Nancy Rosenbaum, Chair
Michael Montgomery, Vice Chair
Joan Lakin
Andrew Brand
Michael Stone – arrived at 8:00 PM
Michael Milazzo
Kirk Shadle
Bob Anastasio
Eric Annes
Robert Gnida – Sitting for vacancy

Others in Attendance:

Dan Kops, Assistant Town Planner
Thomas Vocelli, Inland/Wetlands Officer
Peggy Craft, Acting Commission Clerk
Lisa Raccio, Stenographer

November 9, 2011

MINUTES: THE INLAND WETLANDS COMMISSION, Town of Hamden held a Regular Meeting on Wednesday, November 2, 2011 at 7:00 p.m. in The Thornton Wilder Auditorium, Miller Memorial Library, Dixwell Avenue, Hamden, CT and the following items were reviewed:

Chairwoman Rosenbaum called the meeting to order at 7:03 PM.

Attendance was taken by Vice Chair Montgomery.

I. Regular Meeting

1. **Pending Applications**

   a. **11-1171** 170 Birchwood Drive –driveway culvert-crossing

Chairwoman Rosenbaum called for a motion regarding the pending application, 11-1171 170 Birchwood Drive – driveway culvert-crossing. Commissioner Gnida motioned to deny the application, and read the following motion:

Motion to Deny Application #11-1171, 170 Birchwood Drive

This application presented by Mr. Alberto Dichello, for the purpose of gaining access to a usable portion of this property on 170 Birchwood Drive for a garden area, should not be construed as an "as of right activity". This application is for the building of a 518 foot long roadway, with 288 feet crossing the wetlands, requiring the filling in of 5700 ft^2 wetlands with 482 cubic yards of earth materials, to access a 6600 ft^2 area. The garden is an "as of right activity", while the roadway is not, per Section 4.1.a of the Hamden Inland Wetland Commission (IWC) Regulations:

Regulation 4.1 The following operations and uses shall be permitted within regulated areas, as of right, after notification to the Inland Wetland and Watercourses Commission:

4.1.a (i) grazing, farming, nurseries, gardening and harvesting of crops, and farm ponds of three acres or less essential to the farming operation, and (ii) activities conducted by, or under the authority of, the Department of Environmental Protection for the purposes of wetland or watercourse restoration or enhancement or mosquito control. The provisions of this subdivision shall NOT be construed to include road construction or the erection of buildings not directly related to the farming operation, relocation of watercourses with continual flow, filling or reclamation of wetlands or watercourses with continual flow, clear cutting of timber except for the expansion of agricultural cropland, the mining of top soil, peat, sand, gravel, or similar material from wetlands or watercourses for the purpose of sale:

The road has been downgraded from a 15 foot wide road to a 12 foot wide road at the surface with a 30+ foot width at the base, with no less proposed. The wide road width is said to be for safety reasons (emergency vehicles). Fire trucks and large trucks should not have to access a garden area of this size

The Commission feels that the width and height of the road exceeds what is needed for a garden. The 4+foot high road would act as a dike altering hydraulics, destroying wildlife habitat, and impeding the migration of wildlife such as salamanders and box turtles through the wetlands.

I hereby make this motion to deny Application #11-1171 based on the following Hamden Inland Wetland Commission Regulations:

Regulation 7.5 All applications shall include the following information in writing or on maps or in drawings:

7.5.e the purpose and proposed description of the proposed activity and proposed erosion and sedimentation controls and other management practices and mitigation measures which may be considered as a condition as issuing a permit for the proposed regulated activity including, but not limited to, measures to (1) prevent or minimize pollution or other environmental damage, (2) maintain or enhance existing environmental quality, or (3) in the following order of priority: restore, enhance, and create productive wetland or watercourse recourses;

1 The applicant failed to comply with Hamden Inland Wetland Commission (IWC) Regulation 7.5.e by not addressing the Town Engineer's (Robert H. Brinton, Jr., P.E) requests for the following information;

A Details of the flared end of the culvert pipes to be put on the site plans (requested 5/25/11, 6/30/11, and 10/3/11 by Mr. Brinton), were not submitted on any revised site plans.

B The silt fence should be shown at the limits of disturbance on the site plan, OUTSIDE of the flared end riprap.

C Details of the location and length of the anti-tracking pad at the entrance to Birchwood Drive should be on the site plan (requested 5/25/11, 6/30/11, and 10/3/11 by Mr. Brinton), were not submitted on any revised site plans.

7.5.f alternatives, which would cause less or no environmental impact to wetlands or watercourses and why the original design as set forth in the application was chosen; all such alternatives shall be diagrammed on a site plan or drawing.

2 The applicant failed to comply with IWC Regulation 7.5.f by not submitting the feasible alternatives on the site plan that might mitigate and minimize any adverse environmental impact to this wetland area.
In particular, as stated above, the applicant's explanation regarding the width of the road was not credible as there is no need for emergency vehicles.

7.5.g a site plan showing the proposed activity, the proposed limit of disturbance, and existing and proposed conditions, (including contours), including all Non-Disturbance Buffer Zones and Upland Review Areas, in relation to wetlands and watercourses, the boundaries of which shall be clearly marked and color coded and identifying any further activities associated

with, or reasonably related to, the proposed regulated activity which are made inevitable by the proposed regulated activity and which may have an impact on wetlands or watercourses. Flagging of wetlands and watercourses identified on such site shall be performed by a certified soil scientist, and shall be concurrent with the application. The site plan shall depict a line showing the boundary of the two hundred (200) foot upland review area and the one hundred (100) foot non-disturbance buffer. ……

The applicant failed to comply with IWC Regulation 7.5.g by doing the following:

3 The applicant failed to include all the contours in the Non-Disturbance Buffer Zone and Upland Review Area, specifically on the abutter's properties to the north, downstream side of the proposed activity. These properties are going to be impacted by the proposed activity and their contours needed to be included in the site plan.

4 The flagging of the wetlands and watercourses are incomplete and confusing on the site plan (i.e. two wetland flags #14). Watercourses are not flagged on the site plan. Wetlands and watercourses are not flagged in the one hundred (100) foot Non-Disturbance Buffer Zone to the north and in the two hundred (200) foot Upland Review Area to the north.

5 The initial wetland map presented at the June 1, 2011 Inland wetland Commission meeting is dated August 30, 2004 (received by the Hamden Planning & Zoning office May 2, 2011). The letter attached to the map is also dated August 30, 2004. This map shows two houses with septic system sites, not current with the present application.

Regulation 7.6 At the discretion of the Agency or its designated agent, or when the proposed activity involves a significant impact, additional information, based on the nature and anticipated effects of the activity, including but not limited to the following, is required:

7.6.b engineering reports and analyses and additional drawings to fully describe the proposed activity including any filling, excavation, drainage or hydraulic modifications to watercourses and the proposed erosion and sedimentation control plan;

6 The applicant failed to comply with IWC Regulation 7.6.b by not addressing the Town Engineer's repeated requests for the following information:

A Hydrology and hydraulics calculations should be provided to verify that the pipes were appropriately sized to convey the flow of water under the proposed driveway in the wetlands/watercourse, (requested 5/25/11, 6/30/11, and 10/3/11 by Mr. Brinton). Also this information was requested by members of the Hamden Inland Wetlands Commission during the course of the public hearings.

B Details of the flared end of the culvert pipes to be put on the site plans were not submitted on any revised plans.

C Details of the silt fence in the areas of the flared end riprap at the outflow points along the proposed pipes have never been submitted.

D Topographic relief, wetlands, and stream channels on the abutter's properties, which are on the downstream side of the proposed activity (north of the proposed driveway), are not delineated on the site plan. This large wetland area will be affected by the proposal and needs to be analyzed for potential adverse impacts this proposal may cause to these wetlands to the north.

Regulation 10.2 Criteria for Decision. In carrying out the purposes and policies of sections 22.a-36 to 22a-45, inclusive, of the Connecticut General Statutes, including matters relating to regulating, licensing and enforcing of the provisions thereof, the Agency shall take into consideration all relevant facts and circumstances, including but not limited to:

7 10.2.a The applicant has not shown that the proposed regulated activity will prevent flooding, or

to protect surface and ground water. (i.e. incomplete mapping of topographic relief, wetlands, streams, riprap flared pipe ends, adequate silt fencing, and a failure to provide a hydrologic analysis on this wetland area before and after regulated activities commence).

8 10.2.b The applicant has not fully addressed feasible and prudent alternatives which would cause less environmental impact to these wetlands and watercourses (i.e. making the footprint of the garden driveway smaller, building a bridge, etc. and cost comparisons of each) considering what the purpose is for this project.

9 10.2.d The applicant has not shown that the irreversible and irretrievable loss of the 5700 ft^2 of wetland area to be filled with 482 cubic yards of material will not foreclose a future ability to protect, enhance, or restore the remaining resources to the north and south of the proposed wetland filling . It is required that the inland wetlands and watercourses of the State of Connecticut be recognized as an indispensable, irreplaceable, and fragile natural resource, and that these areas may be irreversibly destroyed by deposition, filling, and removal of material, by the diversion, diminution, or obstruction of water flow including low flows, and by the erection of structures and other uses.

10 10.2.e The applicant has not shown the character and degree of injury to, or interference with, safety, health or the reasonable use of property including abutting or downstream property, which is caused or threatened by the proposed regulated activity. Indeed the applicant doesn't even include the downstream abutter's property attributes on the site plans, even though these property attributes, including wetlands, are within 5 feet of the proposed project (see area near wetland flag #23). An applicant representative has said the five proposed pipes will concentrate flow into the channeled streams and out of the discharge points from the 5 pipes (one existing) into the stream beds. The applicant simply says this will not cause any future flooding to downstream abutters' properties, without the benefit of a hydrologic study requested several times from the town engineer, the commission, and the public.

11 10.2.g The applicant has not proven the suitability of the proposed activity to the area for which it is proposed. The loss of 5700 ft^2 of valuable wetlands by filling with 482 cubic yards of material, and the altering of surface water flows (sheet flow) by the filling in of these wetlands, effectively bisecting a contiguous wetland with rock and dirt for the purpose of accessing 6400 ft^2 of land within the applicant's property, does not seem suitable.

12 10.2.h The applicant has not fulfilled measures which would mitigate the impact of any aspect of the proposed regulated activity. Such measures include, but are not limited to, actions which would avoid adverse impacts or lessen adverse impacts to wetlands and watercourses and which would be feasibly carried out by the applicant and would protect the wetland's or watercourses' natural capacity to support fish and wildlife, to prevent flooding, to supply and protect surface and ground waters, to control sedimentation, to prevent erosion, to assimilate wastes, to facilitate drainage, to control pollution, to support recreational activities and open space, and to promote public health and safety. The site plan does not include the flared ends of the pipes and accompanying riprap which would mitigate erosion and sedimentation in the discharge areas of the proposed activity. Silt fencing is inadequate on the site-plan, especially in the discharge end areas of the pipes and down slope from the proposed activity at the end of the driveway (turnaround area). No details of the location and length of the anti-tracking pad at the cul-de-sac end of Birchwood Drive construction site entrance, which would prevent sedimentation in other, more distant watercourses and wetlands through runoff into catch basins, streams, wetlands, and low lying areas of other properties.

13. In addition, the Commission found the expert testimony in Dr. Orson's comments to be more credible than those presented by the applicant's consultants.

14. We concur with the Town Engineer that overtopping of the roadway during a storm may be permitted as the garden should

not be in use during heavy rainfalls; thus, a high road is not necessary. The height of the road should be based on a design storm appropriate for a roadway to access a garden (memo Town Engineer, May 25, 2011). The applicant cannot claim to have made a plan that has the least impact on the wetlands without considering the flow hydraulics of a design storm.

15. We share the Regional Water Authority's concern about the extent of the disturbance and the impact of the proposed activity on the wetlands' function to renovate water quality and concur with the RWA that the applicant should consider reducing the driveway to what is necessary to serve the proposed agricultural use.

Mr. Montgomery said it should be verified that the pipes are correctly sized. He also said that the hydrology and the hydrology calculations should be provided to show that the pipes are appropriately sized to convey the flow of water.

Commissioners Gnida and Lakin accepted this.

Next, there was a discussion regarding the removal of 36 trees believed to include the garden area. It was noted that the Commission was not told how many trees would be removed across the wetlands.

Mr. Montgomery noted that the issue is not the removal of trees but the effect on the wetlands.

Commissioners Gnida and Lakin accepted.

It was noted that it should be mentioned that we share the Regional Water Authority's concerns about the extent of displacement and the impact of the proposed action on the wetlands function and concur with the Water Authority the applicant should amend the application. The Commission also shares the Water Authority's concern and concurs that the applicant should consider reducing the driveway to what is necessary to serve the proposed use.

Commissioners Gnida and Lakin agreed.

Commissioner Annes suggested that a severability clause be added stating that each of the fifteen reasons are grounds for denial, and if any reasons are found not appropriate under state regulation the other grounds survive and remain independent reasons for denial.

Commissioners Gnida and Lakin agreed.

Mr. Annes said the Commission should favor the motion that the Commission finds that the proposed action will have an immediate impact on the wetlands and watercourses. He said this could be placed at the top or bottom of the motion.

Commissioners Gnida and Lakin agreed.

Mr. Annes said the Applicant has not complied with Regulation 4.4 in asking for a finding on its farming activity. He added that the applicant, in asking the Commission to make a decision on the effect on the wetlands never stated what would be farmed. He said the regulations require that the commission make a finding that the person making the application provide sufficient information with specific details. He added that the applicant has come forward with a formal request, and needs to provide what they are going to do. Mr. Annes said this is too vague.

There was a discussion regarding this.

Commissioner Milazzo said since he did not meet the other thresholds this just complicates the issue.

Mr. Annes withdrew that suggestion.

Mr. Montgomery said he is concerned about the draft, and suggested omitting under 4.l where it began by asking questions about how much road width is needed for a garden. Mr. Montgomery asked to delete up to "why not cultivate a garden" and just state the commission feels that the width and height of the road exceeds that necessary for access to the garden.

Commissioners Gnida and Lakin agreed

Chairman Rosenbaum called for a vote on the revised motion.

The vote was unanimously in favor of the motion. The motion passed.

2. <u>New Applications</u>

The Regional Water Authority has submitted Application 11-1176 – Overflow Discharge Pipe Modifications at 900 Whitney Avenue.

Commissioner Montgomery motioned to accept this application and add it to the Agenda. Commissioner Annes seconded the motion. The motion passed with one abstention (Commissioner Lakin).

Commissioner Milazzo motioned to table RWA Application 11-1176 to the next meeting. Commissioner Montgomery seconded the motion.

Mr. Montgomery said he has looked at the application and agrees that we accept it and continue it for a site inspection.

The motion passed with one abstention (Commissioner Lakin).

3. <u>Notices-of-Violation, Cease & Desist & Restore Orders, Notices-to-Appear</u>

a. N.O.V. 64 Rocky Top Road – clearing of trees & removal of vegetation

Commissioner Brand motioned that the N.O.V. remain in effect and that N.O.V. 64 Rocky Top Road be tabled to the next meeting. Commissioner Annes seconded the motion that passed unanimously.

b. N.O.V. 251 Welton Street – oil spill or discharge

Commissioner Milazzo motioned that the N.O.V. remain in effect and that the N.O.V. 251 Welton Street be tabled to the next meeting. Commissioner Lakin seconded the motion that passed unanimously.

c. C&D 114 Colony Street & 125 Thompson Street-retaining wall

Linda Raccio of 114 Colony Street addressed the Commission.

Ms. Raccio said things are going well at the site considering the snow covering everything. She said the grass is growing on the slope and in the yard.

It was noted that Mr. Montgomery and Mr. Vocelli visited the site.

Mr. Montgomery said the picture shows the completed wall was installed. The stream is flowing unimpeded. He is concerned that the tarp covering the grass created a bare impervious surface, and feels the tarp should now be removed to stabilize the grass. It was noted by Ms. Raccio that grass is growing under the tarp

Mr. Montgomery will research to see if anything further needs to be done. He added that other than the tarp the applicant has met all the conditions of the cease and desist.

Mr. Montgomery made a motion to lift the Colony Street/Thompson Street Cease & Desist Order and to forgive all fines after the Enforcement Officer verifies that the tarpaulins in the rear-yard at 114 Colony Street have been removed and that the grass is growing; or if the grass is not growing, that straw-mesh fabric will be used to stabilize the area. The rear-yard at 114 Colony Street must also be re-seeded in the spring to the extent deemed necessary by the Enforcement Officer.

The motion was seconded by Commissioner Shadle and passed unanimously.

4. Review Site Inspection Schedule

There was a short discussion regarding the site inspection schedule. Mr. Vocelli suggested Saturday, November 19th and Saturday December 3rd as a snow date. There was a discussion regarding Sunday inspections. It was agreed that the next site inspection will be held on Sunday, November 20th and Sunday, December 4th will be the snow date.

5. Review meeting minutes

Ms. Rosenbaum said on Page 3 the third paragraph it should read maintain a level grade instead of maintaining grade level

The last line on page 3 should be Mr.Gnida asked if reducing the width of the driveway …would it be a foot and a half on each side.

Commissioner Shadle said in the fourth page, paragraph six, the first line should be the client's engineer not the Town Engineer.

Page 6 paragraph 2 regarding justification of 12 foot drive. The answer was he was directed to create the 12 foot driveway by the client.

Commissioner Lakin motioned to accept the Minutes as corrected. Commissioner Annes seconded the motion that passed unanimously.

Chairwoman Rosenbaum noted that Commission Clerk Shellard did a very good job on a difficult set of minutes. All present agreed.

6. Other Business

715 Gaylord Mountain Road (update)

Mr. Vocelli said there was seven inches of snow after the October storm. He said the sediment problem seems to wax and wane. He observed the site at 2:30 pm last Thursday, and observed significant down stream sediment and brown stream flow.

Mr. Vocelli shared pictures taken by Mr. Gnida. He said when the Town Engineer was there a few hours later, the water was running clear. Mr. Vocelli said there are pictures that show the stream running clear and pictures that show sediment in the stream.

Mr. Montgomery said he looked at the set of pictures; he discussed the type of stone used. He said the type of stone used is used under French drains. He said this brings all the silt downstream, so that when the Town Engineer went there the water was clear, and you couldn't tell if the water was running under the pipe or over the pipe. He said the project clearly needed engineering. He also noted a sump pump was needed. He reemphasized that the project needs good engineering.

Calendar for 2012

There was a short discussion regard the Calendar for 2012. It was noted that the location of the meetings is missing. Mr. Kops suggested using Thornton Wilder Hall at Miller Memorial Library as the location.

Commissioner Lakin motioned to accept the Calendar as presented. Commissioner Annes seconded the motion. The motion passed unanimously.

7. Adjournment

There was no further business to come before the Commission, and Chairwoman Rosenbaum called for a motion to adjourn. Commissioner Milazzo motioned to adjourn. The motion was seconded by Commissioner Brand and passed with a unanimous vote. Chairwoman Rosenbaum adjourned the meeting at 8:15 PM.

Submitted by: _____
Peggy Craft, Acting Commission Clerk