



Chairman  
Justin DeBrodt

# TOWN OF LEDYARD

## Inland Wetland and Water Courses Commission

### Meeting Minutes - Draft Minutes

741 Colonel Ledyard Highway  
Ledyard, Connecticut 06339

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Tuesday, July 2, 2024

7:00 PM

Council Chambers -Hybrid Format

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#### REMOTE MEETING INFORMATION

##### Join Zoom Meeting

<https://us06web.zoom.us/j/84358421581?pwd=ILCME8uAzkyAmIp12iUITKhRRia68Q.1>

Meeting ID: 843 5842 1581      Passcode: 283974

Dial by your location      • +1 646 558 8656 US (New York)

#### I. CALL TO ORDER

Chairman DeBrodt called the meeting to order at 7:00 p.m. at the Council Chambers, Town Hall Annex Building.

#### II. ROLL CALL

**Present**      Chairman Justin DeBrodt  
                 Vice Chair Paul Maugle  
                 Commissioner Lynmarie Thompson  
                 Commissioner Beth E. Ribe  
**Excused**      Commissioner Dan Pealer

In addition, the following were present:

Liz Burdick, Director of Land Use and Planning  
Alex Samalot, Zoning and Wetlands Official  
Anna Wynn, Land Use Assistant  
Attorney Rob Avena, Suisman & Sharpio  
Attorney Harry Heller, Heller Heller & McCoy

#### III. CITIZENS COMMENTS

Anne Roberts-Pierson, 4 Anderson Drive, Gales Ferry addressed the Commission with errors related to the last meeting's minutes by identifying a wrong name used for a motion.

#### IV. OLD BUSINESS

A. Discussion and possible action on legal jurisdiction for PCZ Application #24-2RESUB - 96, 98,

and 100 Stoddards Wharf Rd., Agent: Harry Heller, Esq., Heller, Heller & McCoy - Applicant/Owner: Avery Brook Homes, LLC, for an 18-Lot Resubdivision/Affordable Housing Development pursuant to CGS §8-30g.

Chairman Debrodt read Attorney Avena's email into the record which stated that he advises the Commission decline jurisdictional rights over #24-2RESUB.

Attorney Avena addressed the Commission to further explain his email and recommended adding verbiage in the future that would afford the ability to extend jurisdiction under that language to events and occurrence that may affect the buffer or wetland extent.

Attorney Avena stated that in this situation the Commission is looking at a 22-A intervention petition that is proceeding with a full public hearing with both the applicant and the intervenor and the PZC Commission. Attorney Avena stated that the petition does not necessitate extending the possible jurisdictional issue that the Commission is facing.

Attorney Avena stated that is it for these reasons he advises his initial opinion on the issue.

Attorney Heller addressed the Commission and stated that the issues at hand are not an issue of impact but an issue of jurisdiction. Attorney Heller stated that jurisdiction is the legal ability of a body politic or municipality to act. Attorney Heller stated that without jurisdiction there is no power to act and no power to regulate.

Attorney Heller stated that the Town of Ledyard IWWC regulatory language is not defined in such a way that would allow The Commission to regulate or act on #24-2RESUBB. Attorney Heller stated that he laid out in detail in his Memoranda where Ledyard IWWC regulations are deficient and why based on the language used, the internal consistency and the punctuations they have defined two areas of jurisdiction.

Attorney Heller stated that the first area of regulation is for activities taking place in wetlands or watercourses and the second is specific activities occurring in the upland review areas that are defined as 100 feet from the wetlands and water course boundary. Attorney Heller stated that Connecticut law allows municipalities to regulate activities occurring outside the upland review area if the Commission makes a determination that there is a negative impact. Attorney Heller stated that this can only be done once the Commission has enacted regulation that has allowed them to do so. Attorney Heller stated that the Commission has not done this.

Attorney Heller stated that the applicant's position is that no application has been filed and there is nothing pending and there is no review because there are no wetlands on the property. Attorney Heller stated that is of his opinion that there is really nothing for the Commission to do.

Commissioner Thompson asked Attonery Heller to comment on how regulated activity of Ledyard IWWC regulation located on page 8 of the regulations does not meet requirements for jurisdiction.

Attonery Heller stated that for two reasons the regulation does not afford jurisdiction. Attonery Heller stated that the first sentence of the regulation states an activity is regulated only if it is in a wetland or watercourse. Attorney Heller stated that the rest of the sentence delimitates specific activities. Attonery Heller said that the critical language of the regulation is that the regulated activity must occur in wetland or watercourse upland review area.

Attonery Heller cited case law demonstrating his position.

Commissioner Maugle commented that the property was a watercourse at one point and asked if that would not constitute jurisdiction.

Attonery Heller responded that the property did not become a watercourse until Groton Public Utilities build a dam.

Director Burdick commented that CT DEEP Model Wetland Regulations provides guidance on implementing regulated areas definitions. Director Burdick stated that her staff is already working on bringing something to the next meeting to help implement some changes to the Commission's regulation that would allow them to regulate past the upland review area.

Commissioner Thompson asked Director Burdick if the Commission declines jurisdiction and the application goes before the PZC, what will the PZC make decisions based upon.

Director Burdick responded that normally the PZC would make decisions based on town zoning regulations but because the application is an 8-30g application regular zoning regulation do not apply. Director Burdick stated that the PZC will make decisions based on the health and safety of the project.

Director Burdick stated that she is pursuing an independent review of the wastewater renovation analysis.

Commissioner Thompson asked Director Burdick to clarify if and when the application goes before the PZC if they will have the jurisdiction to make decisions concerning the watercourses and human health.

Director Burdick responded that yes they will have jurisdiction over those matters but not over wetlands. Director Burdick also added that the intervenor, Groton Public Utilities, will also have

experts reviewing the wastewater renovation analysis.

Commissioner Thompson asked Director Burdick if the IWWC would be allowed to provide the PCZ a letter with comments concerning the potential impact on wetlands and watercourses.

Director Burdick responded that not unless you have jurisdiction concerning the application. Director Burdick explained that there are different situations where subdivision applications will come to the IWWC. The first situation is if there are wetlands located on the property but there is no proposed regulated activity, in which case only a favorable or unfavorable report with conditions will be given. The second instance is when regulated activities are proposed, but the IWWC does not approve subdivision applications, they only regulate specified activities in regulated areas.

Chairman DeBrodt commented that the discussion at hand concerns jurisdictional issues not the variants of an application that is not submitted.

Attorney Heller stated that what has been identified is another but different jurisdictional issue because under 8-26 of Connecticut General Statutes, it requires an application to be filed with IWWC even if there aren't any regulated activities occurring. Attorney Heller stated that in this case there are no wetlands on the property.

Chairman Justin Debrodt stated to the other Commissioners that they are ready to create a motion concerning jurisdiction.

**MOTION** that the Inlands Wetlands and Watercourses Commission does not have jurisdiction over PZ#24-2RESUB 18 LOT Subdivision 96,98, and 100 Stoddards Wharf Rd

MOVER: Commissioner Thompson

SECONDER: Commissioner Ribe

#### DISCUSSION

Commissioner Maugle asked how the IWWC can approve a motion on a subdivision the Commission has not seen.

Attorney Avena replied to summarize that there are no wetlands on the proposed subdivision or wetlands within 100 feet for the Commission to have jurisdiction over.

Director Burdick added that this application is not the same as the one that came before that included wetlands.

The Commissioners discussed amongst themselves different aspects of jurisdiction and potential

impact on surrounding areas.

Attorney Aeva commented that the proposed application is an 8-30g application and does not adhere to normal zoning regulations, but does require examination of the health and safety of the project.

Commissioner Thompson asked Attorney Avena is it would be possible for the IWWC to take no action by neither claiming or declining jurisdiction.

Attorney Avena stated that was acceptable because there is no application before the Commission.

The Commission discussed the motion on the table.

**AMENDED MOTION** that the Inlands Wetlands and Watercourses Commission take no action on the jurisdiction of PZ#24-2RESUB 18 LOT 96, 98, 100 Stoddards Wharf Rd

Note: Motion failed for lack of second

**RESULT:** MOTION FAILED

**MOVER:** Lynmarie Thompson

The Commission discussed the motion on the table.

Director Burdick and Attorney Avena made supporting comments regarding legal terminology and processes.

**MOTION** that the Inlands Wetlands and Watercourses Commission does not have jurisdiction over PZ #24-2RESUB for 18 LOT Subdivision for Uplands Review

**RESULT:** MOTION FAILED

**MOVER:** Lynmarie Thompson

**SECONDER:** Beth E. Ribe

**AYE** 2 DeBrodt Ribe

**NAY** 2 Maugle Thompson

**EXCUSED** 1 Pealer

**MOTION** that the Inlands Wetlands and Watercourses Commission will take no action regarding jurisdiction over PZ#24-2RESUB for 18 LOT Subdivision.

**RESULT:** APPROVED AND SO DECLARED

**MOVER:** Lynmarie Thompson

**SECONDER:** Paul Maugle

**AYE**                    4    DeBrodt Maugle Thompson Ribe

**EXCUSED**           1    Pealer

**V.      NEW BUSINESS**

- A.      IWWC#24-9 - 19, 29 & 39 Military Highway (Parcel IDs: 91-1590-19, 29 & 39), Gales Ferry, CT - Applicant/Owner: C.R. Klewin LLC for approval of regulated activities associated with construction of a 320-unit multifamily residential housing development and associated site improvements. (Submitted 6-24-24, Date of Receipt 7-2-24, Decision Required Date 9-4-24).**

Director Burdick stated that the application was recently submitted, that staff has not yet reviewed and recommended the application be tabled to the 8/6/24 meeting of the IWWC.

**VI.     REPORTS**

- A.      Staff Report - Designated Agent/WEO**

ZWEO Alex Samalot reviewed his monthly staff report with the Commission.

Director Burdick discussed time frames for regulations amendments.

**RESULT:**            RECEIVED AND FILED

**VII.    APPROVAL OF MINUTES**

MOTION to approve the Inland and Wetlands Commission regular meeting minutes of June 4, 2024

**RESULT:**            APPROVED AND SO DECLARED

**MOVER:**            Beth E. Ribe

**SECONDER:** Paul Maugle

**AYE**                    4    DeBrodt Maugle Thompson Ribe

**EXCUSED**           1    Pealer

**VII.    ADJOURNMENT**

Commissioner Ribe moved the meeting be adjourned, seconded by Commissioner Maugle

The meeting adjourned at 8:11p.m.

VOTE: 4-0 Approved and so declared

Respectively Submitted,

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Chairman Justin DeBrodt  
Inlands Wetlands and Watercourses Commission

DISCLAIMER: Although we try to be timely and accurate these are not official records of the Town.