



Chairman  
Justin DeBrodt

# TOWN OF LEDYARD CONNECTICUT

741 Colonel Ledyard Highway  
Ledyard, Connecticut 06339

## Inland Wetland and Water Courses Commission ~ AGENDA ~

Tuesday, June 4, 2024

7:00 PM

Council Chambers -Hybrid Format

### REMOTE MEETING INFORMATION

**Join Zoom Meeting**

<https://us06web.zoom.us/j/81682521335?pwd=feF1Bs3iOILTow32VBkGRt4k6Woo0U.1>

**Meeting ID: 816 8252 1335**

**Passcode: 419703**

**I. CALL TO ORDER**

**II. ROLL CALL**

**III. CITIZENS COMMENTS**

**IV. OLD BUSINESS**

**V. NEW BUSINESS**

- A. Discussion and possible action on legal jurisdiction for PZC Application #24-1SITE - 59 Kings Highway, Applicant/Agent, Peter C. Gardner, Attorney, Mark Branse, Esq., Halloran & Sage - Owner Donco, LLC for a 10-unit Mobile Home Park/Affordable Housing Development in accordance with CGS §8-30g.

**Attachments:** [EX#33 24-2RESUB LtrEmailHeller ReIWWC RespToStuder051724Ltr 052424](#)

- B. 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.

**Attachments:** [Ex #10 - Email Atty Harry Heller to Atty Avena 041724](#)  
[EX#24 24-2RESUB LtrAttStuder-GU ReIWWCJurisdiction 051724](#)  
[EX#33 24-2RESUB LtrEmailHeller ReIWWC RespToStuder051724Ltr 052424](#)

**VI. REPORTS**

- A. Staff Reports - Designated Agent/WEO

**Attachments:** [Wetlands Report for June 4, 2024](#)

**VII. APPROVAL OF MINUTES**

- B.** MOTION to approve the Inland Wetland and Water Courses Commission regular meeting minutes of April 2, 2024

**Attachments:** [IWWC Draft Minutes 4.2.2024](#)

**VIII. ADJOURNMENT**

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



# TOWN OF LEDYARD

741 Colonel Ledyard  
Highway  
Ledyard, CT 06339-1511

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**File #:** 24-0469

**Agenda Date:** 6/4/2024

**Agenda #:** A.

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## LAND USE APPLICATION

**Subject/Application:**

Discussion and possible action on legal jurisdiction for PZC Application #24-1SITE - 59 Kings Highway, Applicant/Agent, Peter C. Gardner, Attorney, Mark Branse, Esq., Halloran & Sage - Owner Donco, LLC for a 10-unit Mobile Home Park/Affordable Housing Development in accordance with CGS §8-30g.

**Background:**

(type text here)

**Land Use Director/Town Planner:**

(type text here)

# ***HELLER, HELLER & McCOY***

***Attorneys at Law***

***736 Norwich-New London Turnpike***

***Uncasville, Connecticut 06382***

*Sidney F. Heller (1903-1986)*  
*Harry B. Heller (hheller@hellermccoy.com)*  
*William E. McCoy (bmccoy@hellermccoy.com)*

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Telephone: (860) 848-1248  
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May 24, 2024

Robert A. Avena, Esquire  
Suisman Shapiro  
2 Union Plaza  
P.O. Box 1591  
New London, CT 06320

Ms. Elizabeth Burdick, Director of Land Use  
and Planning  
741 Colonel Ledyard Highway  
Ledyard, CT 06339

Re: Application of Avery Brook Homes, LLC for resubdivision approval – 96, 98 and  
100 Stoddards Wharf Road, Ledyard, Connecticut

Dear Attorney Avena and Ms. Burdick:

I am writing in response to correspondence received by each of you under date of May 17, 2024 from Stephen W. Studer, counsel to Groton Utilities. I preface this correspondence by stating the obvious; i.e. that Attorney Studer's May 17, 2024 correspondence is both factually incorrect in several instances and materially misleading.

While Attorney Studer notes that he has "supplied emphasis" in his recitation of the definition of a regulated activity as defined in Section 2 of the Inland Wetland and Water Courses Regulations of the Town of Ledyard (effective date: January 25, 2021), the emphasis which has been added impermissibly alters the interpretation of the definition. The bifurcation of the definition of regulated activity into three (3) subparts, which does not exist in the definition adopted by the Ledyard Wetlands Agency represents a perversion of the intent and meaning of the regulation that the Agency adopted.

As noted in our memorandum to Attorney Avena dated April 17, 2024, a wetland regulation is a local legislative enactment and in its interpretation the question is the intent of the legislative body as found from the words employed in the regulation itself. *Fox v Zoning Board of Appeals* 146 Conn. 70, 73 (1958) The words employed are to be interpreted in their natural and usual meaning. *Lawrence v. Zoning Board of Appeals* 158 Conn. 509, 511 (1969) It is a cardinal rule of statutory construction that a statute should be read in order to give full impact to each and every word of the statute. *Archibald v. Sullivan* 152 Conn. 663, 688 (1965) No clause in a statute should be considered superfluous absent compelling reasons to the contrary. *State v. Briggs* 161

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Conn. 283, 287 (1971) The grammar used in the formulation of a regulation or statute is an integral component of the regulation itself.

With these principles in mind, we analyze the definition of regulated activity as contained in the Ledyard Inland Wetlands and Watercourses Regulations. First, it is noteworthy that the regulation contains no bifurcation as contained in Attorney Studer's letter of May 17, 2024. If the Ledyard Wetlands Agency, in its legislative capacity, intended that bifurcation, it would have included the delineation of the subsections inserted for "emphasis" by Attorney Studer. **IT DID NOT.**

The first sentence of the definition in pertinent part reads "...means any operation within or use of a wetland or water course involving removal or deposition of material, or any obstruction, construction, alteration or pollution of such wetlands or watercourses, or any other activity which may impact or effect the wetlands..." In reviewing the totality of the first sentence of the definition of regulated activity, it becomes clear that it is limited to "any operation within or use of a wetland or water course." The further language "involving removal of or deposition of material, or any obstruction, construction, alteration or pollution of such wetlands or water courses..." is nothing more than a prepositional phrase which enumerates certain types of activities within the wetland or water course which are regulated.

If Attorney Studer's interpretation of the definition was to be adopted, it would render superfluous the second sentence of the definition which grants regulatory authority to the Inland Wetlands Agency over certain activities occurring within 100 feet as measured horizontally from the boundary of any wetland or watercourse.

A second tenet of regulatory construction is that, under Connecticut's rules of statutory construction, the language of a statute must be interpreted in context with the statutory scheme of which it is a part. *Broadnax v. New Haven* 284 Conn. 237, 245 (2007) Connecticut has adopted the "plain meaning rule". The plain meaning rule essentially says that if a statute is on its face, clear and unambiguous, and interpreting in light of that clear and unambiguous language would not yield absurd or unworkable results, courts are not permitted to look beyond the language in the statute itself for purposes of determining what the legislative intent was in adopting that legislation. *Hummel v. Marten Transport* 282 Conn. 477, 500 (2007) Connecticut General Statutes §1-2z requires that a court, in interpreting a regulation, consider the text of the statute itself and its relationship to other statutes.

Considering the referenced rules of statutory construction, Attorney Studer's manipulated revision of the definition of a regulated activity as contained in the Ledyard Wetlands Regulations yields absurd and unworkable results and is internally inconsistent. If the definition is given the broad reach suggested, it renders superfluous the second sentence of the definition which allows

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the municipal wetland agency to regulate activities occurring exterior to the wetland or watercourse boundary itself but within 100 feet measured horizontally from the boundary of the regulated resource. That provision is unnecessary if the Wetlands Agency has regulatory jurisdiction over any activity, wherever occurring, if it makes an administrative determination that such an activity is likely to adversely impact a wetland or watercourse. The plain language and construction of the definition of a regulated activity evidences no such legislative intent.

We also call your attention to the first sentence of Section 7.1 of the municipal Wetland Regulations which provides “Any person intending to conduct a regulated activity, including work within the 100’ upland review area, or to renew or modify a permit to conduct such activity, shall apply for a permit on the proper form provided by the IWWC.” Adopting Attorney Studer’s suggested interpretation of the definition of a regulated activity would render the language “including work within the 100’ upland review area” superfluous as the Wetland Agency would have regulatory jurisdiction to regulate any activity which may have an adverse impact on wetlands and watercourses.

As evidenced by this firm’s correspondence to Attorney Avena dated April 17, 2024, a municipal wetland agency acts in both a legislative and administrative capacity. It is void of regulatory authority to regulate activities without first adopting regulations defining the scope of that regulatory authority. A review of various regulatory schemes adopted by municipal wetland agencies in southeastern Connecticut (as attached to that correspondence) evidences the fact that different municipal wetland agencies have adopted differing scopes of regulatory authority. Under the enabling legislation for the regulation of activities in inland wetlands and watercourses, municipal wetland agencies are statutorily required to regulate activities occurring within wetlands or watercourses. Ledyard’s regulations establish a regulatory scheme to fulfil that obligation contained in the enabling legislation.

On the other hand, there is no legislative mandate for municipal wetland agencies to regulate activities occurring exterior to the defined boundaries of inland wetlands and watercourses. The Ledyard Wetlands Commission, in its legislative capacity, has made a determination that it should review; and, if required, regulate activities occurring within 100 feet of the boundaries of regulated wetlands and watercourses. The definition of regulated activity defines the geographic scope of what the Commission has legislatively deemed is necessary in order to fulfill its statutory duty to protect the State’s inland wetlands and watercourses. Wetland agencies in other municipalities have taken a more expansive view of the regulatory scheme necessary to protect these resources. Others, including North Stonington, Preston and Ledyard, have not.

Attorney Studer’s interpretation of *Prestige Builders* lacks depth of analysis. The Appellate Court, in that matter, was reviewing agency regulation exterior to the wetland or watercourse

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boundary. Derby's municipal wetland agency had not adopted upland review area regulations. Notwithstanding that fact, the concept is identical. An agency cannot regulate without first adopting regulations defining the scope of that regulatory authority. In the Derby instance, the activity was occurring in an area which jurisdictionally would likely have fallen within an upland review area if the agency had adopted upland review area regulations. In the instant situation, the activities complained of are even exterior to a defined upland review area; thus, more remote from the regulated resource than the factual situation extant in *Prestige Builders*.

In *Fusco v. Trumbull Planning & Zoning Commission et al* 2021WL 761796 (2021), the Trumbull wetland agency had adopted regulations establishing a 100 foot upland review or buffer area. In *Fusco*, no activity was occurring in either a regulated wetland or watercourse resource or in the 100 foot upland review area. In evaluating the scope of regulatory authority of the wetland agency, and the need to submit an application for review, the court held as follows:

“Here, the record reveals that no activity will occur within the one hundred (100’) foot buffer area. Therefore, the Trumbull Inland Wetlands and Watercourses Commission does not have jurisdiction concerning the site plan, as proposed and approved.”

We therefore reiterate the decision maintained in our April 17, 2024 correspondence that, based on the facts and circumstances of the Avery Brook Homes application, the Town of Ledyard Inland Wetlands and Watercourses Commission has no authority to review and no regulatory authority over activities proposed on a parcel of land which contains no inland wetlands and watercourses and which contains no upland review areas adjacent to wetlands and/or watercourses located on adjacent property.

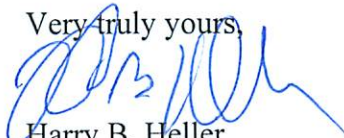
Although extraneous to the jurisdictional issues discussed herein, we also note the following factual errors in Attorney Studer's May 17, 2024 correspondence:

1. No activity is proposed within 105' feet of the Billings/Avery Brook Reservoir. In fact, the most proximate activity is removed more than 300' from the reservoir edge.
2. The characterization of Avery Brook Homes boundary lines as “gerrymandering” is inaccurate and inflammatory. Ledyard has an administrative process to review boundary line adjustments. That process was followed, reviewed and approved by the former Director of Planning.
3. The Applicant's reconfiguration of its lot lines, as expressly permitted by the land use regulations of the Town of Ledyard, was accomplished for the express purpose of attaining regulatory compliance of the resubdivision regulations with the permitting

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requirements of the Ledyard Land Use Regulations, a right afforded to every property owner.

Very truly yours,



Harry B. Heller

HBH/rmb

Cc: Mr. Peter C. Gardner  
Mr. Conrad C. Gardner  
Mr. Anthony Bonafine  
Mark Branse, Esquire  
Stephen Studer, Esquire





# TOWN OF LEDYARD

741 Colonel Ledyard  
Highway  
Ledyard, CT 06339-1511

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**File #:** 24-0470

**Agenda Date:** 6/4/2024

**Agenda #:** B.

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## LAND USE APPLICATION

### **Subject/Application:**

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.

### **Background:**

(type text here)

### **Land Use Director/Town Planner:**

(type text here)

EXHIBIT #11  
Received 10  
from  
Attorney  
Avena,  
4/18/24  
via email

**From:** Harry Heller <hheller@hellermccoy.com>  
**Sent:** Wednesday, April 17, 2024 1:38 PM  
**To:** Robert Avena <RAvena@sswbagg.com>  
**Cc:** Peter Gardner <dieter.gardner@yahoo.com>; Mark K. Branse <branse@halloransage.com>  
**Subject:** Avery Brook Homes, LLC

Good Afternoon Rob:

I am writing this memorandum as a follow-up to our conversation of Wednesday, April 10, 2024 concerning the affordable housing resubdivision application of Avery Brook Homes, LLC that has been submitted to the Town of Ledyard Planning and Zoning Commission for consideration. As discussed, no contemporaneous application was filed with the Town of Ledyard Inland Wetlands and Watercourses Commission; and, for the reasons hereinafter set forth, it is my opinion that there is no jurisdictional basis for the municipal Inland Wetlands and Watercourses Commission to review and/or evaluate this application.

For context, I am forwarding herewith a print of Sheet 2 of 8 of the resubdivision plan entitled "Plan Showing Resubdivision Property Of Avery Brook Homes LLC 96, 98 & 100 Stoddards Wharf Road A.K.A. Connecticut Route 214 Ledyard, Connecticut Scales As Shown March 2024" prepared by Dieter & Gardner. The resubdivision application proposes the resubdivision of three existing approved building lots into eighteen proposed lots which will be accessed by a proposed municipal street designated as "Avery Court" on the resubdivision plan. In reviewing the attached plan, please note that Avery Brook Homes, LLC also owns property abutting the property proposed for resubdivision to both the east and the north (the "Abutting Property"). There are regulated inland wetlands located both on the Abutting Property as well as other property owned by the City of Groton Utilities located easterly and northerly of the Abutting Property. No portion of the property proposed for resubdivision is located within one hundred (100') feet from any wetland or watercourse located either on the Abutting Property or on the City of Groton property. There are no wetlands located on the property which is the subject of the resubdivision application.

Connecticut General Statutes §8-26(e) provides, in pertinent part, "If an application involves land regulated as an inland wetland or watercourse under the provisions of Chapter 440, the applicant shall submit an application to the agency responsible for the administration of the inland wetland regulations no later than the date the application is filed for the subdivision or resubdivision." The subject application does not involve land regulated as an inland wetland or watercourse. There is no regulated resource located on the property being subdivided. Therefore, no subdivision review pursuant to the provisions of §8-26(e) is required in conjunction with this application.

Therefore, any regulatory authority that the municipal Inland Wetlands and Watercourses Commission may have with respect to this application must be derived from the Wetland Regulations themselves. The municipal Wetland Regulations require a permit to conduct a regulated activity occurring on any property within the jurisdictional limits of the Town of Ledyard.

It is a fundamental tenet of Connecticut administrative law that an administrative agency cannot regulate activities without first legislatively enacting regulations that define the parameters of both the activities to be regulated and the manner in which those activities can be regulated. Originally, by judicial interpretation (*Aaron v. Conservation Commission*) and thereafter, by statute, municipal wetland agencies have been granted authority to regulate activities occurring exterior to the boundaries of inland wetlands and watercourses; provided, however, that they enact a regulatory framework authorizing and defining

such regulation. This scope of regulation differs from the regulation of activities occurring within wetland and watercourses proper since municipal wetland agencies are required by the enabling legislation (Chapter 440 of the Connecticut General Statutes) to regulate all activities occurring within inland wetlands and watercourses other than activities permitted by right pursuant to the provisions of C.G.S. §22a-40.

Our review of the Inland Wetlands and Watercourses Regulations (the “Regulations”) of the Town of Ledyard evidences the fact that the Wetland Agency, in its legislative capacity, has adopted regulations enabling it to regulate activities occurring both in inland wetlands and watercourses and in upland review areas located within one hundred (100’) feet of the boundaries of a wetland or watercourse, but nothing further.

In conducting our analysis, we look first to the definition of “regulated activity” as defined in Section 2.1 of the Regulations which provides:

“‘Regulated Activity’ means any operation within or use of a wetland or water course involving removal or deposition of material, or any obstruction, construction, alteration or pollution of such wetlands or water courses, or any other activity which may impact or effect the wetlands, but shall not include the specified activities in Section 22a-40 of the Connecticut General Statutes. Furthermore, any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging of storm water on the land within one hundred feet, measured horizontally from the boundary of any wetland or water course, is a regulated activity.”

The definition of a Regulated Activity is silent as to activities occurring beyond the limits of the one hundred (100’) foot upland review area. In dealing with the regulatory authority of a wetland agency to regulate activities occurring exterior to the wetland or watercourse itself, the Connecticut Appellate Court, in *Prestige Builders, LLC v. Inland Wetlands Commission of the City of Ansonia et al* 79 Conn. App. 710 (2003), framed the issue under consideration as follows:

“The dispositive issue in this appeal is whether the commission can exercise jurisdiction over activities that do not occur within or make use of an inland wetland or watercourse and where the commission has not promulgated regulations granting it authority to regulate upland review areas. We conclude that the commission cannot do so, and, accordingly, reverse the judgment of the trial court.” The Appellate Court, notationally, stated “The fact that the legislature did not include in its definition of “regulated activity”, “wetland” or “watercourses” any reference to upland review area demonstrates that the regulation of such areas is not mandatory, but left to the discretion of local commissions if they determine that such regulations are necessary to protect and to preserve inland wetlands and watercourses ... .. The conclusion that a commission, under Section 22a-42a(f), must first enact a formal regulation to exercise its authority over upland review areas is consistent with our case law.” Finally the Appellate Court stated “We therefore conclude that neither §22a-42a(f) nor our case law allows a commission to exercise its authority over activities in upland review areas without first having enacted a regulation governing such areas. Municipal land use agencies have occasionally attempted to regulate land use before passing regulations. Such action has consistently been overturned by the Courts.”

As stated previously, Avery Brook Homes, LLC is proposing no activity in an upland review area as defined in the Ledyard Wetland Regulations in conjunction with its resubdivision initiative. As per our discussion, activities of the Planner’s concern in conjunction with this resubdivision application are occurring exterior

to the boundary of the upland review area. While *Prestige Builders* specifically adjudicated interests in the City of Ansonia in which the municipal wetland agency had not enacted regulations to regulate activities occurring in upland review areas, the principles enunciated therein are the same under the present factual situation. A similar factual situation was adjudicated in the matter of *Diamond 67, LLC et al v. Vernon Inland Wetlands Commission* 2007 WL 2035137 (2007). In *Diamond 67*, the Court stated:

“Thus, in the present case, it is undisputed that the commission’s jurisdiction was triggered by the proposed regrading of the 6150 square feet of the site falling within the seventy-five-foot upland review area. To the extent that this activity could adversely impact watercourses, the commission acted within its statutory and regulatory authority when it considered the potential impacts of the stormwater management system as the record reveals that this 6150 square feet of land was to be graded to direct runoff into the system. ... This system, along with the surface flow and infiltration measures, was designed to ameliorate the impact of potential contaminants associated with runoff from the creation of impervious surfaces on the site, and was properly within the scope of the commission’s review. The regulations, however, do not contain an express provision that would have enabled the commission to regulate upland activities occurring entirely outside of a wetland, watercourse or its seventy-five-foot upland review area. Thus, as the record discloses that neither the septic system nor its leaching field are within a wetland, watercourse or its seventy-five-foot upland review area, the commission lacked authority under both §22a-42a(f) and its own regulations to consider the potential impacts associated with the site’s septic system. ... Moreover, as the commission’s authority to consider whether a proposed activity would adversely impact a wetland or watercourse is derived from a statutory provision, even if the statements made by the plaintiffs’ counsel during the administrative hearings could be construed as a concession, a party cannot consent to the regulation of activity that is not within the commission’s jurisdiction.”

Therefore, a review of the definition of a “Regulated Activity” as contained in the Ledyard Wetland Regulations, is warranted in order to determine whether or not the scope of the definition authorizes the regulation of activities occurring both exterior to the wetland or watercourse boundary and to the defined upland review area surrounding the regulated resource.

A wetland regulation is a local legislative enactment, and in its interpretation the question is the intent of the legislative body as found from the words employed in the regulation itself. *Fox v. Zoning Board of Appeals* 146 Conn. 70, 73 (1958) The words employed are to be interpreted in their natural and usual meaning. *Lawrence v. Zoning Board of Appeals* 158 Conn. 509, 511 (1969). Utilizing these principles, we analyzed the definition of “Regulated Activity” as adopted by the Ledyard Inland Wetlands and Watercourses Commission in its legislative capacity.

The definition itself incorporates two concepts of regulatory authority, segregated between the first and second sentences of the definition. The first sentence defines any activity within or use of a wetland or watercourse as an activity invoking the regulatory jurisdiction of the wetland agency. The language contained therein, specifically “... involving removal or deposition of material, or any obstruction, construction, alteration or pollution of such wetlands or water courses or any other activity which may impact or effect the wetlands ...” is illustrative of the types of activities which may be occurring within a wetland or watercourse and which are subject to the regulatory authority of the municipal wetlands agency. However, that descriptive language does not broaden the regulatory predicate of the first sentence of the definition that provides that the operation or use must be occurring within a wetland or

watercourse. The second sentence of the definition grants regulatory authority to the municipal wetlands agency over certain enumerated activities occurring within one hundred feet, measured horizontally, from the boundary of a wetland or watercourse in the Town of Ledyard (i.e. the defined upland review area). There is no language either in the definition of a “Regulated Activity” or in any other provision of the Ledyard Wetland Regulations which creates a regulatory framework for the consideration or regulation of activities or uses occurring exterior to the upland review area whether or not those activities may impact wetlands or watercourses.

As enunciated in *Queach Corporation et al v. Inland Wetlands Commission of the Town of Branford et al* 258 Conn. 178 (2001) and other appellate level decisions in the State of Connecticut, the scope of the enabling legislation for the regulation of activities or uses affecting inland wetlands or watercourses is broad enough to enable municipal wetland agencies to promulgate regulations regulating activities or uses affecting wetlands and watercourses wherever they may occur. However, with respect to activities and uses or land exterior to the upland review area, the Ledyard Wetland Agency, in its legislative capacity, has failed to do so.

To highlight the regulatory framework required to authorize wetland agency regulation of activities occurring exterior to an upland review area, I am forwarding herewith copies of the applicable provisions of the Ledyard, North Stonington, Preston, Montville, Stonington, Waterford and East Lyme Inland Wetlands and Watercourses Regulations. In reviewing the same, it becomes obvious that the Town of Ledyard, North Stonington and Preston Inland Wetlands and Watercourses Commissions, acting in their legislative authority, have made a legislative decision not to regulate activities occurring exterior to the upland review areas around wetlands and watercourses.

To the contrary, while utilizing different language, it is also clear that the Montville, Stonington, Waterford and East Lyme Inland Wetlands and Watercourses Commissions have adopted regulations which create a regulatory framework allowing the municipal wetland agency in those towns to regulate activities occurring exterior to the upland review area if they are likely to have an adverse impact on inland wetlands and watercourses. In particular, I call your attention to the following language:

#### **Montville**

“Regulated activities also include any activity ... regardless of how far away from the wetland or watercourse the activity occurs, or whether or not the wetland or watercourse is on the applicant’s property.”

#### **Stonington**

“At its discretion, the agency may rule that any other activity located within such upland review area or in any other non-wetland or non-watercourse area may have an adverse impact on wetland or watercourse and is a regulated activity.”

#### **Waterford**

“The Commission may rule that any other activity located in such upland review areas or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity.”

## East Lyme

“The Agency may rule that any other activity located within such upland review area or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity.”

For the reasons stated herein, Avery Brook Homes, LLC will not file an application with the Ledyard Inland Wetlands and Watercourses Commission in conjunction with its proposed activities to develop the Avery Brook Affordable Housing Development. This decision has been made to the fact that (i) no subdivision review pursuant to the provisions of §8-26 of the Connecticut General Statutes is required with respect to this application and (ii) the Ledyard Inland Wetlands and Watercourses Commission has not adopted regulations authorizing it to regulate any activities or uses occurring in conjunction with the development of this project.

Finally, it is my understanding that the municipal planner has, of her own accord, made a determination to forward the application of Avery Brook Homes, LLC to the Town of Ledyard Inland Wetlands and Watercourses Agency for a determination of jurisdiction without its consent or participation. As stated above, the application submitted by Avery Brook Homes, LLC to the Town of Ledyard Planning and Zoning Commission contains no factual predicate for the invocation of wetland agency jurisdiction either under Chapter 126 or Chapter 440 of the Connecticut General Statutes (or, for that matter, under the Inland Wetlands and Watercourses Regulations adopted by the Inland Wetlands and Watercourses Commission). Avery Brook Homes, LLC asserts that neither the municipal planner nor the Planning and Zoning Commission has authority to make such referral or file such request. The case of *Richards v. Planning and Zoning Commission of the Town of Wilton* 170 Conn 318 (1976) adjudicated the standing of a party to file a land use application. In that case, the Wilton Board of Education applied to build a storage area for school buses, a bus maintenance facility and equipment storage facility, even though it did not own the land which was the subject of the land use application. In that matter, the land was owned by the Town of Wilton and designated for municipal use. The issue presented to the Supreme Court for adjudication was framed as follows:

“The issue, then, is whether the Wilton board of education, although not the title-holder to the property, possesses a sufficient interest in it and in the granting of the special permit to constitute the legal interest required to make the present application... Whether the applicant is in control of the property, whether he is in possession or has a present or future right to possession, whether the use applied for is consistent with the applicant's interest in the property, and the extent of the interest of other persons in the same property, are all relevant considerations in making that determination.”

In the instant situation, neither the municipal planner nor the Planning and Zoning Commission has any control of the property, nor is it in possession of it either presently or in the future, and their interests in the property are not consistent with the interest of Avery Brook Homes, LLC. Neither the municipal planner nor the Planning and Zoning Commission has standing to initiate any administrative proceedings before the municipal Inland Wetlands and Watercourses Commission or any other public agency. See, also, *Gladysz v. The Planning and Zoning Commission of the Town of Plainville* 256 Conn 249 (2001).

Should you wish to discuss our opinion, please feel free to call me.

Harry

*Heller, Heller & McCoy*  
736 Norwich-New London Turnpike  
Uncasville, CT 06382  
Telephone: (860) 848-1248  
Facsimile: (860) 848-4003





Montville YES

- t. **"Nurseries"** means places where plants are grown for sale, transplanting, or experimentation.
- u. **"Permit"** See License
- v. **"Permittee"** means the person to whom a permit has been issued.
- w. **"Person"** means any person, firm, partnership, association, corporation, company, limited liability company, organization or legal entity of any kind, including municipal corporations, governmental agencies, or subdivisions thereof.
- x. **"Pollution"** means harmful thermal effect or the contamination or rendering unclean or impure of any waters of the state by reason of any waste or other materials discharged or deposited therein by any public or private sewer or otherwise so as directly or indirectly to come in contact with the waters. This includes, but is not limited to, erosion and sedimentation resulting from any filling, land clearing, or excavation activity.
- y. **"Prudent"** means economically and otherwise reasonable in light of social benefits to be derived from the proposed Regulated Activity provided cost may be considered in deciding what is prudent and further provided a mere showing of expense will not necessarily mean an alternative is imprudent.
- z. **"Regulated Activity"** A regulated activity is any action that can impact a wetland or watercourse, that is not permitted by right. This includes any activity that occurs in or within 50 feet of the wetland or watercourse. Regulated activities also include any activity that causes or may cause an impact to the wetland or watercourse including, but not limited to, drainage, discharges that may include oil, silt, or sewage, or which direct or limit water flow into the wetland or watercourse - regardless of how far away from the wetland or watercourse the activity occurs, or whether or not the wetland or watercourse is on the applicants property.
- aa. **"Regulated Area"** means any inland wetland or watercourse, upland review area, and/or non-wetland or non-watercourse area which proposed activities are likely to impact or effect wetlands or watercourses as defined in these Regulations, including without limitation in Subsection 2.1(z)
- bb. **"Remove"** includes, but shall not be limited to drain, excavate, mine, dig, dredge, suck, clear-cut timber, bulldoze, dragline or blast.
- cc. **"Rendering unclean or impure"** means any alteration of the physical, chemical, or biological properties of any waters of the state, including, but not limited to, change in odor, color, turbidity or taste.

# STONINGTON - YES

## INLAND WETLANDS AND WATERCOURSE REGULATIONS OF THE TOWN OF STONINGTON

Disturb the Natural and Indigenous Character of the Wetland or Watercourse. To alter the inland wetlands and watercourses by reason of removal or deposition of material, clearing the land, altering or obstructing water flow, or pollution.

Essential to the Farming Operation. That the proposed activity is necessary and indispensable to sustain farming activities on an existing farm.

Farming. Use of land for the growing of crops, raising of livestock or other agricultural use.

Feasible. The ability to be constructed or implemented consistent with sound engineering principles.

Marshes. Areas with soils that exhibit aquic (saturated) moisture regimes and are distinguished by the absence of trees and shrubs and the dominance of soft-stemmed herbaceous plants. The water table in marshes is at or above the ground surface throughout the year and areas of open water six inches or more in depth are common, but seasonal water table fluctuations are encountered.

Material. Any substance, solid or liquid, organic or inorganic, including but not limited to: soil, sediment, aggregate, land, gravel, clay, bog, peat, mud, debris, sand, refuse or waste.

Municipality. The Town of Stonington.

Nurseries. Land used for propagating trees, shrubs or other plants for transplanting, sale, or for use as stock for grafting.

Permit. The whole or any part of any license, certificate or approval or similar form of permission which may be required of any person by the provisions of these Regulations and the Act or other municipal, state and federal law.

Permittee. The person to whom a permit has been issued.

Person. Any person, firm, partnership, association, corporation, company, organization or legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof.

Pollution. Harmful thermal effect or the contamination or rendering unclean or impure of any waters of the state by reason of any waste or other materials discharged or deposited therein by any public or private sewer, or otherwise, so as directly or indirectly to come in contact with any waters. This includes, but is not limited to, erosion and sedimentation resulting from any filling, land clearing or excavation activity.

Prudent. Economically and otherwise reasonable in light of the social benefits to be derived from the proposed regulated activity provided cost may be considered in deciding what is prudent and further provided a mere showing of expense will not necessarily mean an alternative is imprudent.

Regulated Activity. Any operation within or use of a wetland or watercourse involving

INLAND WETLANDS AND WATERCOURSE REGULATIONS  
OF THE TOWN OF STONINGTON

removal or deposition of material, or any obstruction, construction, alteration or pollution, of such wetlands or watercourses, or within 100 feet of any wetland or watercourse, but shall not include the specified activities in Section 4 of these Regulations. Furthermore, any excavating or deposition of material, construction or clear cutting of trees or other activity which may alter, impact, or pollute a wetland or watercourse is a regulated activity. At its discretion, the agency may rule that any other activity located within such upland review area or in any other non-wetland or non-watercourse area may have an adverse impact on wetland or watercourse and is a regulated activity.

Regulated Area. Any wetlands or watercourses as defined in these Regulations, and a horizontal distance of 100 feet from the edge of any wetland or watercourse.

Remove. Includes, but shall not be limited to: drain, excavate, mine, dig, dredge, suck, grub, clear cut timber, bulldoze, dragline or blast.

Rendering Unclean or Impure. Any alteration of the physical, chemical or biological properties of any waters of the state, including, but not limited to: change in odor, color, turbidity or taste.

Significant Impact Activity. Any activity, including, but not limited to, the following activities which may have a major effect or significant impact on the area for which an application has been filed or on another part of the inland wetland or watercourse system:

1. Any activity involving deposition or removal of material, which will or may have a major effect or significant impact on the regulated area or on another part of the inland wetland or watercourse system.
2. Any activity which substantially changes the natural channel or may inhibit the natural dynamics of a watercourse system.
3. Any activity which substantially diminishes the natural capacity of an inland wetland or watercourse to: support desirable fisheries, wildlife, or other biological life; prevent flooding; supply water; assimilate waste; facilitate drainage; provide recreation or open space; or perform other functions.
4. Any activity which is likely to cause or has the potential to cause substantial turbidity, siltation or sedimentation in a wetland or watercourse.
5. Any activity which causes a substantial diminution of flow of a natural watercourse or groundwater levels of the regulated area.
6. Any activity which is likely to cause or has the potential to cause pollution of a wetland or watercourse.
7. Any activity which damages or destroys unique wetland or watercourse areas or such areas having demonstrable scientific or educational value.

Soil Scientist. An individual duly qualified in accordance with standards set by the Federal Office of Personnel Management.

Swamps. Areas with soils that exhibit aquatic (saturated) moisture regimes and are distinguished by the dominance of wetland trees and shrubs.

Submerged lands. Lands which are inundated by water on a seasonal or more frequent

WATERFORD YES

## SECTION VI - ACTIVITIES TO BE LICENSED

- 6.1 No person shall conduct or maintain a regulated activity without first obtaining a permit for such activity from the Waterford Conservation Commission.
- 6.2 The Commission shall regulate any operation within, or use of, a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration, discharge, pollution, or clearing of such wetlands or watercourse, or any other activity outside of a wetland or watercourse which is likely to impact the wetlands or watercourse, except as otherwise indicated in Section 4 of these Regulations.
- 6.3 Upland Review Areas
- Any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging of stormwater on land within 100 feet measured horizontally from the boundary of any wetland or watercourse is subject to review by the Conservation Commission or its designated agent for determination of regulated activities.
- The Commission may rule that any other activity located in such upland review areas or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity.
- 6.4 Any person found to be conducting or maintaining a regulated activity without the prior authorization of the Waterford Conservation Commission, or violating any other provision of these Regulations, shall be subject to the enforcement proceedings and penalties prescribed in Section 14 of these Regulations and any other remedies as provided by law.

EAST LYME YES

**"Material"** means any substance, solid or liquid, organic or inorganic, including but not limited to soil, sediment, aggregate, land, gravel, clay, bog, mud, debris, sand, refuse or waste.

**"Municipality"** means the Town of East Lyme.

**"Nurseries"** means places where plants are grown for sale, transplanting, or experimentation.

**"Permit"** see license

**"Permittee"** means the person to whom a license has been issued.

**"Person"** means any person, firm, partnership, association, corporation, limited liability company, company, organization or legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof.

**"Pollution"** means harmful thermal effect or the contamination or rendering unclean or impure of any waters of the state by reason of any waste or other materials discharged or deposited therein by any public or private sewer or otherwise so as directly or indirectly to come in contact with any waters. This includes, but is not limited to, erosion and sedimentation resulting from any filling, land clearing or excavation activity.

**"Prudent"** means economically and otherwise reasonable in light of the social benefits to be derived from the proposed regulated activity provided cost may be considered in deciding what is prudent and further provided a mere showing of expense will not necessarily mean an alternative is imprudent.

**"Regulated activity"** means any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution, of such wetlands or watercourses, but shall not include the specified activities in Section 4 of these regulations. Furthermore, any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging storm water on the land within 300-feet measured horizontally from the boundary of any wetland or watercourse is a regulated activity. The Agency may rule that any other activity located within such upland review area or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity.

**"Remove"** includes, but shall not be limited to drain, excavate, mine, dig, dredge, suck, bulldoze, dragline or blast.

**"Rendering unclean or impure"** means any alteration of the physical, chemical or biological properties of any waters of the state, including, but not limited to, change in odor, color, turbidity or taste.

**"Significant impact"** means any activity, including, but not limited to, the following activities which may have a major effect:

1. Any activity involving deposition or removal of material which will or may have a substantial effect on the wetland or watercourse or on wetlands or watercourses outside the area for which the activity is proposed.
2. Any activity which substantially changes the natural channel or may inhibit the natural dynamics of a watercourse system.
3. Any activity which substantially diminishes the natural capacity of an inland wetland or watercourse to: support aquatic, plant or animal life and habitats; prevent flooding; supply water; assimilate waste; facilitate drainage; provide recreation or open space; or perform other functions.

# Preston - NO

## 2.0 DEFINITIONS

- 2.1 Certain words, terms and phrases used in these Regulations shall have the meanings presented in this section. All words used in the present tense include the future tense, and the word "used" shall be deemed to include "designed, intended, or arranged to be used." Words not defined in this section shall have commonly accepted meanings.
- 2.1.1 "**Commission**" means the Inland Wetlands and Watercourses Commission of the Town of Preston, Connecticut.
- 2.1.2 "**Deposit**" includes, but shall not be limited to fill, grade, dump, place, discharge or emit.
- 2.1.3 "**Discharge**" means the emission of any water, substance or material into the waters of the Town of Preston, whether or not such substance causes pollution.
- 2.1.4 "**Intervenor**" shall have the same meaning and shall satisfy the same requirements as set forth in the Connecticut General Statutes 22a-19. Such person must file verified pleading containing specific factual allegations setting forth the nature of the alleged unreasonable pollution, impairment or destruction of the public trust of a wetland or watercourse resource within the jurisdiction of this Commission. (App. 07/21/15; Eff. 08/15/15)
- 2.1.5 "**Material**" means any substance, solid or liquid, organic or inorganic, including, but not limited to, soil sediment, aggregate, land gravel, clay, bog, mud, debris, sand, refuse or waste.
- 2.1.6 "**Person**" means any person, firm, partnership, association, corporation, limited liability company, organization or legal entity of any kind including municipal corporations, governmental agencies or subdivision thereof. (Rev. 08/17/10; Eff. 09/01/10)
- 2.1.7 "**Pollution**" means harmful thermal effect or the contamination or rendering unclean or impure any waters of the Town of Preston by reason of any waste or other materials discharged or deposited therein by any public or private sewer or otherwise so as directly or indirectly to come in contact with any waters.
- 2.1.8 "**Regulated Activity**" means any operation within or use of a wetland or watercourse or regulated area, (05/18/04) involving removal or deposition of material or any obstruction, construction, alteration or pollution, of such wetlands or watercourses, or regulated area (05/18/04) but shall not include the specified activities in Section 3 of these Regulations.

2.1.9 **“Regulated Area”** means any wetland or watercourse, or any area within one hundred feet (100’) of a wetland or watercourse as defined in these Regulations wherein a regulated activity is proposed and such activity is likely to impact or affect the wetlands or watercourses. (Rev. 08/17/10; Eff. 09/01/10) (Rev. 08/16/11; Eff. 09/06/11) (Rev. 10/15/13; 11/05/13)

2.1.10 **“Remove”** includes, but shall not be limited to, drain, excavate, mine, dig, dredge, suck, bulldoze, dragline or blast.

2.1.11 **“Render Unclean or Impure”** means any alteration of the physical, chemical, or biological properties of any of the waters of the Town of Preston including, but not limited to, change in odor, color, turbidity or taste.

2.1.12 **“Significant Impact”**, as referred to in Section 6.6 of these Regulations means:

- a. Any activity involving a deposition or removal of material which will or may have a substantial effect on the regulated area or on another part of the inland wetlands or watercourses system, or any activity which substantially changes the natural channel or may inhibit the natural dynamics of a watercourse system, or;
- b. Any activity which substantially diminishes the natural capacity of an inland wetland or watercourse to support desirable biological life, prevent flooding, supply water, assimilate waste, facilitate drainage, provide recreation or open space or perform other functions, or;
- c. Any activity which causes, is likely to cause, or has the potential to cause substantial turbidity, siltation or sedimentation in a wetlands or watercourse, or; (10/21/97)
- d. Any activity which causes, or likely to cause, or has the potential to cause substantial turbidity, siltation, or sedimentation in a wetlands or watercourse or; (04/22/2020)
- e. Any activity which causes or has the potential to cause pollution of a wetland or watercourse, or;
- f. Any activity which creates conditions which may adversely affect the health, welfare, and safety of any individual or the community, or;
- g. Any activity which destroys unique wetland or watercourse areas, or such areas having demonstrable, scientific or educational value, or;
- h. Any activity in the regulated area which is likely to have an impact or affect upon the physical characteristics of the wetlands or watercourses. (Rev. 08/17/10; Eff. 09/01/10)

NORTH STONINGTON

NO

- z. **"MATERIAL"** means any substance, solid or liquid, organic or inorganic, including but not limited to: soil, sediment, aggregate, land, gravel, clay, bog, mud, peat, debris, sand, refuse, or waste.
- aa. **"MUNICIPALITY"** means the Town of North Stonington, New London County, Connecticut.
- bb. **"NURSERIES"** means places where plants are grown for sale, transplanting or experimentation.
- cc. **"PERMIT"** means the whole or any part of any license, certificate of approval or similar form of permission that may be required of any person under the provisions of these Regulations.
- dd. **"PERMITTEE"** means the person to whom a permit has been issued.
- ee. **"PERSON"** means any person, firm, partnership, association, corporation, company, organization or legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof.
- ff. **"POLLUTION"** means harmful thermal effect or the contamination or rendering unclean or impure of any waters of the State by reason of erosion, or by any waste or other materials discharged or deposited therein by any public or private sewer or otherwise so as directly or indirectly to come in contact with any waters. This includes, but is not limited to, erosion and sedimentation resulting from any filling, land clearing or excavation activity.
- gg. **"PRUDENT"** means economically and otherwise reasonable in the light of the social benefits to be derived from the proposed Regulated Activity, provided cost may be considered in deciding what is prudent and further provided a mere showing of expense will not necessarily mean an alternative is imprudent.
- hh. **"REGULATED ACTIVITY"** means any operation within or use affecting a wetland or watercourse by removal or deposition of material, or any obstruction, construction, alteration, or pollution of such wetlands or watercourses, whether or not they appear on the official Inland Wetlands and Watercourses Map of the Town of North Stonington, except as may be provided by State law or by Section 4 of these Regulations.
- ii. **"REGULATED AREA"** means any inland wetland or watercourse as defined in these Regulations, whether or not they appear on the official Inland Wetlands and Watercourses Map of the Town of North Stonington, as well as land within 100 feet in a horizontal direction of any wetland or watercourse.
- jj. **"REMOVE"** includes, but shall not be limited to, drain, excavate, mine, dig, dredge, suck, grub, clear cut timber, bulldoze, dragline or blast.
- kk. **"RENDERING UNCLEAN OR IMPURE"** means any alteration of the physical, chemical or biological properties of any waters of the State, including, but not limited to, change in odor, color, turbidity or taste.



LeDvard - NO

"Preservation restriction" means a limitation, whether or not stated in the form of a restriction, easement, covenant, or condition, in any deed, will, or other instrument executed by or on behalf of the owner of the land, including, but not limited to, the state or any other political subdivision of the state, or in any order of taking such land whose purpose is to preserve historically significant structures or sites.

"Prudent" means economically and otherwise reasonable in light of the social benefits to be derived from the proposed regulated activity provided cost may be considered in deciding what is prudent and further provided a mere showing of expense will not necessarily mean an alternative is imprudent.

"Regulated activity" means any operation within or use of a wetland or water course involving removal or deposition of material, or any obstruction, construction, alteration or pollution of such wetlands or water courses, or any other activity which may impact or effect the wetlands, but shall not include the specified activities in Section 22a-40 of the Connecticut General Statutes. Furthermore, any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging of storm water on the land within 100 feet, measured horizontally from the boundary of any wetland or water course, is a regulated activity.

"Remove" includes, but shall not be limited to drain, excavate, mine, dig, dredge, suck, bulldoze, dragline or blast.

"Rendering unclean or impure" means any alteration of the physical, chemical or biological properties of any waters of the state, including, but not limited to, change in odor, color, turbidity or taste.

"Significant impact" means any activity, including, but not limited to, the following activities which may have a major effect as determined by the IWWC.

1. Any activity involving deposition or removal of material which will or may have a substantial effect on the wetland or water course or on wetlands or water courses outside the area for which the activity is proposed.
2. Any activity which substantially changes the natural channel or may inhibit the natural dynamics of a water course system.
3. Any activity which substantially diminishes the natural capacity of an inland wetland or water course to: support aquatic, plant or animal life and habitats; prevent flooding; supply water; assimilate waste; facilitate drainage; provide recreation or open space; or perform other functions.
4. Any activity which is likely to cause or has the potential to cause substantial turbidity, siltation or sedimentation in a wetland or water course.
5. Any activity which causes substantial diminution of flow of a natural water course or groundwater levels of the wetland or water course.
6. Any activity which is likely to cause or has the potential to cause pollution of a wetland or water course.
7. Any activity which damages or destroys unique wetland or water course areas or



STEPHEN W. STUDER  
sstuder@berchemmoses.com

PLEASE REPLY TO  
MILFORD OFFICE  
WWW.BERCHEMМОSES.COM

May 17, 2024

Attorney Robert A. Avena  
Suisman Shapiro Attorneys-at-Law  
2 Union Plaza, P.O. Box 1591  
New London, CT 06320

Elizabeth Burdick  
Director of Land Use & Planning  
741 Colonel Ledyard Highway  
Ledyard, CT 06339-1511

Re: Application of Avery Brook Homes, LLC, for an 18-Lot Resubdivision/Affordable Housing Development on Stoddards Wharf Road.

The purpose of the Inland Wetland and Water Courses Act, C.G.S Section 22a – 36 *et. seq.* (the “Act”) and of the Inland Wetlands and Watercourses Regulations of the Town of Ledyard (the “Wetlands Regulations”) is “... to protect the citizens of the state by making provisions for the protection, preservation, maintenance and use of the inland wetlands and water courses by minimizing their ... pollution; maintaining and improving water quality in accordance with the highest standards set by federal, state or local authority; ... and protecting the state’s portable freshwater supplies from the dangers of drought, overdraft, pollution, misuse and mismanagement ....” It is the responsibility of the Inland Wetlands and Water Courses Commission of the town of Ledyard (the “Wetlands Commission”) to enforce the provisions of the Act and the Wetlands Regulations. Section 6.2 of the Wetlands Regulations provide that no person shall conduct or maintain a “regulated activity” in Ledyard without first obtaining a permit from the Wetlands Commission.

Ledyard’s existing Wetlands Regulations define “regulated activity” in pertinent part as follows:

“Regulated activity” means [i] *any* operation within or *use of* a wetland or water course involving removal or deposition of material, *or* [ii] *any* obstruction, construction, alteration or *pollution of* such wetlands or water courses, *or* [iii] *any* other activity which may impact or effect the wetlands... Furthermore, any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging of stormwater on the land within 100 feet, measured horizontally from the boundary of any wetland or watercourse, is a regulated activity.” (emphasis supplied)

75 BROAD STREET  
MILFORD, CT 06460  
TELEPHONE (203) 783-1200  
FACSIMILE (203) 878-2235

1221 POST ROAD EAST  
WESTPORT, CT 06880  
TELEPHONE (203) 227-9545  
FACSIMILE (203) 225-1641

The Wetlands Commission clearly has jurisdiction to review the proposed 18 lot resubdivision based on, and because of, that definition. The Wetlands Commission does not require additional language in its regulations authorizing it to regulate activity occurring outside of an upland review area (“URA”).

The definition of “regulated activity” in the Wetlands Regulations is essentially bifurcated. The first part of the definition is multifaceted and both refers to, and allows, the Wetlands Commission to regulate, *any* use of, *any* pollution of, or *any* other activity, without regard to, and without limitation by, physical location or proximity to a wetland or watercourse. The second part of the definition adds certain enumerated activities within 100 feet of the boundary of a wetland or watercourse as regulated activities.

To state that the Wetlands Commission is without jurisdiction to review activity which is likely to impact wetlands and watercourses simply because that activity occurs outside of a wetland, watercourse or URA is to ignore the unambiguous definition of “regulated activity” and to severely restrict the authority and ability of the agency to protect and regulate the wetlands and watercourses of Ledyard in a fashion consistent with the Act. This is especially relevant in light of the fact that the applicant intentionally gerrymandered lot lines and modified a previous development proposal for the express purpose of avoiding review of water quality impacts by the Wetlands Commission.

Multiple provisions of the current definition of “regulated activity” clearly authorize the Wetlands Commission to regulate the proposed subdivision of approximately 6.3 acres of land adjacent to the Avery-Billings Reservoir into 18 lots for the construction of 18 homes, each with on-site drinking water wells and on-site sanitary subsurface disposal systems. As briefly explained in Mr. Giggey’s preliminary report dated May 8, 2024, the development as proposed is very likely to pollute the wetlands and water courses which, collectively, constitute the Avery-Billings Reservoir.

1. The proposed development is clearly a regulated activity since the Wetlands Regulations define “regulated activity” as “... *any* obstruction, construction, alteration or *pollution*” of a wetland or water course. There is no requirement that the pollution be direct or that it result only from activity within the wetland or water course or within an URA. “Pollution” is defined by the Wetlands Regulations as “ ... the contamination or rendering unclean or impure of any waters of the state by reason of any *waste* or other *materials* discharged or deposited therein by any public or private sewer or otherwise so as to directly or indirectly come in contact with any waters.”
2. The proposed development is clearly a regulated activity since the Wetlands Regulations define “regulated activity” as “ ... *any* other activity which may

impact or affect the wetlands ...” As noted above, the activities associated with the proposed development (which are situated approximately 105 feet from the Avery-Billings Reservoir and just outside the URA) are very likely to have a significant adverse impact upon the public drinking water supply.

3. The proposed development is clearly a regulated activity since the Wetlands Regulations define “regulated activity” as “...*any* use of a wetland or water course involving removal or *deposition* of material”. Deposition may or may not involve a direct discharge. It is uncertain whether stormwater from the proposed 18 lot project will constitute a direct or an indirect discharge to the Avery-Billings Reservoir, but it is certain that the effluent from the proposed 18 subsurface sanitary disposal systems will constitute an indirect discharge to the reservoir through the groundwater underlying the development site. The Wetlands Regulations define the verb “deposit” to include, without limitation, “discharge or emit”; and also define “discharge” to mean the “... emission of any water, *substance*, or *material* into waters of the state ...” Furthermore, the Wetlands Regulations define “material” as “... any substance, solid or liquid, organic or inorganic including, but not limited to, ... refuse or waste.”

The Wetlands Regulations also define “significant activity” as “[A]ny activity which is likely to cause or has the potential to cause pollution of a wetland or watercourse” and “[A]ny activity which substantially diminishes the natural capacity of an inland wetland or water course to ... supply water ....”

As stated by the Connecticut Supreme Court the “...*sina qua non* of review of inland wetlands applications is a determination whether the proposed activity will cause an adverse impact to a wetland or watercourse.” Riverbend Associates Inc. v. Conservation and Inland Wetlands Commission, 269 Conn. 57, 74 (2004). The Act grants inland wetland agencies the authority to regulate activity occurring outside wetlands and water courses if such activity is likely to have an adverse impact on the wetland or water course. Aaron v. Conservation Commission of Redding, 183 Conn. 532, 542 (1981).

The case of Prestige Builders v. Inland Wetlands Commission of Derby, 79 Conn App 710, 723 (2003) is limited in its holding to upland review areas; i.e. defined areas around a wetland or watercourse within which activity likely to impact a wetland or watercourse is defined as a regulated activity *per se*. Specifically, the holding in Prestige Builders is that since the agency's regulations did not address upland review areas, it could not deny an application because of proposed activities within an URA. The second part of the definition of “regulated activity” contained in the Ledyard Wetlands Regulations is just such a regulation (i.e. it defines specific activities within a defined URA be to regulated activities). As stated by Judge Berger in the case of Saddle Ridge Developers v. Easton Conservation

Commission, 2016 WL 720247 (2016, at Page 13) the conclusion of Prestige Builders that an agency must adopt regulations in order to exercise authority over an upland review area is “fundamentally different” than the agency’s authority and obligation to review the environmental impact of proposed activities occurring outside a wetland or watercourse, regardless of where located; particularly where, as in Ledyard, the definition of “regulated activity” is broad enough to encompass activity outside the URA.

Some inland wetland agencies have adopted regulations addressing this issue; e.g. revising their definitions of regulated activity to include activity in a non-wetland or non-watercourse area outside the URA. However, such additional language is not required by Prestige Builders, and is unnecessary since, the basic definition of “regulated activity” in Ledyard’s Wetlands Regulations endows the Wetlands Commission with the necessary authority (and, indeed, the obligation) to regulate the proposed activity in the above-referenced application. Such an interpretation is especially important in the context of the fundamental and important public purpose of the Act in protecting fragile and often irreplaceable resources for both current and future generations. As noted by Judge Berger in Saddle Ridge, “ ... an upland review regulation is a useful regulatory mechanism; it does not supplant a substantive review of an activity that may use or impact a down gradient wetland or watercourse.” (Id at p13)

As discussed above, it is the opinion of the intervenor, City of Groton, that both the Act and the Wetlands Regulations require an application to, and review by, the Wetlands Commission in this instance.

Very truly yours,



Stephen W. Studer

c: P. Gelderman, Esq.  
H. Heller, Esq.  
R. Gaudet  
M. Duarte  
K. Acimovic  
M. Giggey

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May 24, 2024

Robert A. Avena, Esquire  
Suisman Shapiro  
2 Union Plaza  
P.O. Box 1591  
New London, CT 06320

Ms. Elizabeth Burdick, Director of Land Use  
and Planning  
741 Colonel Ledyard Highway  
Ledyard, CT 06339

Re: Application of Avery Brook Homes, LLC for resubdivision approval – 96, 98 and  
100 Stoddards Wharf Road, Ledyard, Connecticut

Dear Attorney Avena and Ms. Burdick:

I am writing in response to correspondence received by each of you under date of May 17, 2024 from Stephen W. Studer, counsel to Groton Utilities. I preface this correspondence by stating the obvious; i.e. that Attorney Studer's May 17, 2024 correspondence is both factually incorrect in several instances and materially misleading.

While Attorney Studer notes that he has "supplied emphasis" in his recitation of the definition of a regulated activity as defined in Section 2 of the Inland Wetland and Water Courses Regulations of the Town of Ledyard (effective date: January 25, 2021), the emphasis which has been added impermissibly alters the interpretation of the definition. The bifurcation of the definition of regulated activity into three (3) subparts, which does not exist in the definition adopted by the Ledyard Wetlands Agency represents a perversion of the intent and meaning of the regulation that the Agency adopted.

As noted in our memorandum to Attorney Avena dated April 17, 2024, a wetland regulation is a local legislative enactment and in its interpretation the question is the intent of the legislative body as found from the words employed in the regulation itself. *Fox v Zoning Board of Appeals* 146 Conn. 70, 73 (1958) The words employed are to be interpreted in their natural and usual meaning. *Lawrence v. Zoning Board of Appeals* 158 Conn. 509, 511 (1969) It is a cardinal rule of statutory construction that a statute should be read in order to give full impact to each and every word of the statute. *Archibald v. Sullivan* 152 Conn. 663, 688 (1965) No clause in a statute should be considered superfluous absent compelling reasons to the contrary. *State v. Briggs* 161

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Conn. 283, 287 (1971) The grammar used in the formulation of a regulation or statute is an integral component of the regulation itself.

With these principles in mind, we analyze the definition of regulated activity as contained in the Ledyard Inland Wetlands and Watercourses Regulations. First, it is noteworthy that the regulation contains no bifurcation as contained in Attorney Studer's letter of May 17, 2024. If the Ledyard Wetlands Agency, in its legislative capacity, intended that bifurcation, it would have included the delineation of the subsections inserted for "emphasis" by Attorney Studer. **IT DID NOT.**

The first sentence of the definition in pertinent part reads "...means any operation within or use of a wetland or water course involving removal or deposition of material, or any obstruction, construction, alteration or pollution of such wetlands or watercourses, or any other activity which may impact or effect the wetlands..." In reviewing the totality of the first sentence of the definition of regulated activity, it becomes clear that it is limited to "any operation within or use of a wetland or water course." The further language "involving removal of or deposition of material, or any obstruction, construction, alteration or pollution of such wetlands or water courses..." is nothing more than a prepositional phrase which enumerates certain types of activities within the wetland or water course which are regulated.

If Attorney Studer's interpretation of the definition was to be adopted, it would render superfluous the second sentence of the definition which grants regulatory authority to the Inland Wetlands Agency over certain activities occurring within 100 feet as measured horizontally from the boundary of any wetland or watercourse.

A second tenet of regulatory construction is that, under Connecticut's rules of statutory construction, the language of a statute must be interpreted in context with the statutory scheme of which it is a part. *Broadnax v. New Haven* 284 Conn. 237, 245 (2007) Connecticut has adopted the "plain meaning rule". The plain meaning rule essentially says that if a statute is on its face, clear and unambiguous, and interpreting in light of that clear and unambiguous language would not yield absurd or unworkable results, courts are not permitted to look beyond the language in the statute itself for purposes of determining what the legislative intent was in adopting that legislation. *Hummel v. Marten Transport* 282 Conn. 477, 500 (2007) Connecticut General Statutes §1-2z requires that a court, in interpreting a regulation, consider the text of the statute itself and its relationship to other statutes.

Considering the referenced rules of statutory construction, Attorney Studer's manipulated revision of the definition of a regulated activity as contained in the Ledyard Wetlands Regulations yields absurd and unworkable results and is internally inconsistent. If the definition is given the broad reach suggested, it renders superfluous the second sentence of the definition which allows

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the municipal wetland agency to regulate activities occurring exterior to the wetland or watercourse boundary itself but within 100 feet measured horizontally from the boundary of the regulated resource. That provision is unnecessary if the Wetlands Agency has regulatory jurisdiction over any activity, wherever occurring, if it makes an administrative determination that such an activity is likely to adversely impact a wetland or watercourse. The plain language and construction of the definition of a regulated activity evidences no such legislative intent.

We also call your attention to the first sentence of Section 7.1 of the municipal Wetland Regulations which provides “Any person intending to conduct a regulated activity, including work within the 100’ upland review area, or to renew or modify a permit to conduct such activity, shall apply for a permit on the proper form provided by the IWWC.” Adopting Attorney Studer’s suggested interpretation of the definition of a regulated activity would render the language “including work within the 100’ upland review area” superfluous as the Wetland Agency would have regulatory jurisdiction to regulate any activity which may have an adverse impact on wetlands and watercourses.

As evidenced by this firm’s correspondence to Attorney Avena dated April 17, 2024, a municipal wetland agency acts in both a legislative and administrative capacity. It is void of regulatory authority to regulate activities without first adopting regulations defining the scope of that regulatory authority. A review of various regulatory schemes adopted by municipal wetland agencies in southeastern Connecticut (as attached to that correspondence) evidences the fact that different municipal wetland agencies have adopted differing scopes of regulatory authority. Under the enabling legislation for the regulation of activities in inland wetlands and watercourses, municipal wetland agencies are statutorily required to regulate activities occurring within wetlands or watercourses. Ledyard’s regulations establish a regulatory scheme to fulfil that obligation contained in the enabling legislation.

On the other hand, there is no legislative mandate for municipal wetland agencies to regulate activities occurring exterior to the defined boundaries of inland wetlands and watercourses. The Ledyard Wetlands Commission, in its legislative capacity, has made a determination that it should review; and, if required, regulate activities occurring within 100 feet of the boundaries of regulated wetlands and watercourses. The definition of regulated activity defines the geographic scope of what the Commission has legislatively deemed is necessary in order to fulfill its statutory duty to protect the State’s inland wetlands and watercourses. Wetland agencies in other municipalities have taken a more expansive view of the regulatory scheme necessary to protect these resources. Others, including North Stonington, Preston and Ledyard, have not.

Attorney Studer’s interpretation of *Prestige Builders* lacks depth of analysis. The Appellate Court, in that matter, was reviewing agency regulation exterior to the wetland or watercourse



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boundary. Derby's municipal wetland agency had not adopted upland review area regulations. Notwithstanding that fact, the concept is identical. An agency cannot regulate without first adopting regulations defining the scope of that regulatory authority. In the Derby instance, the activity was occurring in an area which jurisdictionally would likely have fallen within an upland review area if the agency had adopted upland review area regulations. In the instant situation, the activities complained of are even exterior to a defined upland review area; thus, more remote from the regulated resource than the factual situation extant in *Prestige Builders*.

In *Fusco v. Trumbull Planning & Zoning Commission et al* 2021WL 761796 (2021), the Trumbull wetland agency had adopted regulations establishing a 100 foot upland review or buffer area. In *Fusco*, no activity was occurring in either a regulated wetland or watercourse resource or in the 100 foot upland review area. In evaluating the scope of regulatory authority of the wetland agency, and the need to submit an application for review, the court held as follows:

“Here, the record reveals that no activity will occur within the one hundred (100’) foot buffer area. Therefore, the Trumbull Inland Wetlands and Watercourses Commission does not have jurisdiction concerning the site plan, as proposed and approved.”

We therefore reiterate the decision maintained in our April 17, 2024 correspondence that, based on the facts and circumstances of the Avery Brook Homes application, the Town of Ledyard Inland Wetlands and Watercourses Commission has no authority to review and no regulatory authority over activities proposed on a parcel of land which contains no inland wetlands and watercourses and which contains no upland review areas adjacent to wetlands and/or watercourses located on adjacent property.

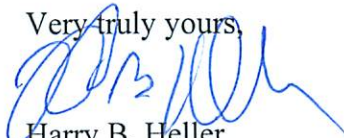
Although extraneous to the jurisdictional issues discussed herein, we also note the following factual errors in Attorney Studer's May 17, 2024 correspondence:

1. No activity is proposed within 105' feet of the Billings/Avery Brook Reservoir. In fact, the most proximate activity is removed more than 300' from the reservoir edge.
2. The characterization of Avery Brook Homes boundary lines as “gerrymandering” is inaccurate and inflammatory. Ledyard has an administrative process to review boundary line adjustments. That process was followed, reviewed and approved by the former Director of Planning.
3. The Applicant's reconfiguration of its lot lines, as expressly permitted by the land use regulations of the Town of Ledyard, was accomplished for the express purpose of attaining regulatory compliance of the resubdivision regulations with the permitting

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requirements of the Ledyard Land Use Regulations, a right afforded to every property owner.

Very truly yours,



Harry B. Heller

HBH/rmb

Cc: Mr. Peter C. Gardner  
Mr. Conrad C. Gardner  
Mr. Anthony Bonafine  
Mark Branse, Esquire  
Stephen Studer, Esquire



# TOWN OF LEDYARD

741 Colonel Ledyard  
Highway  
Ledyard, CT 06339-1511

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**File #:** 24-0471

**Agenda Date:** 6/4/2024

**Agenda #:** A.

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## REPORT

### **Staff/Committee Report:**

Staff Reports - Designated Agent/WEO



# TOWN OF LEDYARD

Land Use Department

Alex Samalot

Zoning & Wetlands Official/Blight Enforcement Officer

741 Colonel Ledyard Highway, Ledyard, CT 06339

Phone: (860) 464-3216

[zoning.official@ledyardct.org](mailto:zoning.official@ledyardct.org)

## Wetlands Official's Report: IWWC Regular Meeting June 4, 2024

**Cease and Desist—47 Terry Road:** Inspection 3/19/24 following complaint from Department of Public Works (DPW). Wetlands Agent confirmed some siltation in wetlands as a result of prior activity within the wetlands/100 foot Upland Review Area. Cease and Desist sent 3/27/24 via first class and certified mail notifying property owner of the violation and requesting they come to the Land Use Office and the April meeting. As per the meeting minutes from the April 2<sup>nd</sup> meeting, the Cease and Desist is lifted now that the soil and erosion control has been fixed. Conditions went from the “Before” picture, to the conditions in the “After” picture. Furthermore, follow up conversations with the property owner and DPW have confirmed that work has been done to alleviate some of the stormwater on Terry Road.

### Before



## After



### **Permit IWWC#24-3URA (Approved)**

**Applicant & Owner:** David Tetlow

**Address:** 13 Reuven Drive, Ledyard, CT 06339

Proposed 12'x16' shed, in the 100 foot URA (approximately 32 feet from the closest portion of the shed to the wetlands).

### **Permit IWWC#24-4URA (Withdrawn)**

**Listed Applicant:** C.R. Klewin, LLC

**Listed Owner:** Sweet Hill Acres, LLC

**Listed Address:** 29 & 39 Military Highway, Gales Ferry, CT 06335

Proposed multifamily development with portions of drainage and grading, in the 100 foot URA (withdrawn).

## **Permit IWWC#24-5URA (Approved)**

**Applicant & Owner:** James Brown

**Address:** 1355 Baldwin Hill Rd, Gales Ferry, CT 06335

Proposed 240 square foot shed on gravel bed, in the 100 foot URA (approximately 50 feet from the closest portion of the shed to the wetlands).

## **Permit IWWC#24-6URA (Approved)**

**Applicant:** Mt. Kineo Builders, LLC

**Owner:** R + N Holding Co., LLC

**Address:** 16 Marty's Way, Ledyard, CT 06335

Proposed New Single Family House with portions of the house, garage and driveway, in the 100 foot URA (approximately 30 feet from the closest portion of the development to the wetlands).

## **Permit IWWC#24-7URA (Approved)**

**Applicant:** Larry Daniels

**Owner:** Tina Murray

**Address:** 10 August Meadows, Ledyard, CT 06339

Proposed 184 square foot deck, in the 100 foot URA (approximately 30 feet from the closest portion of the development to the wetlands).

## **Complaints Before 6/3/24: *Unpermitted Work in URA and/or Wetlands***

Complaints for activity in/near wetlands in the vicinity of 721-725 Colonel Ledyard Highway, 347-351 Colonel Ledyard Highway, 109 Christy Hill Road, 780 Lantern Hill Road. Drive by inspections were performed for all properties and no activity was visible from the roadway.



# TOWN OF LEDYARD

741 Colonel Ledyard  
Highway  
Ledyard, CT 06339-1511

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**File #:** 24-0468

**Agenda Date:** 6/4/2024

**Agenda #:** B.

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## MINUTES

**Minutes:**

MOTION to approve the Inland Wetland and Water Courses Commission regular meeting minutes of April 2, 2024



# TOWN OF LEDYARD

741 Colonel Ledyard Highway  
Ledyard, Connecticut 06339

## Inland Wetland and Water Courses Commission

### Meeting Minutes - Draft Minutes

Chairman  
Justin DeBrod

**Tuesday, April 2, 2024**

**7:00 PM**

**Council Chambers -Hybrid Format**

#### **I. CALL TO ORDER**

Chairman DeBrod called the Regular Meeting of the IWWC to order at 7:00 PM. The meeting was hybrid with some attending in person and others via Zoom.

#### **II. ROLL CALL**

Staff Present: Juliet Hodge, Planning Director, Alex Samalot, Zoning Enforcement Staff and Makenna Perry, Land Use Administrative Assistant.

**Present** Chairman Justin DeBrod  
Vice Chair Paul Maugle  
Commissioner Dan Pealer  
Commissioner Lynmarie Thompson

**Excused** Commissioner Beth E. Ribe

#### **III. CITIZENS COMMENTS**

None.

#### **IV. OLD BUSINESS**

None.

#### **V. NEW BUSINESS**

- A.** Cease and Desist Order for 47 Terry Road, Gales Ferry, CT 06335 - Complaint from Public Works Department regarding siltation in the wetlands at the above stated address. Confirmed by Wetlands Agent that a violation was apparent. Cease and desist was sent to the property owner on March 27, 2024.

Zoning Enforcement Official (in training), Alex Samalot, reviewed the Cease and Desist order for 47 Terry Rd.

David Kapusta, 47 Terry Rd, explained that he had his septic system replaced in October of 2023. The company which replaced the septic system, put in a silt fence to avoid run off into the wetlands that were on the property. However, with the heavy amount of rain recently, the fence failed, and polluted the wetlands.

The Commission discussed, empathizing with the property owner.



Alex Samalot, explained that the cease and desist will be lifted after he re-inspects the property.

**VI. REPORTS**

**A. Staff Reports**

Juliet Hodge, Planning Director, explained the re-subdivision application of Avery Brook Homes at 96, 98, 100 Stoddards Wharf Rd, that will be reviewed by the Planning and Zoning Commission next month. She noted that the Commission has the opportunity to intervene if they suspect that the wetlands adjacent to the property would be impacted.

Alex Samalot, Zoning Enforcement Official in training, presented his staff report, noting the Cease and Desist that went before the Commission.

**VII. APPROVAL OF MINUTES**

**A. Draft Meeting Minutes - February 6, 2024**

Without objection, the draft meeting minutes from the February 6, 2024 meeting were approved as submitted.

**RESULT:** APPROVED AND SO DECLARED

**MOVER:** Paul Maugle

**SECONDER:** Dan Pealer

**VIII. MEETING REVIEW**

The Commission reviewed the meeting, noting that the meeting was short and ran successfully.

**IX. ADJOURNMENT**

Without objection, the meeting adjourned at 7:29 PM.

This was Approved and so declared.

**RESULT:** APPROVED AND SO DECLARED

**MOVER:** Dan Pealer

**SECONDER:** Paul Maugle