

MIDDLEFIELD INLAND WETLANDS
and
WATERCOURSES AGENCY
405 Main Street
Middlefield, Connecticut 06455

Transcription of a Portion of the January 16, 2013 Meeting

Powder Ridge Mountain Park and Resort, LLC, Proposed Activity in the Wetland for Maintenance and Dredging of Pond, 99 Powder Hill Road

RANDY BERNOTAS: I need a motion to open up the public hearing.

LINDA LI: I'll make a motion to open up the public hearing.

MR. BERNOTAS: Okay.

DOUG CHARLES: Second.

MR. BERNOTAS: And I wasn't at the site visit on Saturday, so, uh, I understand you took some pictures?

JAMES BROWN: Uh, yes, and I sent them to you.

MR. BERNOTAS: Do you want to lead off with the discussion about this or . . .

DR. BROWN: we should probably start with (inaudible) team work. If it's all the same, I'll just put the pictures here.

IRENE ANGIETTA: Excuse me, is it possible to move the tripod there?

MR. BERNOTAS: Yeah, if you could put it on the side, it would probably work a little bit better.

MS. ANGIETTA: Thank you.

MATTHEW SANFORD: All right, good evening. For the record, it's Matthew Sanford, professional wetlands scientist, professional certified soil scientist and associate with Milone & Macbroom. This evening, I will be representing, um, Powder Ridge Mountain Resorts, LLC regarding the expansion of an existing irrigation pond on their site. Just to back up and get a little history, um, at your last meeting, we gave an overview of the project. Um, no questions were asked by the commission at that point. A site walk was then scheduled and we had that site walk this Saturday, um, and I believe there were some comments raised there at the site walk. In addition to that, we've also been in contact with Brian Curtis, uh, your acting town engineer, regarding the project, um, with multiple phone calls to address concerns that he had with certain aspects of the project., In addition to that, we've also received his letter, uh, dated January 15th, 2013, I believe you guys have that as part of

your package and we'll address some of the comments in there as well this evening.

MR. SANFORD: Just to give a very brief overview, again what we're doing is expanding an existing pond that's on the site. The pond itself currently is about 2.1 acres in size. We're going to expand both the depth of the pond and the geometry or horizontal area of the pond. The reason being is to allow for additional water to be stored in that pond for snow-making purposes. Uh, the existing pond has a, has a water volume of about 4 million gallons under its present condition. With the proposed improvements, both dredging of the existing pond and expansion into the upland, we'd be doubling that volume to approximately 8 million, 8 million gallons of water.

MR. SANFORD: For reference, north is to the ceiling, south is to the floor, east is towards the windows and west is towards the chalkboard. Um, so, the highlighted in blue here is the pond itself. It was delineated back in 1993 by Mark Burroughs and then we went out there and verified the wetland limits, um, this year, or I should say last year in, uh, in 2002, 2012. And so there's a letter as part of your package that accompanies, um, the application itself detailing what we did, uh, the NRCS certified map is there as well. You have it as part of your package. Um, and basically, the wetland limit around the pond itself is the ordinary high water mark. The wetlands do extend southward where there's an unnamed tributary that enters the pond from the south. The wetland here is shown in this neon green color. That area that you would define as a forested wetland system with a perennial watercourse, uh, running through its center. North of the pond, there's the existing outlet structure located here and that discharges into a watercourse. From the watercourse, it pours into a _____ system which is this little gray line that you see here. In addition to that, the spillway was also identified, the emergency spillway was also identified, and is a watercourse feature and that's shown here in this gray line here. So, those are your wetland resources around the existing pond and, and _____ the pond.

MR. SANFORD: The proposed project is to increase the pond size to the east by actually carving into the upland. That's there. The upland currently consists of maintained lawn, meadow area with some specimen trees, some large trees present. There's also a concrete path located, um, in this area here. So, what that entails is actually cutting the earth back, deepening that area to the elevations as shown on the plan and creating a new pond bottom in that upland area. The slopes along this spatial side of the pond will be graded to a 3:1 slope, so it's moldable. Also, there will be an erosion control blanket placed on that slope with a seed mix to restore it back to a meadowy condition. The area actually within the pond will actually be lowered so there's accumulated material that's in the bottom of the pond and that material will be removed from the bottom of the pond. And that's why you see proposed contours inside the pond as well.

MR. SANFORD: In addition to that, in addition to just the pond improvements, there's a new pedestrian walk being located around the pond. Portions of this pedestrian walk already exist, but the new section which we show in gray here is not currently there

and is being, is part of your approval tonight, um, to actually allow construction of that stamped concrete path. In addition, the other piece of improvements is a new access way from the parking lot that's located here, the southeast corner or southeast portion of the pond or just upstream of it, to allow access to a ski rental building. We saw that on the site walk, the general area to actually be crossed is through this section here. In order to cross the watercourse, a bridge would have to be put in place. That bridge is approximately 11' wide x 17' long. Um, what I should, should also point out is that the commission has new, revised plans in their possession. They're dated yesterday, January 15th, 2013. So, there are new plans that have been revised that reflect that, that bridge location and how it's going to tie back into that ski rental building. The walkway itself will require some filling of the wetland, will require some filling of the wetland and the actual surface of the walkway will either be a stone dust type material or a gravel, something that's, that's compactable, um, for the walkway.

MR. SANFORD: In addition to that, you'll notice on the new plans, there's also a note pointing to the dry hydrant. Um, this was, this was something that, uh, we talked about at the site walk with the fire chief who are present here this evening is to take precautions during construction, when the pond is lowered, um, to either make improvements to that dry hydrant or to make sure that we protect that dry hydrant during, uh, the lowering of the water and also during the construction phases of the project. They will, that activity will be coordinated between, uh, Powder Ridge and the fire department as that takes place. So, there's a note that's been added to the plans, uh, that talks about the involvement of, of the town's, of the fire department on that particular matter.

MR. SANFORD: Okay, um, let's, I'll go directly to the comments raised by Brian Curtis. Um, one of the, some of the things that were raised, um, we looked at, at one time on the plans, the original plans, we had our temporary sediment dewatering basin. Um, as you recall from our last presentation, we have a kind of a low point or a well point that we're going to install because we want to control water through a diversion pipe there. We talked about it being constructing a coffer dam on the north side of the culverts, so water flows in this direction. Constructing a coffer dam just north of the existing crossing, that's already there, and what that does, that coffer dam allows the pond water behind it and will run a diversion pipe through the pond to maintain that through flow of water through the stream. That will also help dry the pond out. In addition, if we have ground water which we anticipate seeping into the pond after it's been dewatered, we have a well point be placed here and a hose and a pump will then run that particular water up into a temporary dewatering assembling area. The original plan called for a hay bale, um, detainment area. What we've changed it to is actually a silt sock or what they call a dirt bag, um, for another term. What essentially a dirt bag is is when you think of a whoopie cushion, I think is the best general term, and what it is, you pump water into this whoopie cushion type, looking apparatus, and it has a very microscopic holes within the actual rubberized membrane and what that allows is, as you're pumping water that has sediment in the water, um,

the sediment retains within that rubberized system and allows the water to slowly percolate out of that rubberized system so it captures most of the, um, fine-grained, medium-grained and coarse-grained particles and the water slowly percolates out that rubberized membrane and down into the nearby watercourse or wetland. And so, one of the comments that was raised by Brian was the location of that. Under the original proposal, it was located here on top of the earthen dam. We have since moved it on the new plans. I'm going to actually roll them out here, I think it'll be easier for the commission just to see that way. You don't mind? So, originally we were located at this location with the temporary sediment dewatering area. It's now been moved northward approximately 25 feet from the existing well house. The well house is shown right here. So, it's been moved to this location here and it's that, um, silt sock or dirt bag system that we're using. There's a new detail on the detail sheet that explains what that looks like.

MR. SANFORD: Another, uh, comment raised by, by Brian was he would like to see, because this does drop off, uh, does drop off into the existing spillway, that we'd like, he'd like to see some stabilization measure as that water comes out of the dirt bag or silt sock, uh, to prevent any erosion on that bank as it then discharges down into the spillway. We have provided a temporary, um, erosion control measure which is modified rip rap to be placed on that slope. That will then be removed and the area be restored following completion of the construction.

MR. SANFORD: Another, um, comment was, um, raised by Brian's letter was, uh, some erosion that's occurring within the, actually occurring within the spillway itself. That spillway is this feature here. That only flows during high storm events; it's an emergency spillway. It's not supposed to be flowing on a, on a daily basis. When we were out at the site, it was flowing that day because we did have a quite of rain and there was ice on the pond and the other structure that's currently there is not working correctly. So, there was a couple of factors as to why that was flowing that particular day. But, under normal circumstances, it's not supposed to flow unless you have a really intense rain event. But one of the things that Brian picked up on when he was doing his site assessment was approximately 250 feet north of the pond, within this spillway which is all modified rip rap, there was a spot that was heavily eroded and it's approximately about 50' wide by about 30' wide, the channel width. And so, his recommendation was actually placing and actually stabilizing that section of the spillway that's been eroded. So, right now, there's currently exposed soil in that area so every time we do get a large rain event and water moves down that spillway, it then allows scouring to go on in that spillway and resuspension of material. By stabilizing with modified rip rap, we control that particular measure. So, that's been added to the plan, your new plans, and is actually allowing us to stabilize that. Access will be, um, via the earthen dam, uh, down the embankment and actually right onto the existing spillway that almost serves as an access road today. So, that's how that material will be deposited at that location. The modified rip rap matches the size material that's currently on both the downstream and upstream side of that scoured

area. So, that is a recommendation that Brian had picked up on and we are addressing that.

MR. CHARLES: And that area was _____ for us on the tour.

MR. SANFORD: Yes, it was, yes, yup.

MR. SANFORD: I believe we've addressed all of the comments in, um, Mr. Curtis' letter regarding the watering sediment basin, also regarding emergency spillway. There are, comment number 4 and comment number 5, I believe would be comments, uh, most likely suited to conditions of approval on this particular project. Comment number 4 relates to, uh, the applicant's design engineer providing regular inspection during construction, that's comment number 4. In addition, comment number 5, uh, asks or requests that additional details be submitted to your agency, um, regarding the pedestrian bridge itself and also indications of how much fill would be required within that area, uh, to construct that access way.

MR. SANFORD: And I think with that . . .

MR. BERNOTAS: That structure on the bottom there, where the . . .

MR. SANFORD: Which one?

MR. BERNOTAS: Right there. Is that the bridge or . . .

MR. SANFORD: Well, under the new plans, yes, that was the, one of the original locations in the December plans that we thought that pedestrian access would be. It's since been moved to the east and on your new plans, it's reflected at this location here. So, originally, it was in this area and now it's been pushed eastward along this area. This is the actual original historic route. There was an original access way, um, from this parking lot to this building and the route was through this particular area, but it did a 90-degree bend at this pre-existing rock wall, that came up this way into the entrance this way. Um, what Powder Ridge would like to do is actually take this same route, historic route, bring it across the stream as it once did, but instead of taking a 90-degree bend, this will take it back up to the center of this building, uh, for ease of, ease of pedestrian traffic flow through that building. They have two different entrances on this building, one located here, one located here, and they want to bring people to the central portion of the building and allow them to move into the building, um, that way.

MR. SANFORD: In addition to that, I should also point out on this plan there's another activity in the review area that's shown and that's for a handicapped accessible ramp from the, uh, the existing lodge, ski lodge area, to the existing ski rental office. That would be within the upland review area of activities and that would be a bituminous, uh, bituminous walk/ramp designed for handicapped accessibility. And with that, that's the, uh, project.

MR. BERNOTAS: Any questions?

DR. BROWN: Will we be getting a plot like that that's in the final package?

MR. SANFORD: Yeah, there's, yeah, there's five plots that were delivered yesterday morning here. Those are the new ones there. We have not revised, we have not revised the wetland report, that hasn't changed. Um, impact numbers have changed and those are reflected in the table that's provided here. They've gone up slightly in terms of wetland impact. But the upland review area impacts have not changed; either have the, uh, pond, um, widening or pond enlargement. Those numbers have not changed.

MR. BERNOTAS: Is there any time table on this?

MR. SANFORD: The time table on this project and, um, and Sean may, he's also, the applicant is in the audience, but we would like to begin the dewatering of the pond during February some time. Uh, what we'd like to take advantage of, if we can, if we get cold weather during February, um, it's easier for the contractor to work in more hardened soils, especially in the bottom of the pond. But if it does delay, um, then we'd probably be looking at more towards the summer, um, time for dredging only because when it starts getting spring conditions, you're going to have a lot of water control, uh, required.

MARK BRANSE: Mr. Chairman, I have a question. For the record, Mark Branse. This is really addressed to anyone who wants to answer, including Mr. Curtis. Um, point number 5 of Mr. Curtis' letter talks about the pedestrian bridge and says details of the proposed pedestrian bridge should be submitted to the agency for approval prior to construction of the bridge. Um, I'm not sure how to interpret that, I guess, and what I'm concerned about is there is case law, fairly recent case law, that a commission can't approve something unless it has sufficient information to evaluate what it's approving and what the impact might be. So, I guess what I'm trying to figure out is will this be a future application and if it's part of this application, is there sufficient detail to determine what are the, the regulated activities involved. Because if the commission doesn't have in front of it what the regulated activities consist of, then they can't evaluate the impact of those activities. I'm just trying to figure it out.

BRIAN CURTIS: Maybe I can just follow up on the comment. I was thinking in parallel to this was when the, one of the more recent projects was constructed was the teaching golf course at Lyman's and there was a number of pedestrian bridges that were constructed as part of that project. And I know that the, uh, I believe that the wetland impact areas and volumes were all, as part of the plan right now, but I know that the commission wanted to see details of exactly how these bridges were spanning the watercourses. Basically, they were a temporary retention structure with timber piers and that would span the watercourse, but, uh, at that time, the commission wanted to see details of exactly what this bridge looked like, how high it was above the watercourse and what the free area was below it, that type of information. So, if that could be submitted as part of this, um, public hearing process, that way it's on the record and the commission can consider it.

MR. BRANSE: Would the details that you're describing, Mr. Curtis, alter the regulated activities that are before the commission?

MR. CURTIS: Uh, I don't believe so, but you should address that.

MR. SANFORD: Yeah, uh, for the record, it's Matt Sanford again. Um, I believe the answer is no because we've given you the area of the bridge. It's on this plan. Uh, the bridge will be 11 feet wide by 17 feet long, so that is your impact area for the bridge itself. Um, the path or the location of the, of the access trail has also been provided, and that width, 10 feet, has been provided on your plan. So, the area of impact has been provided to the commission.

MR. BRANSE: So, the details that you're referring to, Mr. Curtis, would be the, the actual way in which it's constructed?

MR. CURTIS: Yes.

MR. BRANSE: Because your letter says the implication should be given if any fill be required in any approaching areas. From what Mr. Sanford is saying, it sounds like the answer's no.

MR. SANFORD: No, there is, there is . . .

MR. BRANSE: Or there is what's shown on the plan.

MR. SANFORD: I'm sorry, repeat that.

MR. BRANSE: Indication should be given if any fill will be required in the approaching areas to the bridge on either side of the brook.

MR. SANFORD: Yup. Yeah, so, on, on the plan, we're indicating the width of, of the path which also accommodates the fill that's going to be required as part of that activity.

DR. BROWN: That's on this plan here?

MR. SANFORD: That's on that plan that you have before you.

DR. BROWN: Right now, okay.

MR. BRANSE: So, this, this shows where it's going to be required in approaching areas, this plan that's here now.

MR. SANFORD: Yes. Yeah, it shows where the path is going to be and so that's where the fill is going to be placed to construct the path.

MR. BRANSE: Mr. Curtis, does that, is that, is that the information you were seeking?

MR. CURTIS: Yes. Yes, because it was, when they were talking about the review process, it was explained that this path was going to lead up, you know, through the regulated area,

was going to lead up to the bridge, from the parking lot to the bridge and then to the building and they've indicated that on the revised plans.

MR. BRANSE: So, the only issue of details that might require _____ item above the watercourse, method of construction, anything like that?

MR. CURTIS: Yes.

MR. BRANSE: And that would affect the regulated activities involved.

MR. CURTIS: No, it would not.

MR. BERNOTAS: Is there, is there any indication on the amount of fill that's going to be used or is that going to be a case of we'll know that when we get there?

MR. SANFORD: Yeah, there is an indication of how much fill. The indication is this is the impact area. This is your impact area that results of the fill and the construction path. I don't have an exact volume for you, how much fill is being placed on either side of the wetland.

SEAN HAYES: Sean Hayes from the applicant. The fill, I'm Sean Hayes, applicant from Powder Ridge. The fill requirement is much less than that plan shows. The estimates on those plans are showing that if fill is required in the entire pathway. Uh, just so you know, on the south side of the bridge, okay, if you can point to the south side, the south side towards the parking lot, okay, requires no fill whatsoever. It is an existing path, the bridge was there, it goes right to the brook right now at that level. On the site walk, you will see pictures, it's all grass already. I think those pictures will show that. It's a smooth area, no fill required. Okay? The only fill would be approximately halfway on the north side, which is the rental building side, you will need, approximately half the distance of that will require about . . .

MR. BERNOTAS: I think we have our directions mixed up. The north side will not require any fill; the south side will.

MR. HAYES: Is that right? Okay, sorry. So, the rental side of the brook, half of the way will require some fill up to where you see from the bridge point to where that rock wall, current existing rock wall was drawn on the plan. That is the only section that requires fill is from bridge point to the existing rock wall. So, it's very little fill on the, uh, just outside the wetlands. And that, that brick or stone wall does indicate the wetlands area, is the designation of wetlands. So, the rest of that is outside the wetlands area.

DR. BROWN: The stone wall is, as you're in the little semi-circle there with the rental building behind you, would be north and east, is the wall this way or that way?

MR. HAYES: The wall is literally, is right here. This is the existing rock wall that I'm talking about. So, if you're looking in the semi-circle, you're looking down, there's an existing rock wall. So, the only fill that's required is right there, very little fill. This

side is perfectly fine. From rock wall on, it's a little bit of leveling, but no fill required.

DR. BROWN: And the watercourse?

MR. HAYES: The watercourse is just in, right here. The watercourse, that's not the watercourse. There, that's not the water, he's not showing the watercourse. The watercourse comes around this, this way here.

DR. BROWN: Yeah, it's that little . . .

MR. HAYES: I don't know why the water, the actual watercourse isn't shown on this map, the stream that's there. We're not touching it.

DR. BROWN: You said there was going to be a conduit to move water from this area down to the spillway.

MR. HAYES: There will be a temporary, temporary water handling structure which we talked about, the coffer dam, located on the north side of the existing crossing. Um, this pipe will then be located in this general area here and directed to the . . .

DR. BROWN: So it goes into the . . .

MR. HAYES: Right to the outlet structure. This may be moved during certain times of construction in order to allow the contractor to move at certain areas within the pond. So, this is not the exact location this will be throughout the project. This may be move to here, it may move to here. It'll have to, it has to be adjustable to allow the contractor to move the water to where he needs it to be to do the grading. But it'll stay within the confines of the bottom of the pond.

DR. BROWN: (inaudible) the parking lot is going to need (inaudible)

MR. HAYES: The main parking lot will be trap rock or blue stone.

DR. BROWN: And this little area here will be hard surface (inaudible)

MR. HAYES: That is black top.

DR. BROWN: That's already black top?

MR. HAYES: That's already black top now.

DR. BROWN: And how does the water flow from that upland area in this direction?

MR. HAYES: It actually runs here and there's drainage, there's drainage, sewage pipes already running there.

DR. BROWN: And it goes?

MR. HAYES: Into the pond.

DR. BROWN: Directed by something?

MR. HAYES: Underground. If there's two drainage pipes, there's two drainage up here, here's the main road, so the water flow comes here, there's a drain pipe here on the driveway, I'm sorry, here and here. Both of those connect, one connects to here to here and then it flows down to another sewage, sewage and into that pipe.

DR. BROWN: All right, so there is still only, uh, three main places where water enters. One is here, one was up here somewhere and one was over here somewhere.

MR. HAYES: Agreed.

DR. BROWN: One, two, three.

MR. HAYES: Well, this is a pipe, so it's one, two, three, four.

DR. BROWN: Oh, okay.

MR. HAYES: See what I'm saying? This pipe shown, there's one, so this dam will have to come out just to cover that pipe. You know what I'm saying? So, it's one, two, three, four.

MR. SANFORD: Let me, there's more than four. So, there's the stormwater outfall here. There's another stormwater outfall here. There's the culvert that conveys the stream into the pond. We have another outfall located here and two more outfalls located here.

DR. BROWN: There are two where the big one is.

MR. SANFORD: So, besides those, there's also the surface water run-off from the adjacent upland area.

DR. BROWN: So, the water that comes off the parking areas and stuff is filtered somehow or other before it gets to the pond or . . .

MR. SANFORD: For the record, I don't know how this parking lot works in terms of its drainage.

MR. HAYES: There's no filter to it.

DR. BROWN: It seems like we might, you know, somehow how that's cleaned up (inaudible) out of the pond.

MR. BERNOTAS: Well, that parking lot's impervious. I mean, it's pervious rather.

DR. BROWN: This one's pervious.

MR. BERNOTAS: Right, so that's, you know, . . .

- DR. BROWN: (inaudible) much.
- MR. BERNOTAS: Right. Well, don't forget the, what you've got to worry about is in the winter when it freezes, but, uh, that's something we could look at.
- DR. BROWN: How about roof drains? Where are they all going to be?
- MR. HAYES: Obviously, you know, they're existing and we're not modifying any.
- MR. SANFORD: And just for the record, Matt Sanford again, typically roof are considered clean water vs., vs. coming off a roadway or a parking lot, etc. So . . .
- DR. BROWN: (Inaudible) contamination from the sidewalks.
- MR. HAYES: There's not a lot of sidewalks there. So, it's all around, it's all mostly grass around the buildings. The only sidewalk you'd have is on the front face of that rental building. That's the only concrete pad sidewalk except for the little portion on that, and it's not a parking lot, it's really what we now refer to as the term drop-off/pick-up area.
- DR. BROWN: Now, there was, it's not part of your plan here, but, um, in the Town Times' article from earlier this month, you did mention something about eventual retail and other things going on on the cement sidewalk that you draw around there. So, that's, that looks like that should be in the wetlands area 100-foot zone, right?
- MR. SANFORD: Yeah, uh, for the record, Matt Sanford again, the proposed sidewalk, concrete stamped sidewalk, in terms of from a regulated standpoint in the review area, is this section located here along the northern portion of the existing pond up to this point and then also this segment here is within your review area. This section here is actually outside the . . .
- MR. BRANSE: Mr. Sanford, try to remember when you say this area, say like you just need to say this area north of . . .
- MR. SANFORD: Okay, north area of the pond and then this area at the southeasterly portion of the pond is within the review area. The section that's easterly of the extended pond, uh, for the most part, is actually outside the review area.
- MR. BRANSE: Thank you. If, if the vice-chairman listens to the tape and this recording, she hears this area, this area, this area and she will be lost. All right? So, as long as you tell her where you're pointing to, that'll be helpful.
- DR. BROWN: Now, if you decided to put in retail along there, I mean, are you going to come back to, uh, to the Inland Wetlands for another permit to put structures along that sidewalk or are you planning to let us know at this point roughly where you think they might go?

MR. HAYES: We have no plan. Right now, there is no plan to put retail around that. We have no plan to do that. So, there's the existing buildings that we will utilize. There's the restaurant building that sits in front of, no, no, no, that's the, over there. And there's the maintenance that we're utilizing and there's the, what I'll refer to as bath house or the . . .

MR. BERNOTAS: Pool house.

MR. HAYES: Cabana/pool house, yes. But beyond that, there are no plans to expand any retail locations within the wetlands area.

MR. BRANSE: Mr. Chairman, for the record, Mark Branse. I can actually help you with that question. If a future building is within your upland review area, yes, it will need a permit from this commission.

DR. BROWN: I just wanted an opportunity for him to say he has (inaudible). The other thing to, uh, that puzzled me the other day was, you know, water in, water out, what's left in there for fire. I was asking the firemen if they had some idea how much water had to be left in the pond at all times for safety's sake and you probably don't have numbers yet, but you can probably come up with an estimate at some point.

PETE TYC: Pete Tyc, fire chief representing the Middlefield Fire Department. That's really a question for the Fire Marshal to determine what is there. Uh, as we stated at the walk-through, what our system has right now is a pipe extending out. Where that is and where the low water level, anticipated water level is, that's where it's located right now so there is a steady supply of water. Uh, whether that's going to change or not will depend on what we have to do there. It's kind of a vague question, but as far as we really haven't seen plans of what the buildings are going to entail, modifications, but those questions for, uh, fire protection have to go through, really should be answered by the Fire Marshal as far as the water supply.

DR. BROWN: Apparently, it says in the Town Times that you're planning to avoid using Lake Beseck water to make your snow. So, my question is, um, you know, how much water do you think you'd need to draw out because people have worked there in the past said that, uh, Lou Zemel sometimes just drained his pond dry and you are going to, uh, double the volume of the pond, but still.

MR. HAYES: Yeah, I mean, the pond was created, Sean Hayes again, the pond was created to, for making snow. As I understand it, again, we're all here on hearsay, but as I understood it, yes, during building of the base, what they called snow base, they drained the pond on a regular basis but it replenished itself fairly regularly. Now, what they didn't do is ever tap, they tapped four wells specifically to replenish that pond if they did get that condition. They never used them. So, you have a replenishment, built-in replenishment mechanism to replenish that pond in addition to the tributaries coming in on a regular basis. Uh, we are doubling the size of the pond. We don't see, in the near future, expanding the number of trails on the hill, so we don't expect and we're recapturing and we're redirecting some of the hill water to get it back towards the pond instead of bypassing the pond. Right now, there's a

main drainage flow that's bypassing the pond. Okay? So, they're making snow, all that snow, as it melts, goes into Lake Beseck directly. With that redirection and the volume of water, you shouldn't drain this pond. I understand the question, but on a regular course of business, they did drain that pond. It was down to nothing.

DR. BROWN: Which would be undesirable from the fire department standpoint.

MR. BERNOTAS: Well, I'd like some clarification from the fire department. Is that a courtesy that he's extending to you as far as that dry hydrant or are you actually deeded it or something?

MR. TYC: Excuse me, Peter Tyc, fire chief. The dry hydrant does have an easement that was included as part of the sales agreement. We have the right to maintain it as that.

MR. BERNOTAS: Okay, and you do have a right to say how low the pond can go. Or do you?

MR. TYC: I don't believe that, no. No, we do not. The easement on the property is basically to allow fire department access to the dry fire hydrant and maintain it. It certainly is in the best interest of the applicant . . .

(Inaudible)

MR. BERNOTAS: Well, I assume that up above, you may have to use it also. I mean, there are houses on Powder Hill Road.

MR. TYC: Once again, it is a water source and it would be considered your own water source as some of the ponds and the lake is lowered and things. There's a lot of different factors that come into that, but it is considered a water source.

MR. HAYES: Sean Hayes again. Just to address one issue on future plans, there are no future plans. I mean, the buildings are the same size. We're not expanding the size of these footprints. So there's no expansion on the existing buildings that are there as far as fire safety requirements, water source requirements.

DR. BROWN: Now, I understand that there's some question about the septic system, where it, where it is, what the final drawing will be and I'm just asking, I know that that's beyond the immediate 100-foot barrier, but still it would certainly affect water quality in the pond and down in Lake Beseck.

MR. BERNOTAS: Hmm, no, no, not necessarily.

MR. HAYES: No, there are just, let me answer the question. There's two leaching field septic systems on the property, one services the lodge primarily, uh, which is in, as I understand it, working condition and is perfectly fine. The one that serviced the rest, the old restaurant, uh, is the one that might be in question based on, it was based on, the previous owner of the property was planning to put his water park where that leaching field was. So, he was redirecting, on his own, all of the water to end there because he wanted the flow of the water in the low point to be there. So, it, what he

did may have compromised one of the two leaching fields, but it's outside of the watercourse issue.

DR. BROWN: Is that the one that's located, uh, on the far side of the parking lot (inaudible)? You pointed that out the other day.

MR. HAYES: I'm just trying to get oriented here. Unfortunately, it's outside the view of this map. Um, there's two leaching fields, one actually, this is the lodge, okay, um, the one leaching field for the lodge is actually runs out here, off map, on the north side, if I'm still in the right position. Okay? And then the other secondary leaching field is actually this course right here. So, this is the one that maybe compromised because of water flow, but it's just stagnant because he buried it. He was trying to get rid of it. He was going to propose, because his water park was going to be here, he was proposing to put a new leaching field up here. He didn't care about it.

DR. BROWN: Where is the parking lot . . .

MR. BRANSE: Mr. Chairman, I think we're okay, for the record Mark Branse, I won't do anymore than a question to pose for Mr. Sanford. Is there any proposed changes to the septic system or the leaching fields?

MR. SANFORD: No.

MR. BRANSE: The answer is no. It just, then it's really not on the table.

MR. BERNOTAS: Okay, the soils coming out of the dredging of the pond, the spoils, are they going to be tested for heavy metals and pesticides and . . .

MR. SANFORD: Yes, as part of the contract that we have with Powder Ridge, when we lower the pond, we're actually going to be sampling sediment in the pond for heavy metals, uh, actually also for pesticides that could be associated with . . .

MR. BERNOTAS: Lyman Orchards.

MR. SANFORD: Lyman Orchards. So, those will be done as part of this project. We are not doing them, it would be easier, it's easier for us to take the samples when the water's down, so that's when we will do the sampling.

DR. BROWN: There was a question and I didn't know whether anything's changed since I asked you this question last Saturday, but there are these four, four pipes coming out and right around where the other regular are supposed to be. Now, two of them came out (inaudible) and go down the side of the bank and you said those were obsolete and nothing came out of them. Why was the big, big sort of light brown colored, ad it was for, it had a corrugated outside and that was the one that supposed to carry water, not so much now that it's cleaned out and then there was a fourth thing, much smaller that you said you had no idea where that came from. Is it important for us to really find out what that is? That's one thing. The other, is anything coming out of that at all? And, uh, if there is, then we might want to know what it's attached to.

MR. HAYES: We're not proposing any changes to it.

DR. BROWN: I mean, (inaudible) you might want to know if it's draining anything undesirable.

MR. BERNOTAS: If I'm not mistaken, that may be an overflow for one of the wells when the groundwater gets high, if I'm not mistaken. What was the diameter of it?

DR. BROWN: It's maybe the same size as the other two that come over.

MR. HAYES: I know there's a couple down there. I don't know, I honestly don't know where it comes from. We weren't touching anything over on that side of the bank and I haven't seen any water flow from it. But I do know the primary well with that is located on the overflow side. Northerly, there's a well, it's indicated right here. This well house, okay, was supposed to replenish one of the four pumps or wells that were supposed to replenish this. Um, the pump, as I'm told story-wise, dropped down into the well and hasn't been touched since. So, it's probably not overflowing because of that reason.

MR. BERNOTAS: Are you going to be dewatering the whole pond? All, what is it, 4 million gallons?

MR. SANFORD: Yes, for the record, Matt Sanford again. In order to actually, uh, properly do the construction without causing, um, a good deal of sedimentation, is to actually dewater the entire pond in one shot.

MR. BERNOTAS: The reason I ask, and I'm not very good with volumes, okay, the reason I ask is we're right now in a 3-1/2 foot drawdown on Lake Beseck which is above that and it's causing some concern for property owners around the lake if we get a, happen to get a hard freeze. And I'm just, I'm trying, you know, you're a soil scientist, an engineer, whatever, whether a volume of 4 million gallons entering Lake Beseck adjust that level again?

MR. SANFORD: Uh, I guess, for clarification, just Lake Beseck's water level?

MR. BERNOTAS: Yes.

MR. SANFORD: Um, I don't know, I don't think that we can answer that without really looking at the entire watershed. Um, my inclination is to say no it wouldn't adjust that, just given the size of Lake Beseck and its watershed. Um, this pond is a very small blip in the watershed in terms of water volume. This will be done very slowly. It will be a very slow release. It wouldn't be open the flood gates and out it goes. It's a very slow, uh, method of lowering the empondment. So, I think my answer, without giving you any, any numbers to back it up, would be that there would be no impact on Lake Beseck with draining this pond.

MR. HAYES: Based on what I've learned so far, we were trying to take it down to get it below the overflow regular valve so we could get in there and unclog the main. And it took us almost a week to drop it a foot.

MR. BERNOTAS: Well, if it's any indication, the last snowstorm, not this one that we got yesterday, but the last snowstorm which has melted, that, the lake went up at least a good foot-and-a-half to two feet. Just from that one snowstorm. So, you can imagine what kind of a watershed you have and the lake has.

MR. HAYES: You're getting a lot in. You're getting from us and everywhere else, yes, I agree. No, we're, and, and the pond is, at the walkthrough, the pond is extremely high. It shouldn't be this high. It was very this high. If the overflow mechanism that's currently on the pond wasn't clogged, it wouldn't be this high.

MR. BERNOTAS: Right.

MR. HAYES: And that's what we were trying to repair before, a month, I don't know, three weeks ago when the rain started three or four weeks ago. It wasn't just the water, it wasn't the snowstorm, it was all the water that built up before.

LINDA LI: Matt, during the last meeting, we were talking of getting additional copies for each of the members of the commission as well as alternates and I personally haven't received my copy yet. I know you have sheets 1 and 2, but the rest of the package, I mean, we just got this now, but there were only five copies and I believe we were going to get one for everyone, including alternates, and the rest of the package.

MR. SANFORD: We discussed, for the record, Matt Sanford, we did discuss it with town personnel and per the requirements, they felt that five copies was what the regulation states is required. And so, therefore, we provided five copies under the original submission and we provided five copies under this submission.

MS. LI: Okay, so you're saying that basically it's up to the town to make those available to the commission members?

MR. SANFORD: Well, I believe they're all, I believe the plans are always available to any of the commissioners at any time in Town Hall. I believe you could also most likely take them home. Maybe Lee could speak more to it, but I believe you could take those copies home with you to review, um, as part of being a commissioner.

MS. LI: Lee, do you know anything about that because I know I haven't seen a full package yet.

LEE VITO: The five copy thing is what the requirements are. Lee Vito.

MS. LI: Oh, Linda Li was speaking.

MR. VITO: So, I'm sure we can get more copies for everybody, if that's what they want.

MS. LI: Yeah.

- MR. BRANSE: I guess my question, for the record, Mark Branse, I had presumed that (inaudible) provide additional copies so that all commission members and alternates can have copies.
- MR. SANFORD: That's, yup, that's fine. We were just trying to meet the regulation.
- MR. BRANSE: It certainly is a normal request and a reasonable request since the commissioners are volunteers. Sometimes they can come to the office and sometimes they can't, um, and, uh, having their own set of plans to review is certainly desirable and expedites a decision. (inaudible) library, it means that you may need extra meetings before they all cycle through and have the chance to review what's in front of them.
- MR. VITO: P&Z does get a copy for each one of their members. I don't know if they (inaudible). I know they have more than five. I think the five number was when the commission was five.
- MR. BERNOTAS: I don't remember. We normally got copies to, you know, for everybody. What are you planning to do with the soil., the spoils, if they check out okay and . . .
- MR. SANFORD: Yeah, for the record, um, what we're showing on the plan currently and I'm sure Sean will speak to it in a minute, but what the, we believe the soils will turn out to be clean, we'll test them to verify that. But right now, we're showing on the plan for you to permit is a temporary stockpile area shown outside your review area, located here. I could let the applicant speak to where those soils will go from there on-site and what they'll be used for.
- MR. HAYES: We're planning on using the soil for different features on the hill, berms, banks, half pipes, etc. They will stay on property.
- DR. BROWN: You're showing the cement path in gray, right, and it continues on around. Um, my impression from the site visit was that the area where the overflow occurs, the emergency overflow, that would not be paved there.
- MR. HAYES: It won't.
- DR. BROWN: Okay, so that makes that kind of a wetlands area and in a drier time, people would be tromping across.
- MR. HAYES: It will be stone, but stone then will take the overflow when it needs to.
- DR. BROWN: But is the . . .
- MR. HAYES: It's currently stone right now. We just put finer stone in that area.
- DR. BROWN: It would qualify as a wetlands area where people are walking.
- MR. BERNOTAS: Well, it would be, it would be an intermittent watercourse.

DR. BROWN: Yeah.

MR. BERNOTAS: It's only emergency.

MR. HAYES: It's only (inaudible) you've got a situation right now that you have a major storm drain that's backed up and that hasn't been cared for in seven years. I think the town actually did try to clear it a couple of years ago. They went down in.

MS. LI: Matt, I guess, you know, looking at these plans, you know, I think, well there are two questions. One is that, you know, the pedestrian bridge is 11 feet wide in the details and as you mentioned. The measurement here on the map says 10 feet, so I just don't know what that difference of one foot is.

MR. SANFORD: Well, okay, uh, for the record, Matt Sanford.. Um, typically with these bridges, you have your walkway and that's 10 feet coming up to them. There's typically, we're anticipating this is going to be a wooden structure, a bridge, and so you have a little overhang on either side of the bridge, your wood overhangs actually six inches on either side to give you a total width of 11, 11 feet.

DR. BROWN: Like the overhang of a roof.

MR. SANFORD: Right, or even on your deck or on your, you always have a little hangover there.

MR. HAYES: Just for everyone who knows the site, there's an existing, uh, bridge system that runs out to the old tubing area which is, rental, where's rental? But it's back here. There's a wooden deck system that goes all the way out. The bridge will match that existing bridge.

MR. BERNOTAS: Yeah, that was permitted back I don't know how many years ago.

MR. HAYES: So, there's an existing, uh, 2 x 6 wooden construction, 10-foot wide, six inches on either for the railings. It would be designed to match the existing bridge.

MS. LI: I guess, well one thing that I find that I'm not able to see right away looking at this map and the one we had last month is that I don't see the details of, you know, the full watercourse, I don't see, you know, the fill boundaries, I don't see a side profile view of, you know, the water level with the fill, the amount of fill and, you know, where the watercourse is. So, I think that's all very pertinent information. If you could get that to us . . .

MR. SANFORD: We could provide that, yup.

MS. LI: And I know, you know, you have this area designated wetlands in Connecticut based on soils, but it'd be, I think it would be prudent, not prudent, pertinent to, you know, just give, indicate what some of the soil types are and where it is, you know, where the wetlands is and just in the vicinity, you know, because it's not like on/off.

MR. SANFORD: So, what the, for the record, Matt Sanford, the commission is requesting more detail on the bridge approach, on the bridge itself in relation to the water level and stream and in addition to that, soils being added as an underlayment to the plan.

MS. LI: Right, and a profile view showing heights, you know.

MR. SANFORD: Right, a cross-section view of, a cross-section of the bridge.

MR. BERNOTAS: Any alterations to the island?

MR. SANFORD: To the island? No, the island, for the record, Matt Sanford again, the island with the willow tree stays in place. We're actually doing some grading below the water surface elevation of the island, but the tree that's been there for years is to remain in place. That was something that the applicant wanted to make sure that we saved as part of the plan.

MS. LI: Has a wildlife survey been done for any national . . .

MR. SANFORD: National, yes, for the record, Matt Sanford, we have reviewed the national (inaudible) database. We do not have a hit within this pond area or within a half mile of, of the pond itself.

MS. LI: Now, if I can just (inaudible), this is just an application for this pond specifically, so that's why you don't have any details for the surrounding area.

MR. SANFORD: Correct, yes, that's correct. What is before you, again, is the pond extension. It is the pedestrian walk around the pond, it's the pedestrian walk from the existing parking lot to the ski rental area and the handicapped accessible ramp from the existing lodge to the ski rental area.

MS. LI: Now, what you have is a nice view from, zoomed out so you can see, you know, the, uh, Lake Beseck and the site and the roads. Do you have something or can you provide something similar but that shows more of, gives us more of an indication of general watershed, you know, the topography with contour lines because we have it right here. We don't, like you're saying, get a lot of water in and we can't really, we don't really have anything that kind of shows that over here because there is a relationship between the lake, this pond and the ski hill.

MR. HAYES: But those are already indicated. They're in the pond right now. The pipes that we are referring to earlier. It's those six pipes coming into the pond. Those are the only things coming into the pond.

MS. LI: Oh, no, I'm talking about overflow, water that flows over the, just from the natural topography.

MR. HAYES: You get very little. You get very little flow from anywhere coming over land into this pond because of the way the land goes.

MS. LI: Because you're talking about the ski hill, how you're going to recapture more water .
..

MR. HAYES: But it's coming into those existing pipes, I'm sorry.

MR. BRANSE: I was motioning for you to . . .

MS. LI: Yeah, that was what you were mentioning, you know, how, because the way you're redirecting things, you're going to, you know, have a lot of water that comes from the hill itself so you can recapture any water you push out, it'll recapture.

DR. BROWN: (Inaudible) to see how the water (inaudible) and this pipe. I can imagine that as done years ago.

MR. HAYES: Correct, and they're in the drawings already and it comes through that, there's that one main pipe that everyone saw up on the site walk. There's one main pipe that takes all the water from the hill.

MS. LI: Show me, it's here, right?

MR. SANFORD: This is the main pipe that Sean is referring to.

MS. LI: See, it'd be nice to have, it'd be nice to be able to have that contour with the ski hill showing the pipe and how it leads all in. You can get a general feel of, you know, what the watershed looks like.

DR. BROWN: You could have like a three-inch rainstorm in few hours that would probably bring everything every which way. It would swamp out the collecting points for your balanced loads and stuff.

MR. HAYES: Well, anything's possible. I'm not saying it's not possible. I'm not an expert in watershed.

DR. BROWN: That's why the topography map might show you the possibilities for really major deluge.

MR. BERNOTAS: But what would we do about it?

MS. LI: See, I have a followup question that kind of relates to that. Because one of the things that, you know, you mentioned before was, you know, this whole lake is really meant to give water to make, snow-make, right? And, um, you know, they had wells that would help fill it if it got dry, but that they never used that. So, I was wondering if you have records showing that, you know, that those wells, records for when Powder Ridge used to be in operation?

MR. HAYES: No.

MS. LI: Okay. Oh, you don't have them at all? So, that was the question with the watershed, you know, knowing, just getting that nice, fuzzy feeling that you're not going to be withdrawing more water, you won't have need to withdraw more water from the ground in order, because your watershed is so good at replenishing your pond.

MR. BERNOTAS: But that is what you would use for . . .

MR. HAYES: That is the intent of what those wells is to replenish if we drained it down. There's three, like I said, that one to the side of it, as I hear the stories, the pump itself is down in the hole, it dropped down in. But, yes, the other two wells that we've inspected are flowing water right now. So, they are, there's plenty of water.

(Inaudible)

MR. HAYES: Yes, well, again I'm not a water expert . . . the one I know that's flowing, both are literally coming out the top. There's water flowing. Okay, so, but again, you're doubling the volume and you're certainly not doubling the amount of, of trails on it.

MR. BERNOTAS: Right, you're increasing the, the capacity of the pond but your watershed is remaining the same.

MS. LI: Right, so, you know, there's (inaudible) of water so you're saying that, okay, so help me with this, so you're saying that right now, the water say holds 4 million gallons, right? Four million? And, you're going to double it to eight. But currently, you don't even, you don't, as far as you know, they never had to add more groundwater to maintain that 4 million.

MR. HAYES: Well, be careful. Let's be honest, the story we all heard, the stories we all heard, they have drained the pond. In the initial creating of snow pack, I have heard stories that the pond went dry. Okay? But it replenishes itself. No, as I understand it, again rumor, history, conversation, the story is they never used the wells to replenish the pond.

MR. BERNOTAS: The last time, the last time that the ski area was in operation, he was getting water from Lake Beseck.

MR. HAYES: Correct. That is correct.

MR. BERNOTAS: And which tells me at this point, because I can't remember if the wells worked or not, um, then again it might've been a quicker way to replenish the pond. And he, you know, there'd be a couple of times during the winter months that that pond would actually go way down, very, very far down and then he'd replenish with the Lake Beseck pipeline.

MR. HAYES: So, he had a different alternative for replenishment.

MS. LI: Okay, besides the wells.

MR. HAYES: Correct. He had never tapped the wells.

MS. LI: Right. But you . . .

MR. HAYES: And there is a difference, there is a volume, there's already a set restriction on those wells we can't tap. It's X volume per day or something. So, there is a set restriction on those wells that we can't tap more than X and we will certainly adhere to those volume restrictions.

MR. BRANSE: If I may, I believe Mr. Hayes is probably referring to the permit from DEP, right? They set the limits on these high-volume wells through what you withdraw per day.

MS. LI: Right, and I think those limits are, are based on tests that were done at that time and so those permits have been renewed and so, I assume, now you may made, you don't, because (inaudible) those wells were never piped, you don't really have data to know what depression from taking all that water would be.

MR. VITO: Lee Vito. I do remember seeing an engineering study from years ago, I think Sima did something, on the well withdrawal rates and the drawdown and all that. I haven't seen a report lately. We may have it here in our files.

MR. BERNOTAS: I think, Lee, if you could go back, if you could do me that favor also, go back and look at the, the water park permits because I think they were, he got diversion permits in there and if it's any help, the water park was going to use a lot more water than the snow-making operation, a lot more water.

MR. HAYES: You're right. He did have extra permits for the water park which was significantly over our requirements. Good point.

MS. LI: So, now, uh, the idea is that you get so much water naturally from the watershed that, even though you're doubling the capacity, retention capacity of the pond, you feel that it will fill, it will fill on itself naturally instead of having to pump out more water from the ground.

DR. BROWN: On average.

MS. LI: On average?

MR. HAYES: Yes.

MS. LI: And we don't have an idea of, like, you know, fill rates? You know, you would use if there was no snow during the season, you'd need to kind of make snow regularly.

MR. HAYES: Well, it's not, it's not dependent on how much snow. It's also the, certainly this year you wouldn't have an issue. I mean, that thing's replenishing at a rate right now that, so it's the condition around. You know, for the last two years, we've had plenty of replenishment. That pond, so it's not how much snow we have. It doesn't matter. It's the replenishment and the conditions of rain and everything else. If you have dry, dry winter . . .

- MR. BERNOTAS: A cold, dry winter.
- MR. HAYES: A cold, dry winter, that's correct, that's the issue. But if it's a cold, dry winter, if it is cold, the snow's not going to melt anyway. So, the requirement for snow-making goes down.
- MS. LI: So, you think it'll balance out basically.
- MR. HAYES: Well, 8 million gallons is twice the volume. So, and like I said, you know, you have 25, 22 trails today on that hill. We don't plan on expanding those number of trails at this moment.
- MS. LI: So, if I understand the logic, the idea is to expand the capacity so it will actually act as a buffer in some sort, right?
- MR. HAYES: Agreed, yes.
- MS. LI: And in that way, you know, it actually minimizes the risk of having to withdraw . . .
- MR. HAYES: Withdraw from the wells. Just so you understand the science of snow-making, and I don't want to, I'm learning myself, so well water is 55 degrees. In this region, all underground water temperature is approximately 55 degrees.
- MR. BERNOTAS: Geothermal.
- MR. HAYES: Correct, okay? You can't make snow at 55 degrees. So, the longer the water sits at surface, the colder it gets. So you want to make snow with the top layer of the pond water. So, even depth in the pond isn't a big benefit. What you need is surface area and he had, he had water fountains running in the pond and everyone thought it was cute, pretty, etc.. It's not for that. It was to get the water out into the air to make it colder.
- MR. BERNOTAS: And to bring the cold water up from the bottom.
- MR. HAYES: So, it's all about the colder the water. If that water is underground or at certain depths, it's not good.
- DR. BROWN: The 4 million gallons that the current pond holds, is that with or without the muck in the pond? And how much muck is there?
- MR. SANFORD: Yeah, for the record, Matt Sanford. The 4 million gallons is based on the existing topography/bathymetry today. So, what's there currently . . .
- DR. BROWN: So, once you de-muck it, what will it be?
- MR. SANFORD: Okay, so . . .

DR. BROWN: Once you de-muck it and do the expansion.

MR. SANFORD: It becomes, yeah, 8 million gallons, yup.

DR. BROWN: But right now, it's only 4 million, maybe 3-1/2.

MR. HAYES: No, it's 4 million.

MR. SANFORD: Yeah, 4 million. That's based on the existing bathymetry of what the current, uh, bathymetric survey pond bottom is now. So, it does right now currently supply 4 million. With the improvements, it'll then supply 8 million.

DOUG CHARLES: You said you were redirecting some of the flow that was, is now going into Lake Beseck that will now come into the pond.

MR. HAYES: Yeah, our original, our original thought was looking at the water flow and watershed of the certain right-hand lanes was that it's going to the rough. There are already, there's already the . . .

MR. BERNOTAS: Grand Canyon.

MR. HAYES: Yeah, there's pipes, but there's one large, that's in what is referred to, if anyone knows the land, of Grand Canyon. It literally comes down the right-hand side of the hill, it's gouging out and it's creating a significant erosion and the thought is eventually to redirect that erosion, to stop the erosion, to stop the sediment going into Lake Beseck is redirecting it into the existing water pipes that are on the hill. There is no plan to do that.

MR. BERNOTAS: Did you see it?

DR. BROWN: You see it coming out down below.

MR. BERNOTAS: No, no, I'm saying have you ever seen that area?

DR. BROWN: No, we didn't go there.

MR. BERNOTAS: It's unbelievable.

MR. HAYES: It's way up in the hill.

MR. BERNOTAS: Unbelievable. It's got to be almost as tall as this room and it's actually scoured down to bedrock.

MR. HAYES: But that's the natural flow of the hill.

MR. BERNOTAS: Right.

- MR. HAYES: It is the natural flow. I mean, he's done nothing to encourage it. He's actually tried to redirect it.
- MR. CHARLES: That's been there for a while, hasn't it?
- MR. BERNOTAS: Oh, yeah.
- MR. HAYES: Oh, yeah.
- MR. CHARLES: I remember in >93 there were discussions of that.
- MR. BERNOTAS: We were trying to get him to correct it. There's a, there's a, um, this is kind of getting off the subject, but there's like a pond that's up there also, a manmade structure.
- MR. HAYES: Up on the hill? Over by that Grand Canyon?
- MR. BERNOTAS: Over by that Grand Canyon.
- MR. HAYES: I haven't seen it.
- MR. BERNOTAS: It's actually concrete.
- MR. HAYES: Oh, no. What you're probably referring to, there are two concrete structures here at the bottom of one. Okay, and it's called the snake in the woods. But on the top of the second one, which this is the second one . . .
- MR. BERNOTAS: Yeah, see, it doesn't pick it up because that, the one I'm talking about is up a little further.
- MR. HAYES: Okay. They both, they both start with a bowl which you're probably referring to and then that bowl was to, when he was planning his water park, he was going to pump water and it was a pool of water where you started in your raft. That's all that is.
- MR. BERNOTAS: Okay.
- MR. HAYES: It was a, it's a manmade structure of concrete that starts, both of these snakes or water tubes, okay, water slides, start in a bowl.
- MS. LI: I just have a comment to make. Can you just take it back to the plans because I don't know if everybody saw, but when you, Matt, when you came over and helped indicate where fill was going to be, would you mind just pointing it out on that map so other people can see where that fill will be. Sean, you were helping out too to point where the fill would be near the bridge. Can you just point it on the map so everyone can see?
- MR. SANFORD: I can point, for the record it's Matt Sanford again. It's going to be located, the fill that the applicant was referring to, here is the rock wall, the fill will be located in this

area here. What would be to the south of the existing stream, south of the existing wetland, the ramp up to the ski rental building.

MR. HAYES: And it's just to level the land. It's not a significant amount.

MS. LI: For some reason, I thought there might've been some between here and this 70 mark, but no there's not?

MR. HAYES: No, no, yeah, it is actually, yeah. So, let's clarify. Sean Hayes again. From the indication on this thing, there's a brown bridge mark. If that bridge is 17 feet long, correct . . .

MR. SANFORD: Yes, that's an old location.

MR. HAYES: Correct, that's why it's different on that map because this is an older drawing. Okay? So, it's much closer to that rock wall than this picture shows. So, it is only, if you can scale it, each of you have this map, but if you scale it from that 17-foot mark on the end of the bridge to the rock wall, it's this area here that will require some fill.

MS. LI: Just right here?

MR. HAYES: Correct. Exactly where you're drawing. It is the natural rock wall to the bridge point.

MS. LI: And so does that, does that interfere with the blue, well I guess . . .

MR. HAYES: The watercourse is under the bridge.

MS. LI: But you're not filling in that watercourse portion? It's beyond that, at the wall.

MR. HAYES: The watercourse, even at its highest, is only about a three-foot width in that area. You have a bridge that goes 17 feet. The watercourse would be in the middle of that bridge. So, you have a three-foot section in the middle of a 17-foot bridge.

DR. BROWN: Uh, I think I know where it is on the, where the dirt that you remove from the, yeah, and what is that cross-hatched thing, a construction road?

MR. SANFORD: For the record, Matt Sanford. Yes, in order to access the stockpile area and to meet the 2002 soil and erosion control manual guidelines, we have to provide a, a rip rap construction access path.

DR. BROWN: Which you'd be taking down when you're done?

MR. SANFORD: Yeah, well, under current conditions, from the site walk, as you recall, this area has already got gravel, a gravel pad. It would be up to the applicant whether, you know, he wants to leave that as an improved gravel pad. But it may be taken down.

DR. BROWN: Now, the, actually the concrete walkway around the lake is not continuous, is it?

MR. HAYES: He just doesn't show it.

DR. BROWN: It's confusing. Okay, so it is continuous.

MR. HAYES: It does.

MR. CHARLES: We walked it.

DR. BROWN: And you were saying the other day that the third pile from the excavated third might or might not be used if you decide where you want to put the dirt, you'll just put it there.

MR. HAYES: Correct. The only, you know, most of the dirt removal, the significant portion of the soil removal from this site will be dry soil because you'll do it dry first. So, go ahead.

MR. SANFORD: For the record, Matt Sanford. So, the construction sequence would be to start with the upland excavation first. So, that material there, that'd be dewatered and taken down to your groundwater table where your soil might become a little more moist. But the construction sequence would be to construct this eastern half of the pond, the upland section, excavate that material out, stockpile and as the empondment is dewatering and we allow the sediment to dry, then the excavator would go in and start to remove that material.

MR. HAYES: And this dry material, we do have the potential of moving it directly to its end location without stockpiling it.

MR. BERNOTAS: Any consideration given to the fish?

MR. HAYES: I've got to tell you, I've been fishing that thing, you know, I haven't found one yet, but it might be me, but I don't know.

(Inaudible)

MR. SANFORD: Well, yeah, correct me if I'm wrong, but historically I think the pond does experience dry, when it was an active, um, ski resort, if it did go dry during the winter, obviously it would've lost most of the fish. I believe they drained it, it accidentally was drained a few years ago, uh, down dry and so it probably lost fish there. You may have some fish that migrate in occasionally from upstream, it would be really small, (inaudible) fish. You may also get some eggs that get deposited from a duck or a goose that may fly in, but the fishery population itself is very small in there.

MS. LI: Speaking of fish, you know, you have that pool there, so I guess you'll use, you know, some, what water source will you use to I guess put in the pool and then when you drain the water from the pool. How does that work?

MR. HAYES: The pool itself, the dam, the pool?

MS. LI: Yes, the swimming pool.

MR. HAYES: Yes, okay. I'm sorry, what was the question again?

MS. LI: What's the relationship getting water in and out of that pool relative to the pond?

MR. HAYES: There is no relationship.

MS. LI: Oh, a different source.

DR. BROWN: Irene, you're a tree person. Did you have any reservations about what they mentioned the other day?

IRENE ANGILETTA: No, not in this case.

MR. HAYES: Yeah, most of the trees that are coming down are either, uh, damaged, dead trees or there are a couple of very, you know, I tried to save one of them, beautiful, older trees but they're almost over their life cycle, overgrowth and we just lost another one. So, we just lost a major limb from them, so they're overgrowth and there's not that many in this affected area.

MR. BERNOTAS: Any other questions? Okay, um, Mark, I guess at this time, it would be good to just suspend the hearing for now or . . .

MR. BRANSE: You need to go to any members of the public. This is a public hearing and you need to see if anyone wants to address it.

MR. BERNOTAS: Are there any questions from the public?

LUCY PETRELLA: Hi, Lucy Petrella. This is a public hearing? Did you have a separate notice for it? Because one of the, it didn't indicate that it was a public hearing.

MR. BERNOTAS: Uh, I'm not sure. I think they sent one out.

MS. PETRELLA: Because usually when you open a public hearing, you also read the notice that was published in the paper.

MR. BRANSE: I don't know. I guess I assumed all the stuff, the legal notice . . .

MR. HAYES: I don't believe it was published as a public hearing. I haven't seen anything.

MR. BERNOTAS: Hmm.

MS. LI: I didn't either.

MR. BERNOTAS: Good point.

MS. PETRELLA: Fifteen years on P&Z, I was like, wait a minute, I don't remember seeing a public hearing, I didn't see the notifications. Well, that wasn't my original question when I

raised my hand before, but as you kept talking about a public hearing, I said, that's why I asked you to see your agenda. I said, it doesn't, it wasn't noticed, I thought maybe I missed a paper somewhere. So, well that's something you're going to have to deal with, but I just wondered, with the draining of, um, Lake Beseck, with the possibility of what the state is going to be doing, you know, with repairs to the dam, is that going to have any effect on any of this work in any way and/or for you guys (inaudible) at the same time, that's a significant drawdown by the state. I don't know, when are they proposing . . .

MR. BERNOTAS: Who knows? I mean, one of the things, we had a meeting Monday night and one of the things about it is, you know, does the state really have the funds for it, number one. If they're really worried about the dam, they're talking about starting it this August. I think bids are supposed to go out in April.

MS. PETRELLA: Okay, so then if this gets started, as they were suggesting in February, which, you know, that's only a couple of weeks away, but, uh, there's a possibility that this might be completed before that even starts.

MR. BERNOTAS: Right, right.

MS. PETRELLA: All right. The other thing, since I had seen in, in Patch about the fees, I don't know if that's an issue with this application, if the fees have been paid, uh, to this point, uh, for this application. Has that all been squared away?

MR. BERNOTAS: Uh, I'm not sure. I heard, we were talking about waiving the fees on this particular application.

MR. VITO: I believe they paid the base fee which was whatever (inaudible) and it was a question on wavering the other, due to the amount of material, I guess the fees are up there.

MR. SANFORD: You know, for the record Matt Sanford, um, according to the regulations, um, there's, the way you base your fees is based on wetland impact, per square foot of wetland impact. There's a certain threshold that you guys use as a fee base and when you do that square foot impact and multiply it by whatever it is, I forgot if it's \$2.50 per square foot or whatever it was in the regulation, it ends up being \$20,000 for the permit for this and what we're saying is that we're doing a maintenance project on an existing manmade pond and we're actually improving that, that functional value of that pond by actually performing maintenance that we're requesting a waiver of that, we believe is an excessive fee for this particular type project.

MS. PETRELLA: Okay, so to clarify with the fee, are you saying that some of the fee will be paid or all of it is going to be waived?

MR. BERNOTAS: The base will be paid, if I'm not mistaken.

MR. SANFORD: The base has been paid.

MR. HAYES: The base is paid.

MS. PETRELLA: The base is pad.

DR. BROWN: How much was that?

MR. SANFORD: That was \$240.

MS. PETRELLA: Would this be the proper format to bring up the fee because, I mean, this isn't public hearing, I don't believe, so . . .

DR. BROWN: Number 9.

MS. PETRELLA: Oops.

MR. BERNOTAS: No, it's just revisions in our, in our, uh, I didn't have anything to do with the agenda.

(Inaudible)

MS. PETRELLA: Aren't you lucky?

MR. BRANSE: (Inaudible) actual applicant. In light of this fee waiver question, the commission has called upon its consulting engineer, Jacobson and Associates. Would the applicant reimburse the commission for any fees for Mr. Curtis' review or reviews? Because that certainly would be more than \$240, um, I'm not sure if the \$240 would cover advertising for a public hearing which we'll talk about in a moment, which is going to have to be done. But, uh, it certainly seems, it's at the commission's discretion whether to waive the fee or how much of it, but I do think it's worth asking about the costs for Jacobson's review because that's something that you should request and certainly is a cost.

MS. PETRELLA: And I would like to speak to that as the chairman of the Board of Finance in terms of the finances and also having had 15 years' experience on Planning and Zoning where, uh, when you look at the fees, fees are basically in place to, not for towns to, uh, turn profit, but for them to be able to cover the costs not for necessarily their staff that's normally there . . .

MR. BERNOTAS: Outside consultants.

MS. PETRELLA: The outside consultants, the legal notices which are, whatever expenses, not just working. So, you know, I think that in your, in your discussion of the fees, that you would give serious consideration to at least not burdening the taxpayers with paying the extra fees for outside, anything that's, that is over and above whatever just our normal staff would, would do. I think that's only a fair way to do it and then to make a consideration on the rest of it, obviously taking into consideration Mr. Hayes and, you know, and his needs and costs and all the other stuff. Uh, we, at the moment, whether we did or not, but at the moment, the budget is, is somewhat strained. There are a number of issues that are already impacting this year's budget and we already have some that are on line to impact next year's budget, I shouldn't say budget,

taxpayers. We have an increase in our percentage for RSD13 as well, uh, student population percentage. Not that ours has gone up; it's just our number of students went down less than Durham's did. We have a fire truck that's now going out to bed. We need approximately \$60,000 in addition to next year and other issues. So, you know, I think recouping additional fees is, is, it may not sound like a lot, but it adds up.

MR. BERNOTAS: Yeah.

MS. PETRELLA: It adds up.

MR. BERNOTAS: Duly noted.

MR. CHARLES: It was the review or the enforcement officer when we were doing Happy Acres, right?

MR. BERNOTAS: No.

MR. CHARLES: At any rate, as I recall, something like \$14,000 was deposited for fees in that case and we didn't use it all, thank God. I think a percentage, over half was returned at the end. So, it's not like, you know, you pay the \$20,000 and you lose it. It's \$20,000, we hold it for contingencies that come up and then if we don't use it on your project, you get it back. I think I would anticipate we probably would have some consultations.

MR. BERNOTAS: Well, we do.

MR. CHARLES: We have Mr. Branse helping us a bit here too already and, uh, so, we may, we may want to get another consultant in to double-check some things and so I think we ought to, and I believe these fees were set by Ken Hinsch and (inaudible) a number of years ago, uh, (inaudible) and everything, they set the fees this way.

MR. BERNOTAS: Well, we had a public hearing for that also.

MR. BRANSE: Mark Branse. Jim, you have a, you have an expense here although, in fairness, it is not the applicant's fault, but I'm going to recommend to the commission that tonight's hearing be transcribed, which is an expense. That it be transcribed, that we advertise a public hearing which should've been done, that the transcript of that hearing be entered into the record, uh, and that the advertised public hearing, the applicant basically summarize the presentation, uh, not go through the whole thing again, but summarize because we'll have the transcript and we'll have the questions and answers that were given here tonight. We will then, if members of the public who were not aware of this meeting for lack of a legal notice, have other things they want to say, then they'll be able to do it. Um, but we only have two choices now. One is to pretend tonight never happened and repeat it completely next month. Or to transcribe, you know, or transcribe what happened here tonight, enter that and just sort of pick up where we left off and see if any members of the public, who didn't have notice for tonight, have other things that they want to know about. The good

thing is, based on the items that the commission has requested so far, it sounds as if you couldn't have closed the hearing tonight and opened it tonight. Um, additional information . . .

MR. BERNOTAS: Needs to come in.

MR. BRANSE: So, um, so at least we aren't delaying the applicant any worse than it would've been. The one expense is going to be the transcription costs and, as the commission notes, I've been taking notes but I don't claim it's a transcription. It's close, but it's not. Um, and, um, plus I never type and talk at the same time, so I never have my own comments. But, um, my suggestion would be, uh, that the applicant, uh, that the commission could consider, if you wish, a reduction or waiver of fees except for your actual expenses (inaudible) which could certainly include Jacobson Associates, it could include me, if you wish, um, uh, but, uh, I understand what the applicant is saying which is that you just take the area of the pond and multiply it by X dollars, you get a figure that you probably aren't going to ever spend. On the other hand, you do have expenses. And, by the way, Ms. Petrella is correct. The setting is very clear. The purpose of the applicant fees is to cover the expenses of review, not to turn a profit. It's not that this is a profit center for (inaudible) and we would return any overage anyway, but that's something for the commission to consider and the applicant to consider. The applicant may wish to, in his fee waiver request, may wish to modify that, but offering a reduction except for actual costs, with or without the transcription. My personal feeling is that the town should absorb the cost of the transcription because we didn't advertise, but, uh, (inaudible).

MR. CHARLES: (inaudible) a public hearing, so I don't think a mistake was made. It was, this was supposed to be just the presentation to us.

MR. BRANSE: Well, if it's a presentation, I guess the question is does the commission consider this to be a significant activity. And a significant activity is one that involves a disturbance of wetland or a watercourse. So, the dredging of a watercourse is certainly a significant activity and there's case law that says it is. So, it had to be a public hearing. If the purpose of tonight was only by way of introduction . . .

MR. _____ (inaudible) a public hearing.

MR. BRANSE: The other thing you do is, you could consider this as, as your, your preliminary, all right, the applicant can get the rest of the material in, you advertise for next time. The applicant reviews those modified plans and you may not have the same questions at the time. My concern is that you asked a lot of questions tonight before we found out that there was no advertised public hearing. So, um, if this had just been introduction, it should've been 10 minutes. An overview, get any additional information you want, set up a public hearing. We went way beyond that and I, in my discussions with your prior vice-chair, I had understood from her that this was being advertised as a public hearing.

MR. BERNOTAS: And that's the indication I got as far as phone calls. I don't know how I missed it on the agenda, being perfectly honest with you, because they usually had a . . .

MR. BRANSE: I thought you were holding the public hearing because that's what I had been told. It's really, I think it's the applicant's risk, if you will, um, so I don't know if you want to take a moment and huddle, but I mean if you want to consider this as an introductory meeting, this was a really long one.

MS. PETRELLA: But I will say, because of experience having done a transcript for a public hearing when I was a recording secretary, we're talking verbatim. It takes a long time. It's a very, this was quite a lengthy meeting, it's expensive, however to sit here and try to duplicate this on another occasion and to miss some pretty pertinent questions is also a danger (inaudible) the record. So, it's not an easy decision.

MR. CHARLES: There are a lot of sort of promises and comments made here that would be good to have on the record, so that we are sure what we've covered and haven't.

MR. BERNOTAS: What do you think, legal?

MR. BRANSE: I mean, I think the safest way is certainly to transcribe this and hope to have it ready for, if you set a hearing next, enter that transcript so that no one can claim that they didn't hear the exchanges, that they were unaware of the questions, unaware of the answers. So we don't have to try to replicate exactly every question you asked and every answer you got. Um, because that's, I mean, that's the risk. The risk is if someone files an appeal and says information was provided to the commission and I have no way of knowing what it was because there was no public hearing and when I went to the advertised public hearing, they didn't say that. So, I hear there was some prior meeting, all this information was provided and I didn't know about it and I didn't hear it and so the commission heard things but I don't know what they heard. I'll never know what they heard, so I have a disadvantage as a citizen. (Inaudible) so transcribing it prevents that.

MR. CHARLES: As far as this being just maintenance, I have a hard time thinking of this as just maintenance. I know you're not changing it much and you're digging out one part and doubling its size, you're creating . . .

MR. BERNOTAS: Oh, there's no doubt about it's a significant, that's not in question, that's not in question at all.

(Inaudible)

MR. HAYES: Sean Hayes here. The only issue is, as I understood the fee structure, because it was calculated on the total volume, three-quarters of the pond is maintenance. You're dredging the pond that was dredged on a regular basis by the town. You are impacting and expanding it. So, on the expansion side, but if you calculate the fees on what is being expanded, it's significantly less because the calculation is based on the total size of the project.

DR. BROWN: And the bridge. The bridge, there's no bridge now but there will be.

MR. HAYES: There was a bridge.

DR. BROWN: There was a bridge?

MR. HAYES: There was a bridge there. So, it is maintaining bridge or re-establishing the bridge.

DR. BROWN: (inaudible) asking for a percentage. Can we do that? (Inaudible)

MR. BRANSE: The applicant is asking for a waiver for full or partial. So, (inaudible) is correct.
(Inaudible)

MR. BRANSE: Mr. Hayes, I'm not your attorney, but I hope you're not saying that it's waiving all or nothing. That may not be prudent.

MR. HAYES: Okay, I'm not saying, I don't know how it was worded. That's all I'm saying. I don't have the document in front of me, guys, I'm sorry. I'm sure it is all or a portion of it. I don't know that for sure.

MR. BRANSE: But my question is, you're the applicant's consultant, is that your request that the commission waive as much of the application fee as . . .

MR. HAYES: Correct. I mean, if the intent is to cover the expenses of associated, reasonable associated expenses as an outside consultant, the applicant does not have an issue with that.

DR. BROWN: That's what it's for. We're not going to make enough for all of those other things like Lucy said. (Inaudible)

MR. HAYES: Well, yeah, I can't pay for the fire truck. That's not my intent.

MS. PETRELLA: Not even as a goodwill gesture?

MR. HAYES: Trust me, the building permits that I've already paid for have taken care of most of it.

MR. BERNOTAS: Nancy, or Lucy, I'm sorry.

MS. PETRELLA: I just want to also mention with regard to waiving the fee, it isn't something that, uh, commissions generally do very lightly because even though some of the additional costs in here may not necessarily be incurred by the towns, those fee structures are there for a reason, for building, for Planning and Zoning as well as for Inland Wetlands. Uh, in the 15 years that I was on Planning and Zoning, I believe we waived fees, you know, I could count on one hand, probably even less than that, uh, and for the most part, it was for extenuating circumstances for individuals as opposed to, you know, for, for larger, larger developments and things like that. So that, if you do decide, I mean obviously the decision falls with your commission, if you do decide to waive it for whatever reasons, uh, just, you know, bear in mind that it isn't something that's done as a matter of course. It's something that, if you did it this

time, would perhaps be a courtesy, a recognition of some type of a need or whatever, uh, but it's just, because otherwise if we start doing that, if commissions start doing that with every application, why have a fee structure. You know? They're all there, so it's just, you know, just some thoughts for, you know, as you deliberate.

MR. BRANSE: I will work with Mr. Vito to give you some language. My suggestion is I listened, I know where you're going, let me put something together for you.

MR. HAYES: Can I, Sean Hayes one more time. Uh, just so you know, this fee structure is a new fee structure. This is the first time for a project this size it's ever been applied, that's why it's exorbitant. So, this isn't the traditional fee. The reason we're asking for the exception, there has never been a fee paid for this amount in the history of this town.

MR. CHARLES: Happy Acres was 14.

MR. HAYES: Right, but that was still under the rule of impact and it was a new fee structure, this committee, I guess, implemented last year and it's a calculation based on total affected when we're actually increasing, as I understand the intent, was it was something for a penalty because you were decreasing the wetlands. This actually is increasing. So, it is a different fee structure than this committee has ever received before.

MR. CHARLES: I think it's meant really to try to cover our costs.

MR. BERNOTAS: Well, like Mark said, let him put something together and we can look at it, um. I'm trying to . . .

MR. VITO: Lee Vito. I have one question, Matt. Is it absolutely necessary to expand, the pond? Do they figure they're going to use 8 million gallons per event to make snow?

MR. SANFORD: I relay your question to Sean. That was the direction that he's been given by his irrigation specialist in terms of how much water they need.

MR. HAYES: I'm sorry?

MR. VITO: Is it absolutely necessary to expand the size of the pond, rather than just keep what you have and make it deeper? So, you'd have the 4 four million gallons and you're saying you need 8 million gallons a day to make the snow? Is that what the calculations have been or . . .

MR. HAYES: The environmental impact is you draw like the previous owner, you try to draw from Lake Beseck or do you do it on-site from the existing resources.

MR. VITO: So, you figure you need 8 million gallons at a shot to make snow? Is that . . .

MR. HAYES: For the, again, it comes down to averages and peaks and valleys. But yes, and to minimize the impact on the water source itself or the pond, 8 million is the calculated number.

MR. VITO: To make snow.

MR. HAYES: It's based, it's based on historical hearsay and volume of peak snow-making for that what's called the pack. Early season pack production.

MR. BRANSE: We're now at the point where we're just creating more to transcribe. Okay? The, um, the commission presumably has got the initial information. Is there any other additional information that you should want to see that has not been provided to you? Because, and certainly if you don't want to write a public hearing and ask the applicant for something that they don't have . . .

MR. BERNOTAS: Just what was brought up tonight which I'm sure they took notes about what we need.

MR. BRANSE: And if they didn't, I did.

(Inaudible)

MR. BRANSE: I'm wondering what's your next regular meeting.

MR. CHARLES: February something. That's a long time.

MR. BRANSE: You're limited only by the (inaudible). The first legal ad must be at least 10 days before the meeting. So, it must be published at least 10, what's called 10 clear days which is really 12 days prior.

MR. BERNOTAS: Yeah, how long, well we also have the transcription, we have to, how long does that take?

MR. BRANSE: I don't know.

MS. PETRELLA: Does it have to be done before the ad goes in?

MR. BRANSE: No. But it would have to be done before the hearing was held. It would not have to be done before the ad goes in.

MR. CHARLES: Don't people have to be able to look at it before they come to the hearing?

MR. BRANSE: Not necessarily, no. I mean, there are plans that show up at public hearings.

MR. CHARLES: Are we still transcribing this all too?

MR. BRANSE: We can. And it, we probably need to transcribe this because what we're talking about now is setting the schedule. So, we're okay on that. It's a question of when, it's a question of when the transcription can be done and then the legal notice. So, I, um, I don't know what to tell you. Does the town have someone who does transcriptions?

MR. BERNOTAS: We have someone who does the minutes of the meeting. Is that the same thing or no? I don't know if they do or not. I'd have to check tomorrow to see.

Respectfully submitted,

Debra Waz

Debra Waz
Alwaz First

MIDDLEFIELD INLAND WETLANDS
and
WATERCOURSES AGENCY
405 Main Street
Middlefield, Connecticut 06455

Minutes of the January 16, 2013 Meeting

Darin Overton, Chairman, called the meeting to order at 7:06 pm.

Attendance:

Members

Alternates

X	Angiletta, Irene	X	Bernotas, Randy
X	Brown, Dr. James	X	Dilauro, Richard
X	Charles, Douglas	X	Li, Linda
A	Hinsch, Kenneth	A	Poturnicki, Rob
X	Overton, Darin	Others	
A	VanderVeer, Daria	X	Vito, Lee

A=Absent
X=Present

All three alternates were seated on the commission.

Approval of the Agenda

As there were no amendments proposed to the agenda, Irene Angiletta made a motion, seconded by Doug Charles, to approve the agenda as presented. Motion carried unanimously.

Public Session

Lucy Petrella wanted to offer her input with regard to fees. Darin Overton commented that that would be discussed under item 9 of the agenda, Discussion of Fee Schedule Revisions.

Election of Officers

James Brown nominated Darin Overton as chairman and Daria VanderVeer as vice chairman. Randy Bernotas made a motion to approve the nominations, seconded by Linda Li. Motion was passed unanimously.

At this point, Darin Overton welcomed Rich Dilauro as the newest member to the commission.

Powder Ridge Mountain Park and Resort, LLC, Proposed Activity in the Wetland for Maintenance and Dredging of Pond, 99 Powder Hill Road

Darin Overton recused himself from the application, as his company had prepared the plans for the application. As Daria VanderVeer was not present, Darin had conferred with Mark Branse on who could run the meeting in her absence. Darin recommended Randy Bernotas run the meeting and then left the room. The commission was asked if there was anyone else on the commission that had any financial interests or conflicts with this issue and there were none.

Mark Branse explained that the time line on this issue is that tonight is the night the public hearing opens, so there will be 35 days to close the hearing and the applicant can consent to an additional 35 days. Thereafter, the commission has 35 days to make a decision and the applicant can extend as long as the total extensions do not exceed 65 days.

Irene Angiletta recommended that Randy Bernotas chair the meeting. Mark Branse explained that it was at the commission's discretion and that there is no legal requirement, but that it would certainly make sense to have the same chairman going forward at all meetings on this application. The commission agreed that Randy Bernotas would chair.

Linda Li made a motion to open the public hearing, seconded by Doug Charles. Randy Bernotas was not able to attend the site visit on Saturday, January 12, 2013 and asked for an update on that visit.

Matthew Sanford, professional wetlands scientist, professional certified soil scientist and associate with Milone & Macbroom, represented Powder Ridge Mountain Resorts, LLC regarding the expansion of the existing irrigation pond. To review the history, Mr. Sanford had given an overview of the project at the commission's last meeting and no questions were asked by the commission at that point. A site walk was held on Saturday, January 12, 2013 and there were some comments raised during that time. In addition to that, Mr. Sanford has been in contact with Brian Curtis, the acting town engineer, regarding the project and have addressed multiple concerns. Mr. Sanford also received a letter from Brian Curtis, dated January 15, 2013, which the commission has a copy of in their package.

Matt Sanford explained that they would be expanding an existing pond on the site. The pond itself is currently about 2.1 acres and will be expanded, both in depth and in horizontal area. The reason for this expansion is to allow for additional water to be stored in the pond for snow-making purposes. The existing pond has a water volume of about 4 million gallons and with the proposed improvements of both dredging the existing pond and expansion into the upland, the volume would be doubled to approximately 8 million gallons.

Matt Sanford reviewed the drawings, highlighting the pond and all wetland resources. All wetland limits have been verified and there is a letter in the package, detailing those verifications. The high water mark is highlighted as well as all tributaries and watercourses. North of the pond is the existing outlet structure and that discharges into a watercourse. The emergency spillway was also identified and is a watercourse feature.

The proposed project is to increase the pond size to the east by carving into the upland that exists. That upland is currently maintained lawn, meadow area with some large trees present as well as a concrete path. The earth will be cut back, deepening the area and creating a new pond bottom in that upland area. The slopes will be

graded to a 3:1 slope and there will be an erosion control blanket placed with a seed mix. The area within the pond will be lowered and the accumulated material from the bottom of the pond will be removed.

In addition the pond improvements, there is a new pedestrian walk being located around the pond. Portions of this walkway already exist, but the new section is part of the approval process. Another piece of improvement is a new access way from the parking lot at the southeast portion of the pond to allow access to a ski rental building. This general area was pointed out at the site walk. A bridge will have to be put in place to cross the watercourse. The bridge will be approximately 11' wide x 17' long. The commission does have revised plans dated January 15, 2013 that reflect the bridge location and how it ties into the ski rental building. The walkway itself will require some filling of the wetland and the actual surface of the walkway will either be a stone dust type of material or a gravel.

There is also a note on the new plans pointing to the dry hydrant which was something that was talked about at the site walk with the fire chief. Precautions will be taken during construction, while the pond is lowered, to either make improvements to that dry hydrant and make sure to protect it during the lowering of the water and during the construction phases of the project. That activity will be coordinated between Powder Ridge and the fire department.

Addressing the comments raised by Brian Curtis, Matt Sanford explained that the original plans had a temporary dewatering basin and he explained that, as was explained at the last meeting, they will control water through a diversion pipe. Construction of a coffer dam just north of the existing crossing was discussed in order to control the direction of the water flow and the diversion pipe will maintain the through flow of water through the stream. That will also help dry the pond out. In addition, if there is ground water seeping into the pond after dewatering, a well point will be placed and a pump will then run that water into a temporary dewatering assembly area. The original plan had called for a hay bale detainment area, but that has been changed to a silt sock or a dirt bag which is similar to a whoopie cushion. Water is pumped into the dirt bag and there are microscopic holes within the rubberized membrane and that retains the sediment within the rubberized system while allowing the water to slowly percolate out. One of the comments that was raised by Brian Curtis was the location of that. That location has been moved north approximately 25 feet from the existing well house. That new location is on the revised plan as well as a new detail on the detail sheet.

Another comment raised by Brian Curtis was that he would like to see some stabilization measures as the water comes out of the dirt bag to prevent any erosion on the bank as it discharges down into the spillway. Temporary erosion control measures have been provided with modified rip rap to be placed on the slope that will then be removed and the area restored following the completion of the construction.

Another comment was about erosion that is occurring within the emergency spillway itself. That is only flowing during high storm events and should not be flowing on a daily basis. During the site visit, that spillway was flowing. Under normal circumstances, it should not be flowing unless there is a really intense rain event. One of the things that Brian Curtis pointed out was that approximately 250 feet north of the pond, within the spillway which is all modified rip rap, there was a spot that was heavily eroded, approximately 50' x 30'. Brian Curtis recommended that that section of the spillway be stabilized with modified rip rap and that has been added to the new plans. Access will be via the dam and right onto the existing spillway which almost serves as an access road today.

Matt Sanford stated that he believes all comments in Brian Curtis' letter regarding the sediment basin and emergency spillway have been addressed. Mr. Sanford believes that comments 4 and 5 of Mr. Curtis' letter would most likely be conditions of approval on this particular project. Comment 4 relates to the applicant's design engineer providing regular inspection during construction. Comment 5 requests that additional details be submitted to the commission regarding the pedestrian bridge itself and also indications of how much fill would be required within that area to construct the access way.

There was further discussion about revisions made to the new plans. Powder Ridge would like to take the same historic route that was used, bring it across the stream as it once did, but to take it back up to the center of the building for ease of pedestrian traffic flow. Mr. Sanford also pointed out the handicapped accessible ramp from the existing ski lodge area to the existing ski rental office. This would also be in the upland review area of activities and would be a bituminous walk/ramp designed for handicapped accessibility.

Impact numbers have changed are reflected in the table that was provided. There has been a slight increase in terms of wetland impact. The upland review impacts have not changed and the widening and enlargement of the pond has not changed.

The applicant would like to begin the dewatering of the pond some time in February and would like to take advantage of the more hardened soils in the bottom of the pond. If there was a delay, it would probably be more toward the summer for dredging to avoid the water control required during the spring.

Mark Branse asked about item five of Brian Curtis' letter regarding that details of the pedestrian bridge be submitted to the agency for approval prior to construction. He cited fairly recent case law where a commission cannot approve something without sufficient information to evaluate why it is approving it and what the impact might be. Attorney Branse was asking if this was a future application or part of this application and if there is sufficient detail to determine the regulated activities involved.

Brian Curtis referred to the teaching golf course at Lyman's where there were a number of pedestrian bridges constructed as part of the project. Mr. Curtis believes that the wetland impact areas were part of the plan, but that the commission had wanted to see details of exactly how the bridges were spanning the watercourses. At the time of that project, the commission had wanted to see exact details. He suggested that that information could be submitted as part of this public hearing process so it is on the record. Attorney Branse asked if these details would alter the regulated activities that are before the commission and Mr. Curtis did not believe that to be the case.

Matt Sanford also agreed that the answer to that would be no, because the applicant has specified the area of the bridge on the plan and that would be the impact area. The location of the access trail has also been provided, so the area of impact has been provided to the commission. Mr. Sanford also commented that the width of the path, which also accommodates the fill that is going to be required as part of that activity, is on the plan. Brian Curtis agreed that that was the information necessary. Matt Sanford stated that the indication on the plan is the impact area that results from the fill and the construction path, although the exact volume is not available at this point in time.

Sean Hayes, from Powder Ridge Mountain Park and Resort, LLC, stated that the fill requirement is much less than the plan shows. The estimates on the plans show that fill is required for the entire pathway, however the

north side of the bridge towards the parking lot requires no fill whatsoever. It is an existing path and the bridge is there. Pictures from the site walk show grass in that area already and that no fill will be required. The only fill required would be approximately halfway on the south side, which is the rental building side, where approximately half the distance will require some fill near the existing rock wall.

Matt Sanford again described the temporary water handling structure (coffer dam) on the north side of the existing crossing. This may be moved during certain times of construction in order to allow the contractor to move within the pond. There was discussion about the direction of the flow of the water into the pond from the drain pipes. Matt Sanford stated that he was not sure how the drainage from the parking lot worked or whether or not it was filtered.

A question was asked about roof drains and if they were accounted for. Matt Sanford stated that typically roof drains are considered clear water vs. water coming off a roadway or parking lot. Sean Hayes commented that the only concrete sidewalk would be in front of the rental building except for the small portion in the drop-off/pick-up area.

Mention was made about eventual retail and other things going on on the cement sidewalk and Matt Sanford commented that the proposed concrete sidewalk, in terms of a regulated standpoint in the review area, is the section along the northern portion of the existing pond and one other area at the southeasterly portion of the pond. The section to the east of the pond is, for the most part, actually outside the review area. There is no plan to put retail around that area at this time. The existing restaurant, maintenance and bath house or cabana/pool house will continue be to utilized. Mark Branse commented that if a future building is within the wetland review area, it will in fact need a permit from this commission.

A question was brought up about how much water would need to be left in the pond for fire safety. Pete Tyc, chief of the Middlefield Volunteer Fire Department, noted that that was really a question for the Fire Marshal to determine. As was stated at the site visit, the system now has a pipe extending out with a steady supply of water. Since no real plans are available of what the buildings will entail, those questions for fire protection really should be answered by the Fire Marshal as far as the water supply. Apparently, Powder Ridge Mountain Park and Resort, LLC will be trying to avoid using water from Lake Beseck for snow-making and the question arises as to how much water will be needed. It was stated that the pond had been drained dry in the past.

Sean Hayes stated that the pond was created for making snow and, as he understands it, the pond was drained on a regular basis but it replenished itself fairly regularly. Four wells had been tapped to replenish the pond, but those wells were never used. There is a built-in replenishment mechanism to replenish the pond in addition to the tributary coming in on a regular basis. The size of the pond will be doubled, but they do not see expanding the number of trails on the hill at any time in the near future. With the redirection of the water, the pond should not be drained.

Randy Bernotas asked for clarification from the fire department as to whether this is a courtesy being extended as far as the dry hydrant or has that been decided. Pete Tyc, fire chief, stated that the dry hydrant does have an easement that was included as part of the sales agreement and the Town has the right to maintain it as that. Randy Bernotas then asked if that meant they had a right to say how low the pond can go, but Pete Tyc did not believe that to be so. The easement on the property is to allow the fire department access to the dry fire hydrant. Sean Hayes also commented that there are no future plans to expand the building footprints.

Matt Sanford reported that there are two leaching field septic systems on the property, one primarily servicing the lodge which is in working condition. The one that serviced the old restaurant might be in question. The previous owner of the property was planning to put the water park where that second leaching field was and was going to redirect all of the water to end in that area. That may have compromised one of the two leaching fields, but that is outside of the watercourse area. That leaching field is the one located outside the view of the current map. Mark Branse asked if there were any proposed changes to the septic system or leaching fields and the answer was no.

Randy Bernotas asked about the soils coming from the dredging of the pond and if they were going to be tested for heavy metals and pesticides. Matt Sanford replied that sampling would be done on the sediment from the pond for heavy metals and for pesticides that could be associated with Lyman Orchards. The samples will be taken when the water is down.

During the site visit, two of the outlet pipes were found to be obsolete and having nothing coming out of them. There was another pipe found that wasn't identified as to where it came from. A Commissioner wanted to know if it was important for the commission to find the source of this pipe and if anything was coming out of that pipe. Matt Sanford replied that no changes were being proposed for that pipe. Randy Bernotas believes that that pipe may be an overflow for one of the wells when the groundwater gets high. The primary well located on the overflow side was supposed to be one of the wells to replenish the pond, but Matt Sanford has been told that the pump dropped down into the well and hasn't been touched since.

Randy Bernotas asked if the entire 4 million gallons were going to be dewatered. Matt Sanford confirmed that all 4 million gallons would be entirely dewatered in one shot. Randy Bernotas noted that there was a currently a 3-1/2 foot drawdown on Lake Beseck and it was causing some concern for property owners around the lake if there happens to be a hard freeze. Mr. Bernotas was concerned about whether a volume of 4 million gallons would adjust that level in Lake Beseck again. Mr. Sanford didn't think he could answer that without really looking at the entire watershed though his inclination would be to say that it would not adjust that, given the size of the lake and its watershed. The dewatering will be a very slow release and will probably not have an impact on Lake Beseck. Randy Bernotas did comment that Lake Beseck went up 1-1/2 to 2 feet just with the melting of the last snowstorm.

Linda Li asked about additional copies of the entire package for the commission members. Matt Sanford stated that he did discuss it with town personnel and he was told that five copies was what the regulation states is required. Therefore, five copies were provided under the original submission as well as with this new revision. Linda Li interpreted that as saying that it is up to the Town to make that available to the commission members. Mr. Sanford believes that any of the plans are available to any of the commissioners at any time at Town Hall. Lee Vito stated that the requirements are for five copies, but he was sure that more copies could be made available. Mark Branse would presume that applicant could provide more copies since the commissioners are volunteers and may not be able to make it to the Town Hall. Attorney Branse feels that that would be a reasonable request. Matt Sanford stated that they could do that and were just trying to meet with the regulation.

Randy Bernotas asked what the plan was for the soil that was removed. Matt Sanford explained that, after the soil is tested, there will be a temporary stockpile area shown outside the review area. Sean Hayes commented

that the clean soil will then be used for different features on the property and will stay on the property. There was more discussion about another intermittent watercourse area that hasn't been cared for in several years.

Linda Li also asked Matt Sanford about the pedestrian bridge being 11 feet wide, but the measurement on the map says 10 feet. Mr. Sanford explained that typically the walkway coming up to the bridge is 10 feet and the wooden structure will have an overhang on either side for a total width of 11 feet. The new bridge will match the existing bridge system that runs out to the old tubing area that was permitted many years ago.

Linda Li doesn't see the details of the full watercourse, the fill boundaries, a side profile view of the water level with the amount of fill or where the watercourse is and feels that that is very pertinent information. Matt Sanford agreed to provide that information. Linda Li also commented that she would like to know what some of the soil types are in the vicinity. Matt Sanford reiterated that the commission is requesting more detail on the bridge approach, the bridge itself in relation to the water level and soils being added as an underlayment to the plan. Linda Li agreed and added that she'd like to see the profile view showing heights as well.

Randy Bernotas asked if there were any alterations to the island. Matt Sanford replied that the island with the willow tree stays in place. There will actually be some grading below that, but the tree and the island are to remain in place. The applicant wanted to be sure to save that as part of this plan.

Linda Li asked if a wildlife survey had been done and Mr. Sanford stated that they have reviewed the database and do not have a hit within the pond area or within a half a mile of the pond itself.

Linda Li stated that since this is an application for this pond specifically, there are no details for the surrounding area. Matt Sanford reiterated that what was before the commission was the pond expansion, the pedestrian walk around the pond, the pedestrian walk from the existing parking lot to the ski rental area and the handicapped accessible ramp from the existing lodge to the ski rental area. Ms. Li asked if the applicant could provide something giving more of an indication of the general watershed and topography with contour lines. Sean Hayes commented that the pipes are already indicated and in the pond right now. Ms. Li wants to see the overflow area and the topography. Mr. Hayes replied that there is very little overflow coming into the pond because of the lay of the land and any water comes in through the existing pipes. The pipes were reviewed once again. Linda Li said it would be nice to have the contour with the ski hill showing the pipe and how it leads into the pond.

Linda Li had a followup question regarding the pond being meant for snow-making and the wells that would help replenish it. She was wondering if records showed those wells from when Powder Ridge used to be in operation. The applicant does not have those records. Sean Hayes did comment that the wells that were inspected are flowing water right now and there is plenty of water. Mr. Hayes reiterated that while the volume of the pond was being doubled, the amount of trails will remain the same. Randy Bernotas did remember the pond going way down in the winter months and then being replenished from Lake Beseck. Sean Hayes also commented that there is a set volume restriction on the wells as to how much can be tapped per day and Mark Branse confirmed that those restrictions are from the permit from the DEEP. Linda Li believes that the limits were based on tests that were done at the time of the permits.

Lee Vito remembers seeing an engineering study from years ago on the well withdrawal rates and drawdown and that may exist in the files. Randy Bernotas asked Lee Vito to also go back and take a look at the water park permits which were going to use a lot more water than the snow-making operation.

Sean Hayes remarked that it really isn't the amount of snow-making that is at issue; but more an issue of the replenishment and conditions of rain, etc. There are currently 22 trails and there are no plans for expanding that number. Linda Li summarized the project as expanding the capacity will create a buffer of a sort and actually minimize the need to withdraw from the wells. Sean Hayes reviewed the science of snow-making for the commission and the need for surface area. The colder the water, the better for snow-making.

Linda Li again asked about the actual location of where the fill will be located. Matt Sanford explained that the fill will be located in the area near the rock wall, south of the existing stream and wetland. Sean Hayes also reviewed the location of the fill as in relation to the bridge and the rock wall. The watercourse, at its highest, is only about a three-foot width in that area and the bridge is 17 feet.

Matt Sanford also explained the rip rap construction access pathway on the map. It would then be up to the applicant whether or not he wants to leave it as an improved gravel path. Sean Hayes commented that the significant portion of the soil removal will be dry soil and Matt Sanford explained that the construction sequence would be to start with the upland excavation first. The eastern half or upland section of the pond would be excavated first, material removed and stockpiled and as the pond is dewatering and the sediment is drying, then the excavator would go in and begin to remove that material.

Randy Bernotas asked about consideration given to the fish and Sean Hayes commented that he has yet to find a fish. When the pond was drained in the past, it would have lost any fish. Though there may be some fish that have migrated in, it would be a very small amount.

Linda Li also asked about the relationship between water in and out of the pool and the pond. There is no relationship between those two.

Sean Hayes also reported that any trees coming down are trees that are damaged or at the end of their life cycle.

Randy Bernotas asked if there were any questions from the public. Lucy Petrella asked at this point if there had, in fact, been a separate notice of the public hearing. Ms. Petrella noted that no legal notice was read at the opening of the public hearing. Ms. Petrella also asked whether the repairs to the dam at Lake Beseck would affect any of this work in any way. Randy Bernotas noted that there is a question as to whether the state really has the funds for the work at Lake Beseck. Work may be starting in August. Lucy Petrella also asked about fees paid for this application and Matt Sanford reported that the fees based on wetland impact would end up being \$20,000 for this permit and the applicant is asking that, since it is a maintenance project and will actually be improving the functional value of the pond, the fees be waived. Mr. Sanford reported that the base fee of \$240 was paid. Comments were made about the cost of utilizing the commission's consulting engineer, Jacobson Associates, for review of the application as well as cost of advertising public hearing, etc. in relation to the application. Lucy Petrella, as chairman of the Board of Finance and having had 15 years of experience on Planning and Zoning, commented that fees are in place to cover the costs for outside consultants and expenses. Ms. Petrella asked the commission to give serious consideration to not burdening the taxpayers with expenses, but to still take into consideration the needs of applicants. Ms. Petrella also commented the budget is

already somewhat strained this year, including education expenses. There are several other items contributing to budget issues and fees should be considered. It was also explained that the fee could be collected and held and, if not used on the project, would be returned to the applicant.

Mark Branse recommended to the commission that tonight's hearing be transcribed and a public hearing then be advertised. The transcript of the hearing should be entered into the record and the applicant summarize the presentation at the advertised public hearing. Members of the public would then have the opportunity to make comments at that time. Attorney Branse explained that there are basically two choices: one, to act as if tonight's hearing never happened and repeat the procedure; two would be to transcribe tonight's meeting and enter it into the record. It would have been unlikely to be able to close the hearing tonight anyway, so at least the applicant is not being delayed. Attorney Branse also recommended that the commission consider a reduction of fees, except for actual expenses. Attorney Branse's personal opinion is that the commission absorbs the cost of the transcription of tonight's meeting because it was not properly advertised. Attorney Branse also confirmed what Lucy Petrella had said as to the purpose of the fees is to cover the expenses of a project, not to turn a profit.

One commissioner did not feel that a mistake had been made, but that the information tonight was just a presentation to the commission. Attorney Branse explained that the question is if the commission considers this to be a significant activity. A significant activity is one that involves the disturbance of a wetland or a watercourse and dredging of a watercourse is certainly a significant activity. In that case, this had to be a public hearing. The commission could also consider tonight as preliminary and advertise the public hearing for next time. Attorney Branse's concern is that a lot of questions were asked tonight before it was realized that the public hearing was not advertised. Attorney Branse does feel that this has gone way beyond preliminary discussions and had been told that tonight was, in fact, a public hearing. Attorney Branse feels that the safest bet would be to transcribe the meeting and enter that transcript into the record.

Sean Hayes believes that three-quarters of the project is maintenance that includes dredging the pond that is dredged on a regular basis by the Town. On the expansion side, the fees are significantly less. Sean Hayes is asking the commission to waive as much of the fees as possible and does not have an issue with paying for actual expenses.

Lucy Petrella also mentioned, with regard to waiving the fee, that it is not something that commissions do very lightly because fee structures are there for a reason. In the 15 years Ms. Petrella was on Planning and Zoning, she believes they waived fees probably less than five times. For the most part, those waivers were for extenuating circumstances for individuals as opposed for larger developments. If the commission does decide to waive the fees for whatever reasons, she asks the commission to bear in mind that that is not something done as a matter of course, but something that may perhaps be a courtesy or recognition of some type of need. Ms. Petrella is afraid if commissions start waiving fees with every application, there will be no need for a fee structure.

Mark Branse will put some language together with regard to fees. Sean Hayes reminded the commission that this fee structure is a new fee structure and that this is the first time it has been applied for a project this size and that is why it is exorbitant. The reason he is asking for a waiver is that there has never been a fee paid for this amount in the history of the town. Mr. Hayes understands the fee structure to represent a penalty when you are decreasing the wetlands. This project is actually increasing the wetlands.

Lee Vito asked if it was absolutely necessary to increase the volume from four million to eight million for snow-making. Sean Hayes stated that the difference is the environmental impact of drawing from Lake Beseck or drawing on-site from the existing resources. Mr. Hayes explained the averages and that to minimize the impact on the water sources, eight million is the calculated number based on historical hearsay.

Mark Branse reminded the commission that the legal notice for the public hearing must be published 10 days prior and that the transcription would need to be completed before the date of that hearing. Attorney Branse suggested that the next regular meeting, February 20th, would allow time for legal publication and transcription. Randy Bernotas suggested that Lee Vito find out how long it would take to get the transcription done. Attorney Branse did comment that the commission does not need to vote to set up a public hearing. Linda Li again asked that each of the commission members get a copy of the complete file so as not to repeat questions.

Darin Overton then returned to the commission and the commissioners then discussed whether they felt tonight was supposed to have been a public hearing or not. Attorney Branse recommended to the commission that the first thing they do upon receiving any application is to determine if it is a significant activity and if not, is a public hearing desired in the public's interest. As this is a significant activity, a public hearing would be needed. Attorney Branse had been told by the commission's former vice-chair that tonight was a public hearing. Randy Bernotas apologized to the commission that he did not notice the lack of the banner of public hearing on the agenda.

Legal Update with Attorney Mark Branse

Attorney Branse asked the commissioners to mark their calendars for Saturday, March 16th as an all-day session that is offered every two years. Brochures should be going out shortly. The session does cover more than just wetlands and includes procedures, conflicts of interest, notes of intervention and a lot of things that impact what the commissioners do.

Mark Branse talked about a case from 10 years ago called Dobson's Boatyard vs. Stonington and a more recent example from Madison. Both of these cases warn us that when any commission does a motion of approval, that motion has to include, as conditions, everything that the commission has been told will be part of the application. It should also include the reference to the plans that are before the commission, including dates. In the aforementioned cases, the applicant had stated certain things on the record, but the motion did not reference the plans. Linda Li asked if there could be reference to the minutes in that case and Attorney Branse cautioned that the information be included in the motion because any agreement is not binding if it is not included in the motion. Attorney Branse explained that if someone new buys a property that had a wetlands permit and goes to the clerk's office to view the file, they look at the motion for approval (with its conditions) and knows that that is what they have to do. If there were things that the original applicant had agreed to that are not included in the motion, the new property owner is not obliged to do that.

Darin Overton reviewed the standard language in the decision portion of motions and the fact that the final map is usually referenced in the motion. Mr. Overton asked if it was sufficient to use the language, written information and public testimony provided by the applicant. Attorney Branse reviewed the language from the actual case as well as different situations where this could occur. Attorney Branse wants the commission to be aware of these issues and be sure to note them in further motions of approval.

Mark Branse mentioned other changes in law that have to do with bonding, mostly with zoning. The authority of commissions to bond things, such as landscaping, has been very much curtailed. The burden on Planning and Zoning has been increased, but this does not apply to this commission. This commission should not assume that Planning and Zoning is bonding erosion and sediment control and should do their own bonds, if they feel it necessary. Attorney Branse reiterated that any bonding the commission wants should be done at this commission. Darin Overton stated that this commission rarely requires any bonds. Brian Curtis commented that bonds are usually part of Planning and Zoning, and Attorney Branse replied that if that is the case, then that part of it should be moved to this commission. Erosion and sedimentation control bonding should be done from this commission. This was done as a result of the Connecticut Home Builders' Association complaints to the General Assembly about some towns not releasing the bonds for over a year.

Darin Overton stated that the language in the bonding section states that the commission can "require a bond of sufficient sum to ensure compliance with the permit and to place the agency in a position to perform both emergency and long-term remediation and restoration in the event the applicant fails to comply with these regulations or any permit issued hereunder or any remediation orders issued by the agency" Erosion and sedimentation controls fall under the zoning regulations, but Mark Branse reminded the commission that it also falls under this commission's authority. Mr. Overton agreed that there is always a lot of discussion about erosion and sedimentation, but that it truly doesn't fall under the agency's regulations. Attorney Branse interpreted that any activity that is probable to deposit material in a wetland is a regulated activity and if there is no erosion control in the plans, then it is reasonably probable that the sediment will reach the wetland. The applicant does have to address erosion control in every application and it should be on the plans. Attorney Branse suggested that the primary responsibility of bonding of erosion control and other site restoration should be with this commission. If the project is outside the wetland review area, any erosion and sediment control bonding would be with Planning and Zoning. Randy Bernotas stated that he believes that even an activity that does not fall under this commission's review, if it can affect the wetland review area, this commission would still have jurisdiction. Darin Overton and Attorney Branse both agreed.

Darin Overton gave examples of different language used in the commission's findings and Attorney Branse recommended that the commission be as specific as possible in their motions. Randy Bernotas also remarked that the commission is not there to police all issues. Darin Overton explained that the check in place is that Lee Vito has to sign off on all the building permits and would see any activity that would be under this commission's purview.

Darin Overton asked if the discussion of item 8 on the agenda could be deferred further until after discussion of item 9, discussion of fee schedule revisions.

Discussion of Fee Schedule Revisions

Darin Overton commented that he had emailed Joe Geruch for a budget summary for the past year. He also commented that he thought the fee schedule was revamped in 2009 so that the commission would become self-sufficient. What he had not known at the time was that all fees go directly into the general fund. Joe Geruch has said that the information can be extracted out to be able to understand what has been collected in comparison to expenses. Darin Overton does believe that this commission should be self-sufficient.

Mark Branse commented that the commission should be self-sufficient on not only the expenses that you have, but on the expenses that you ought to have. If fees collected justify more wetlands' officer time, more staff time, more secretarial time or more legal time, then that should be.

Darin Overton noted the complex application fee that was added to the regulations where the commission has the ability to get fee estimates and have the applicant deposit a check to cover those expenses. This was actually enacted with the Happy Acres application. There is also a schedule for applications that have larger impacts on wetlands which normally would dictate more intense reviews and mean that more fees should be collected. Darin Overton did look back over his notes from when this schedule was proposed and the fees per square foot, whether it's directly in wetlands or in the upland review area or beyond, were increased by a factor of 10 from what was originally proposed. Mr. Overton does believe those numbers may be a little bit high and asked Attorney Branse if he thought the numbers should be adjusted or if other exemptions be considered. Attorney Branse commented that he thought the base fees were low, based on his experience. The legal notice for a public hearing will take up most of that base fee. As far as the per square foot fee, Attorney Branse has not seen that used very often. Most of the towns Attorney Branse works with have the base fee which covers the basic administrative costs and then use the reimbursement of special expenses. Attorney Branse gave an example that Old Saybrook includes a transcription cost in their complex application approval. If there is no appeal and no transcription, the applicant gets the money back. Attorney Branse did state that it is perfectly legal to have whatever fees the commission would like and that they do not have to match the actual costs as long as, on average, it is a fair allocation of your annual expenses among the various applications that the commission gets.

Attorney Branse also mentioned that a number of towns are getting tired of incomplete applications and, for example, Colchester has the base fee cover one review by the town engineer and one review by the town planner. If the applicant submits revised plans, then an extra fee is applied for further review. Another example is Westport which says that the base fee covers the first three hours of the town engineer and the first two hours of the town planner and if it's over that, then there are extra fees. This is basically to get applicants to submit information that is complete in the beginning.

Darin Overton also mentioned that there are significant activity fees and public hearing fees and while the base fee may be a little bit low, he believes things are covered reasonably well. Schedule A has rarely come into play and most of the applications don't have direct wetland impact and when they do, they are relatively small.

Mr. Overton feels that it may be possible to get rid of schedule A as long as the complex application fee exists. Brian Curtis remarked that a lot of towns have their outside consultants estimate the cost of the review and will charge one-and-a-half times that to the applicant, again returning whatever money is not used. Mr. Curtis also commented that he has not seen the square foot charge used a lot.

Randy Bernotas asked where the commission had gotten the example of charging per square foot to begin with and Darin Overton stated that he thought it was from the Town of Beacon Falls. Attorney Branse asked about the fee charged to Happy Acres and Darin Overton explained that there was no direct wetland impact associated with that project. Mr. Overton did not recall the total amount collected for that project, but does remember not using all of the monies collected. Any unused money was returned to the applicant within the 30-day period.

Randy Bernotas asked if the commission can charge for a contingency factor, based on estimates received by outside consultants. Darin Overton stated that “the agency may charge an additional fee, sufficient to cover the costs of reviewing and acting on complex applications. Such fee may include, but not be limited to, the cost of retaining experts to analyze, review and report on issues requiring such experts.” Mr. Overton feels that the commission could add an additional fee beyond estimates. There was discussion about possibly including a 50 percent contingency factor in the fee structure because the commission does not have the ability to collect more if the expenses should go over.

Darin Overton does like having a fee schedule with penalties built in for applications that are incomplete. Mark Branse confirmed that several other towns have that included in their fee schedule. Mr. Overton reiterated that the goal is to properly collect enough fees to operate the commission as is required.

Lucy Petrella asked Darin Overton to read the waiver provision language. Section 19.7 reads, “the applicant may petition the agency to waive, reduce or allow delayed payment of the fee. Such petition shall be in writing and shall state fully the facts and circumstances the agency should consider in its determination under this subsection. The agency may waive all or part of the application fee, if the agency determines that (a) the activity applied for would clearly result in a 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.” Thus, the commission does have the ability to waive the fee for a benefit to the environment. The next section speaks about the amount of the application fee being clearly excessive in relation to the cost to the town for reviewing and processing the application. Mr. Overton reiterated that all the commission is trying to do is collect a reasonable fee to cover costs. The final section talks about the applicant showing good cause which again leaves it completely at the discretion of the commission.

Darin Overton feels that the commission may want to get rid of schedule A all together and maybe look at adjusting some of the base fees as well as adding some language that was suggested by Mark Branse.

There was also discussion about including the number of copies, etc. in regulation changes. Mark Branse commented that some commissions state that if they do not have the information a certain number of days prior to their meeting, they will not consider it. Darin Overton remarked that the time frame in this process has always been difficult, particularly on large scale applications where there are a lot of different reviewers. Mr. Overton does not like the fact that the commission doesn’t get mailed more of the information. He knows that other commissions get PDF versions or half-scale plans distributed. Mark Branse explained that that could be included as part of the fee schedule. Darin Overton asked if wording to the effect of if revised documentation is not submitted five days before the meeting, there should be no expectation of a decision could be included in their regulations. Attorney Branse confirmed that that could be done. Mr. Overton asked if something could be rejected that was submitted prior to or during a meeting and Attorney Branse felt that that also could be done. In the past, Mr. Overton has set up complex applications with a schedule of time lines for reviews. Generally, commissions include wording to the effect that the commission *Amay@* refuse to consider an application.

Lucy Petrella complimented Attorney Branse for his insight and commended the commission for taking their role very seriously.

Linda Li asked if the commission could require information to be presented in written form rather than just verbally. Attorney Branse confirmed that that could be done with any application.

Randy Bernotas commented that this commission is not only a protector of the environment, but a protector of landowners' rights also and that sometimes becomes a bone of contention. Attorney Branse reminded the commission that they are a regulatory commission and, as a regulatory commission, the goal is to come to a balance. Irene Angiletta then asked if the commission has any control over land use and development, under management practices. Does this commission have any say about the construction of set-back from wetlands? Ms. Angiletta was asking about the scope of the commission's jurisdiction in terms of protecting the environment and whether they commission has any say about development. Attorney Branse concurred that that would require a permit for development in a wetland, but would need a specific example. Ms. Angiletta explained that an applicant came in for development on a piece of property on Lake Beseck that is 1.3 acres. The applicant wants to build seven houses on the property. Ms. Angiletta commented that some of the commission members felt that that was an unreasonable amount of development on that piece of property because the normal zoning for that area is 100 x 100 and he would have been allowed four houses. Attorney Branse then confirmed that that would not be within the jurisdiction of this commission. What would be under this commission's jurisdiction is whether seven houses can be demonstrated, by expert testimony, to have an adverse impact on the wetland or watercourse. If there were expert testimony that that number of houses would have an adverse impact on the wetland and that four houses would have a lesser impact or no impact, that would be something this commission would be allowed to considered. Further discussion continued about the specific application. Darin Overton summarized the issue in that there were going to be less units, albeit they were going to be larger; they were going to be further away from the wetland or water body; there was no direct wetland disturbance associated with it and the applicant did comply with the commission's request for mitigation of impervious surface. Attorney Branse confirmed that he felt that the commission approached that the correct way.

Randy Bernotas then asked if a member of the commission has the right to ask for documentation as to whether or not a property is zoned for the number of structures. Attorney Branse explained that a commission member may ask the question, but it is irrelevant to this commission's decision because that would, in fact, be a Planning and Zoning issue.

Darin Overton asked Mark Branse if a commission member could research information on the internet. Attorney Branse stated that if a commission member is going to do research on an issue, it has to be before the public hearing closes and put into the record and shared with everyone, including the applicant. This means that there has to be a hard copy provided for the record. Attorney Branse reviewed that the essence of a public hearing is that everyone knows what everyone else knows and that the public hears everything that is said. If someone is receiving information online, no one else in the room knows the information. If that information is to be used in making a decision, then that would violate the fundamental basis of the public hearing. Linda Li suggested that the information could be projected on a screen during the public hearing. Attorney Branse mentioned that a second problem would be when a commissioner is doing research, is the commission member acting as an advocate, pro or con. Commission members are supposed to listen and evaluate the information that is placed in front of them. Commission members cannot act as a speaker or a presenter and are primarily there as judges. Attorney Branse gave the example of the commission is given a map and the commission members don't feel that the actual property correlates with what is shown on the map. The commission members may ask about the difference and ask for an explanation. There is a difference between being familiar with something and using your expertise and actually going out to do research and make a presentation.

Randy Bernotas asked about taking pictures on a site visit and Attorney Branse felt that that was a great idea and could be entered into the record. The only issue Attorney Branse would have is to be sure to ask the applicant if they agree that the photos are an accurate depiction of the property. Darin Overton also asked about pictures being distributed amongst the commission members by email. Attorney Branse felt that was perfectly okay as long as a copy was sent to Lee Vito and becomes part of the file. It would become a problem, however, if one commission member wanders off and takes pictures of something that nobody else, including the applicant, saw. The commission members must stay together on site walks.

Wetlands' Enforcement Officer's Report

Lee Vito had nothing critical to report and will defer his report until the next meeting.

Approval of Minutes

Approval of minutes was deferred until the next meeting.

Chairman's Report

Darin Overton deferred his report until the next meeting.

Miscellaneous

There were no miscellaneous items to be discussed.

Adjournment

A motion was made, and seconded, to adjourn the meeting. The meeting was adjourned at 10:30 pm.

Respectfully submitted,

Debi Waz

Debi Waz
Alwaz First

MIDDLEFIELD INLAND WETLANDS
and
WATERCOURSES AGENCY
405 Main Street
Middlefield, Connecticut 06455

Minutes of the February 20, 2013 Meeting

Darin Overton, Chairman, called the meeting to order at 7:05 pm.

Attendance:

Members		Alternates	
X	Angiletta, Irene	X	Dilauro, Richard (arrived at 7:06)
X	Bernotas, Randy	X	Li, Linda (arrived at 7:06)
X	Brown, James	X	Poturnicki, Rob (arrived at 7:43)
A	Charles, Douglas		
X	Overton, Darin	Others	
X	VanderVeer, Daria	X	Vito, Lee

A=Absent
 X=Present

Linda Li and Richard Dilauro were both seated on the commission.

Approval of the Agenda

As there were no amendments proposed to the agenda, Irene Angiletta made a motion, seconded by Randy Bernotas, to approve the agenda as presented. Motion carried unanimously.

Public Session

Michelle Ford, a certified wildlife biologist and registered professional soil scientist, introduced herself to the Commission. She is a new employee at New England Environmental, located in Middlefield as well as a commission member on Inland Wetlands in Middletown. Ms. Ford described her firm to the commission and offered to provide any information the commission may require.

Darin Overton reported that he had prepared thank-you letters to Ken Hinsch and Marianne Corona for their service. Mr. Overton read those letters to the commission. Darin Overton also reported that Ken Hinsch had been asked to stay on the commission for a few more months, but Mr. Hinsch’s wife had informed the first selectman that he had no interest in doing that. The Board of Selectmen met last night and Randy Bernotas was elevated from an alternate to a full commission member.

Darin Overton also reported that the public hearing that was scheduled for 7:00 p.m. will be delayed until the agenda items number 6 and 7 are finished.

Miller Road Bridge Repairs

Howard Fulmer, from Nathan Jacobson & Associates, presented the Town's project for Miller Road bridge repairs. The project involves just removing deteriorated concrete, patching and new guardrail. He presented the grading plans and reviewed them with the commission.

Howard Fulmer reviewed the three main components of the project. There will be a cast-in-place reinforced concrete end wall which will extend three feet up the road at each of the four corners. The purpose of this is to be able to remove the old guardrail and do an updated transition connection to the new end block. Another item will be to remove the wearing course of the bridge which is an oil and stone overlay. The deteriorated concrete will be patched and then a membrane waterproofing will be placed on top of the deck to create a new roof over an old house. The membrane will be wrapped under the deck about six inches and in order to do that, an approximately six foot wide trench will need to be excavated, probably about three feet deep at both ends of the bridge. Once the membrane is placed, approximately 25 feet of pavement will be placed directly over the bridge. The third part of the project is repair of the deteriorated concrete beneath the bridge. There is exposed steel in various areas and exposed cracks as well. The guardrail has become an unsafe situation and needs to be repaired.

There will also be a couple of areas that will get fresh modified rip-rap, approximately four feet wide and varying from six to nine feet long. Erosion controls will be placed during this process. Mr. Fulmer explained that the contractor will provide some sort of floating platform to do the work under the bridge and catch any debris. If the depth of the water is low enough, the contractor could potentially hang something off the bridge. Mr. Fulmer does prefer the floating platform as it is much more portable. This work will hopefully start in July and be done in time for the Durham Fair, as it is an important route for that weekend (approximately a two-month time frame).

Mr. Fulmer stated that this project started as purely a structural repair and there will be nothing done below the water line. The road will be closed for a period of time in order to do the deck work. Mr. Fulmer stated that the bridge is about 77 years old and is actually in fairly good condition. He also explained that after the repairs are done, the parapets and new end walls will be coated with an elastomer acrylic type coating. The color will be selected by the Town. The contractor will either roll or paint that coating on to avoid any over-spray from a spraying application.

The drawings reviewed tonight are permitting drawings and much more detailed construction drawings are in the process of being developed for the contractor. The construction drawings will state precisely what will be required and properly protect the Town. There will most likely be a written specification booklet to go with it as well. This will go out to bid as a Town of Middlefield project, but will be funded by a STEEP grant that is administered by the First Selectman's office.

Darin Overton asked if an application has been filed or if this was just for informational purposes. Mr. Fulmer stated that an application had been filed a week ago. Daria VanderVeer had the application with her. Mr. Fulmer also reported that the DEEP had no concerns with the project. The only State permit that may be needed is a DEEP flood management certification and Mr. Fulmer explained that there will only be temporary impact on the flood plain. They are working on streamlining that process as that type of permit can take six months or longer to obtain.

Darin Overton felt that since there is no direct impact, this application can be deferred to Lee Vito for permitting. No one on the Commission felt any additional information was needed. Mr. Overton explained then that the Commission will have a decision at the next meeting.

Robbin Cabelus, Proposed Activity Within 100' of a Wetland, Demolition of Existing House and Construction of New House, 86 Lake Shore Drive

Robbin Cabelus appeared tonight with Jeff DeFavreau, DeFavreau Associates, her contractor, to review her plans with the Commission. Currently, there is a two-season cottage on the property which she plans to demo and then build a year-round home for her occupation. Ms. Cabelus has lived in Middlefield for 23 years and is downsizing. She has contacted DEEP and submitted, for the record, that they have no concerns at all provided the proper sedimentation control measures are in place. Ms. Cabelus will be seeking a lot coverage variance from ZBA next week, as the new home will be about 5 percent over the 25 percent. She did review the plans with the Commission members. The lot is 55' by about 110' and the new home will cover just shy of 30 percent of the land.

Ms. Cabelus remarked that the driveway will be moved to the other side of the house and will be paved. The current driveway will be removed.

Randy Bernotas asked about the sump pump outlet on the drawing and Robbin Cabelus commented that she thought it was an error. It is actually the well overflow. There is no basement currently, but the new home will have a walk-out basement. The house is roughly 30 to 35 feet from the water. Ms. Cabelus hopes to eventually build a Trex deck off the house.

Robbin Cabelus also had letters from the neighbors on either side and across the street stating that they were in favor of her project. Irene Angiletta asked about the various trees on the property. Two trees on the lot will be removed, however there are very large trees just adjacent to the property. Right now, Ms. Cabelus does not have a firm plan for landscaping. The dogwood trees will be removed, as they are in the location of the new driveway. Ms. Angiletta remarked that in just one year, over 150 trees have been taken down in the watershed area and this just adds to that. Daria VanderVeer also commented about the challenge of trees on such tiny lots and the other alternatives that exist.

Darin Overton commented that there is a curtain drain proposed in front that wraps around and ties into the footing drain. Randy Bernotas asked about the property being hooked up to the sewer system and Ms. Cabelus replied that it was. Mr. Overton also confirmed that the deck which will be at the first floor elevation with the walk-out basement underneath. Daria VanderVeer asked where the catch basin drain and Randy Bernotas remarked that he thought it may go the channel that runs alongside the beach, but he is not positive. Irene Angiletta stated that there is a channel closer to this property, but she didn't think it would run into that channel.

Darin Overton also confirmed that Ms. Cabelus plans to match the existing grade on the lake side of the property. She did comment that they may have to put in a couple of small retaining walls to blend with the neighboring grades. There are no plans to change the retaining wall that backs up to the lake other than a footing drain through it. Jeff DeFavreau explained that he will have to core through the retaining wall unless

they were allowed to tie both into the same drain and not have to go through the wall. Mr. Overton explained that that was not in the jurisdiction of this Commission.

Darin Overton also asked if fill would be needed in front to bring the driveway up and Ms. Cabelus explained that it would just be a little bit to get it to drain to the road. Mr. Overton commented that the current driveway actually drains to the lake and the new design will have it actually draining toward the road. There is no curbing on the road, but there is a bit of a lip at the edge of the driveway. The roof leaders for the new house will all tie into the existing outlet.

Daria VanderVeer asked about the timing of the project. Robbin Cabelus is hoping to begin the project before the height of the summer while the water is down. Mr. Overton asked how they would deal with access on the lake side of the house once the foundation and framing are in and Jeff DelFavreau stated that they would have to be very careful and something would have to be created to go over the top of the well head to get equipment, such as a Bobcat, into the backyard. Mr. DelFavreau does not believe they will be using any type of lull in the area because of the access issues. Mr. DelFavreau also explained that the plan would be to put the foundation in, put the footing drain in, back fill the drain and the foundation, pour the floors, rough grade and then start framing. Randy Bernotas asked if it was a drilled well and if they thought about maybe cutting the casing down and putting a new well head in. Mr. DelFavreau remarked that the engineer had suggested that.

There was more discussion about the percentage of coverage on the land and Darin Overton explained that that was a zoning issue. Linda Li also asked about the side variance. Robbin Cabelus explained that you need 10 feet for the side yard, but the current house is only about 4.5 feet off the property line and that she will, in fact, need to get a variance for that even though she is holding the line. Ms. Cabelus has letters from the property owners to the north and south as well as two neighbors across that street. All the neighbors have no issues.

Mark Branse commented that there were regulations about building coverage only in a residential zone. Darin Overton confirmed that the parcel is located in an HD-1 residential zone and a discussion ensued about the amount of impervious surface. The Commission would like to see a comparison of the existed to proposed amount of impervious surface. The Commission would also like to see a comparison of the amount of water that would drain into the lake vs. how it drains presently. Linda Li also asked for a landscaping plan, but Ms. Cabelus stated that she did not have one because of the very small rear yard and until she sees the house on the lot, she does not know what the landscaping will be. Mark Branse suggested that the Commission ask Brian Curtis if there was anything else that the Commission should be looking for, as Mr. Curtis is present at the meeting. Brian Curtis stated that the storm drains along Lake Shore Drive do go to particle separators that were done as part of the sewer projects and that would be a positive that the water is not going right into the lake off the driveway. Mr. Curtis also confirmed that the Commission's request for comparisons between future and present drainage is a good idea. The main concern would be road surfaces, not roof surfaces. Roof drains are usually considered to be relatively clean water run-off.

Robbin Cabelus also commented that there are other properties at the lake that have 75 percent lot coverage and roofs that are about four times the size of the one being proposed. Daria VanderVeer commented that this is a good opportunity for the Commission to find a balance between what homeowners want to do and what the Commission is charged to do.

Darin Overton reiterated that the Commission would like to see how the watershed changes pre and post, and how the amount of impervious surface changes pre and post and how that relates to the watershed, whether it drains towards the road or towards the lake. The Commission would also like to see some considerations for plantings. Mr. Overton asked if there was particular concern about the 12" maple on the north side. Robbin Cabelus replied that that tree doesn't bother her so much as it has a smaller head, it's just that the root system will be damaged by the excavation. She would be willing to try to keep it, but is concerned about moving equipment, etc. Mr. Overton asked Ms. Cabelus to think about whether the footing drain could possibly be relocated to the other side. Randy Bernotas mentioned that the root system will never go beyond the canopy of the tree, so that's a good way of telling where the roots will be. Ms. Cabelus again pointed out the two large trees that will remain.

Public Hearing

Submitted by Powder Ridge Mountain Park and Resort, LLC. The proposed regulated activities include: perform pond maintenance dredging activities and expansion (into bordering upland areas) to provide additional water storage for snow making. Install pedestrian bridge and trail over unnamed tributary and wetlands to provide safe pedestrian access from parking lot to site buildings. Property location: 99 Powder Hill Road.

* * * * *

Darin Overton recused himself from the application. Randy Bernotas assumed the chair. Mr. Bernotas opened the public hearing at 8:10 p.m.

Marianne Corona filed a petition notice of intervention and request for notices and fillings dated February 13, 2013 with the Middlefield Inland Wetlands and Watercourses Agency. Randy Bernotas read the petition notice of intervention from Marianne Corona into the record. Mr. Bernotas also explained that there is a transcript of the previous month's meeting available for review and that transcript was also available in the Land Use office.

Randy Bernotas stated that the procedure for tonight's hearing would be to get the presentation, hear from the public with any questions and take that evidence and talk about that at the Commission's next meeting.

The Commission was asked if they or their families had worked at Brownstone. Rob Poturnicki reported that his daughter worked at Brownstone, but that has nothing to do with any decision. His daughter does not work for Mr. Hayes at the moment.

Attorney Branse asked if there was anyone present who objected to the composition of the panel for tonight's hearing. Marianne Corona asked that the members be seated so that the record reflects who is seated at the hearing. The full members were seated as well as Richard Dilauro as an alternate. Linda Li commented that Rob Poturnicki had arrived and was also seated.

Matt Sanford, professional wetlands scientist, professional certified soil scientist with Milone & MacBroom, has been retained by Powder Ridge, LLC. and was here to present the pond expansion project and restoration of a pedestrian walk. Mr. Sanford submitted his resume into the record.

Matt Sanford wanted to respond to Commissioner's comments that were raised at the last meeting. The first item was the number of copies submitted as part of the revision and the Commission did receive 10 copies of the revised materials dated February 1, 2013. Another comment was to add the NRCS Soil Survey soils to the actual mapping and those have been incorporated onto sheet 1 of 3, represented by a table located at the lower lefthand corner of the plans. The boundaries are also located on the plans. The different soil types are all located on the map.

There was also a discussion on what the watershed was on the existing pond as it relates to Lake Beseck. There is a graphic that illustrates the watershed. It is approximately 1,300 acres and is highlighted in blue. The watershed to the Powder Hill pond is approximately 228 acres, which is about 17 percent of the contributing watershed to Lake Beseck.

The Commission had also asked for a cross-section of the proposed pedestrian bridge and the fill locations. This comment was raised by the Commission and also by the Town Engineer in his letter. A response was made to Mr. Curtis' letter of February 4, 2013 with a letter from Mr. Sanford dated February 15, 2013 which the Commission has a copy of. Detail was provided on sheet 2 of 3 and a coded version of the detail was also provided on the upper lefthand corner of the plan. It is essentially a wooden bridge structure and the Sonotube supports will be placed. The channel itself is approximately eight feet in width. Typical water depth within this section of the channel ranges seasonally. During the wintertime, it can be from six to eight inches; in the summertime, much less and more in the two- to three-inch range. The clearance area is approximately three feet. Looking upstream of this proposed pedestrian bridge, there is an existing crossing that allows people to access the rental building from the parking lot and that has a 48-inch culvert. Just downstream of this proposed pedestrian bridge, the cross culvert has a 48-inch and a slightly smaller 18-inch high flow culvert. This new pedestrian bridge will be keeping the opening to allow flow through the particular area.

This section also shows where the primary fill will be placed in order to ramp up to the bridge. The existing topography is colored in brown and the gray area is the proposed fill. The proposed fill for the entire walk through the wetland is approximately 15 cubic yards and that was in response to a request by Mr. Curtis. The actual wetland disturbance for the restoration of the pedestrian walk is approximately 695 square feet and that was accounted for in the summary table located on sheet 1 of 3 in the lower lefthand corner.

A few alternatives were considered; the first one being leaving the pond as it is today and not providing a pedestrian walk. This is an historic pedestrian walk through the area that has been overgrown for the last few years and the applicant feels that not providing this access would be feasible, but not prudent. Therefore, no action is not prudent. Mr. Sanford explained that there would be two options for people to access the ski rental lodge. The first one, located on the east side of the building, would be used for handicapped accessibility. This area would be the main drop-off area, both for vehicles and potentially smaller buses, and it would make sense that access would be necessary in that location. Otherwise, those people would have to walk through the parking lot, around the handicapped areas and other buses and start to mix pedestrians with cars. That is something that the applicant does not want to do. Another option would be to actually walk down the access road, but this access road would be primarily closed and there would be no desire to have people moving over that access road during operational hours. The idea would be to funnel people in a safe manner across the wetland and into the ski lodge. Daria VanderVeer commented that the Commission walked right across the whole thing during the site walk as there is no pathway now. She commented that that is a risk as well.

In terms of the pond itself, an alternative would be to leave the pond as it is today. However, as was discussed previously, the pond only provides about four million gallons of surface water for snow making and that is relatively inefficient for today's standards for snow making. Again, it is feasible, but not prudent from a

financial standpoint. Doubling the size and surface area would allow for better snow making on the ski slope. Matt Sanford also explained that the site has a current diversion permit with the DEEP that allows them to pump 11.4 million gallons of water a day from the pond, from four wells and from Lake Beseck. That permit is current up until 2023. The actual withdrawal of water from the pond, from the wells and from Lake Beseck has been permitted.

Matt Sanford went on to explain that the pond not only provides storage for snow-making, but water temperature as well. The water in a well is actually at a warmer temperature than it would be during the winter months in a pond. The colder the water, the better for snow-making. There could potentially be some need to use the wells or Lake Beseck to fill the pond during certain times of the year, but that has all already been permitted. If water were to be pulled from Lake Beseck, it would involve the installation of a portable pump. Sean Hayes explained that the pipe is laid across the surface of the land. Realistically, Powder Ridge cannot utilize the existing piping as it goes across private land. It is also at the shallow side of the lake and it was recommended by the State that they draw off the deeper side of the lake. Randy Bernotas noted that it has worked there in the past. It was also believed that the permit had called for Mr. Leavitt to buy the pipe. Dick Boynton, long-time resident of Middlefield and president of the Lake Beseck Association for 20 years, added that it is an environmental issue if the water is pumped out of the shallow part of the lake as that's where many of the frogs, etc. live. There was also a noise pollution issue with use of a generator.

Matt Sanford then discussed two additional alternatives. The first alternative would be to only complete the pond expansion, with no removal of sediment. That would limit the activities required. Again, this is a feasible option, but not a prudent one because it would not provide the eight million gallons that are needed. That option would only provide a very limited amount of additional water.

The second alternative would be to leave the existing sediment within the pond, but expanding the pond eastward. As the Commission saw on the site walk, the grade steepens as you move eastward and that would then require concrete retaining walls and add a significant amount of cost to the project. Again, this alternative is feasible, but not prudent as the cost of constructing the pond would become too great.

Sean Hayes also commented that if you don't remove the sediment, you are allowing the sediment to travel down to the lake. By performing the maintenance part of this project, there will be a positive impact on the pond and Lake Beseck as well.

Matt Sanford also addressed the comment made tonight regarding the limits of wetlands onsite. Mr. Sanford explained that he has been a soil scientist and professional wetlands scientist for the last 12 years. This site was officially delineated in 1993 by another soil scientist. Part of Mr. Sanford's task for this project was to verify the wetlands limits and he did concur with the limits that had been delineated. Therefore, two different soil scientists have concurred that the limits as shown on the plans are correct.

Linda Li felt that the question that remains is where the additional water that will now go into the pond would have gone before. Matt Sanford directed the Commissioners to the watershed map. The expansion of the pond occurs along the eastern boundary and will not change how the water gets to the pond. Randy Bernotas clarified that what Ms. Li was asking about was that the water is going into Lake Beseck right now, not the pond, but, as Sean Hayes had pointed out, it is bringing a lot of sediment with it. Sean Hayes confirmed that the actual watercourse doesn't change at all, but in fact is just a temporary build-up of water in the pond before it goes on to Lake Beseck. Mr. Bernotas feels that the lake will benefit by this because the pond acts like a silt pond for the lake.

Matt Sanford reported that the pond was last dredged in 1996 and received an approval from the Commission at that time for the removal of a sand bar and dredging and installation of the existing fire protection system. This means it's been about 17 years since the pond was last maintained.

Dick Boynton added that he is also co-chairman of the environmental committee on Lake Beseck and one of the things the committee has been looking for is locations of retention ponds that will hold back rainwater during heavy rains because it brings a lot of silt into the lake. Mr. Boynton feels this is a win-win situation as it's the ideal location for this since this is one of the major areas where silt comes from. Mr. Boynton's committee would also like to avoid pumping the lake during the winter because there is already a six-foot draw-down and they really wouldn't want to go beyond that as creatures in the lake would be frozen and killed. Mr. Boynton expressed his hope that the Commission accepts this proposal.

Randy Bernotas asked if there would be enough impact on the lake during the winter to make it unusable by, for instance, ice fishermen or ice skaters. Matt Sanford could not really answer that question without looking at the diversion permit data that has been provided. Jim Brown commented that, at the moment, this isn't feasible anyway since there is no pipe. Sean Hayes stated that there is an alternative that takes it out via the road with significant expenditures and impairment of roads. Basically, it is not feasible.

There was some discussion about sediment erosion controls to avoid this situation in the future.

A commissioner asked if there was a significant difference in impact with pumping from the lake to the pond and then to the slopes compared to just from the pond to the slopes. Matt Sanford stated that the question was difficult to answer without reviewing the diversion permit and what withdrawal rates are permitted.

Dick Boynton added that normally the six-foot or three-foot draw-down are maintained before the lake freezes. If water is pumped out after the lake freezes, the ice collapses on the shoreline and it becomes so dangerous that the DEEP had to put up signs preventing people from going on the ice.

Sean Hayes explained that the pond was engineering for making snow and has a fountain in it that keeps the water moving so that the pond never freezes. There is no ice skating or ice fishing allowed on the pond because of that reason.

Jim Brown reiterated his question from previous meetings about the fire department's thoughts on how much water can be removed from the pond before it becomes unusable. Sean Hayes reports that there are over 600 gallons per minute currently flowing into the pond. Even if the pond was drawn down to its lowest level, leaving only 10 percent, at 600 gallons per minute, it is replenishing itself at a rate that the fire marshal did not have an issue.

Janet Brown commented that it would take a lot of extra energy to pump around the pond which means more fuel, more machines, etc. With deepening the pond, that would mean more water for the fire department to have access to. She believes those to be pluses with regard to the environment and fire safety.

Randy Bernotas also commented that whatever snow is made with the water from the pond will the melt and return back down to the pond or the watershed.

Daria VanderVeer asked if there was a plan to put fencing up by the concrete walkway. Sean Hayes reminded the Commission that there had been split-rail fencing in that area. The pathway exists as a natural path and

people will go over the area. Mr. Hayes stated that they will put the split-rail fencing back up, funneling the traffic to stay on the bridge only in the wetlands area.

Jim Brown asked about a comment that was made about the water being directed away from Lake Beseck to get more water to the potential water park and the doubt about how that drainage was functioning. Sean Hayes referred to the ravine which was there to stop the erosion going into Lake Beseck which was a plus. The issue of one of the two septic fields on the property will be addressed. There are no plans to use it until it is repaired or replaced. It is currently not functioning and there is no plan to use it.

Randy Bernotas asked if there was any possibility that Powder Ridge would hook up to the sewer system and Sean Hayes said he was told that he cannot ever, ever, ever touch it though Mr. Hayes would appreciate any influence anyone could use for that.

Matt Sanford requested a 10-minute recess to review what was submitted by the intervener. Marianne Corona asked for an opportunity to speak before any recess. Ms. Corona explained that she has a long history with Powder Ridge, helping to sign off on the original permit for Mr. Zemel. In 1993, Mr. Leavitt appeared before the Commission and got approval. As a side note, the fees were \$10,000 at that time to cover expenses.

Ms. Corona expressed her deep commitment to bring skiing and open space back to Powder Ridge. She spoke to the finance director today and the town is now at a \$6 million bill for Powder Ridge. Ms. Corona stated that it needs to be done right this time. She stated that the pond has been pumped dry a number of times in the past. She talked to the DEEP and read from a letter she received from Doug Hoskins. The letter talked about the fact that Powder Ridge is currently allowed to withdraw from both the lake and the pond and that enlargement would most likely require a separate water diversion permit. Randy Bernotas commented that only the DEEP bureau director can formally make that decision.

Mark Branse asked if a diversion permit is needed, how is that relative to the wetlands. Ms. Corona replied that it is because they would be diverting water from the pond. Ms. Corona also stated that the current diversion permit has expired. Attorney Branse expressed that the DEEP has jurisdiction over the diversion permit, but this Commission has none. Attorney Branse questioned the impact of the need for a diversion permit on what this Commission decides. Ms. Corona explained that it affects not only the pond, but the wells that feed that pond. Attorney Branse accepts that Ms. Corona probably has far more knowledge about the diversion permit than he does, but his question is about the application.

Rob Poturnicki was a little confused about how they would be diverting water from the pond. Marianne Corona explained that they will be taking water out of the pond and diverting it as well as from the wells. Mr. Poturnicki explained that the pond would be dredged and expanded and then when it rains, all the water will end up in the big hole that has been created.

Marianne Corona stated that in order to draw water from Lake Beseck or from the pond, a water diversion permit is needed from DEEP. Enlargement of the pond and/or channeling of watercourses would likely require a separate water diversion permit from DEEP, according to Doug Hoskins.

Attorney Branse asked again how that would affect this Commission's review of the pending application which is not water from wells (wells are not wetlands). The application is to deepen the pond. Marianne Corona replied that the reason for deepening the pond is not to use it as a wetlands, but instead as a water source for skiing. Attorney Branse suggested that if a diversion permit is needed and there is none in force today, this Commission cannot grant it and it would have to come from DEEP. Ms. Corona stated that she was trying to

alert the Commission to that fact and that the Commission should get information from DEEP before approving this project. Attorney Branse does not agree and feels that this Commission can only apply its regulations to this application. There are activities that involve many different commissions and agencies with overlapping jurisdictions and the same activity may trigger many different permit requirements.

Marianne Corona remarked that her original question to Doug Hoskins was for information regarding the existing water withdrawal permits for Powder Ridge pond and Lake Beseck and his answer was that DEEP does have a role in the process. Attorney Branse explained that the Commission is now aware of that and that should be the end of the discussion. Ms. Corona believes that before the Commission makes a decision, they should find out if DEEP authority supercedes the expansion. Randy Bernotas replied that even if the Commission gives Powder Ridge permission for this, if a permit is needed from DEEP, he would still have to "jump through that hoop."

Marianne Corona reminded the Commission that this is serious stuff and that it had to be addressed in the past. In the past, Ken Leavitt addressed this Commission and then had to go through DEEP for a diversion permit. Mr. Bernotas stated that that confirmed his statement and that that would then be between the DEEP and Mr. Hayes. Ms. Corona again reminded the Commission that she does want Powder Ridge to succeed and to have skiing up there again.

Ms. Corona had an issue about the upland review area around the pond and there is a problem with no approved septic around the pond. There was a consent order on all the septic at Lake Beseck on December 3, 2009 when Lee Vito got a letter asking for copies of the permit and suggesting that the Town would have to apply for a new permit as it was now the property owner. Ms. Corona stated that she spoke to Ms. Antonello yesterday who stated that the existing systems cannot be used. That order should be addressed before any approvals are given because those systems may have to be located fairly close to the pond.

Marianne Corona stated that she filed as intervener because this information needed to be brought forward. Ms. Corona spoke to Lee Vito today and doesn't believe there has been any discussion between Mr. Vito and Mr. Hayes with regard to what is going to happen with the septic systems. She feels there should be a plan that shows what will happen around the perimeter of the pond. Ms. Corona feels it is environmentally important to do this as well as the huge financial investment that the Town has made.

Randy Bernotas stated that he is taking everything Ms. Corona said into consideration, but does not want to turn this into a water park permit process. Mr. Bernotas stated that there is no need to look at the whole site right now, but just what is on the application before the Commission. Ms. Corona asked how the water will get to the pond and feels that they need to be on a map. Again, she reminded the Commission of the DEEP's response to that issue. Sean Hayes stated that no tributaries coming into the pond will be changed. Ms. Corona replied that she was not saying that he was planning to do that. What she was trying to say was that a water diversion permit was granted based on certain information and that Powder Ridge needs to talk to DEEP about this.

Randy Bernotas asked Matt Sanford to revisit the diversion permit that is currently in place. Mr. Sanford went on the DEEP website and looked up registered diversions. When you search for the spreadsheet, it pulls up the registered diversion for this particular site and it is in the name of the Town of Middlefield at this point, but he believes it has been transferred to Mr. Hayes. It stated that the permit expires in 2023. The figures for the withdrawal of water, combined from Lake Beseck, the wells and the pond, is 11.48 million gallons per day.

Marianne Corona had a copy of the water diversion permit dated 2003 permitting a maximum of 2.8 million gallons per day and a maximum of 2,000 gallons per minute from Lake Beseck and a maximum of 8.6 million gallons a day, 6 million gallons from the Powder Hill pond.

Dick Boynton believes that there are three different issues at hand. The diversion permit that he is familiar with is in regard to pumping water from Lake Beseck and the proposal tonight is for deepening the pond and using natural rainfall. There had also been no discussion about the use of wells and the wells would not change the characteristic of the retention pond. Mr. Bernotas confirmed that that was his point; that that is a DEEP issue and that may have to happen regardless of what this Commission says. Mr. Boynton believes there is an approved septic plan that was submitted some time ago and based on the same perimeter of the pond. The depth of the pond should not have any effect on that. Ms. Corona stated that there was no approved septic system for Powder Ridge.

Mark Branse spoke directly to Marianne Corona and explained that they could not talk about the health code and the septic system as this Commission has no authority there. Ms. Corona understood, but was concerned because it was right around the pond. Again, Attorney Branse explained that it is not part of this proposal and if they were to propose changes to the leaching fields or septic system that were within the review area, they would have to return for a permit to do that. Ms. Corona summarized an article that said that Commissions need to be concerned with what goes on around the wetlands areas when considering a permit.

Jim Brown asked Marianne Corona if she had evidence to show that the septic system is not functioning. Lee Vito stated that he did a report a few years ago about the septic systems and the wells. Mr. Vito had also talked to the DEEP and as far as the order on the septic system, the DEEP said it was closed out because the application and the owners have changed. The DEEP has only requested a copy of any approvals that the town gives and the DEEP feels it is a closed deal.

Marianne Corona stated that in the report that Mr. Vito did, there were two 2,000 -gallon septic tanks and a pump chamber that pumped to the main leaching field located at the north end of the property. She went on to review other portions of Mr. Vito's report.

Attorney Branse stated that there cannot be another word said about the public health code, septic system or diversion permits and that the next thing the intervener says has got to address the proposed dredging of the pond and no other topic. If that were to happen, Attorney Branse suggested that the chair move the intervener out of order. He reminded everyone that the intervener wanted the Commission to be aware of these issues and the Commission is now aware. Anything else has got to focus on the application that is on the table before the Commission.

Marianne Corona went on to the next issue of where the sediment goes and how it gets placed. She would like to see a plan for that. Again, the reason Ms. Corona filed as intervener was to make the Commission aware of what is happening.

Ms. Corona explained that right now, the sewer system is pumping about 12 million gallons of water a year over the mountain into the other watershed. She wanted to know what the connection is between this pond and the watershed and to have someone see what the real effects are going to be on Lake Beseck if you hold 8 million gallons of water out. Mr. Bernotas explained that once the pond gets to that level, the water will be used on the hill and come back down into the pond. Ms. Corona commented that if you read the water diversion permit, that water doesn't come back down until the next spring. She just wants to be sure the Commission takes that into consideration.

Dick Boynton believes that there is something like 400 million gallons of water in Lake Beseck and there is an 11:1 watershed to Lake Beseck. If the watershed at Powder Ridge was taken away, it would still be a 9:1 ratio so there should be no issue.

Matt Sanford withdrew his request for a recess as he believes the intervener has had an opportunity to present her testimony and the Commission has had an opportunity to review it.

Marianne Corona again wanted to remind the Commission that she was not there as an adversary; but is trying to be helpful.

Pete Sibley, from Lake Shore Drive, does not feel that the application is unreasonable or detrimental and should be approved by the Commission.

Mark Branse asked Matt Sanford to address the intervener's allegations that he has not provided information on rates of withdrawal or metering and that this would allegedly impair or destroy the wetlands. Mr. Sanford replied that the allegations have to do with the actual diversion permit for the site. Those are rates that the DEEP has approved for withdrawal of water and are all within the diversion permit application that is on file with DEEP. The answers to those question can be found in the diversion permit. Rob Poturnicki stated that it seemed to not really be irrelevant whether it was 4 million gallons being pumped from or 8 million gallons being pumped from. Mr. Sanford stated that it has to do with what was approved by DEEP under the diversion permit. The terminology that is used in the intervention letter, gallons per minute, stream flow monitoring, withdrawal rates, metering is all terminology that is used in a diversion permit and not really related to the purview of the wetland commission. The DEEP's responsibility is to analyze that data and assess it.

Matt Sanford described the existing wetland as an open water body that was constructed for the purposes of snow-making. Over time, it has seen withdrawal of water, variable across seasons. At times, the pond has been drained completely dry, sometimes half dry and sometimes only a foot dry. Changing the footprint of the pond would increase the volume of water available for snow-making. There would still be some withdrawal of water, but no significant impact to the system that exists. The wildlife, and very limited fishery, are used to that condition and would not negatively impact that system by deepening and widening the pond.

Sean Hayes explained that the reality is, with the sediment build-up over the last 17-plus years, this pond was over an estimated 6 million gallons. So, the increase is only from 6 to 8 million gallons and the in and out doesn't change at all. Mr. Hayes explained that they are not asking for, nor seeking, additional diversion permits. Rob Poturnicki wanted to be clear on the flow rates and couldn't see how it is relevant to this application as it's just "taking it from a bigger bucket."

Daria VanderVeer commented that if it were looking like the pond was going to constantly be drained completely dry, you would think about the fish but it certainly doesn't seem like that will happen. Matt Sanford explained that there may be no fish at all or it is very limited. He reminded the Commission that the pond has been drained dry and the only source of fish entering the site would be the small tributary and that is a stream environment and any fish want to remain in the cooler waters of the stream. Furthermore, the only way fish would get into this pond would be through attachment to a waterfowl egg and being transferred. Mr. Sanford states that he has not seen any fish out there and does not believe that this is a significant fishery resource. Rob Poturnicki commented that, even if it was, if the pond remains as it is, it will have more impact on the fish than expanding the pond and giving the fish more area.

Marianne Corona asked Matt Sanford why DEEP would be interested in diversion and putting limits on how many gallons could be pumped. Mr. Sanford does not believe that that is a question under the purview of this Commission. Ms. Corona reminded him that he was making an application to increase the size of the pond and take water out and put it on the hill as snow. Attorney Branse reminded Ms. Corona that, while she has the right to ask a question, it has to be relevant to what is before the Commission and it is his recommendation that this is not relevant. Ms. Corona replied that it is for the Commission to decide as to whether it is relevant or not.

Randy Bernotas stated that Mr. Sanford believes it is not relevant and so does the chair. Other Commission members agreed. Mr. Bernotas believes that the thing DEEP would be concerned about would be the wells more than anything else and that this application is about the pond.

Attorney Branse asked if Brian Curtis has had a chance to review the applicant's draft motion. He suggested a recess so that Mr. Curtis can review the draft motion and the conditions that are included in it. Randy Bernotas recessed the meeting for 10 minutes.

(10-Minute Recess)

Randy Bernotas brought the hearing back to order at 9:47 p.m.

Attorney Branse stated that the applicant has provided a draft motion for approval, which is not unusual. Attorney Branse asked Brian Curtis if there were any changes he would suggest. Mr. Curtis had reviewed the proposed motion and items about monitoring construction by the engineer and notifying the wetlands officer were included in that motion and he has no objections.

Randy Bernotas asked if there were any further comments or questions. Marianne Corona asked if she could review the draft motion.

Rob Poturnicki made a motion to close the public hearing, seconded by Rich Dilauro. Motion was passed, unanimously.

Randy Bernotas explained that the Commission will take all of the evidence into consideration and would not be voting on it tonight, but probably at the Commission's next regularly scheduled meeting.

Randy Bernotas did ask if the Commission would like to hold a special meeting to discuss the evidence on the Powder Ridge application prior to the next regularly scheduled meeting. Daria VanderVeer asked if the applicant was on a tight time frame. Randy Bernotas explained that there could be no vote tonight. Attorney Branse explained that the Commission could in fact vote tonight.

Randy Bernotas asked for time to be able to read over the draft motion and conditions and get additional input from Attorney Branse. Mr. Bernotas did not feel comfortable voting on this at tonight's meeting. Rob Poturnicki felt that the process was dragging on and the Commission should vote and move forward.

Marianne Corona was going to comment, but Attorney Branse reminded her that the public hearing was closed and that once the hearing is closed, no member of the public can address the Commission, intervener or not.

Attorney Branse has analyzed and modified the motion and emailed the modified version of the document to Lee Vito. The Commission agreed that it would be good to think about the motion, but it did not need to be for a full month.

Daria VanderVeer asked when the earliest date was that the special meeting could be held and Attorney Branse explained that it could be at least 24 hours later. After discussion of various dates and times, it was decided to hold a special meeting on Friday, February 22 at 6:00 p.m.

Attorney Branse asked if the Commission would discuss the allegations of the intervention tonight. A Commissioner did not believe the septic systems were an issue with this application and there were no changes being made to any feeder streams. Randy Bernotas commented that if the applicant wasn't before the Commission to increase the volume of the pond by dredging and expanding it, would the Commission be looking at the septic systems at this point. Dr. Brown replied that the Commission only looks at things that are presented to them for permits. Mr. Bernotas felt that if the septic system had a problem, it will have to be addressed by Mr. Hayes and then eventually by the Commission, but it does not pertain to this application. Daria VanderVeer commented that the Commission needs to be extremely careful not to overstep their bounds when making a decision in order to avoid it being overturned on appeal. Ms. VanderVeer feels that while the Commission should look comprehensively, the decision cannot be based on something that is not under the Commission's jurisdiction.

Randy Bernotas addressed the other issue of the intervention and remarked that those issues will all be contained within the diversion permit which is also out of the jurisdiction of the Commission. Daria VanderVeer does not agree with the contention that that data is necessary to ascertain the impact on the wetlands and feels that there is a lot of data already available to do just that.

Randy Bernotas then asked how the Commission felt about the contention that the impact on the Lake Beseck watershed has not been determined. Daria VanderVeer felt that there has been a lot of discussion about what or will not happen downstream. Ms. VanderVeer also mentioned that she thought that the pond and Lake Beseck have two different watersheds. Linda Li stated that it is also one watershed, but that Mr. Sanford had shown the relative size of the watershed for the pond compared to the Lake Beseck watershed. Daria VanderVeer wondered what the intervener meant by impact to Lake Beseck and whether that was the work to be done or the impact of ultimately dredging the pond. Ms. VanderVeer felt that the work to be done would not impact the lake. Jim Brown felt the most impact on Lake Beseck would occur if the pond was not maintained year after year. Linda Li also mentioned that the diversion permit shows water withdrawal rates being a lot higher for the pond than the lake and that means that it would have been okay to totally drain the pond. Ms. VanderVeer remarked that that is just what the pond was constructed for. The Commissioners then had a discussion about the old days vs. now and the updated technology that is used today for snow-making.

Attorney Branse has listened to the public hearing comments and the Commission's deliberations as well as considering what Brian Curtis had said and will email modifications of the draft motion to the Commission members.

At this point, Darin Overton returned to the meeting at 10:16 p.m.

Discussion of Fee Schedule Revisions

This subject will be deferred to the next meeting.

Wetlands' Enforcement Officer's Report

Lee Vito had to leave the meeting at about 9:45, but left a report with Darin Overton.

Bridge project and tree removal at Route 147 and Miller Road: Lee Vito had met with State DOT concerning tree removal for this project and approximately eight to 12 trees will be removed.

Powder Hill Lakeview Estates: A meeting was held with the property owner and they are planning to build a well pump house.

Approval of Minutes

Linda Li had a number of issues with the minutes and that the way the minutes are written make statements sound like fact, rather than just one person's statement. Attorney Branse commented that minutes are supposed to record what people have said and don't necessarily mean it's true. The minutes are just something someone said unless the Commission were to make a finding in a motion. Daria VanderVeer asked if they could make corrections to the minutes by referring to the transcript in this case. Darin Overton asked if the section of the minutes that refer to the public hearing can be deleted and the words "refer to transcript" be used in its place.

Randy Bernotas asked if it made any sense to keep the minutes electronically. Attorney Branse replied that as long as they are accessible to people for the Freedom of Information act, they can be kept on disk or printed copy. Attorney Branse does believe that the Town Clerk does have to have a paper copy.

Darin Overton suggested that the Commission approve of all of the 2013 minutes at the next meeting.

Chairman's Report

Darin Overton had nothing to report.

Miscellaneous

There were no miscellaneous items to be discussed.

Adjournment

A motion was made, and seconded, to adjourn the meeting and was carried unanimously. The meeting was adjourned at 10:25 pm.

Respectfully submitted,

Debi Waz

Debi Waz
Alwaz First

MIDDLEFIELD INLAND WETLANDS
and
WATERCOURSES AGENCY
405 Main Street
Middlefield, Connecticut 06455

Minutes of the February 22, 2013 Special Meeting

Randy Bernotas, Acting Chairman, called the meeting to order at 6:09 pm.

Attendance:

Members		Alternates	
A	Angiletta, Irene	X	Dilauro, Richard
X	Bernotas, Randy	X	Li, Linda
X	Brown, James		
A	Charles, Douglas		
A	Overton, Darin	Others	
X	Poturnicki, Rob		
X	VanderVeer, Daria	A	Vito, Lee

A=Absent
 X=Present

Linda Li and Richard Dilauro were both seated on the commission.

Approval of the Agenda

Rob Poturnicki made a motion, seconded by Richard Dilauro, to approve the agenda as presented. Motion carried unanimously.

Vote on Powder Ridge Mountain Park and Resort, LLC application

Randy Bernotas read the proposed motion into the record (see attached) up to and including the application fee portion of the motion.

Mr. Bernotas had spoken with Attorney Mark Branse earlier and determined that approximately \$3,100 has been spent so far on this application. Mr. Bernotas suggested an application fee of \$7,000, but does not feel it will be anywhere near that.

Linda Li asked what the normal application fee would be and Randy Bernotas stated that it would be closer to \$15,000 or \$16,000. What Mr. Bernotas and Attorney Branse looked at were the bills that are currently in-house which add up to roughly \$3,100. Those bills do not include the meeting on February 20, 2013 or any future work that Brian Curtis will have to do, as well as any unforeseen expenses or emergencies that come up. Mr. Bernotas feels that \$7,000 is a reasonable figure and any unused monies would be returned to the applicant.

Linda Li would feel more comfortable if the expenses were included for any work done so far and then that amount were doubled for the application fee. Randy Bernotas did not feel there would be much added for the February 20, 2013 meeting. Daria VanderVeer suggested that there might be an additional \$500 for that meeting. Randy Bernotas agreed and thought that \$1,000 would be the most added.

Another Commissioner brought up that Attorney Branse had been scheduled to be at the January meeting even before Powder Ridge was on the agenda and that those expenses should go against Powder Ridge anyway.

Randy Bernotas explained that Brian Curtis is the town engineer, and that he felt that anything not being handled by the Enforcement Officer should be handled by the town engineer. Mr. Bernotas believes that there would be enough money set aside for Brian Curtis with the application fee being set at \$7,000.

Daria VanderVeer asked what other possible expenses could come up. Examples would be if Attorney Branse had to get involved again or something unexpected comes up during the work. Linda Li was concerned that you can't plan for everything and wanted to be sure there would be enough for any expenses. Mr. Bernotas feels that \$7,000 is a reasonable number that doesn't overburden the applicant or under-finance this Commission.

Daria VanderVeer explained that normally, when the applicant first arrives and starts to make the application, the Commission sees whatever experts are needed during the hearing process, and tells the applicant right up-front what application fee would be needed. Since this process is nearing the end, all of the experts have been hired for the most part and the Commission doesn't expect to spend more.

Randy Bernotas reminded the Commission that this property has been looked at with a fine-toothed comb over the years and has been flagged in prior years. Mr. Bernotas doesn't really see a need to look at it again.

Jim Brown was concerned that Lee Vito would have to monitor the project, but Randy Bernotas explained that Brian Curtis would be monitoring the project with Lee Vito. If Lee Vito has any issues, he is to call Brian Curtis. Daria VanderVeer mentioned that item 4 of the conditions addresses this issue.

Randy Bernotas also reminded the Commission that Milone and MacBroom are a very reputable engineering firm who are working on this project and will probably be hiring the contractors. Dr. Brown had a concern about who will actually be doing the work. Daria VanderVeer remarked that if Brian Curtis found the project

to be in violation of the permit, there would be a cease and desist order and the applicant would need to return to the Commission and amend it. Dr. Brown referred to how much was charged for Happy Acres.

Daria VanderVeer referred to pages 45 and 46 of the Commission's regulations which give the basic fee schedule and fees for complex applications. She read a section to the Commission about acting on complex applications and what the fee may include. The regulations require that any portion of the complex application fee in excess of the actual cost shall be refunded to the applicant no later than 30 days after publication of the agency's decision. Ms. VanderVeer interprets that section to say that the Commission does not get to keep the applicant's money while the project is being worked on. Linda Li agreed that it really doesn't matter because all of the money would go back once a decision is made by the Commission.

Randy Bernotas read the remainder of the motion into the record.

Randy Bernotas made the motion (as attached), seconded by Rob Poturnicki. The motion was passed unanimously.

Adjournment

A motion was made by Daria VanderVeer, seconded by Rob Poturnicki, to adjourn the meeting. The motion was carried unanimously and the meeting was adjourned.

Respectfully submitted,

Debi Waz

Debi Waz
Alwaz First

Middlefield Inland Wetlands and Watercourses Agency
February 22, 2013

Application: Powder Ridge Mountain Park and Resort, LLC proposed regulated activities for pond maintenance dredging and expansion (into bordering upland areas) to provide additional water storage for snow making, installation of a pedestrian bridge over unnamed tributary and wetlands to provide pedestrian access from parking lot to site buildings. Property located at 99 Powder Hill Road.

IWC Permit #1203-12 WET.

Decision:

Fee Waiver:

The Commission has considered the criteria of Section 19.7, and makes the following findings:

Per paragraph (a):

The activity applied for would clearly result in a substantial public benefit to the environment by the removal of accumulated sediment in the existing pond, thereby increasing the pond's capacity to trap new sediment originating upgradient. Such sediment would otherwise reach Lake Beseck. This factor *supports* a reduction in the application fee.

Per paragraph (b):

The costs of review were increased by the expectation that the application would be controversial and might spark an intervention, an appeal, or both; but upon consideration of the intervention (see below), no unreasonable impact was alleged that is either within the Commission's jurisdiction or supported by substantial evidence, and so the additional review costs should not be borne entirely by the applicant. This factor *supports* a reduction in the application fee.

Rightly or wrongly, an intervention *was* filed and the Commission required both legal and engineering advice to respond to it. This factor *does not support* a reduction in the fee.

The applicant did not retain its own attorney, placing a greater urgency for the Commission to have its own attorney present. This factor *does not support* a reduction in the fee.

The applicant promptly provided all information requested by the Commission and its consulting engineer, allowing adequate time for review by the engineer and the Commission members. This factor *supports* a reduction in the application fee.

Per paragraph (c):

The applicant raised the issue of fee waiver at the earliest opportunity, rather than awaiting the outcome of the decision. This factor *supports* a reduction in the application fee.

The application is for maintenance dredging of an existing pond, and a slight lateral expansion. If this was anywhere but Powder Ridge, it would have been a routine application. However, anything that touches upon Powder Ridge has for many years stirred deep emotions in Middlefield, and complicates even the simplest of proceedings. The applicant is seeking to bring this long-running saga to a conclusion that all speakers, including the intervener, agree is the best one for the community. The applicant should not be penalized for the history of controversy that Powder Ridge stirred under previous owners, previous proposals, and previous conditions. This factor *supports* a reduction in the application fee.

The Commission reduces the application fee to \$7,000 (seven thousand dollars).

Notice of Intervention:

The Commission has considered the Notice of Intervention filed pursuant to CGS 22a-19, and makes the following findings:

- The intervention contains no allegations, nor is it supported by any expert testimony, to the effect that maximum pumping rates, rates per minute or day, dates of pumping, or lack of metering or monitoring, is reasonably likely to unreasonably impair, pollute, or destroy the wetlands and watercourses involved. An allegation of inadequate information by the applicant is not sufficient to sustain the intervener's own burden to prove the allegations of the intervention.
- The Commission also finds that the allegations of the intervention are not adequately specific to allow meaningful review.
- The Commission also finds that the allegations of the intervention, as explained by the intervener, raised issues which are not within the Commission's jurisdiction, i.e., State diversion permits and Public Health Code compliance.
- Lastly, the Commission finds that feasible and prudent alternatives have not been identified for a lack of information that, in the first instance, bears no identified relationship to unreasonable impairment, destruction, or pollution of the subject wetlands and watercourses. Even if the maximum pumping rates, rates per minute or day, dates of pumping, or metering or monitoring were provided, the intervener has not provided information or testimony indicating that there would be any impacts on wetlands or watercourses that are different from those without such information. The pond will be filled with existing flows from the existing watershed, or from existing wells if required.

Therefore, the Commission finds that the intervener has failed to sustain her burden of proof to support her allegations, to sufficiently detail the claimed adverse impacts, or to identify feasible and prudent alternatives to the activity as proposed or as modified by conditions of a permit that the Commission may grant.

Motion: That the Middlefield Inland Wetlands and Watercourses Agency, having considered the factors pursuant to Section 10 of the Inland Wetlands and Watercourses Regulations of the Town of Middlefield,

Commissioners' knowledge of the area, and after review of written information and public testimony provided by the applicant on this application finds the following:

1. That the activity was determined to be a significant activity and a public hearing has been held to allow input from the public.
2. That the Commission conducted a field walk of the property with the applicant's representatives to review current field conditions and better understand the layout of the proposed improvements.
3. That there are no feasible and prudent alternatives to the proposed activity which would have a lesser impact on the wetlands and watercourses. The watercourse in this instance is a man-made pond that was built for snow-making at the adjacent ski area. A smaller or shallower pond, as now exists, has no benefit over the larger and deeper pond proposed, and whatever natural resource benefits may be exhibited by the existing pond, they will be enhanced by the dredging and expansion. In addition, expansion of the existing pond reduces the need to draw water from Lake Beseck, as was done at one time, and thereby avoids the potential impact on Lake Beseck, which is a large body of water with substantial recreational and habitat functions. This is especially the case during the winter when the Lake is already drawn down.
4. The pond serves as a sedimentation basin, but because it has not been dredged since 1997, that function is impaired. Removal of accumulated sediment would improve the pond's function as a sediment trap, to the benefit of Lake Beseck.
5. If the pedestrian bridge is not replaced, visitors are likely to take the shortest route from the parking lot to the ski rental building, which will have a more negative impact on the watercourse than the construction of the bridge and the confinement of pedestrian movements to a non-erodible surface. Other routes for pedestrian movement create the probability of compromised safety due to conflicts between vehicular and pedestrian movement.
6. There are feasible and prudent alternatives to the manner in which the activity is performed, and those feasible and prudent alternatives are contained within the conditions of approval in this motion.
7. That the proposed activity will not have a significant adverse effect on the inland wetlands and watercourses as presented, provided all permit conditions are adhered to.

Therefore, the agency grants, with conditions, approval of the MIWWA Permit Application of Powder Ridge Mountain Park and Resort, LLC for proposed regulated activities for pond maintenance dredging and expansion (into bordering upland areas) to provide additional water storage for snow-making, installation of a pedestrian bridge over unnamed tributary and wetlands to provide pedestrian access from parking lot to site buildings, as presented and shown on plans entitled:

"Pond Maintenance Dredging Project -- Site Plan, A Powder Ridge Ski Mountain & Resort Area, Powder Hill Road, Middlefield, CT," sheets 1 of 3 through 3 of 3, dated December 17, 2012, revised to February 1, 2013, as prepared by Milone and MacBroom, Inc.

with the following conditions:

1. That all activities have appropriate sediment and erosion controls in place in accordance with the 2002 DEP Erosion and Sediment Control Guidelines to prevent sedimentation of downstream wetlands and watercourses. In particular, any dewatering activities associated with excavation on site shall have appropriate sediment containment to minimize discoloration of receiving waters.
2. That all maintenance and refueling of equipment and vehicles is performed as far as practical from all wetlands and watercourses, at least 100' if possible. All oil, gasoline and chemicals needed at the site

- shall be stored in secondary containment to prevent contamination of any wetlands or watercourses from possible leaks.
3. That the Middlefield Wetlands Enforcement Officer be notified prior to the proposed start date of construction to verify that appropriate sediment and erosion controls are in place when construction begins.
 4. That regular inspection of the pond dredging and enlargement project be done by the design engineer in order to make recommendations to the Owner and contractor regarding operation of, and adjustment to, erosion and sedimentation control measures. In particular, it is anticipated that field-based observations and adjustments will be needed with the sediment basin, dewatering sump, temporary bypass pipe, stabilization of the easterly slope, and sediment controls around the stockpile area. These efforts should be coordinated on a regular basis with the Wetlands Enforcement Officer.

**MIDDLEFIELD INLAND WETLANDS
 and
 WATERCOURSES AGENCY
 405 Main Street
 Middlefield, Connecticut 06455**

Minutes of the March 20, 2013 Meeting

Darin Overton, Chairman, called the meeting to order at 7:04 pm.

Attendance:

Members		Alternates	
X	Angiletta, Irene	X	Dilauro, Richard
X	Bernotas, Randy	A	Li, Linda
X	Brown, James		
X	Charles, Douglas		
X	Overton, Darin	Others	
X	Poturnicki, Rob	A	Vito, Lee
A	VanderVeer, Daria		

A=Absent
 X=Present

Richard Dilauro was seated on the commission.

Approval of the Agenda

Darin Overton reported that Lee Vito had issued a violation in regard to inadvertent filling of some wetlands at Powder Ridge, but the issue was too late to make the agenda and will most likely be covered under the Wetlands Enforcement Officer's Report.

Rob Poturnicki made a motion to approve the agenda as presented, seconded by James Brown. Motion was passed unanimously.

Public Session

There was no one from the public who requested to address the Commission.

Miller Road Bridge Repairs

Darin Overton drafted a motion that was sent to the Commission members. Mr. Overton explained that if the Commission had any questions, Brian Curtis was in the adjoining room and would be available to answer any questions. Mr. Overton explained that in the process of preparing the motion, he did have a couple of questions that he discussed with Brian Curtis. Mr. Overton feels that there is no direct wetland impact and the only thing that will go in the water will be the floating platform. No Commission members had any questions that needed to be addressed.

Darin Overton made a motion (as attached), seconded by Rob Poturnicki. Motion was passed, 6-0-1, with Doug Charles abstaining.

Robbin Cabelus, Proposed Activity Within 100' of a Wetland, Demolition of Existing House and Construction of New House, 86 Lake Shore Drive

Robbin Cabelus presented a revised plan to the Commission, with the house being a little bit smaller than originally proposed. The house is now 2 feet narrower on the south side. The Commission had asked for pre- and post- impervious coverage and Ms. Cabelus reported that existing is 26.1 and the new would be 38.8. This does not include the deck without the roof, but does include the house and the covered front porch. Ms. Cabelus did not include the deck because it will not be covered and will freely drain.

Darin Overton reviewed the numbers and concluded that the house is approximately 500 square feet larger. Robbin Cabelus also commented that the driveway is a bit larger as well. Because the driveway is being moved from one side of the lot to the other, it will be raised roughly 1 foot to drain to the road. Irene Angiletta asked how much fill would be required to do that and Ms. Cabelus felt that they would be able to work with what was there from the excavation.

Irene Angiletta commented that she lives in the neighborhood and does not feel that it will be a small amount of fill required. Ms. Angiletta would feel more comfortable if there was a number attached with some amount of fill that will be required. Another Commission member wondered how that was relevant to this application. Ms. Angiletta reminded the Commission that Darin Overton had mentioned at the last meeting that one of the

considerations was the way that the water drained. If the water from this new driveway is supposed to drain into storm sewers on Lake Shore Drive, then there has to be considerable fill, in her opinion. The other Commission member feels that there is a benefit to the water running into the drains rather than the lake.

A question was asked if excavation would be required for the walk-out basement and Ms. Cabelus replied that she thought it was about at grade in the back. Ms. Cabelus then reviewed the plans for the Commission. The elevation for the garage will be at 324, which is just a foot higher, and will feather out over 35 to 40 feet. The footing on the basement is at 317 while the wall in the back is at 316. She did not originally plan to have a walk-out basement, but the grade favored that. Ms. Cabelus commented that there would be a full basement, but not under the garage. Mr. Overton commented that it seems that there is only about a 2-foot fill and there will be about 4 feet of fill underneath the garage slab. Irene Angiletta asked if that would affect the adjoining property owner on the north side. Robbin Cabelus replied that they can blend into the property next door without diverting any water to them.

Irene Angiletta asked about the sump pump and Robbin Cabelus told the Commission that that has been taken out. Ms. Angiletta also asked about the drains from the roof and whether they drain into the lake. Ms. Cabelus replied that the roof drains and footing drains will drain into the lake, just as they do now. Darin Overton reminded the Commission that, as general practice, water from roof areas is treated as clean water by the Commission.

Irene Angiletta is also concerned about retaining walls. Ms. Cabelus doesn't feel that any walls will be needed, though if they are needed, it will be just to make sure the water flows properly. Ms. Angiletta also asked about pre- and post- effects on the watershed from this additional development.

Robbin Cabelus had that information, but prefaced it by saying that she was told that it was not an accurate assessment on a lot of this size although she did have it done by the engineer and it is very insignificant. Darin Overton explained that what the Commission was looking for was a simple analysis of the change in the watershed area. Ms. Cabelus stated that she had given the minutes from the meeting to Pat Benjamin of Bascom & Benjamin and asked him to take care of it. Mr. Benjamin said that that wouldn't ordinarily be done because it's not highly accurate. Mr. Overton explained that it was not accurate because these models are meant for large watersheds and this is a very tiny watershed. Mr. Overton reviewed the analysis and concluded that it does show a small increase in the flow, looking at the overall site as if it were all running to the lake. Mr. Overton concluded that there was approximately 754 feet of additional impervious, pre- and post-, the house being about 500 feet of that. The existing driveway is about 512 square feet and the new driveway is 675, with a difference of about 163 square feet.

Irene Angiletta also asked about the effect of taking down the trees. Mr. Overton explained that trees are not taken into account in the analysis. Robbin Cabelus explained that she will be landscaping, but doesn't have an exact plan at this point. Ms. Cabelus reported that she went before the ZBA Commission last night and they asked for her to keep the south side open to enable a fire truck to get through. Ms. Cabelus explained that she has no problem planting a few extra trees, if desired. Robbin Cabelus also explained that she would not be able to save one of the trees that was talked about because the contractor will need to remove it to gain access. All stumps will be removed when the trees are removed.

Irene Angiletta asked if Ms. Cabelus had received the variance from the Zoning Board of Appeals and Ms. Cabelus stated no, she had to return back to the ZBA next month.

Irene Angiletta asked if they could include in the motion that there should be landscaping and trees. Mr. Overton thought that was a tough condition to include. Obviously, the Commission hates to lose ground by adding impervious surfaces, but the plan has been scaled back and is not much different than the prior layout. If the Commission feels there is an adverse impact that should be mitigated, then a condition can be added to deal with that but the layout is very similar to what was there; it's just a bigger footprint and is being elevated just a little bit. The driveway will now drain towards the road. Ms. Angiletta asked if that could be part of the conditions, that the driveway really does drain toward the road. Mr. Overton commented that there is a plan on file that shows that and that if it was built different from the plan, it would not be consistent with what was permitted.

The Commission then discussed plantings and landscaping requirements and whether that could be part of the conditions of the motion. Randy Bernotas felt that Ms. Cabelus would not be leaving dirt and would be doing some kind of landscaping that will probably be a benefit to the area. Ms. Angiletta reminded the Commission that there have been many instances in the past where people haven't done exactly what they said they were going to do and that the Commission is looking to protect the environment as much as possible. Ms. Cabelus invited the Commission to visit her property at 19 Orchard Lane and look at the landscaping that exists there. She also commented that she will not be removing any of the hedges along the side of the property.

Darin Overton reiterated that he felt it would be difficult to condition the motion to add landscaping and things like that, without some sort of specific finding.

Darin Overton made a motion (as attached), seconded by Irene Angiletta. Ms. Angiletta asked about including the variance as part of this permit. Darin Overton explained that if Ms. Cabelus does not get the variance, she will probably have to come back before this Commission with a modified plan. Having no further discussion, motion was carried, 6-0-1, with Doug Charles abstaining.

Discussion of Fee Schedule Revisions

Irene Angiletta mentioned an article in the Hartford Courant about Avon and complex applications and Darin Overton commented that that provision is in Middlefield's regulations.

Randy Bernotas felt that the Commission could look at an application and the plans and surmise what it will cost. Darin Overton commented that the current fee schedule A section doesn't consider all types of applications. Mr. Overton would like to get rid of that section as the complex application provision is in the regulations. That provision actually allows the Commission to get quotes and estimate what the fee would be.

Commission members discussed possible situations that could come up with applications and what concerns there would be.

Darin Overton stated that the Commission's biggest expense is the Coastal Conservation District which costs the Town \$1,500 per year to assist the Commission and they are hardly ever used. That is a resource that is basically already paid for and the Commission can call them on for assistance. Another Commission member

commented that one of the best resources the Commission has is actually Darin Overton who can tell the Commission what they will need and will not need.

Darin Overton would like to remove schedule A and look at some of the other fees. The Commission will need to schedule a public hearing for this issue.

Mr. Overton also reported that the Commission basically collects about 50 percent of their projected fees over the course of the year, so the Commission basically funds itself. Last year, the Commission had a \$12,000 budget and the projection is that the Commission will use about \$7,500 and that has been the case for the last two years. The Commission has been consistently below budget and Darin Overton recommended a budget of \$10,000 to the Board of Finance.

The issue was tabled until the next meeting.

Wetlands' Enforcement Officer's Report

Lee Vito left a copy of his report with Darin Overton. Item A refers to Powder Ridge Mountain Park and Resort and that a violation letter was issued to Mr. Hayes of Powder Ridge on 3/14/13. This was as a result of the site inspection where a hauling road was found to be in a wetland area or in the review area. Mr. Overton read the letter of violation to the Commission. There were also photos of the area with the report. Lee Vito had requested Sean Hayes come to tonight's meeting to discuss this issue.

Darin Overton explained that he has been involved with the work at Powder Ridge and that when the soil scientist went out to walk the area, the hauling road was noticed at that time. This road was put in last Fall and at that time, the owner did not realize there were wetlands in that area. After the snow melted, the soil scientist reviewed the area and the fill looks to be at the upper edge of the wetlands at the bottom of the tubing area. Lee Vito and the soil scientist did look at the area together. The road is needed to bring the material that will come out of the pond up the hillside to build the mounds and improvements for the changes to the tubing park. The question for the Commission is whether they want to see the fill pulled out of the wetland or wait until the work is completed and then have the fill pulled out later. The question is if there is really a benefit to taking it out now and restoring the area or not.

Darin Overton stated that it appears that this wetland is manmade. Soil was piled up to stop the tubes at the end of the tubing area and in doing that excavation of the hillside, it looks like the ground water table was intercepted. This appears to have been done before Ken Leavitt owned the property. The 1993 wetland map that was referenced in the application showed the area as wetland and showed the mounding as being outside of the wetland. Randy Bernotas commented that that area has been enhanced since site walks were previously done. Mr. Overton had first thought that the mound was built in the wetland, but after walking the area, it looks like the area probably is not wetlands. It appears that the wetland was created when the slope was cut. But, however it came about, it is a wetland now and is a poorly drained area.

Rob Poturnicki doesn't see any benefit to removing the fill and reconfiguring a road that will be needed to accomplish the project anyway. Mr. Overton agreed and stated that the applicant would then be forced to rebuild the road up the hill and out the wetland where, in reality, it will be no different if the fill is removed now or a year from now. Randy Bernotas thought it would be better to do that kind of work later in the season when it is dry anyway.

Sean Hayes stated that when the fill was brought in in September or October, the area was dry. There is no intention to fill that area in permanently. Mr. Hayes reviewed the area on the map. Mr. Overton stated that it looks like there are lines of stone that were put in after it was excavated out and the ground water table was intercepted. It appears that pipes and stone were put in to try to dry the area out. Sean Hayes reviewed the watercourse in the area and the drainage pipes that currently exist as well as the existing road.

James Brown was concerned about the chairman being involved in the discussion as he has recused himself from any prior conversation. Darin Overton explained that he was only trying to provide information on this issue and would not take part in any decision. Rob Poturnicki stated that he feels this is a problem with various commissions in town and that something like this should not become an issue. Information is being provided to the Commission by people who are familiar with the area. Dr. Brown thought that maybe it would be good to consult with Brian Curtis on this. Mr. Poturnicki took offense to the idea of Dr. Brown questioning Darin Overton's integrity.

Randy Bernotas feels that this was clearly a mistake, but there would really be no need to remove it now when the road is clearly necessary. Sean Hayes stated that they would be able to remove when the wet season is over, probably mid-summer. Mr. Hayes explained that they had driven the trucks up the hill as far as they could go to begin with and to move the road any further west becomes almost impractical because of the grade.

Darin Overton reminded the Commission that tonight was just to explain what happened and why the violation was sent. Mr. Overton explained that he did not want to render any opinion and that this would be a decision of the Commission that he will not be involved in. Updated maps and information will be available for the next meeting. It was recommended that the Wetlands Enforcement Officer keep an eye on the situation for now.

Item B of Lee Vito's report has to do with the fee for the Powder Ridge applicant. Darin Overton recused himself from the discussion. Randy Bernotas took over the meeting as chair.

Sean Hayes explained that \$7,000 was the deposit to be made until the actual fees were calculated. Since that time, Lee Vito has done a full calculation of the fees. Randy Bernotas explained that the Commission had asked for \$7,000 and to date, the expenses have been \$4,100. Mr. Bernotas would rather not issue any refunds until the project is complete. Sean Hayes commented that there will be no more expenses as far as the permit is concerned. Mr. Hayes also reported that Planning and Zoning have approved the application.

Randy Bernotas reviewed the expenses as reported by Lee Vito. Mr. Bernotas did mention that the cost of the transcript was not included, but other Commission members felt that that expense should not fall on Mr. Hayes.

Rob Poturnicki made a motion, seconded by Rich Dilauro, to accept the fee review for Powder Ridge as per the Inland Wetlands Officer's report. Motion was passed, 5-1-0.

Darin Overton returned to the meeting at 8:24 PM.

Approval of Minutes

Darin Overton made a motion, seconded by Randy Bernotas, to approve the minutes of the regular meeting on February 20, 2013. Motion was carried, 4-0-2, with Douglas Charles and Darin Overton abstaining.

Darin Overton made a motion, seconded by Randy Bernotas, to approve the minutes of the special meeting on February 23, 2013. Motion was carried, 3-0-3, with Douglas Charles, Darin Overton and Irene Angiletta abstaining.

Chairman's Report

Darin Overton reported he had received a copy of a letter from Brian Curtis's review of the Planning and Zoning application. Mr. Overton also mentioned that there is section 12.9 of the regulations states that two complete sets of final plans must be submitted on Mylar as well as 10 sets on paper, along with two complete sets of all other documents, all of which should be updated to reflect any conditions or modifications of approval. Mr. Overton felt that that was just a waste of paper and was curious is this does, in fact, happen.

Miscellaneous

There were no miscellaneous items to be discussed.

Adjournment

Rob Poturnicki made a motion, seconded by Richard Dilauro, to adjourn the meeting. Motion was carried unanimously. The meeting was adjourned at 8:44 pm.

Respectfully submitted,

Debi Waz

Debi Waz
Alwaz First

Application: Town of Middlefield proposed regulated activities for repair of the Miller Road bridge over the Coginchaug River

IWC Permit # _____ WET

Decision:

Motion: That the Middlefield Inland Wetlands and Watercourses Agency, having considered the factors pursuant to Section 10 of the Inland Wetlands and Watercourses Regulations of the Town of Middlefield, Commissioners' knowledge of the area, and after review of written information and public testimony provided by the applicant on this application finds the following:

1. That the proposed improvements are for repair of the existing structure. No part of the work is proposed in wetlands or watercourses other than the use of a temporary floating platform used to conduct the work under the bridge.
2. That the proposed activity will not have a significant adverse effect on the inland wetlands and watercourses as presented, provided all permit conditions are adhered to.

Therefore, the agency grants, with conditions, approval of the MIWWA Permit Application of The Town of Middlefield for repair of the Miller Road bridge over the Coginchaug River, as presented and shown on plans entitled:

"Town of Middlefield, Connecticut, Repairs to CTDOT Bridge No. 04843, Miller Road Over the Coginchaug River," Sheets 1-10, dated February 13, 2013 as prepared by Nathan L. Jacobson & Associates, Inc.

with the following conditions:

1. That all activities have appropriate sediment and erosion controls in place in accordance with the 2002 DEP Erosion and Sediment Control Guidelines to prevent sedimentation of downstream wetlands and watercourses. In particular, any dewatering activities associated with excavation on site shall have appropriate sediment containment to minimize discoloration of receiving waters.
2. That all maintenance and refueling of equipment and vehicles is performed as far as practical from all wetlands and watercourses, at least 100' if possible. All oil, gasoline, and chemicals needed at the site shall be stored in secondary containment to prevent contamination of any wetlands or watercourses from possible leaks.
3. That the Middlefield Wetlands Enforcement officer be notified prior to the proposed start date of construction to verify that appropriate sediment and erosion controls are in place when construction begins.

Application: Robbin L. Cabelus, proposed activity within 100 feet of a wetland, demolition of existing house and construction of new house, property at 86 Lake Shore Drive

IWC Permit #0201-13 WET

Decision:

Motion: That the Middlefield Inland Wetlands and Watercourses Agency, having considered the factors pursuant to Section 10 of the Inland Wetlands and Watercourses Regulations of the Town of Middlefield,

Commissioners' knowledge of the area, and after review of written information and public testimony provided by the applicant on this application finds the following:

1. That the proposed activity involves demolition of an existing home and construction of a new home within 100 feet of Lake Beseck.
2. That a side yard variance is required to accommodate the proposed house footprint.
3. That, as proposed, there is approximately 754 square feet of additional impervious.
4. That the proposed activity will not have a significant adverse effect on the inland wetlands and watercourses as presented, provided all permit conditions are adhered to.

Therefore, the agency grants, with conditions, approval of the MIWWA Permit Application of Robbin L. Cabelus, proposed activity within 100 feet of a wetland, demolition of existing house and construction of a new house, as presented and shown on plans entitled:

"#86 Lake Shore Drive, Middlefield, Connecticut, Property of: Robbin Cabelus, Site Development Plan Lots 539 & 540 Mountain Lake Estates," Sheet 1 of 1 dated January 31, 2013, revised to March 19, 2013, scale 1" = 10' as prepared by Bascom and Benjamin, LLC

with the following conditions:

1. That all activities have appropriate sediment and erosion controls in place in accordance with the 2002 DEP Erosion and Sediment Control Guidelines to prevent sedimentation of downstream wetlands and watercourses. In particular, any dewatering activities associated with excavation on site shall have appropriate sediment containment to minimize discoloration of receiving waters.
2. That all maintenance and refueling of equipment and vehicles is performed as far as practical from all wetlands and watercourses, at least 100' if possible. All oil, gasoline, and chemicals needed at the site shall be stored in secondary containment to prevent contamination of any wetlands or watercourses from possible leaks.
3. That the Middlefield Wetlands Enforcement officer be notified prior to the proposed start date of construction to verify that appropriate sediment and erosion controls are in place when construction begins.

MIDDLEFIELD INLAND WETLANDS
and
WATERCOURSES AGENCY
405 Main Street
Middlefield, Connecticut 06455

Revised Minutes of the March 20, 2013 Meeting

Darin Overton, Chairman, called the meeting to order at 7:04 pm.

Attendance:

Members		Alternates	
X	Angiletta, Irene	X	Dilauro, Richard
X	Bernotas, Randy	A	Li, Linda
X	Brown, James		
X	Charles, Douglas		
X	Overton, Darin	Others	
X	Poturnicki, Rob	A	Vito, Lee
A	VanderVeer, Daria		

A=Absent
 X=Present

Richard Dilauro was seated on the commission.

Approval of the Agenda

Darin Overton reported that Lee Vito had issued a violation in regard to inadvertent filling of some wetlands at Powder Ridge, but the issue was too late to make the agenda and will most likely be covered under the Wetlands Enforcement Officer's Report.

Rob Poturnicki made a motion to approve the agenda as presented, seconded by James Brown. Motion was passed unanimously.

Public Session

There was no one from the public who requested to address the Commission.

Miller Road Bridge Repairs

Darin Overton drafted a motion that was sent to the Commission members. Mr. Overton explained that if the Commission had any questions, Brian Curtis was in the adjoining room and would be available to answer any questions. Mr. Overton explained that in the process of preparing the motion, he did have a couple of questions that he discussed with Brian Curtis. Mr. Overton feels that there is no direct wetland impact and the only thing that will go in the water will be the floating platform. No Commission members had any questions that needed to be addressed.

Darin Overton made a motion (as attached), seconded by Rob Poturnicki. Motion was passed, 6-0-1, with Doug Charles abstaining.

Robbin Cabelus, Proposed Activity Within 100' of a Wetland, Demolition of Existing House and Construction of New House, 86 Lake Shore Drive

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Irene Angiletta commented that she lives in the neighborhood and does not feel that it will be a small amount of fill required. Ms. Angiletta would feel more comfortable if there was a number attached with some amount of fill that will be required. Another Commission member wondered how that was relevant to this application. Ms. Angiletta reminded the Commission that Darin Overton had mentioned at the last meeting that one of the considerations was the way that the water drained. If the water from this new driveway is supposed to drain into storm sewers on Lake Shore Drive, then there has to be considerable fill, in her opinion. The other Commission member feels that there is a benefit to the water running into the drains rather than the lake.

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Robbin Cabelus had that information, but prefaced it by saying that she was told that it was not an accurate assessment on a lot of this size although she did have it done by the engineer and it is very insignificant. Darin

Overton explained that what the Commission was looking for was a simple analysis of the change in the watershed area. Ms. Cabelus stated that she had given the minutes from the meeting to Pat Benjamin of Bascom & Benjamin and asked him to take care of it. Mr. Benjamin said that that wouldn't ordinarily be done because it's not highly accurate. Mr. Overton explained that it was not accurate because these models are meant for large watersheds and this is a very tiny watershed. Mr. Overton reviewed the analysis and concluded that it does show a small increase in the flow, looking at the overall site as if it were all running to the lake. Mr. Overton concluded that there was approximately 754 feet of additional impervious, pre- and post-, the house being about 500 feet of that. The existing driveway is about 512 square feet and the new driveway is 675, with a difference of about 163 square feet.

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Irene Angiletta asked if Ms. Cabelus had received the variance from the Zoning Board of Appeals and Ms. Cabelus stated no, she had to return back to the ZBA next month.

Irene Angiletta asked if they could include in the motion that there should be landscaping and trees. Mr. Overton thought that was a tough condition to include. Obviously, the Commission hates to lose ground by adding impervious surfaces, but the plan has been scaled back and is not much different than the prior layout. If the Commission feels there is an adverse impact that should be mitigated, then a condition can be added to deal with that but the layout is very similar to what was there; it's just a bigger footprint and is being elevated just a little bit. The driveway will now drain towards the road. Ms. Angiletta asked if that could be part of the conditions, that the driveway really does drain toward the road. Mr. Overton commented that there is a plan on file that shows that and that if it was built different from the plan, it would not be consistent with what was permitted.

The Commission then discussed plantings and landscaping requirements and whether that could be part of the conditions of the motion. Randy Bernotas felt that Ms. Cabelus would not be leaving dirt and would be doing some kind of landscaping that will probably be a benefit to the area. Ms. Angiletta reminded the Commission that there have been many instances in the past where people haven't done exactly what they said they were going to do and that the Commission is looking to protect the environment as much as possible. Ms. Cabelus invited the Commission to visit her property at 19 Orchard Lane and look at the landscaping that exists there. She also commented that she will not be removing any of the hedges along the side of the property.

Darin Overton reiterated that he felt it would be difficult to condition the motion to add landscaping and things like that, without some sort of specific finding.

Darin Overton made a motion (as attached), seconded by Irene Angiletta. Ms. Angiletta asked about including the variance as part of this permit. Darin Overton explained that if Ms. Cabelus does not get the variance, she

will probably have to come back before this Commission with a modified plan. Having no further discussion, motion was carried, 6-0-1, with Doug Charles abstaining.

Discussion of Fee Schedule Revisions

Irene Angiletta mentioned an article in the Hartford Courant about Avon and complex applications and Darin Overton commented that that provision is in Middlefield's regulations.

Randy Bernotas felt that the Commission could look at an application and the plans and surmise what it will cost. Darin Overton commented that the current fee schedule A section doesn't consider all types of applications. Mr. Overton would like to get rid of that section as the complex application provision is in the regulations. That provision actually allows the Commission to get quotes and estimate what the fee would be.

Commission members discussed possible situations that could come up with applications and what concerns there would be.

Darin Overton stated that the Commission's biggest expense is the Coastal Conservation District which costs the Town \$1,500 per year to assist the Commission and they are hardly ever used. That is a resource that is basically already paid for and the Commission can call them on for assistance. Another Commission member commented that one of the best resources the Commission has is actually Darin Overton who can tell the Commission what they will need and will not need.

Darin Overton would like to remove schedule A and look at some of the other fees. The Commission will need to schedule a public hearing for this issue.

Mr. Overton also reported that the Commission basically collects about 50 percent of their projected fees over the course of the year, so the Commission basically funds itself. Last year, the Commission had a \$12,000 budget and the projection is that the Commission will use about \$7,500 and that has been the case for the last two years. The Commission has been consistently below budget and Darin Overton recommended a budget of \$10,000 to the Board of Finance.

The issue was tabled until the next meeting.

Wetlands' Enforcement Officer's Report

Lee Vito left a copy of his report with Darin Overton. Item A refers to Powder Ridge Mountain Park and Resort and that a violation letter was issued to Mr. Hayes of Powder Ridge on 3/14/13. This was as a result of the site inspection where a hauling road was found to be in a wetland area or in the review area. Mr. Overton read the letter of violation to the Commission. There were also photos of the area with the report. Lee Vito had requested Sean Hayes come to tonight's meeting to discuss this issue.

Darin Overton explained that he has been involved with the work at Powder Ridge and that when the soil scientist went out to walk the area, the hauling road was noticed at that time. This road was put in last Fall and at that time, the owner did not realize there were wetlands in that area. After the snow melted, the soil scientist reviewed the area and the fill looks to be at the upper edge of the wetlands at the bottom of the tubing area. Lee Vito and the soil scientist did look at the area together. The road is needed to bring the material that will come out of the pond up the hillside to build the mounds and improvements for the changes to the tubing park. The question for the Commission is whether they want to see the fill pulled out of the wetland or wait until the work is completed and then have the fill pulled out later. The question is if there is really a benefit to taking it out now and restoring the area or not.

Darin Overton stated that it appears that this wetland is manmade. Soil was piled up to stop the tubes at the end of the tubing area and in doing that excavation of the hillside, it looks like the ground water table was intercepted. This appears to have been done before Ken Leavitt owned the property. The 1993 wetland map that was referenced in the application showed the area as wetland and showed the mounding as being outside of the wetland. Randy Bernotas commented that that area has been enhanced since site walks were previously done. Mr. Overton had first thought that the mound was built in the wetland, but after walking the area, it looks like the area probably is not wetlands. It appears that the wetland was created when the slope was cut. But, however it came about, it is a wetland now and is a poorly drained area.

Rob Poturnicki doesn't see any benefit to removing the fill and reconfiguring a road that will be needed to accomplish the project anyway. Mr. Overton agreed and stated that the applicant would then be forced to rebuild the road up the hill and out the wetland where, in reality, it will be no different if the fill is removed now or a year from now. Randy Bernotas thought it would be better to do that kind of work later in the season when it is dry anyway.

Sean Hayes stated that when the fill was brought in in September or October, the area was dry. There is no intention to fill that area in permanently. Mr. Hayes reviewed the area on the map. Mr. Overton stated that it looks like there are lines of stone that were put in after it was excavated out and the ground water table was intercepted. It appears that pipes and stone were put in to try to dry the area out. Sean Hayes reviewed the watercourse in the area and the drainage pipes that currently exist as well as the existing road.

James Brown was concerned about the chairman being involved in the discussion as he has recused himself from any prior conversation. Darin Overton explained that he was only trying to provide information on this issue and would not take part in any decision. Rob Poturnicki stated that he feels this is a problem with various commissions in town and that something like this should not become an issue. Information is being provided to the Commission by people who are familiar with the area. Dr. Brown thought that maybe it would be good to consult with Brian Curtis on this. Mr. Poturnicki took offense to the idea of Dr. Brown questioning Darin Overton's integrity. Dr. Brown indicated that he was not questioning the chairman's integrity, but only pointing out that the situation was highly irregular.

Randy Bernotas feels that this was clearly a mistake, but there would really be no need to remove it now when the road is clearly necessary. Sean Hayes stated that they would be able to remove when the wet season is over, probably mid-summer. Mr. Hayes explained that they had driven the trucks up the hill as far as they could go to begin with and to move the road any further west becomes almost impractical because of the grade.

Darin Overton reminded the Commission that tonight was just to explain what happened and why the violation was sent. Mr. Overton explained that he did not want to render any opinion and that this would be a decision of the Commission that he will not be involved in. Updated maps and information will be available for the next meeting. It was recommended that the Wetlands Enforcement Officer keep an eye on the situation for now.

Item B of Lee Vito's report has to do with the fee for the Powder Ridge applicant. Darin Overton recused himself from the discussion. Randy Bernotas took over the meeting as chair.

Sean Hayes explained that \$7,000 was the deposit to be made until the actual fees were calculated. Since that time, Lee Vito has done a full calculation of the fees. Randy Bernotas explained that the Commission had asked for \$7,000 and to date, the expenses have been \$4,100. Mr. Bernotas would rather not issue any refunds until the project is complete. Sean Hayes commented that there will be no more expenses as far as the permit is concerned. Mr. Hayes also reported that Planning and Zoning have approved the application.

Randy Bernotas reviewed the expenses as reported by Lee Vito. Mr. Bernotas did mention that the cost of the transcript was not included, but other Commission members felt that that expense should not fall on Mr. Hayes.

Rob Poturnicki made a motion, seconded by Rich Dilauro, to accept the fee review for Powder Ridge as per the Inland Wetlands Officer's report. Motion was passed, 5-1-0.

Darin Overton returned to the meeting at 8:24 PM.

Approval of Minutes

Darin Overton made a motion, seconded by Randy Bernotas, to approve the minutes of the regular meeting on February 20, 2013. Motion was carried, 4-0-2, with Douglas Charles and Darin Overton abstaining.

Darin Overton made a motion, seconded by Randy Bernotas, to approve the minutes of the special meeting on February 23, 2013. Motion was carried, 3-0-3, with Douglas Charles, Darin Overton and Irene Angiletta abstaining.

Chairman's Report

Darin Overton reported he had received a copy of a letter from Brian Curtis's review of the Planning and Zoning application. Mr. Overton also mentioned that there is section 12.9 of the regulations states that two complete sets of final plans must be submitted on Mylar as well as 10 sets on paper, along with two complete sets of all other documents, all of which should be updated to reflect any conditions or modifications of approval. Mr. Overton felt that that was just a waste of paper and was curious if this does, in fact, happen.

Miscellaneous

There were no miscellaneous items to be discussed.

Adjournment

Rob Poturnicki made a motion, seconded by Richard Dilauro, to adjourn the meeting. Motion was carried unanimously. The meeting was adjourned at 8:44 pm.

Respectfully submitted,

Debi Waz

Debi Waz
Alwaz First

Application: Town of Middlefield proposed regulated activities for repair of the Miller Road bridge over the Coginchaug River

IWC Permit # _____ WET

Decision:

Motion: That the Middlefield Inland Wetlands and Watercourses Agency, having considered the factors pursuant to Section 10 of the Inland Wetlands and Watercourses Regulations of the Town of Middlefield, Commissioners' knowledge of the area, and after review of written information and public testimony provided by the applicant on this application finds the following:

1. That the proposed improvements are for repair of the existing structure. No part of the work is proposed in wetlands or watercourses other than the use of a temporary floating platform used to conduct the work under the bridge.
2. That the proposed activity will not have a significant adverse effect on the inland wetlands and watercourses as presented, provided all permit conditions are adhered to.

Therefore, the agency grants, with conditions, approval of the MIWWA Permit Application of The Town of Middlefield for repair of the Miller Road bridge over the Coginchaug River, as presented and shown on plans entitled:

"Town of Middlefield, Connecticut, Repairs to CTDOT Bridge No. 04843, Miller Road Over the Coginchaug River," Sheets 1-10, dated February 13, 2013 as prepared by Nathan L. Jacobson & Associates, Inc.

with the following conditions:

1. That all activities have appropriate sediment and erosion controls in place in accordance with the 2002 DEP Erosion and Sediment Control Guidelines to prevent sedimentation of downstream wetlands and watercourses. In particular, any dewatering activities associated with excavation on site shall have appropriate sediment containment to minimize discoloration of receiving waters.
2. That all maintenance and refueling of equipment and vehicles is performed as far as practical from all wetlands and watercourses, at least 100' if possible. All oil, gasoline, and chemicals needed at the site shall be stored in secondary containment to prevent contamination of any wetlands or watercourses from possible leaks.
3. That the Middlefield Wetlands Enforcement officer be notified prior to the proposed start date of construction to verify that appropriate sediment and erosion controls are in place when construction begins.

Application: Robbin L. Cabelus, proposed activity within 100 feet of a wetland, demolition of existing house and construction of new house, property at 86 Lake Shore Drive

IWC Permit #0201-13 WET

Decision:

Motion: That the Middlefield Inland Wetlands and Watercourses Agency, having considered the factors pursuant to Section 10 of the Inland Wetlands and Watercourses Regulations of the Town of Middlefield,

Commissioners' knowledge of the area, and after review of written information and public testimony provided by the applicant on this application finds the following:

1. That the proposed activity involves demolition of an existing home and construction of a new home within 100 feet of Lake Beseck.
2. That a side yard variance is required to accommodate the proposed house footprint.
3. That, as proposed, there is approximately 754 square feet of additional impervious.
4. That the proposed activity will not have a significant adverse effect on the inland wetlands and watercourses as presented, provided all permit conditions are adhered to.

Therefore, the agency grants, with conditions, approval of the MIWWA Permit Application of Robbin L. Cabelus, proposed activity within 100 feet of a wetland, demolition of existing house and construction of a new house, as presented and shown on plans entitled:

"#86 Lake Shore Drive, Middlefield, Connecticut, Property of: Robbin Cabelus, Site Development Plan Lots 539 & 540 Mountain Lake Estates," Sheet 1 of 1 dated January 31, 2013, revised to March 19, 2013, scale 1" = 10' as prepared by Bascom and Benjamin, LLC

with the following conditions:

1. That all activities have appropriate sediment and erosion controls in place in accordance with the 2002 DEP Erosion and Sediment Control Guidelines to prevent sedimentation of downstream wetlands and watercourses. In particular, any dewatering activities associated with excavation on site shall have appropriate sediment containment to minimize discoloration of receiving waters.
2. That all maintenance and refueling of equipment and vehicles is performed as far as practical from all wetlands and watercourses, at least 100' if possible. All oil, gasoline, and chemicals needed at the site shall be stored in secondary containment to prevent contamination of any wetlands or watercourses from possible leaks.
3. That the Middlefield Wetlands Enforcement officer be notified prior to the proposed start date of construction to verify that appropriate sediment and erosion controls are in place when construction begins.

MIDDLEFIELD INLAND WETLANDS
and
WATERCOURSES AGENCY
405 Main Street
Middlefield, Connecticut 06455

Minutes of the April 17, 2013 Meeting

Darin Overton, Chairman, called the meeting to order at 7:07 pm.

Attendance:

Members		Alternates	
X	Angiletta, Irene	A	Dilauro, Richard
A	Bernotas, Randy	X	Li, Linda
X	Brown, James		
X	Charles, Douglas		
X	Overton, Darin	Others	
X	Poturnicki, Rob	X	Vito, Lee
X	VanderVeer, Daria		

A=Absent
 X=Present

Linda Li joined the meeting at 7:12 and James Brown came in around 7:14, making a full commission.

Approval of the Agenda

Irene Angiletta made a motion to approve the agenda as presented, seconded by Doug Charles. Motion was passed unanimously.

Public Session

First Selectman Jon Brayshaw explained to the Commission that he and his kids have been the owners of the Lyman Scope shop just down the road from the Blackbird Tavern and the Gun Sight building across the street for 11 to 12 years. They had put their efforts into the bigger building at first since it needed the most help and they are now turning their attention to the Scope shop which is the building that's on the waterfall. Mr. Brayshaw invited members of the Commission to stop by and visit.

Mr. Brayshaw explained that there is an inlet structure (about 3' x 3' square) where the suction pipe is for the fire pump which provides sprinkler water for the bigger building across the street as well as the Scope shop itself. At this point, the silt has built up in the pond to the extent where the suction pipe is now in the mud. About 15 to 18 years ago, that pond was mucked out by Vin Cahill. Now, the water in the pond is maybe between 12 and 18 inches deep and it's all filled in with silt that comes down the hill.

Mr. Brayshaw wanted to let the Commission know that he will be putting together a game plan to muck out the pond so he can once again have the sprinkler system which is required for the buildings. Mr. Brayshaw did meet with the DEEP last week. Since the lake is going to be worked on, Mr. Brayshaw sees that as an opportunity to get in there and muck out the pond while the lake is down and make some repairs to the dam. The DEEP did look at the dam itself and it appears to be functioning. The DEEP felt that they would not be

involved in this, but that the local wetlands agency would be. Lee Vito is also aware of the particulars of the situation. The Fire Department also uses the pond as a water source in case of a fire in the area.

Mr. Brayshaw feels that he will be back in a month or two with a real application and a real game plan so that hopefully it can be ready for the summer.

Irene Angiletta asked if the dam project was going to go forward this year and Mr. Brayshaw said that he felt that it would. He felt that they would start draining the lake at the end of the summer. Several different locations have been looked at for the spoils from the lake.

Darin Overton asked Mr. Brayshaw if the Fire Department had a separate suction line into the pond which they do not. It is a source for water, but the Fire Department would drop a line into the pond.

Town of Middlefield Park and Rec., Proposed Regulated Activity for Herbicide Treatment to Swimming Area on Lake Beseck Beach, Lake Shore Drive

Two representatives from New England Environmental were present at tonight's meeting.

Darin Overton reviewed the information and that map that was presented. There was also a cover letter from New England Environmental explaining what would be done as well as some qualifications and the actual herbicide labeling information. It is Mr. Overton's understanding that Diquat is something that is commonly used as an herbicide treatment in lakes. Chuck Lee from the DEEP has also spoken of that fairly regularly being used as an herbicide.

Darin Overton feels that because of the amount of people who both live on the Lake and use the Lake, that there would probably be some public interest in this application and that there should probably be a public hearing. Mr. Overton spoke with Matt Willis who also discussed this with Mark Branse as to whether this would be a significant activity. Mr. Overton hasn't had a lot of experience with this, but doesn't see it as being a significant activity. Both Attorney Willis and Attorney Branse have little experience with this and no experience with it being a significant activity. The attorneys felt that this would not be considered a significant activity, but the decision is up to the Commission. The Commission could certainly look through the regulations and see if anything applies. Irene Angiletta mentioned that she would like to do just that.

A representative from NEE spoke about the lake not being a protected species habitat and that the DEEP has signed off on that. Darin Overton had a copy of the response letter from the DEEP regarding the Natural Diversity Database inquiry that notes there are a couple of protected species of plants in the lake, but nonetheless they have approved the application for the beach area.

NEE will submit an application for the actual permit to the DEEP in the next few days. The approval usually takes about 20 days.

Darin Overton also spoke with Matt Willis regarding whether the DEEP needs to sign the permit application as they actually own the lake. Mr. Overton asked if whether the DEEP approving the permit for the pesticide application would be acknowledgment of the application and Attorney Willis felt that that was enough

acknowledgment from the owner as basically consenting to the application and that no actual signature would be needed.

Darin Overton also asked if NEE would be posting signs before the actual pesticide application. A representative from NEE noted that there were a couple of levels of notification, one being that it has to be published in a local newspaper and also a minimum of 24 hours in advance around the lake. NEE usually posts around the lake about a week before the application takes place.

Mr. Overton asked about a waiting period after the application as far as use of the beach. The recommended time for use of water in terms of swimming is one day and that's for large applications. In this case, NEE would be treating roughly 1 percent of the water body, so it may be even shorter than that. In lakes with similar water chemistry to Lake Beseck, the chemical lasts upwards of 14 days, at which point it is no longer detectable throughout the lake. The chemical does not move through soil and will not move into wells.

Irene Angiletta asked why the chemical is banned in California. The representative from NEE did not have the answer to that question. He explained that California has some of the strictest environmental laws in the US. Irene Angiletta then asked why it is banned in New York and it was again explained that he did not have the answer to that.

The representative from NEE explained that this is a contact herbicide and will remove any weeds present in the area. Application of the herbicide is targeted for June 1, 2013.

Darin Overton read the possible applicable items. Item A, any activity involving the deposition or removal of material that will or may have a substantial effect on the wetland or watercourse or on the wetlands or watercourses outside the area for which the activity is proposed.

Irene Angiletta commented that there was a possibility of that if the herbicide is put into the lake, having the dam, the overflow and the Coginchaug River. Ms. Angiletta talked about it not being a contained body; but rather a body that flows in through other bodies and she feels that that needs to be considered as one thing.

Item B, any activity that substantially changes or has the potential to substantially change the natural channel or may inhibit the natural dynamics of a watercourse system. Ms. Angiletta asked if the natural dynamic of the water system would include the creatures in the water. Mr. Overton explained that it was pretty broad. Ms. Angiletta remarked that the herbicide labeling says it is toxic to aquatic invertebrates and it is impossible to eliminate all of it. Mr. Overton stated that you could look at significant impact as trying to protect invasive plants as well and that you would be killing the plants with this. Ms. Angiletta agreed and asked what else would be killed. Mr. Overton thought that most people would look at it as a benefit.

Ms. Angiletta understood that and first felt this was a good thing, but then she thought she had better look at this because the reason she serves on this Commission is because she is concerned about people putting pesticides and herbicides into places. Ms. Angiletta feels we are in a period of time where eco-cycles are being destroyed every single day and recalled a story of a local beekeeper who has lost bees and is attributing it to pesticides. The manatees in Florida and the great leatherback turtles are being destroyed due to destruction of eco-cycles. This is all of concern to Ms. Angiletta, but she has even greater concern for the studies done in California with the possible connection between this and cancer in children. Ms. Angiletta went on to report

that the State of California considers this to be a problem for groundwater contamination. Ms. Angiletta lives two houses away from the beach area and feels like this is a significant activity. It is an easy way to get rid of the weeds and this just seems to be an easy way out. Ms. Angiletta believes it is a significant activity and people at the lake should know. If people thought there was any connection between the chemical and cancer, would people put their children into the water afterward? Ms. Angiletta stated that she has three grandchildren and believes that people should have a voice. Darin Overton agreed that that is one reason why it would be a mistake for the Commission not to have a public hearing.

Darin Overton suggested the public hearing be held at the Commission's next regular meeting unless others feel like they should hold a special meeting. Representatives from NEE stated that they will bring information to the public hearing to help clear up any questions about toxicity, etc., but that they do hope to be able to apply the herbicide once the water reaches 50 degrees as that's when the chemical is most active. Mr. Overton feels that all of that information should be provided at the public hearing and asked the members of the Commission to ask any questions tonight that are relevant to a decision about whether the activity is a significant impact.

Representatives from NEE explained that, for the last few years, the lifeguards at the beach have been using rakes out the weeds. It was also explained that the herbicide will take care of the problem, but only for one season. The chemical will remove the plant biomass in the treated area within roughly a week. Following the removal of that biomass, there should not be additional curly leaf pond weed coming up in that area for the year. It would take about a five- to six-year period to get the weeds totally under control. This particular species is correlated with the ionic concentration of the lake. A question was asked about what else could be done instead. It was then explained that this is a couple of thousand dollars to make the swimming area enjoyable for the season vs. \$100,000 or \$200,000 to dredge and really repair the whole lake.

The Lake Beseck Association has also worked on letting people know about fertilizers and the Lake Beseck Environment Committee just got appointed as an ad hoc committee last night and will be working on all of that outreach to the public.

The representative from NEE stated that in Connecticut, lake water is tightly correlated to the bedrock type and it varies from east to west throughout the state. Middlefield has bedrock geology in the region that is a mix of sedimentary and igneous rocks. The ability to control one of the major components leading to the presence of this plant, the connectivity is going to be nearly impossible though the ionic content could certainly be handled.

Daria VanderVeer believes this would be great information at a public hearing and asked if anyone on the Commission disagreed about having a public hearing. Ms. VanderVeer also asked if a decision should be made tonight as to significance. Darin Overton feels that that determination should be made tonight.

Daria VanderVeer continued to read from the regulations: Item C reads, any activity that substantially diminishes or has the potential to substantially diminish the natural capacity of an inland wetland or watercourse to support aquatic plant and animal life, habitats, prevent flooding, supply water, assimilate waste, facilitate drainage, provide recreation or open space or perform other functions. The next item reads, any activity that is likely to cause or has a potential to cause substantial turbidity, siltation or sedimentation in a wetland or watercourse. Any activity that causes substantial diminution of flow of a natural watercourse or groundwater levels of a watercourse. Any activity that's likely to cause or has the potential to cause pollution

of a wetland or watercourse. And the last one, any activity that damages or destroys or has the potential to damage or destroy unique wetland or watercourse areas with such areas have demonstrable scientific or educational value.

Daria VanderVeer believes there are a couple of things that would cause this to be a significant activity. Darin Overton remarked that some would say getting rid of the invasive plants would help support the native plants to grow and have better water health, etc.

Irene Angiletta made a motion that the activity proposed by the Town of Middlefield Park and Rec. Department for herbicide treatment to the swimming area at Lake Beseck, Lake Shore Drive, is a significant activity per the IWWC regulations. The motion was seconded by James Brown. Motion was passed, 4-3. Darin Overton recommended a formal presentation be made at the public hearing. The public hearing will be scheduled for the Commission's next regular meeting on the third Wednesday in May.

Discussion of Powder Ridge Mountain Park and Resort Wetlands Violation Letter for the Construction of a Hauling Road

Darin Overton recused himself from the meeting and Daria VanderVeer took over the meeting. Ms. VanderVeer asked for a summary of the violation letter.

Lee Vito explained that it was brought to his attention that a hauling road was put in through a wetland area back in November. At last meeting, options for this hauling road were discussed and whether or not it needs to be filled in now. It was recommended that the Commission take a few minutes to review last meeting's minutes.

A small portion of the road is most likely going through wetlands, but it was not known before as the road was built in the dry season and it is not marked on maps. The road lies very close to the edge of the wetlands. The road will be removed and is not a permanent access road. It currently has silt fencing and hay bales on it. Once hauling is complete, the plan would be to remove the road and seed the area.

Linda Li read from last month's minutes: the question for the Commission is whether they want to see the fill pulled out of the wetland or wait until the work is completed and then have the fill pulled out later. The question is if there's really a benefit to taking it out now and restoring the area or not. Ms. Li believes that to be the question at this time and believes that it would make sense to let it stay for now and then have it restored once the work was done. The plan would be for the road to be in place through the Summer. Restoration would have to be completed in the Fall as Powder Ridge could not do tubing with the road there.

No one on the Commission could find a reason to restore the road immediately. The road is hard surface at this point and is not muddy. There is also a drainage pipe in the area. It was also mentioned that this road was shown in prior applications.

Linda Li made a motion, seconded by James Brown, that the activity of Powder Ridge Mountain Park and Resort to maintain a temporary hauling road is acceptable to the Commission provided (a) that all erosion and sedimentation controls are maintained; (b) that maintenance of the road is kept to a minimum and supervised by the Inland Wetlands officer; (c) that the road is removed and all restoration completed in the wetlands by the end of Fall 2013. Maintenance and repair of the hauling road shall be done in accordance with the Planning and Zoning permitted activity. Motion was carried unanimously.

Darin Overton returned to the meeting.

Discussion of Fee Schedule Revisions

Darin Overton reported that he spent an hour or more researching various regulations and created a spreadsheet. He tried to pick other towns that were similar to Middlefield.

Linda Li stated that both she and Irene Angiletta went to the Connecticut Land Use on March 16, 2013 at Wesleyan and they actually had a lawyer come in to talk about fees. Connecticut general statute 22A-42AE says, under application fees, inland and wetland watercourses agencies may establish a fee sufficient to cover reasonable costs in reviewing and acting on an application or petition, including, but not limited to, the costs of mailing publication notices and decisions and monitoring compliance with permit conditions or agency orders. Ms. Li believes Middlefield's fee is really an application fee and once the application is done and reviewed, that's it and there is nothing for monitoring and compliance. The lawyer presenting there strongly recommended that towns build that into their regulations and make it more open-ended so there is a means to reclaim costs.

Darin Overton asked if any model language was provided for that, but Linda Li would have to check her notes. Mr. Overton did notice that some towns collect a fee that is applied to inspections after the activity is complete. Ms. Li hoped that that type of provision would cover the town for when estimates might be wrong. Commission members discussed the difficulty of collecting monies after completion of a project if it wasn't collected up-front.

Darin Overton recalls talking with Attorney Mark Branse and it was suggested that the fee structure can't really be open-ended. He suggested that it is possible to hold a bond for the cost of regulated activity. Mr. Overton also suggested that there be a formal process for Lee Vito to close out on a permit. Other towns include a follow-up inspection fee as part of the up-front cost. The Commission could charge a fee for Lee Vito to go out the first time when the work is being commenced and then another fee when the work has been completed to confirm that it was done right. Mr. Overton feels that is more a matter of procedure than changing the fee structure.

As far as holding a bond, that would be completely at the Commission's discretion and could be determined by the size of the impact, the sensitivity of downstream wetlands or watercourses, past reliability of an applicant and whether they were capable of doing the job properly. Mr. Overton stated that, while this hasn't happened in Middlefield, there are people that are chronic offenders in other towns and they never seem to do anything right or follow the rules.

Linda Li reminded the Commission that they do have the legal authority to fine \$1,000 a day plus expenses, as per the statute. Rob Poturnicki said that he thought that would scare people away and that people may try to get away with doing things instead of coming before the Commission. Mr. Overton explained that that fine would only be for a violation, not for a permit. Daria VanderVeer read the next paragraph, any municipality may, by ordinance, establish a fine of up to \$1,000 for a violation. Darin Overton explained that the statutes allow for it, but Middlefield does not have an ordinance to enact it. Ms. VanderVeer commented that that ordinance should probably be created. Mr. Overton remarked that the Commission would have to ask the Board of Selectmen to create that ordinance.

One thing that Darin Overton found in his research was that Durham's fee section is almost identical to Middlefield's. Mr. Overton commented that he did not feel that Schedule A works very well and that most towns do not have that type of schedule. The Town of Roxbury has five categories of fees and it is very simple. For a subdivision, they charge \$150 per lot. They have a base fee for virtually anything that is \$90.

Darin Overton is a proponent of eliminating Schedule A and feels there are enough provisions for complex applications to collect the proper fees. The point of his spreadsheet is to look at base fees. Mr. Overton also analyzed the past year, looking at how much revenue was generated by the Commission vs. expenses. There were no major applications, other than Powder Ridge which came in after the fact and wasn't part of his analysis, the Commission collected about 50 percent of its costs. In a year where there are three or four items on every agenda, the Commission will probably cover its costs. When meetings are held talking about regulations, etc., no fees are being collected but the Commission is still paying for Lee Vito's time, etc.

Mr. Overton feels the Commission's fees are pretty decent and not dramatically different than other towns. He did note that every town has a public hearing fee and most towns were a little higher than Middlefield. Middlefield's public hearing fee is \$175, Woodbury is \$250, Cheshire is \$175, Oxford is \$500 (though Oxford had pretty high fees for everything, with \$200 for a continuation of the hearing), Southbury is \$200, Washington \$250, Roxbury \$350. Most towns do not have a significant activity fee and about half the towns did have a hearing continuation fee which was less than the initial public hearing fee.

There was more discussion about Schedule A and how the multiplier works. Mr. Overton noted that it has been suggested that that schedule is meant to punish people for even proposing to fill wetlands. The problem is that Schedule A didn't really apply to Powder Ridge's pond dredging application because wetlands were not being destroyed. James Brown pointed out that the Commission should try to avoid losing wetlands, so that fee should be high. Mr. Overton suggested that the language could be changed to loss of wetland. Daria VanderVeer also suggested that fees or a portion thereof can be waived by the Commission in a particular circumstance.

Darin Overton noted that the Army Corps will permit a loss of wetland, but usually they require a ratio of 5 or 10:1 of creating wetland or enhancing wetland somewhere else. You tend to trade off the loss of a lower quality wetland in order to make it work and provide economic benefit. Mr. Overton reminded the Commission that they do, in fact, have that negotiating capability on any project. Darin Overton also talked about Route 66 and the prior farm fields that are there. He can see the benefit of some of that wetland being impacted for a development, but enhancing some of the wetlands along the main stem of that corridor and restoring the natural wetland in a larger area along there.

Linda Li feels that the Commission really wants to get high-value wetlands and maintain them and it shouldn't be so much about the money. Ms. Li is leaning more toward eliminating Schedule A and putting in guidelines or rules where we don't lose any or just lose a small amount of low-value wetland. Darin Overton spoke about an application he worked on where the applicant was permitted to fill wetlands and there was no place to restore any wetlands, but the Commission permitted the filling of the wetlands to accommodate the commercial application however the town required the applicant to do a mitigation plan on property completely across town. The applicant didn't want to do the work, but was willing to prepare the plan, estimate the cost and pay the town the money to do the work and the town could hire a contractor of their choosing.

Linda Li also remarked that the fees are almost a deterrent for people who do the right thing. She would rather have the fees be reasonable and not discourage people from doing the right thing. Mr. Overton agreed.

Darin Overton went on to say that he didn't feel the base fees are that far off based on the analysis he did. This Commission spends about a fifth of what the Planning and Zoning Commission spends. The current budget proposal is \$11,500 for next year. Mr. Overton feels that the numbers show that the fee structure is fairly reasonable. He would like to eliminate Schedule A or, at the very least, revise it to be more about loss of wetland and not just disturbance.

Darin Overton also commented that the Commission could say, for example, with an herbicide application in a water body that, according to the fee structure that says a watercourse to be disturbed or impacted, you could say that that fee applies to the whole area of the lake or pond or water body or wherever it's being applied.

Darin Overton would like the Commission to come to a consensus before this is presented at a public hearing. He suggested that someone mark up the sections being revised and get them on file in the office so that anyone from the public may see the changes before the public hearing. Darin Overton volunteered to edit the sections and send the revisions out to everyone for comment. Linda Li reminded the Commission that they don't need to vote on it at the public hearing and that there are other issues besides the fees, such as bonding, the ordinance for violations and the ability to collect on expenses and compliance.

Darin Overton asked if everyone was agreeable to getting rid of Schedule A and James Brown was in favor of altering it, not eliminating it. Daria VanderVeer reminded everyone of the work that went into Schedule A and that the idea was to protect the town during big applications and projects. Linda Li suggested that maybe it's not necessary if the Commission has the ability to bond and collect on expenses. Other Commission members like the idea of being able to bond also.

Darin Overton read from section 13 which refers to bond and insurance: upon approval of the application and prior to issuance of a permit, the applicant may, at the discretion of the agency, be required to file a cash bond in such an amount and in a form approved by the agency. Said bond to be of sufficient sum to ensure compliance with the permit and to place the agency in position to perform both emergency and long-term remediation and restoration in the event that the applicant fails to comply with these regulations or any permit issued hereunder or any remediation orders issued by the agency.

Mr. Overton continued with section 13.2: the cash bond shall be conditioned on compliance with all provisions of these regulations and the terms, conditions and limitations established in the permit. By acceptance of the permit, the applicant shall be deemed to consent to allow the agency or its agents, employees or contractors to enter onto the permit process for the purpose of inspection, enforcement and remediation as set forth in section 15 of these regulations.

Section 13.3 says the agency may require the applicant to certify that it has public liability insurance against liability which might result from the proposed operation or use of the wetlands or watercourse, covering any and all damage which might occur within two years of completion of such operations in an amount commensurate with the regulated activity.

Irene Angiletta then asked who determines what a sufficient sum is. Daria VanderVeer also commented that you would have no idea what the amount may be to fix the area. Darin Overton explained that Planning and Zoning normally holds a bond for erosion controls. The amount of erosion controls shown on the plan gets priced out by the applicant, submitted to the Town Engineer for review and the Commission approves it. Once that amount is approved, that is the amount of the bond. This Commission can do the same thing and decide how much bond is needed or defer it to the Town Engineer or someone else to estimate.

James Brown asked if, in the case of Powder Ridge, the bond that is held by Planning and Zoning covers what this Commission wants them to do as well. Mr. Overton explained that Planning and Zoning can't make a decision until this Commission has and that Planning and Zoning would take the IWWA decision into consideration and would know what the bond was. Planning and Zoning then would not bond for the same things. Darin Overton does believe that the Commission should hold a bond on larger applications and that the applicant would probably have to post a bond at the start of construction.

Darin Overton feels it makes sense to add a fee (possibly \$50) for the Wetlands' Enforcement Officer to go to inspect the site and then a notification for the Wetlands' Enforcement Officer to go out and confirm that the activity was completed. Some Commission members felt that a fee should be charged for every time the WEO has to visit the site, but Mr. Overton is not comfortable with leaving it open-ended.

James Brown asked that everything be covered before eliminating Schedule A. Daria VanderVeer agreed. Linda Li asked to get the ordinance created for enforcement. Mr. Overton feels more comfortable with the complex application fee language and that the Commission doesn't necessarily need Schedule A as long as that language exists. Mr. Overton also feels that the bond will cover any concerns about the work not being done properly.

Darin Overton will attempt to modify Schedule A. He does feel that the waiver language is good and the complex application language is good. He believes that the base fees are fine.

Linda Li asked if a hearing was necessary for changes in regulations because she would like to have copies provided for everyone on the Commission, including alternates. According to the regulations, applicants are supposed to provide 10 copies but she was told it was only five. On page 36 of the regulations, it states that two complete sets of the final plans and 10 sets on paper should be provided. Ms. Li believes that the number should reflect however many people on are the Commission, plus alternates. Page 21, section 7.8, requires the original plus four copies be submitted with the application. Darin Overton will look into what other towns do in regards to this.

Linda Li would also like to see the Commission receive plans three business days in advance before an application is presented. Irene Angiletta agreed with that and would like to have a few days to take a look as some applications are so complex. Darin Overton feels there is no harm in providing guidance to applicants that the Commission desires plans three business days prior to a meeting. The Commission cannot reject plans and has to accept them whenever they are submitted, however they do not need to be acted upon at that time. Darin Overton asked if the Commission would like documents to be submitted in PDF format for distribution. Linda Li prefers a paper copy of the big maps. These changes would be made on page 24. Darin Overton suggested section 8.5, at any time during the review period, the applicant shall provide such additional information as the agency may reasonably require. Requests for such additional information are subject to time limitations as set forth in section 11 of these regulations. A sentence can be added that the Commission requires these documents to be submitted three days prior to their next meeting for consideration at that meeting.

Daria VanderVeer read from section 8.4 regarding the date of submission of an application. Mr. Overton stated that a lot of commissions require plans to be submitted a certain number of days before the meeting and if that is not done, the commission doesn't accept it and the clock is not started at the next meeting. The state statute changed and required that if it is submitted the day before, the clock has to start and you cannot reject the application. The Commission has the right at that point to deny the application for not being complete, but

you cannot prevent the clock from starting as being received. Right now, the deadline is the day before the meeting.

Wetlands' Enforcement Officer's Report

Lee Vito reported that the Middlefield Fire Department completed installation of the dry hydrant today at Country Flower Farms. It came out very nice and the pond is filling up.

Lee Vito also reported that work is going on at Lakeview Estates. Drains were put in. Soil testing was completed for the retention basins. Erosion and sedimentation controls are in place. One house is being built.

Approval of Minutes

James Brown noticed that his comment was not captured on the last paragraph on page five of the minutes and would like the following sentence added: Dr. Brown indicated that he was not questioning the chairman's integrity, but only pointing out that the situation was highly irregular.

It was also noted that there was no permit number on page eight, the permit for the Town of Middlefield proposed regulated activities for repair of the Miller Road bridge over the Coginchaug River.

Doug Charles moved to accept the minutes as amended, seconded by Irene Angiletta. The motion was carried, with Daria VanderVeer and Linda Li abstaining.

Chairman's Report

Darin Overton reported that the budget that is going to hearing is for \$11,500 for the Commission which is a \$1,000 reduction from last year, but well above what was spent in the last two years.

An Earth Day 2013 flyer was sent to the Commission, inviting them to the grand re-opening of White's Farm, Maple Avenue in Durham on April 20, 2013 at 2:00 PM. It was sent by the Durham Board of Selectmen, Conservation Commission and Inland Wetlands and Watercourses Agency.

Darin Overton also read a letter dated February 18, 2013 from the Middlefield Volunteer Fire Department in reference to the proposed activity at Powder Ridge Pond. It states that the existing standpipe is in operable condition and the water supply adequate for the company's needs. They will not be doing any improvements to the standpipe in the foreseeable future. The water level, as indicated in the plans, state that it should remain between the elevation of 367.2 and 367.5. This should not impact the existing system. The Fire Company requests a two-week notice prior to any lowering of the water level. This is needed to implement a revised plan for water supply. Also, prior to refilling the pond, the Fire Company requests to receive notice of this to inspect the standpipe and flush it out if needed. If the standpipe is impacted in any way during the course of the proposed activity, they would also like to be notified. In the event that alteration needs to be made due to construction, it would be the property owner's responsibility to restore it to its existing condition. The Fire Company would like this to be a condition of approval for the application. Mr. Overton commented that it was a little late to be a condition of approval, but feels that the letter should be forwarded to the property owner. Darin Overton does not recall seeing the letter before this time. Mr. Overton asked Lee Vito to put the letter in the file and make sure a copy is sent to Powder Ridge.

Darin Overton also reported that there was a letter dated March 18, 2013 from Jacobson and Associates regarding Powder Ridge with a review for the planning and zoning application. It did mistakenly reference that the Wetlands and Watercourse Agency required a \$7,000 bond. That was the permit application fee and was clarified in a followup letter. The letter is available for Commission members to read, if they so desire. Darin Overton then reviewed the process of returning application fee money to the applicant.

James Brown also heard that there was something in the Town Times about Powder Ridge having kiosks, but that was not part of the original application.

Miscellaneous

There were no miscellaneous items to be discussed.

Adjournment

James Brown made a motion, seconded by Rob Poturnicki, to adjourn the meeting. Motion was carried unanimously. The meeting was adjourned at 9:23 pm.

Respectfully submitted,

Debi Waz

Debi Waz
 Alwaz First

**MIDDLEFIELD INLAND WETLANDS
 and
 WATERCOURSES AGENCY
 405 Main Street
 Middlefield, Connecticut 06455**

Minutes of the August 21, 2013 Meeting

Darin Overton, Chairman, called the meeting to order at 7:08 pm.

Attendance:

Members		Alternates	
X	Angiletta, Irene	A	Dilauro, Richard
X	Bernotas, Randy	A	Li, Linda
X	Brown, James		
X	Charles, Douglas		
X	Overton, Darin	Others	
X	Poturnicki, Rob	A	Vito, Lee
A	VanderVeer, Daria		

A=Absent
 X=Present

Approval of the Agenda

Doug Charles made a motion to approve the agenda as presented, seconded by Rob Poturnicki. Motion was passed unanimously.

Public Session

Randy Bernotas, acting as a member of the community rather than the Commission, asked about what was going on at the Fazzino property and if there were two houses on the property. Darin Overton commented that the additional building was a garage. Jon Brayshaw commented that the drawings that were the basis for the building permit is what is being built except for the location of a door and possibly a couple of windows. Different rumors are being circulated about what will be happening in the garage. Irene Angiletta asked about how Mr. Fazzino got permission to install the stone culvert. Mr. Brayshaw explained that there was always a stone trench that went from the state highway where the catch basins culminate and turn down the property line to the lake. Mr. Brayshaw believes that Mr. Fazzino put rip-rap to restore the channel. Randy Bernotas reminded Ms. Angiletta that this Commission had given Mr. Fazzino permission to do that. There was discussion about the definition of rip-rap and its different sizes. Mr. Bernotas explained that the rip-rap will help with the water flow. Jon Brayshaw also reported that the current garage is actually two feet smaller than what the permit was issued for and went on to describe the garage itself.

140 West Street, LLC, Informal Discussion of Possible Cleaning of Pond, 104 Baileyville Road and Route 147

Jon Brayshaw, a member of 140 West Street, LLC, was present. Mr. Brayshaw explained that the restoration of the Lyman Gunsight properties has been a lifetime project and has been working on it for 12 to 13 years. Mr. Brayshaw explained that he was hoping to get some direction from the Commission. The property consists of three parcels: one with the pond at 104 Baileyville Road, the Gunsight at 140 West Street and property in back of existing homes. The property totals approximately 25 acres, most of which is unusable.

Mr. Brayshaw explained plumbing and electrical systems that were put in place many years ago which, in fact, actually run under the state highway. He reviewed the maps and pointed out to the Commission the location of the 500-gallon pond, the pump station, the 8-inch water line which goes across the street and up to a 50,000-gallon reservoir. Mr. Brayshaw also explained that the tank is the reserve water for the fire system for the main plant and for the scope shop. He also explained that the existing Quonset hut is, in fact, on state property and went on to relate some of the history of the property and how water was controlled by Mr. Bailey.

The pond, back in 1957, was a more narrow pond. 140 West Street, LLC hired a surveyor who took a bunch of soundings on the pond and found that some of it is two feet deep, most is a foot-and-a-half. The perimeter is water level 95.1. Jon Brayshaw showed the Commission which areas they

were planning to muck out. They feel it is smarter to not bring trucks out into the road and would like to create an impoundment area for dewatering. The number of cubic yards is not known yet, but Mr. Brayshaw is positive it will be more than 500 cubic yards and will then need to go before the Planning and Zoning Commission as well.

Randy Bernotas asked if they were worried about leaving a terraced level in the pond after mucking it out. Mr. Brayshaw does have that worry. The DEEP had told Mr. Brayshaw to go back 15 feet from the face of the dam and then go down a slope of 3:1. He explained that they did not want to go near the dam except at the inlet box where they have to go near the dam.

Jon Brayshaw distributed information to the Commission members. Irene Angiletta asked if they planned to do this when the Lake was drawn down and Mr. Brayshaw replied yes, that would provide the greatest insurance. The excavator that they have contacted estimated the work to take about a week and would hope that they could hit a good weather week with little precipitation. Mr. Brayshaw was told that it would take two to three days to bring the pond down, then you let it sit for two or three days so that the muck dewateres and then you remove the muck.

Mr. Brayshaw explained that there is one company left in Connecticut that specializes in drag lines, cleaning out farm ponds with a drag line. It was thought that the drag line was a more primitive, less surgical device and would be much more disruptive.

Jon Brayshaw explained that the first item in his handout is a letter from the Fire Department stating that this pond was a source of fire water since its inception and it is now impossible for them to use it. The Fire Department would use the pond for firefighting at Fowler's Market (Blackbird Tavern). The second page of the handout is the prior approval of the application to dredge the fire pond. The third page is the application for dredging the pond and the next page is a photograph that shows the enormity of the washout, showing the septic tank exposed. These items are all dated 1994.

Jon Brayshaw also reviewed the tax map to help educate the Commissioners on the layout of the parcel. Mr. Brayshaw brought this information to show the comparison between 1957 when the pond was more narrow and how it was gouged during the flood. Mr. Brayshaw explained he is not worried that the building will burn down because there are 50,000 gallons in the reserve tank.

Mr. Brayshaw explained that the fire system has been tested repeatedly and that the water has a foul smell to it. He went on to explain the relationship between Factory Mutual and insurance companies. Mr. Brayshaw explained that he wants to get the project done as soon as possible.

A Commissioner asked for assurance about the root system of the trees in the area near the pond and Mr. Brayshaw replied that they will obviously do what they can to maintain that.

Jon Brayshaw referred the Commission to a memo from Ted Ryback, who is in charge of dams in the State of Connecticut, where Mr. Ryback implied that this was maintenance and that fire ponds do fill in as do other ponds. Per a Commissioner's request, Mr. Brayshaw defined spalling as when the freeze/thaw cycle gets small particles of water in behind a concrete surface. While the water is down in the pond, Mr. Brayshaw will probably put a coating on the two cheek walls of the dam. Mr. Ryback suggests staying 10 or 15 feet back from the dam and not to disturb the slope any more than a 3:1 slope. Mr. Brayshaw stated that he and Mr. Ryback discussed ways to get from one abutment to the other on the dam, one of those possibilities being a bridge. Mr. Brayshaw explained that there may be situations where they have to get to the other side of the dam for maintenance and/or tree upkeep. Mr. Brayshaw is not suggesting that he will build a bridge; he just wants to get the fire pond going.

Darin Overton remarked that it seems pretty straightforward and there is an obvious need, not just for the private property but also for the community as a whole in that area. As far as filing an application, Mr. Overton suggests that a wetland delineation be provided so the Commission can fully understand the impact to the wetlands. The water control should be clearly described and how the water will be managed while the work is being done. Any sort of emergency management plan (i.e., in the case of a large storm) should be provided. Location and methods of dewatering need to be reviewed, in particular coordinating with the Town Sanitarian since the dewatering area looks to be on top of the leaching fields. Access road construction and an estimate of quantity of temporary fill for the road should be provided. There should be a plan for the location of material on the site once the excavated material is sufficiently dewatered. Mr. Brayshaw did mention that they would like to lose some of the material on the site to try to restore some of the areas that were damaged 20 years ago. He does realize that some of the material will have to be trucked away, though he does not want to truck muck over the highways. A restoration plan should be provided to describe removing the temporary fill and restoration of any of the disturbed areas. Mr. Overton also asked Mr. Brayshaw to let the Commission know if any trees will be removed and erosion control measures should be described in full. Mr. Overton also mentioned that Mr. Brayshaw may want to request a waiver of fees as this is a temporary impact and the Commission has done that before. The base fee would apply, but the Commission will consider waiving the schedule A fees. Mr. Brayshaw asked if the Commission would want to see a plan for the dry hydrant and Mr. Overton stated that some of those details should be included with the application.

Jon Brayshaw reported that his contractor thinks that, in a perfect situation, it would take approximately a week to fully and another week to do the excavating. While work is being done on Lake Beseck, the valve at the dam will be open and the lake will not be allowed to go back up. Mr. Brayshaw hopes to be able to work in conjunction with the people working on Lake Beseck. Darin Overton believes that it would be their responsibility to notify somebody downstream if they were going to do a large release as part of the project.

Jon Brayshaw reported that on August 27 or 28, the contract will be awarded for the work at Lake Beseck. DEEP claims that the lake will be drawn down by November. His two envelopes of time would be to get the work done on the pond before the lake is drawn down or while it is happening.

Mr. Brayshaw invited members of the Commission to stop by any time and walk through the area.

Wetlands' Enforcement Officer's Report

Lee Vito is on vacation, but did relate to Darin Overton that there was nothing to report.

Discussion of Fee Schedule Revisions

Darin Overton has not considered anything further on fee schedule revisions and the Commission agreed to defer this to the next meeting.

Approval of Minutes

Irene Angiletta moved to accept the minutes of the April 17, 2013 meeting as presented, seconded by James Brown. The motion was carried, with Randy Bernotas abstaining. Irene Angiletta asked if the Commission had a copy of the Natural Diversity database, but Darin Overton referred her to the DEEP website where the eco maps are online. Ms. Angiletta also asked about having an ordinance in place so that the Commission can fine people in violation and whether the Commission should talk to the Selectmen about that issue. Mr. Overton agreed to discuss it with the Commission's attorney to determine what the procedure is.

Chairman's Report

Darin Overton had nothing new to report.

Miscellaneous

A Commissioner asked for an update on the herbicide at Lake Beseck and asked if something had happened to inhibit the growth of weeds this year. It was believed that the weeds this year were actually worse than ever.

Adjournment

James Brown made a motion, seconded by Rob Poturnicki, to adjourn the meeting. Motion was carried unanimously. The meeting was adjourned at 8:05 pm.

Respectfully submitted,

Debi WAZ

Debi Waz
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**MIDDLEFIELD INLAND WETLANDS
 and
 WATERCOURSES AGENCY
 405 Main Street
 Middlefield, Connecticut 06455**

Minutes of the September 18, 2013 Meeting

Darin Overton, Chairman, called the meeting to order at 7:14 pm.

Attendance:

Members		Alternates	
X	Angiletta, Irene	A	Dilauro, Richard
A	Bernotas, Randy	A	Li, Linda
X	Brown, James		
A	Charles, Douglas		
X	Overton, Darin	Others	
X	Poturnicki, Rob	X	Vito, Lee
X	VanderVeer, Daria		

A=Absent
 X=Present

Approval of the Agenda

James Brown made a motion to approve the agenda as presented, seconded by Irene Angiletta. Motion was passed unanimously.

Public Session

No one from the public wished to speak to the Commission.

Wetlands' Enforcement Officer's Report

Lee Vito reported that Lakeview Estates is moving along. The entry road has been completed and the last retention basin is being installed. Mr. Vito commented that the consulting engineer has been doing a really good job of doing weekly site inspections for erosion control and he is very impressed with the contractor on this job, D'Amico from Plainville.

Robin Cabelus, 86 Lake Shore Drive, has resubmitted new plans for her lot with a smaller house, but basically the same floor elevations. Darin Overton reviewed the history of this. The IWWA approved an application for a house footprint that required a variance. The variance was denied and that plan never went forward. Apparently, the owner has reduced the size of the house so that no variance is required. After talking to Mr. Vito, Mr. Overton doesn't see an issue with it and stated that Lee Vito could approve that going forward. Ms. Angiletta stated that Ms. Cabelus probably still intends to bring in fill to level the driveway and that Arlene Bielefield, who lives on the same road, had an experience with something like this creating water in her yard. Ms. Angiletta is concerned that there will be run-off into the neighbors' yard and then into the lake. Darin Overton believes that, under current conditions, surface run-off comes down from the road, goes around the house on both sides and into the lake. With the changes Ms. Cabelus proposes, the driveway will pitch back toward the road and the run-off should still come around and go between the two houses. Mr. Overton feels that, if it's managed properly, there shouldn't be a problem.

Randy Bernotas called Lee Vito about 22 High Street where wood chips were being filled in. This issue has come up several times over the years. Mr. Vito visited the area and the 100-foot review area is clearly marked and there really doesn't seem to be an issue.

Lee Vito talked with Sean Hayes of Power Ridge and the pond is totally drained. Powder Ridge hopes to do the excavation in early October. They are waiting for the DEEP permit to expand the pond.

Lee Vito also reported that a property owner on Lake Beseck asked about fixing a wall while the lake is drawn down and asked if the Commission wanted to handle these requests, as always, even if the water is not there. Darin Overton stated that there should be a permit application filed, regardless of whether the water is down or not, as the wetland is defined by the high water mark, not whether there is water there or not.

Discussion of Fee Schedule Revisions

Darin Overton has reviewed some other wetlands regulations and seems to be no longer in support of Schedule A. Mr. Overton feels that, because there is a provision in the regulations for complex application fees, Schedule A seems a bit ludicrous. Mr. Overton feels that if the Commission wants to eliminate that section, a public hearing should be scheduled. Rob Poturnicki agrees that it should be eliminated.

Daria VanderVeer recalls that the schedule was actually formulated for projects that the Town of Middlefield is probably likely to never see, such as Stop & Shop-type really huge projects. Irene Angiletta suggested that a project of that size might be possible on Route 66 and Dr. Brown asked if maybe it could be scaled for

something of that size. Darin Overton thought that a project like that would still be considered a complex application.

The Commission reviewed the definition of the complex application fee and the timing of it. Darin Overton thought it was fair to determine that a project is complex up-front, but that if revisions to a project made it more complex, the Commission could still invoke the complex application fee. Mr. Overton doesn't believe there is any limitation as to when this fee is invoked.

Daria VanderVeer also thought that Schedule A was initially designed to encourage an applicant to think very carefully about how much they planned to disturb. Darin Overton believes that some people would look at Schedule A as a penalty fee, though the complex application fee is sort of the same thing. James Brown asked if there was a way to provide guidance to applicants as to what would qualify as a complex application (as determined by the Commission). Mr. Overton again confirmed that a complex application fee is completely at the discretion of the Commission. Daria VanderVeer stated that Schedule A is a non-refundable application fee, but if the Commission determines that the project may be huge, but not complex, there would be no additional fee. However, if the project is huge and controversial and will require experts, there will be a big fee to apply and we will require experts to review it.

The Commission agreed that the term "complex" is tied to whether or not experts are needed on an application, regardless of the size of the project. There was discussion regarding the difference between "complex" and "significant activity." Mr. Overton explained that "significant activity" is based on the amount and severity of impact. "Complex application fee" can be different, not necessarily a large impact but maybe interveners with several consultants that come in opposing the application. Mr. Overton reminded the Commission that they were not experts, engineers, biologists and if someone comes in with a wetland biologist or soil scientist regarding an application, the Commission cannot refute their argument without experts of their own.

Daria VanderVeer asked leaving Schedule A in place as long as the Commission has the ability to waive those fees, when deemed appropriate. Mr. Overton cited an example of somebody being reluctant to file an application because of concerns over the fees for a project such as dredging a pond for maintenance. Rob Poturnicki member disagrees with Schedule A since it is non-refundable and should be more like a bond.

James Brown asked if Schedule A was created to discourage people from disturbing the wetlands. Darin Overton feels that that was part of the thinking. Daria VanderVeer believes that fee Schedule A would make people consider moving their projects outside of the wetlands to avoid the higher fees. She does agree that it may also discourage maintenance type work being done that is necessary in the wetlands.

Darin Overton explained that part of the thinking when developing that fee schedule was to provide incentive for people to think hard about not impacting wetlands. The second part of it was that if people were going to do a substantial amount of work in the wetlands, it was going to be a more difficult application for the Commission to consider and would cost more to process. Mr. Overton feels that that second part of it is covered under the complex application fee and feels that you're left only with an incentive or a penalty to stay out of the wetlands. The complex application fee is refundable if money is not spent. Rob Poturnicki feels better about returning any unspent money.

Darin Overton also brought up the example of someone paying the Schedule A fee and then revising their plan to have a lesser impact on the wetlands. The fee will have already been paid.

This has happened only once during the time Darin Overton has been chairman of this Commission and, at that point, the fee was partially waived. Daria VanderVeer did read from the regulations and found that the fee can, in fact, be refunded. Mr. Overton is of the opinion that the waiver needs to be requested up-front and not partway through the process.

The Commission then discussed how the Powder Ridge application was handled and what fees were charged.

Darin Overton suggested that maybe there be a waiver requirement that a request for a waiver has to be submitted with the application. There was then discussion about getting the word out about the possibility of a waiver.

The Commission then discussed another example of a pond that needed attention but never happened due to the application and permitting process. There was also discussion about larger-impact projects triggering state and federal permits as well as local permits. Commissioners were directed to look for programmatic general permits from the Army Corps of Engineers for more information.

James Brown also suggested that it be incumbent on the Commission to let applicants know if Schedule A will be considered with their application and explain that they can request a waiver. The Commission also wants to avoid every applicant asking for a waiver because they believe the fee is too high. Mr. Overton remarked that the waiver should apply to only a limited amount of things and not to standard fees. The Commission then discussed the waiver conditions that exist and what is a public benefit. Mr. Overton explained that the Wetlands Commission is supposed to weigh the balance of economic development and look at the benefits to the community as a whole. Decisions aren't just based on the amount of impact, but also on public benefit as well.

Schedule A is part of the application fee while the complex application fee is only charged if the Commission invokes it. Application fees are normally not refundable. The Commission also has the ability to require a bond or issue a violation. Commissioners then discussed the difference between bonding and Schedule A fees, with the bond being refundable. Darin Overton researched fines with Matt Willis and explained that the Commission has the ability to go after someone if there is a violation and sue them for the impacts. If in that suit, the Town wins monetary funds, those funds go to the DEEP. Under the statutes, the fine structure has to be set up by ordinance so the Commission would have to go to the Board of Selectman have an ordinance established to create fines. There would then need to be an officer set up to issue the fines which would be issued just like a traffic fine. The maximum fine would be in the order of \$1,000. Attorney Willis found that there were very few, if any, towns that had an established fine structure. The process to set up fines seems poor and the level of fines that can be invoked appears minimal.

Commission members then discussed having fines instead of Schedule A and how that would deter non-permitted activity in wetlands. Irene Angiletta recalled the activities that Mr. Fazzino conducted at the lake. Ms. Angiletta feels this is an example of someone pushing too far and the Commission should have recourse.

Daria VanderVeer asked if the Commission could revisit this issue at the next meeting so that Commission members can check information from the Army Corps of Engineers, the DEEP and the Town of Greenwich. Darin Overton is not interested in pushing forward with fines, but if the Commission, as a whole, is interested in that, he would certainly not oppose it.

Approval of Minutes

James Brown moved to accept the minutes of the August 21, 2013 meeting as presented, seconded by Rob Poturnicki. The motion was carried, with Daria VanderVeer abstaining.

Chairman's Report

Darin Overton apologized for the backlog of mail. There was a letter from Jacobson dated June 17, 2013 that was written to Robert Johnson, chairman of Planning and Zoning, regarding Powder Ridge and the erosion control bond. The bond estimate was approved at \$18,880 for the work for dredging the pond. Lee Vito reported that Sean Hayes has paid one bond, but he wasn't sure if it was this bond or not.

Darin Overton also reported receipt of an email from Howard Frommer at Nathan Jacobson regarding the Miller Road bridge that talks about a new schedule, but the whole project has been put on hold for this year.

Mr. Overton also received notice of tentative determination to approve the repairs to the dam at Lake Beseck, dated May 6, 2013.

Darin Overton also received a letter from CACIWC that membership fees of \$60 are due. Irene Angiletta also commented that CACIWC's annual conference is on November 16, 2013. Mr. Overton also distributed newsletters from CACIWC and asked Lee Vito to sign the Commission members up for the conference.

Mr. Overton also had a submittal for the general permit for the dredging of the pond at Powder Ridge as part of the general permit application to the DEEP and is available for the Commissioners to review. There has already been a category 1 Army Corps permit issued.

Miscellaneous

There were no issues.

Adjournment

James Brown made a motion, seconded by Rob Poturnicki, to adjourn the meeting. Motion was carried unanimously. The meeting was adjourned at 8:23 pm.

Respectfully submitted,

Debi Waz

Debi Waz

Alwaz First

MIDDLEFIELD INLAND WETLANDS
and
WATERCOURSES AGENCY
405 Main Street
Middlefield, Connecticut 06455

Minutes of the October 16, 2013 Meeting

Darin Overton, Chairman, called the meeting to order at 7:11 pm.

Attendance:

Members		Alternates	
X	Angiletta, Irene	X	Dilauro, Richard
X	Bernotas, Randy	X	Li, Linda
A	Brown, James		
A	Charles, Douglas		
X	Overton, Darin	Others	
X	Poturnicki, Rob	X	Vito, Lee
A	VanderVeer, Daria		

A=Absent
 X=Present

Richard Dilauro and Linda Li were seated on the Commission.

Approval of the Agenda

Rob Poturnicki made a motion to approve the agenda as presented, seconded by Irene Angiletta. Motion was passed unanimously.

Public Session

There was no one present to speak to the Commission.

Wetlands' Enforcement Officer's Report

Lee Vito reported that Lakeview Estates has been coming along very nicely. The owner has asked if he could get a reduction in the weekly engineering inspections now that the road, utilities and retention basins are in. Lee Vito walked the site today and it has all been pretty much seeded and stabilized. Mr. Vito would not have a problem with the Commission reducing the inspections as the last few reports from the engineer have shown no problems. Lee Vito will continue to go out there once or twice a week and, if he sees an issue, he can get hold of the owner or call Brian Curtis.

Irene Angiletta has an issue with him cutting the limbs off the bottom part of the four trees that were left. She did not feel that was very considerate of the Commission's request. Lee Vito did comment that he was trying to spruce the property up to sell the houses. Ms. Angiletta stated that All he wants is what he wants@ and is worried about the railroad trestle which would inhibit his ability to use big motor boats back and forth. Mr. Angiletta also mentioned the dock that was supposed to be strictly for kayaks and canoes and that now they may be thinking they need a dock for motor boats. Rob Poturnicki remarked how dangerous the situation is with those railroad pilings and that they should be cut down to the ground. Mr. Poturnicki stated that if someone stood on the back of their boat and dove in the water and hit one of those, they would die. Randy Bernotas feels that when the lake is full, they are a nonissue. Ms. Angiletta commented that, in the old days, that whole section was very shallow and large boats didn't go in there. A lot of birds and turtles collected in that area of the lake. Mr. Poturnicki had pictures of the area for the Commission to review.

Darin Overton asked how people would know not to use the area as there is a state boat launch there and no warnings. Irene Angiletta explained that people just knew not to use the area, even after the boat launch was installed. Ms. Angiletta feels that there is a problem now because the lake is low and people see it and the owners of Happy Acres will want to have motor boats. She is afraid that the whole area that has been protective for wildlife will not exist anymore because people will use their motor boats at 50 mph. Ms. Angiletta went on to explain that she is a conservationist and has lived on the lake for 45 years and never owned a motor boat because she doesn't believe the lake is big enough for one. Linda Li then asked if this was even a decision for this Commission to make and both Ms. Angiletta and Mr. Overton said no. Randy Bernotas also mentioned a point at the north end of the lake where people lose their props.

Randy Bernotas noted that this Commission does not have any say as to what goes on in the lake as it is a state-owned lake. The installation of a dock cannot even be regulated by this Commission. Ms. Angiletta has copies of regulations from Greenwich, including dock regulations, for the Commission to review. Darin Overton had tried in the past to propose a dock ordinance and no one seemed interested. Several people from the Lake Beseck Association were opposed to it at the time. There are no standards or basis for consistency. Currently, the state wants only floating docks installed, nothing permanent.

Darin Overton brought the discussion back to the issue of allowing the engineer's inspections to go from weekly to monthly. Mr. Overton felt that if the site was mostly established, that weekly inspections were probably not necessary. Lee Vito reported that the site manager is competent and that Brian Curtis feels he is one of the best contractors he's seen. Mr. Vito would continue to go out to the site, regardless of the engineering inspections.

Randy Bernotas thought that if it was the State who set these rules and regulations, that the property owner would have to go to the State rather than this Commission. Darin Overton felt that since they had been following the weekly inspections thus far, he would not be opposed to going to monthly inspections, particularly since he agrees that the site is mostly stabilized. Only Irene Angiletta disagreed.

At this point, it was agreed to let it stand as is for another month. Darin Overton will contact Matt Willis or Mark Branse regarding this issue. Lee Vito will also contact DEEP to see if there is language in the regulation regarding the site being established.

Lee Vito also gave an update on Powder Ridge. The pond has been drained and expansion has started. The pond sediments have been tested for pesticides and herbicides and were negative for both. Mr. Vito also gave approval to relocate the soil stockpile from the base of the slope to behind the old maintenance building. Linda Li asked what would have happened had pesticides been found in the pond. Mr. Bernotas explained that it would not have been able to be spread out.

Discussion of Fee Schedule Revisions

Darin Overton explained that Daria VanderVeer was going to do some research, but was not feeling well and could not make tonight's meeting. Irene Angiletta had researched the fees charged in Greenwich and had prepared a packet for the Commission to review. Also included in the packet is an ordinance that enables fines as well as docks. Greenwich also uses a questionnaire to determine if a permit application is required.

Irene Angiletta explained that the schedule of fines was on the last two pages in the packet. Mr. Overton stated that those pages were a schedule of fees and Ms. Angiletta explained that the fines were connected to State statutes. She also remarked that a maximum was never stated, but instead refers to the State statutes. It was also pointed out that Greenwich also charges for inspections. Ms. Angiletta also explained that Greenwich does a preliminary application to determine if a permit is even needed, which the Town also charges for.

The Commission reviewed and compared the Town of Greenwich rates to those of Middlefield.

Darin Overton reminded the Commission that the discussion was really surrounding eliminating Schedule A, not redoing the whole fee schedule. Linda Li agreed, but stated that Schedule A is the most contentious part. Ms. Li remarked that the original intent was to provide some type of deterrent and that some modification could be put in for the case of maintenance projects. She also stated that the fees could always be waived, but that she did not feel comfortable just taking it out.

Darin Overton agrees that a waiver works, but he's not sure property owners would file an application with a risk that the fee would not be waived. Ms. Li asked if the work to be done is maintenance, then is it really called disturbance. Mr. Overton reminded the Commission that the definition is disturbance or impact by implementation of the project.

Darin Overton also suggested that a paragraph could be added with an exemption for maintenance of water bodies. Randy Bernotas asked whose definition would determine if the project was maintenance or not and that, depending who is on the Commission, that would not be fair. Mr. Overton read the definition of watercourses to mean "rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs and all other

bodies of water, natural or artificial, vernal or intermittent, public or private, which are contained with, flow through or border upon the Town or any portion thereof.”

Irene Angiletta asked about changing the wording of the fee schedule for destruction of wetlands vs. a fee schedule for maintaining wetlands, such as dredging. Mr. Overton suggested it could be tied to permanent loss of wetland. Mr. Overton’s thoughts were to just eliminate Schedule A.

Linda Li also mentioned discussion at the CACIWC conference about differentiating between different qualities of wetlands because not all wetlands have environmental impact. It was suggested that towns need to begin to distinguish between types of wetlands when assessing impact. Since the Commission’s point is to preserve valuable wetlands, maybe some wording could be added about that. Darin Overton commented that the Army Corps has a standard that soil scientists and wetland biologists follow for evaluating wetlands and rating them. One standard is various types of habitat, another is stormwater management and another is whether it collects sediment. Irene Angiletta asked if maybe the Commission would implement the type of questionnaire that Greenwich uses and therefore evaluate the wetland prior to an application. That may help to eliminate Schedule A.

Rob Poturnicki can’t come up with a reason to not eliminate Schedule A. Randy Bernotas feels that that is what the waiver system is for and that Schedule A should be amended, not eliminated. Mr. Bernotas feels that a fee needs to be in place that can be waived, if deemed necessary. Mr. Poturnicki doesn’t feel that people should have to pay a large amount of money to pull a permit and that the Commission does have a right to request a bond.

Darin Overton feels that the Greenwich questionnaire is basically a screening tool and that Lee Vito essentially does this already.

Darin Overton asked if the Commission would like him to rewrite Schedule A to make it simpler and propose it at the next meeting. Linda Li asked if it could be sent out ahead of time so that the Commission members could review it. Discussion of the fee schedule revisions will be continued to next meeting.

Approval of Minutes

Rob Poturnicki moved to accept the minutes of the September 18, 2013 meeting as presented, seconded by Rich Dilauro. The motion was carried, with Linda Li, Rich Dilauro, and Randy Bernotas abstaining.

Approval of 2014 Meeting Dates

The Commission members reviewed the proposed meeting dates for 2014. Randy Bernotas moved to accept the 2014 meeting dates, seconded by Rob Poturnicki. The motion was carried unanimously.

Chairman’s Report

Darin Overton received the letter from the Town Clerk regarding the 2014 meeting dates. He also received the permit for the dam repair from the DEEP which he read to the Commission.

Miscellaneous

Randy Bernotas has been told that the property owner to the left of Don Smith's house has been carting in a huge amount of wood chips and stockpiling them towards the back of his property. Mr. Bernotas has been told that the indication is to fill in back there and that part of the property is a wetland. Lee Vito had visited the property and the 100-foot review area is clearly marked and the chips are staying outside of the area.

Linda Li asked about the discussion with the Commission's attorney about fines that was reported in the August meeting minutes. Darin Overton reported that he had talked to Matt Willis and that the statute did allow for establishment of fines by ordinance. Irene Angiletta explained that that was why she gathered the information from Greenwich. Ms. Angiletta explained that the Commission was looking to have an ordinance in place so that they could go after someone who didn't get a permit, when necessary. Darin Overton explained that any fines go to the DEEP. Mr. Overton feels that the Commission already has all of the recourse necessary by the ability to issue a violation. Randy Bernotas recalls the Commission fining property owners in the past. Darin Overton will take a look at some options and speak to Matt Willis.

Adjournment

Rob Poturnicki made a motion, seconded by Randy Bernotas, to adjourn the meeting. Motion was carried unanimously. The meeting was adjourned at 8:15 pm.

Respectfully submitted,

Debi Waz

Debi Waz
Alwaz First

**MIDDLEFIELD INLAND WETLANDS
and
WATERCOURSES AGENCY
405 Main Street
Middlefield, Connecticut 06455**

Minutes of the November 20, 2013 Meeting

Darin Overton, Chairman, called the meeting to order at 7:05 pm.

Attendance:

Members	Alternates		

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X	Angiletta, Irene	A	Dilauro, Richard
A	Bernotas, Randy	X	Li, Linda
X	Brown, James		
X	Charles, Douglas		
X	Overton, Darin	Others	
A	Poturnicki, Rob	X	Vito, Lee
X	VanderVeer, Daria		

A=Absent

X=Present

Approval of the Agenda

Doug Charles made a motion to approve the agenda as presented, seconded by Irene Angiletta. Motion was passed unanimously. James Brown joined the Commission at 7:06 PM and Linda Li arrived at 7:08 PM.

Public Session

Josephine Monthei addressed the Commission to ask if they can apply blacktop on a launching area they have at 45 Lake Road. In the past, Tom Weber had given the Montheis permission to install the launching area, but then told them that they can't put blacktop on. They would like to know that since that the lake is down, if they could pave it. Daria VanderVeer asked what the surface was now and if they had put rocks down. At this point, they have everything there except the blacktop. Darin Overton suggested that the Commission take a look at the area since they are not familiar with it. Jim Brown asked if the launching area was normally underwater or just at the edge of the lake. Ms. Monthei replied that it just goes to the edge of the lake. The Commission members will visit the site on Saturday, 11/23/13, at 8:00 AM.

Thomas Perrelli, Proposed Activity within 100' of a Wetland to Repair and Replacement of Wall, 24D Rosemary Lane

Thomas Perrelli explained that over the years, his wall has just fallen into the lake and, with the water being down, he thought it was a good time to repair and replace it. He did explain that he'd like to do it as cheaply as possible, but really doesn't know what will have to be done. He has no plans to add anything to the wall other than possibly making the stairs a little wider. Darin Overton did not feel that widening the stairs would be an issue.

Darin Overton explained that Mr. Perrelli will need to define a little better exactly what he plans to do and the Commission know if the wall will be replaced in-kind with poured-in-place concrete or if he will be doing something different. Mr. Overton asked for a map defining the limits of what the repair will be, even if it's just the town assessor's map, explaining that the Commission needs something to go in the file. Details needed would be the length of the wall to be replaced, the method to be used, how much of the area is expected to be impacted. The Commission would like to see an outline of exactly what the contractor will do.

Irene Angiletta also asked about a wall that was put up at the lake with no permit issued and asked why Mr. Perrelli has to come for a permit, but the other property owner did not. Ms. Angiletta did not recall the address. Darin Overton suggested they discuss the issue under the Wetland's Enforcement Officer's report.

Jon Brayshaw, 140 West Street, LLC, Proposed Dredging of Fire Pond and Patch Concrete, 104 Baileyville Road

Jon Brayshaw thanked the Commission members for their volunteer service to the town and reminded the members to contact Fran at the Town Hall if their term was expiring and they wanted to continue. Darin Overton congratulated Jon Brayshaw on his win in the election and for his service to the town.

Mr. Brayshaw brought Steve McClarney with him to the meeting. Steve is the contractor who will be doing the work for 140 West Street, LLC. They showed the Commission plans of the work that is planned. Mr. Brayshaw described that the pond is a little less than a half-acre in size and is about a foot to a foot-and-a-half deep. It was excavated by Vinny Cahill for the fire department about 20 years ago for use as a fire pond. Not long after it was excavated, a large storm filled it right back in. Within less than a year, all of the excavation that was done was lost.

Jon Brayshaw stated that the pond is important to both the Town and 140 West Street, LLC because it is a source of water for fire protection. In the packet provided, there is a letter from the fire chief who absolutely agrees on the importance of the pond. Mr. Brayshaw related stories of firefighting during the fire at Fowler's. The next item in the packet is a memo from Mr. Ryback of the DEEP who is in charge of the work on the dam at Lake Beseck. Mr. Ryback feels that this is a maintenance project. The next item is a report from Ian Cole, the wetlands person that was hired, and shows the delineation of the wetlands. The last item in the packet is a sketch of where the property is. It is a piece that is about 8 acres that starts up at the Blackbird and goes down around the corner.

Steve McClarney reviewed the project with the Commission. They will first come in and excavate the area which may also act as a pre-settling basin for future maintenance. A pump will be installed on the other side of

the watercourse. Hoses will be run from there. The goal will be to work in dry as the work is done. Of course, the weather will have to be watched. The pond would then be pumped down. Suction lines may have to be moved to different locations in the pond to do this. It will be necessary to fill the pond a little bit to gain reach, though some of the dry soil may be able to be reused. As the excavation is done, one area will be filled first. It may not be able to be graded right away as the material will be wet. If it is stockpiled, silt fencing will be installed, as needed, and may be seeded. There is also a temporary stockpile location available.

Jon Brayshaw reported that he has spoken to Brian Curtis. There is more than 500 cu.yds. involved with the project and could be up to 1,200 cu.yds. The Town has a trigger point of 500, so the project has to go before Planning & Zoning. If there is extra material, it will be transported to the Town's gravel pit.

Daria VanderVeer asked about the material left behind after the project. Mr. McClarney explained that it will all be removed. The edge of the pond will be where it is now. Fill material will have to be hauled in to get the platform started, but they are hoping to leap-frog the material and keep using what is there. Mr. Brayshaw explained that they will be renting a long-reach excavator. He also explained that he would like to get approvals in the months of November and December, but then wait and see how the weather goes. They are hoping the project will be completed within a week. Mr. McClarney also explained that grading and seeding would be done in the Spring/early Summer as the material will have to dry.

Darin Overton asked how the pump would be powered and Mr. McClarney explained that it will be a diesel pump. They then reviewed the locations in the pond where it will be suctioned off. Mr. McClarney also explained that one of the goals was also to keep the stream clean. They are also trying to be cautious of the dam while doing the work.

Darin Overton is a little concerned about stockpiling over the top of the exposed septic system. Mr. Overton asked Mr. Vito if he had any concern with wet material being put on top of the tank and asked if a liner should be installed. Mr. Vito stated that it probably wouldn't be a bad idea to have a liner put down. Mr. Overton is just concerned that the leaching fields are not damaged. Mr. McClarney stated that since it is a parking lot, he would assume the tank is an H2O tank.

Darin Overton is also a little concerned that the material may not be as dry as they might think and that the silt fence may not hold the material. Mr. Overton suggested maybe a berm as a dewatering area and once it dries out, it could be spread out. Steve McClarney agreed that that could be done. They do hope to not remove all of the trees within the green area on the drawing. Daria VanderVeer asked if the pond could be dewatered, but the material left there to dry. Jon Brayshaw explained how Vin Cahill had done it before. The point now is that no one knows what's really there until the water is removed, but nobody wants to transport the material.

Jon Brayshaw explained that there is no volume in the pond right now. Mr. Brayshaw also stated that he was told by Mr. Ryback of the DEEP that when you have an earthen dam, you have a wedge of material going away on a 3:1 slope and advised them not to go too close to the dam.

Steve McClarney also stated that the pond may have to be pumped down at a later date to do some parging of the concrete surface of the dam which may not be able to be done during this project.

Darin Overton asked for a couple of things before the Commission could make a decision. They will need to know the volume and area of fill in the purple color on the drawing. If there is a simple narrative for an emergency management plan, that would help. There should be some sort of sediment containment on the pump discharge. Mr. Overton referred Mr. McClarney to the Erosion Control manual for ways to do that. Mr. McClarney was concerned with the amount of space available in order to contain the sediment, but agreed to come up with something.

Darin Overton reviewed that the project is purely a maintenance operation, but asked Mr. Brayshaw to put it on the plan that material will be being pulled out. Jon Brayshaw will return to the Commission's next meeting on December 18th.

Wetlands' Enforcement Officer's Report

Lee Vito reported that the pond excavation has been completed at Powder Ridge and they are starting to get some water in it. Powder Ridge is opening on November 29th this year.

Irene Angiletta reminded the Commission of the wall that was built at Lake Beseck. Ms. Angiletta has material to submit for the Commission to review that is a proposed ordinance that says the Commission can go after someone that does not have a permit. Ms. Angiletta does feel the new wall is a beautiful wall, but it was not there before and she feels that there should be consistency for permits. Lee Vito will go out to take a look at this wall.

Discussion of Fee Schedule Revisions

Irene Angiletta got a draft copy of the ordinance from Greenwich which is very simple and shows the fine schedule. She also has the state statute that supports the fines. Ms. Angiletta brought a copy of all the members of the Commission. Ms. Angiletta feels it is very clear and very specific and feels that an ordinance should be put into place. Darin Overton felt that this was the draft of what Ms. Angiletta had actually given the Commission had the last meeting. The maximum fine would be \$1,000, which comes from the state statute.

Darin Overton reviewed the regulations from Greenwich and noticed that the fine schedule had been removed. The regulation just states that the fine can be up to whatever the state statute allows.

Darin Overton asked Matt Willis to look at the language and confirm that it met the statute requirements and Attorney Willis asked for a little more time to look through it. Mr. Overton thought that the statute said it had to be established by ordinance, so he wasn't sure how Greenwich got it in their regulations.

Mr. Overton believes this provides a method of fining people for small violations where the Commission does not want to have a show-cause hearing for doing something without a permit. Ms. Angiletta has a difference on opinion and believes that the Commission does not have to charge a lot, but at least there would be something on the books so that if somebody really does something, there is something that can be done. Mr. Overton explained that in the case of the wall at Lake Beseck, if it had been something terrible done in the wetlands, the Commission would not want to fine the property owner and then walk away from the issue. Ms. Angiletta replied with "why not." Mr. Overton believes that the Commission should call the property owner in to have a show-cause hearing and if the Commission doesn't like what's there and it's not permitted, to tell the

property owner to remove it at whatever the cost. Mr. Overton does not believe that fining the property owner seems like justification for an egregious action. Mr. Overton believes that the fines are only established for minor violations that the Commission does not want to call people before them to defend and is more like a slap on the wrist. Mr. Overton reminded the Commission that they currently have the capability to call for a show-cause hearing. Daria VanderVeer asked if there would be an objection to establishing an ordinance, and Mr. Overton stated that he did not believe there would be any harm in doing so. He just wanted to reiterate that he believes it is a method for dealing with minor violations.

Darin Overton also reminded the Commission that this would establish another task for somebody in the Town to act as the enforcement officer. Someone would have to be established to actually go out and write the citation and issue the fine. Ms. Angiletta felt that that person could be the wetlands enforcement officer. Daria VanderVeer does believe it is worth having this type of ordinance.

Mr. Overton stated that Matt Willis had mentioned an additional level of fine, like a civil fine, where you can take legal action against a property owner, but fees that are collected for that go to the DEEP. Ms. Angiletta remarked that the fees in the Greenwich regulations go to the general fund in the town.

The Commission agreed that this may be a good idea, as long as they have not given up the ability to go after someone who has done something more serious. Daria VanderVeer reminded the Commission that an ordinance cannot be done through this Commission and asked if the Commission needs to send the language to the First Selectman. Mr. Overton stated that Matt Willis will provide that information.

Darin Overton quoted from section 14.6 of the regulations about issuing a written order of violation and holding a public hearing to allow the proper owner to show just cause. The Commission can revoke or suspend any permit if the Commission finds that the property owner has not followed the permit.

Darin Overton does not feel that the fine ordinance is necessary, but would like to bring it to a vote to see if there is a majority of Commissioners who would like to move forward with it. Mr. Overton asked for a simple show of hands. Four members out of six would like to move forward with a fine ordinance or similar adoption of regulations similar to what Greenwich has done. Darin Overton was opposed to moving forward and Doug Charles abstained. Mr. Overton will forward the information provided by Irene Angiletta to Attorney Willis. Mr. Overton has asked Attorney Willis to review the ordinance and then to look at our regulations and the way the Town is set up and tailor it to the Town of Middlefield. He will then put together a draft for this Commission. If it is a change to regulations, there will need to be a public hearing. It does appear that an ordinance will have to be established first, but once the ordinance is established (which is enforced by the Board of Selectman), it will be deferred to the Wetlands Agency.

Darin Overton also mentioned that Jon Brayshaw should probably file a waiver of the Schedule A fee for his project. Lee Vito did note that Jon Brayshaw has not paid any fees as of yet.

Darin Overton research how other towns handle this type of situation and the simplest thing seems to be to have an exemption for maintenance. The point is that the fee would be charged for a permanent loss of wetlands. When someone is doing maintenance, there is no loss of wetland and Mr. Overton doesn't feel the fee applies for that type of project.

The Commission discussed what the fee would have been at Powder Ridge. Irene Angiletta asked the Commission to think about how much Powder Ridge is worth and that the fee of \$30,000 is really small compared to that. Ms. Angiletta feels that the fees are all relative. Mr. Overton explained that the same size

pond could be on a two-acre farm and somebody would still have to pay that fee. Ms. Angiletta then commented that she thought it would be exempt if it were on a farm.

Daria VanderVeer thought that schedule A fees were for big projects where Wal-Mart wants to come in and fill in a wetland and you charge them as much as you humanly can and make it as painful as possible so that they would absolutely minimize what will be done in the wetland because it would be so outrageously expensive. Mr. Overton reminded that they would also apply to five acres, worth \$300,000 to \$400,000, and then it would cost \$20,000 for a permit to excavate the pond. Ms. Angiletta commented that if they could afford \$300,000 for a property, they can afford \$30,000. Mr. Overton argued that the Commission cannot look at the financial ability of somebody to pay a fee and justify the fee that way. The fee is intended to cover the cost of reviewing the application. While Ms. Angiletta understands that, she does feel that the Commission is very generous to people who are developers in this town and that the Commission should look at what Greenwich is charging. Ms. Angiletta asked what the ultimate goal is and whether or not they are conservationists or are they going to let things go. Daria VanderVeer commented that if the goal was to make it really expensive to do things in a wetland and much cheaper to move it 50 feet over and get it out of the wetland, then these fees accomplish that. But for those folks where it is maintenance, that should not be an outrageously expensive thing to do.

Lee Vito mentioned that most of the people he deals with on properties try to stay the 100 feet away from the wetlands, if they can.

Darin Overton stated that this Commission should be blind to whoever the applicant is. This Commission is here to enforce the regulations and the laws of the state as the state statutes empower them to do so.

Daria VanderVeer asked if they do have a waiver for maintenance, would they run the risk of everybody saying their project is maintenance. Mr. Overton stated that there would need to be a definition of maintenance and he would recommend looking at what the Army Corps establishes as maintenance. Mr. Overton looks at the Schedule A fee as a complete failure if every time it's implemented, it's waived. To date, there have been two applications that it has applied to and both will likely be waived because they are maintenance activities. Mr. Overton feels that maintenance should be an exception and that people shouldn't run the risk of being charged the fee because the Commission wants people to maintain things.

Linda Li summarized activity from past meetings about Darin Overton's point that people were trying to skirt around regulations by doing things without bringing it before the Commission because of the cost involved even though it's just maintenance. Ms. Li doesn't object to language that maintenance activities would get strong consideration for exemption, but is a little concerned about making the language too strong that it ties the Commission's hands. Mr. Overton reminded the Commission that the exemption would not mean that a permit is not needed; it would just exempt the property owner from the Schedule A fee. Ms. Li does feel that, if that language is passed, the Commission should make sure that the ordinance for fines is in place.

Daria VanderVeer asked if anyone could imagine a scenario where somebody would do something that seems to be maintenance, but the Commission wanted a soil scientist to look at it first or wanted Brian Curtis to take a look at it first. Mr. Overton suggested that the Commission could institute the complex application fee and hire a soil scientist.

Darin Overton believes that maintenance dredging of a pond, with a letter of support from the fire department, would clearly qualify under exemption A of the regulations, as a benefit to public health and safety. Exemption B could also apply that the fee would be so high that it is well above what it would cost the town to review it. Exemption C is just kind of a blanket exemption as anybody could argue any good cause. Mr.

Overton feels that the language of the waiver works and makes sense, but it concerns him that if somebody wants to do some meaningful maintenance and Lee calculates the fee at \$15,000 for the Commission, the property owner may decide just not to do the work. If they are not sure the Commission may give the waiver, they may not bother to do the work.

Darin Overton agreed that there has to be a definition of maintenance in the regulations to go along with a maintenance exemption. The Commission has the authority to interpret any of the language of the regulations, but the better the language is, the easier it is to be consistent and make good decisions. Other Commission members would encourage maintenance and also would encourage people to come in before the Commission to do so.

Darin Overton will draft the language to add an exemption under 19.6 and look for a reference to come up with a definition of maintenance. He will check with both the DEEP and the Army Corps for that definition and run it by Matt Willis or Mark Branse and try to get a draft for discussion at the next meeting.

Approval of Minutes

Irene Angiletta moved to accept the minutes of the October 16, 2013 meeting as presented, seconded by Linda Li. The motion was carried, with Daria VanderVeer, Douglas Charles and James Brown abstaining.

Chairman's Report

Darin Overton had the Habitat newsletter from CACIWC. He has also received a letter CACIWC dated September 23, 2013 with notice of the annual meeting that occurred last Saturday. Irene Angiletta and Linda Li both attended the annual meeting. Irene and Linda told the Commission about some of the events at the meeting.

Miscellaneous

There were no items to be discussed under miscellaneous.

Adjournment

James Brown made a motion, seconded by Daria VanderVeer, to adjourn the meeting. Motion was carried unanimously. The meeting was adjourned at 8:52 pm.

Respectfully submitted,

Debi Waz
Debi Waz
Alwaz First

MIDDLEFIELD INLAND WETLANDS
and
WATERCOURSES AGENCY
405 Main Street
Middlefield, Connecticut 06455

Revised Minutes of the December 18, 2013 Meeting

Darin Overton, Chairman, called the meeting to order at 7:06 pm.

Attendance:

Members		Alternates	
X	Angiletta, Irene	X	Dilauro, Richard
A	Bernotas, Randy	X	Li, Linda
A	Brown, James		
X	Charles, Douglas		
X	Overton, Darin	Others	
X	Poturnicki, Rob	X	Vito, Lee
X	VanderVeer, Daria		

A=Absent
 X=Present

Rich Dilauro was seated on the Commission. Linda Li joined the meeting at 7:08 PM and was seated.

Amendments to the Agenda

Darin Overton received a request from Attorney John Corona to move item 8 of the agenda ahead on the agenda to enable Attorney Corona to attend another meeting in Durham. Mr. Overton has reviewed and plans and feels that it is pretty straightforward. Darin Overton made a motion to move item 8, William and Faye Francesco, up ahead of item 6, Jon Brayshaw, on the agenda, seconded by Rob Poturnicki. The motion was approved unanimously.

Approval of the Agenda

Darin Overton made a motion to approve the agenda as amended, seconded by Doug Charles. Motion was passed unanimously.

Public Session

There was no one present from the public.

William and Faye Francesco, Statutory Review for Subdivision, Ross Road

Attorney John Corona, from Lang and Corona, and Pat Benjamin, from Bascom and Benjamin, were at the meeting on behalf of the applicants. The property is on the east side of Ross Road and currently has two houses located on it. The applicants would like to create a third lot on the neighboring property. There will be no activity in the wetland area and they are before the Commission on a review basis only.

Pat Benjamin explained that the piece of property was originally created in 1955, on the east side of Ross Road. There is a long driveway that goes down to two existing houses on two existing lots. The wetlands have been flagged and a soil test has been done. The plan is to extend the driveway to the third lot and none of the activities proposed are within 100 feet of a wetland. Mr. Benjamin also showed the Commission the approved septic plan and reviewed property lines and wetland areas. Lee Vito has already reviewed and approved the plans.

Linda Li did ask for clarification of the rain water pattern as well as grading.

Attorney Corona explained that this third lot was never an approved lot and is just a parcel. Therefore, the property needs to be approved as a separate lot and also as an interior lot by Planning and Zoning. Darin Overton commented that he had reviewed the wetland map and the wetlands outlined here seem to be consistent with the Town's map.

Darin Overton made a motion that the proposed subdivision and single home construction plan submitted by William and Faye Francesco, permit no. 1201-13 IWA, does not constitute a significant activity and does not require a permit from this Commission. The motion was seconded by Rob Poturnicki and approved unanimously by the Commission.

Jon Brayshaw, 140 West Street, LLC, Proposed Dredging of Fire Pond and Patch Concrete, 104 Baileyville Road

Attorney John Corona reported that Jon Brayshaw was unable to make the meeting tonight, but has submitted a revised plan. Attorney Corona had spoken with Mr. Brayshaw about revising the agenda and Mr. Brayshaw had asked Attorney Corona to relay to the Commission that he would like you to proceed with this application in his absence if that is possible.

Darin Overton did take a look at the revised plan. There are several notes on the plan. There has been an effort made to address the issues that the Commission raised at the last meeting. They have provided sediment containment for the discharge of the dewatering pump.

Irene Angiletta asked if there was an explanation on how the dewatering would work. Mr. Overton explained that the pump discharge is being piped down below the factory and going into a 40-yard dumpster which then overflows into a stone channel. Lee Vito commented that Jon Brayshaw had explained to him that the dumpster is to act as a settling basin.

Irene Angiletta also asked if the volume and area of fill was included. She reminded the Commission that Mr. Brayshaw had talked about 500 cu.yds. but then it went up to 1,200 cu.yds. Darin Overton reviewed the storage and placement of fill. Lee Vito did say that he was going to ask Mr. Brayshaw to keep the alternate stockpile away from the septic system.

Irene Angiletta then asked about the emergency management plan and also for a clarification on the type of septic tank.

Darin Overton explained that the volume of excavation from the pond is anticipated to be 1,600 cu.yds. and they anticipate placing 450 yds. of fill in first to stage the equipment. The area of stockpiling is a 17,000 sq.ft. area that they will clear all of the trees in order to place the material for dewatering. Irene Angiletta asked if the material could be placed elsewhere to avoid removing all of the trees, but Darin Overton did not feel there was anywhere on the site and there would be a cost factor involved as well as the traffic situation. Ms. Angiletta is concerned about the vegetation. Daria VanderVeer suggested that the area could be planted after the completion of the work. Linda Li noted that the plans seem to show that just grass will be planted. Ms. Angiletta mentioned that the Commission could ask for specific vegetation. Linda Li also mentioned that the Army Corps of Engineers includes vegetation as a consideration when you're deliberating activity in the wetland. Irene Angiletta feels that if the Commission is going to grant a permit, they should include a stipulation about a certain number of trees be replanted.

The Commission then reviewed the plans and the definition of significant activity. Darin Overton reminded the Commission that the Fire Department also uses the pond as a water source. The Commission members then discussed whether maintenance obviates the fact that material is being removed from a wetland. Linda Li reminded the Commission that the neighbors to the property get the opportunity to weigh in on the project at a public hearing. Darin Overton also commented that,

because they are just dredging sediment and not deepening or expanding the pond, no state or federal permits are required.

Linda Li made a motion that the application of Jon Brayshaw, 140 West Street LLC, proposed dredging of fire pond, is a significant activity. The motion was seconded by Irene Angiletta.

More discussion followed regarding what determines a project to be a significant activity.

The motion was voted on, with three voting in favor and four voting against. The motion was defeated.

Darin Overton has not had time to prepare a motion on the project and feels that the Commission may want to include some provisions, so asked that it not be voted on tonight. Linda Li also asked that any plans and revisions be provided for each member of the Commission with enough notice for the Commission members to be prepared.

Lee Vito did mention that Jon Brayshaw asked him to tell the Commission that eventually the fire department will want to install a dry pipe. Darin Overton will prepare a motion, incorporating the Commission's concerns, for the January meeting, though he is not opposed to calling a special meeting earlier, if necessary.

Thomas Perrelli, Proposed Activity within 100' of a Wetland to Repair and Replace a Wall, 24D Rosemary Lane

Lee Vito reported that Mr. Perrelli had called him today and does not have a plan ready as of yet.

Marco Caminito, Pioneer Builders of Newington, Inc., Construction of rip-rap erosion control strip within 100' of a wetland, 48 Meriden Road, Owner - Linda Crescimano

Pat Benjamin was in attendance, along with Marco Caminito. Mr. Benjamin explained that the property is an existing auto repair facility of about 7,000 sq.ft. The proposal is to take the bulk of the auto repair and move it into a much smaller space at the rear of the building and take the front of the building and turn it into three retail slots. They would also put a small addition on that would be a fourth retail slot.

Pat Benjamin reported Planning and Zoning had some concerns about the existing storm water control. No drainage or impervious area will be changed on the site. Because of the slope of the parking lot and where it drains into the wetlands, P&Z wanted them to ensure that there wasn't going to be any erosion down the side of the parking lot.

Pat Benjamin then went on to review the plan for the Commission. There is a culvert which goes underneath the road and there is an existing stream. The parcel right now is 1.16 acres with large curb cuts in and out of the site. The parking in the front of the building would remain the same as would the paved area. They do propose to add a dumpster about 90 feet away from the wetlands.

The chain link fence and the auto impound area will be removed and six inches of topsoil would be added and be seeded and have an erosion control blanket installed. Mr. Benjamin described how the storm water runs on the property currently and explained that the best idea would be to put a 10-foot wide x 12-inch deep erosion sedimentation control strip. It will be 105 feet long and 10 feet wide, made of rip-rap (between 2 and 5 inch-diameter stone). The water will run to a flat area and overflow to a brush area, and eventually to the stream. Silt fence will be provided below all of the disturbed areas. The parking area will be a gravel surface, with space available for about 39 cars.

Pat Benjamin described the erosion control strip in detail. Mr. Benjamin also explained that they are proposing a conservation easement to create a buffer. Linda Li asked about containment around the dumpster and Pat Benjamin explained that it will be water-tight and have a lid. It will be on a concrete pad and will have a vinyl fence around it.

Linda Li also asked about the distance between the rip-rap area to the stream and Mr. Benjamin explained that it is 50 feet. Right now, the distance to the edge of the parking lot is 42 feet. Linda Li also asked about the environmental controls that will actually be in the businesses. Mr. Benjamin explained that there are no inside drains allowed and everything will be self-contained. Marco Caminito remarked that the existing drains in the building have all been filled with concrete.

Pat Benjamin stated that the Town Engineer had already approved the plan before this was added. Linda Li asked about oil leaking from cars in the parking lot and Mr. Benjamin explained that this area would need to be cleaned every 10 years. Darin Overton asked if there was erosion occurring presently and Mr. Benjamin said it was very minor.

Pat Benjamin stated that the new addition would be added on an area that is already paved, so there would be no change in impervious surface and that the only change is really the gravel area. Darin Overton went over the plans and summarized the project for the Commission.

Pat Benjamin also discussed some of the possibilities that would go in the retail areas, one being a laundromat.

Darin Overton stated that he sees no need for a public hearing. The Commission agrees that this is not a significant activity and that a public hearing is not necessary. Mr. Overton will have a motion written up for the next meeting in January.

Lee Vito reported that Lakeview Estates has requested a reduction in the bond.

The sides of the pond at Powder Ridge are stabilized and have been covered with hay. Mr. Vito also reported that there had been some vandalism damage done at the top of the hill.

Lee Vito also reported that three property owners at Lake Beseck have had their walls worked on, installed or replaced without permits. Letters have gone out to each individual, stating that they needed a permit application. Mr. Vito did receive the applications with the fees and would now like to know what the Commission wants to do with this.

Darin Overton asked what kind of work had been done. Mr. Vito reported that there had been no wall at all at #30 and the contractor made a stone wall. Another one had railroad ties and replaced it with stone. Mr. Vito is not sure what had been done at the other wall. Irene Angiletta reported that three in a row had had work done, one putting up a whole wall, the second put up a wall and the third one had repairs done. Ms. Angiletta also states that there is another one on Lake Shore where Mrs. Cabelus wants to put up her house. Mr. Vito did talk to the contractor and explained that the work cannot be done without a permit.

Darin Overton feels that if there is excavation involved in the lake bed, there is no choice but for the Commission to require a permit. Mr. Vito has not really seen excavation, but will process the applications and have them come before the Commission. None of the three were available for tonight's meeting.

Commission members suggested that Darin Overton write a letter to the Town Times reminding people that they need to get a permit for this type of work, especially since the draw down of the lake.

Lee Vito also stated that he had spoken to Mrs. Monthei about her boat launch area. Irene Angiletta commented that Chuck Lee said that if that goes into the lake bed, a DEEP permit will be required. Ms. Angiletta also stated that the black top is toxic, per Mr. Lee. Commission members discussed the possible work that could be done there.

Darin Overton recommended that Lee Vito process the applications and that he will go take a look at the walls.

Discussion of Fee Schedule Revisions

Irene Angiletta found a definition for maintenance in relationship to gutters that could probably apply to anything. Darin Overton looked at the Army Corps category 1 permits that allow for stream bank stabilization not to exceed 200 feet in length, not to exceed 1 cubic yard per linear foot below the

water, no fill within the stream bed and they limit that work to June through September, in the dry season. In essence, the simplest Army Corps permit allows maintenance of stream beds but they don't provide a definition of what maintenance is.

Irene Angiletta states that in another section, the Army Corps says "maintenance generally includes, but is not limited to, activities such as excavation of accumulated sediments back to original contours, reshaping of side slopes, bank stabilization to prevent erosion where reasonably necessary using best management practices." Ms. Angiletta went on to read from the Army Corps of Engineers Wetlands Delineation manual and stated that they interpret maintenance as involving activities that keep something in its existing space or to preserve it from failure or decline. Linda Li and Daria VanderVeer both thought that was a very nice definition.

Darin Overton summarized that the Army Corps basically sees maintenance as not expanding the impoundment or excavating down deeper, basically just removing sediment, as a simple category 1 filing.

Mr. Overton reports that the DEEP does not require a permit if there is no expansion or it's not being made deeper.

Daria VanderVeer refreshed the memory of the Commission by stating that Darin Overton was proposing to do away with Schedule A or adding an exemption to the Schedule A charges for maintenance. Mr. Overton would like to get rid of Schedule A and felt that they could develop a definition of maintenance.

Mr. Overton asked for a copy of the definition from Irene Angiletta and he will write it into the regulations and the Commission will hold a public hearing.

Regarding the ordinance, Darin Overton sent the information that Irene Angiletta had provided to Matt Willis for review. Attorney Willis did some research and emailed Mr. Overton which he then forwarded to the Commission. Attorney Willis found the actual language of the regulation that the Town of Greenwich has in place. There is a standard form letter for violations and also for mailing citations.

Daria VanderVeer asked if Attorney Branse thought this would be a good idea. Mr. Overton thought that the email outlined that if the Commission was to proceed, it would have to be requested that the Board of Selectmen approve an ordinance and that it would have to be approved and in place before it would be enforceable. He had also stated that he had not gone through to tailor any of the language to Middlefield.

Darin Overton feels that the Commission already has the power and the authority in the regulations to remedy essentially any situation. If remediation needs to be done, it may go well above the \$1,000 fine. A fine just gets paid to the Commission and nothing is done with it.

Irene Angiletta stated that, in the case of the walls at Lake Beseck, she does not believe that all of these people didn't know about the requirement to get a permit. Ms. Angiletta believes that if someone had to pay a \$50 fine, that that type of activity would be stopped. She does not feel the fine has to be millions of dollars.

Lee Vito reiterated that all three of the homeowners at Lake Beseck were receptive to the letter that was sent and mailed in their application with the fee. Again, Ms. Angiletta stated that it is not about the fee, but about what you do. She feels that it is easier to say I'm sorry than it is to do the right thing. Daria VanderVeer feels that there are other cases where the Commission would say to undo the work and fix it, but the walls in this example would not be required to be taken down.

Darin Overton concluded that if the Commission establishes a fine, they would then have the ability to fine the property owner in addition to the application fee. Daria VanderVeer thought that the idea to that would be to encourage people to do the right thing up-front because that is less painful. Mr. Overton wasn't sure that he would be inclined to issue a \$1,000 fine to these people as it seems like they have been cooperative and there doesn't appear to have been malicious intent.

Linda Li feels that one of the points to the ordinance is to make sure the correct process is followed so that the Commission can intervene if things can be designed better ahead of time and so that people who do the right thing aren't at a disadvantage.

Irene Angiletta also stated that the three walls are right, but it's not fair to require Mr. Perrelli to come in with an application when people on the other side of the lake are doing whatever they want. Linda Li stated that it's not just about money, but about time and convenience. Again, this is not fair to the people who are doing it right.

Darin Overton believes that the fine is an additional level of work that the Commission will need to do to establish and levy the fines and then manage the fining or the review of it after the fact. He then read the Greenwich citation to the Commission. Mr. Overton does not feel this additional procedure is necessary. Ms. Angiletta feels that it would probably only happen once or twice and then the word would be out and it wouldn't be necessary.

Rob Poturnicki asked why the Commission wouldn't want to try to be friendly and work with people. Lee Vito stated that he has really had no issues like this in the past. Mr. Overton agreed that he doesn't remember any egregious violators that haven't responded to violations.

There was discussion about the fact that people cringe when they hear they need to come before the Commission. Daria VanderVeer asked what it was that people cringed about and Darin Overton stated that there has been a history of inconsistency and disagreement on applications. Mr. Overton believes people have a fear that they're not sure what they're going to get as far as a review. Linda Li agreed completely that if there are issues with the way the Commission operates, they should be addressed. The image in the public is that the Commission is unfriendly and that needs to change.

Rich Dilauro also stated he's also heard that approval from this Commission takes far too long. Darin Overton believes that the decisions in the past 11 years have been consistent and fair and the Commission has always made an effort to process things in a timely fashion. Darin Overton would like to see a guideline for docks. Irene Angiletta believes that regulations would improve neighborly relations in the instance of docks. Daria VanderVeer felt that possibly many people don't know what the charge of this Commission is and what it is the Commission tries to accomplish.

Rich Dilauro brought up the example of Robbin Cabelus who got permission from her neighbor and the Commission still aggravated her for a couple of meetings over a roof line or where her driveway was. Mr. Dilauro feels that the Commission picked her apart and that that was not friendly. Daria VanderVeer felt it is important to distinguish being friendly and just rubber-stamping things. Linda Li feels that all of the bickering should be done behind the scenes and not in front of the applicant. Rob Poturnicki felt that it sometimes seems as if the Commission is trying to come up with an issue on an application. Darin Overton suggested that the last application, Marco Caminito, could have been deferred to Lee Vito for approval and that would have saved the applicant time.

Commission members agreed that anything involving Lake Beseck is very difficult because the lake is owned by the State and the Commission has no jurisdiction over the size of docks.

Again, Daria VanderVeer stated that she thought the biggest issue would be to get out in the community and explain who the Commission is and what they do. Ms. VanderVeer remembers a conversation with an applicant about how a dock should be attached to the land and taking crap for that. This may be a vicious cycle at this point as people only expect the worst from the Commission.

Irene Angiletta believes the Commission does do their job and, as volunteers, are here in good faith and care. Rich Dilauro Vito believes that the problem seems to be that the public doesn't see it quite that way.

Darin Overton also suggested that part of the problem is that the Commission meets only once a month and that Lee Vito has multiple jobs. The Commission agreed that there is a public relations problem.

Approval of Minutes

Irene Angiletta moved to accept the minutes of the November 20, 2013 meeting as presented, seconded by Linda Li. The motion was carried, with Rob Poturnicki and Rich Dilauro abstaining.

Chairman's Report

Darin Overton had nothing new to report.

Miscellaneous

There were no items to be discussed under miscellaneous.

Adjournment

Rob Poturnicki made a motion, seconded by Irene Angiletta, to adjourn the meeting. Motion was carried unanimously. The meeting was adjourned at 9:34 pm.

Respectfully submitted,

Debi Waz

Debi Waz
Alwaz First