predominant feature that it has a saturated or near saturated condition. Mr. Pietras continued that the way it developed to get the gray colorations you have extended saturation during the growing season, it maintains full saturation. Normally one to two months in order to develop the gray color. This is a loamy soil, so you'd have to have a water table within 12 to 18 inches of the surface, constant with that level or above to maintain that saturation in order to develop the gray color. Commissioner Szkola questioned so it's continuous all the way down. Mr. Pietras stated that this is a mineral soil.*

*Chairman Zahornasky asked John Cook is he has been out there. John responded that he's been out there multiple times. In 1989 and more recently I've met the applicant a number of times and basically have gone over the same things. There is a discrepancy and it should be cleared so that the record is clear. Inaudible – everyone speaking at once. Mr. Pietras stated that this is basically a field determination, you have to go and look in the field, dig the holes, look for the gray colors. John Cook responded even in terms of while the Open Space might be the zoning standards they are adding to the kitty sort of speak by providing a Conservation Easement to further the Commission's goals and removal of the old swimming pool which is an eye sore. So all of those things are on the plus side but yet there is still this one issue. Commissioner Szkola stated that my initial reaction that is totally non-binding is you've done a real good job on this. I'd like to go to the field and take a look at this and walk it. Commissioner Nappi stated that he'd like to have them go over the amount of fill and get that out of the way. You're going to fill? Attorney Bellis stated yes, what we're going to fill is that area there, 1,080. It's not a lot and it allows us to put the wall up to protect what's of the wetlands and have a yard. Chairman Zahornasky asked if it is flagged out there if they take a walk. Mr. Ellis stated that the actual wetlands is flagged not the actual fill. Chairman Zahornasky continued that it might be helpful if you delineate that area so that we know what we're talking about as far as the fill goes and this way we're not confused. I think it would be beneficial for us.*

*Chairman Zahornasky stated that John Cook will set up a date with the applicant to do a walk through. Jon Cook will canvas the Commissioners and see if they are available to do the site visit with the applicant and Mr. Pietras.*

**III-D OTHER BUSINESS**

- 1. Buffer-Application #08-11, SIMPSON PROPERTY – 75 WALNUT TREE HILL ROAD. Proposal to construct in-ground swimming pool within watercourse setback.

John Cook stated that this is 25 feet, the property was graded in approximately 1980, it's been an established property, established lawn. Further back in the property you go up a hill and the edge of the patio is 25 feet, the pool is approximately 30 feet.

John Cook issued the permit.

**IV. MINUTES**

**Commissioner Santa motioned to approve the minutes of May 15, 2008. Commissioner Nappi seconded the motion.**

**A voice vote was taken; all were in favor. Motion passed unanimously.**

**OPEN AND ONGOING:**

- 1. Mauretti Property – 324 Meadow Street (replanting plan).
- 2. Fortin property – 220 Soundview Avenue. Awaiting application.

**END SIDE B, TAPE 1**

- 3. DiMarco Property – John Cook has spoken with Mr. DiMarco and the landscape architect that designed the plan. Mr. DiMarco just cleared the brush 3 weeks ago. Action to take: send letter.

**Commissioner Nappi motioned to send a letter to initiate the planting within five (5) days of receipt of certified letter and completion should be thirty (30) days after that date and to appear at the next Inland Wetland Commission meeting with a progress report. Commissioner Santa seconded the motion.**

**A voice vote was taken; all were in favor. Motion passed unanimously.**

**V. ADJOURNMENT**

**Commissioner Santa motioned to adjourn. Commissioner Goncalves seconded the motion.**

**A voice vote was taken; all were in favor. Motion passed unanimously.**

**MEETING ADJOURNED at 8:40 PM.**

Respectfully submitted,

*Sophia V. Belade*

Sophia V. Belade  
Clerk – Inland Wetlands

2 tapes on file in Town Clerk's office

TAPES ARE AVAILABLE IN THE TOWN CLERK'S OFFICE; ATTACHMENTS ARE NOT INCLUDED ON WEBSITE. FULL COPY OF MINUTES WITH ATTACHMENTS IS AVAILABLE IN THE TOWN CLERK'S OFFICE.