

**HARWINTON INLAND WETLANDS AND WATERCOURSES COMMISSION**  
**MONDAY, NOVEMBER 7, 2022**  
**TOWN HALL 7:00 P.M.**

**REGULAR MEETING**

Present: Chairwoman Susan Ryan, Secretary Merrill French, Eric Rahn, Robert Wesneski, Todd Werner, Timothy Bobroske, Brent Lafferty (7:04 p.m.), Land Use Coordinator Polly Redmond and Inland Wetlands Enforcement Officer Don Truskauskas

Also Present: Michael D. Rybak, Michael D. Rybak, Jr. and Dave Bousquet, Deputy Chief, Harwinton Volunteer Fire Department

**1. OPEN MEETING – ESTABLISH QUORUM.**

Chairwoman S. Ryan called the meeting to order at 7:00 p.m. All members present are seated.

T. Bobroske asks that a moment of silence be taken in remembrance of the two Bristol Police officers, Lieutenant Dustin Demonte and Sergeant Alex Hamzy, who were killed in the line of duty on October 12, 2022.

**2. APPROVE MINUTES OF PREVIOUS MEETING: 10-3-2022**

T. Werner **motioned** to approve the minutes of the previous meeting, seconded by E. Rahn. Motion passed unanimously with R. Wesneski abstaining from vote due to his absence at the previous meeting.

**3. ZACHARY PRENOVEAU – DISCUSSION/POSSIBLE DECISION - APPLICATION FOR 18' X 40' INGROUND POOL, 399 HILL ROAD.**

No one is present to represent. See Item 5 – Other Business.

B. Lafferty arrives at 7:04 p.m. and is seated.

**4. JAMES MALONE – SEPTIC SYSTEM REPAIR, 30 LAKE SHORE DRIVE, LAKE HARWINTON CHARTER ZONE.**

Mr. & Mrs. Malone are present. Plans prepared by Colby Engineering titled Septic System Repair Design, 10-12-22 are reviewed. TAHD approval has been received. Mr. Malone explains that the septic repair is not an emergency repair but that the 40 year old system is not functioning properly. T. Bobroske **motioned** to approve the application as a use of right for maintenance with the condition that erosion control measures are put in place and that the Enforcement Officer be contacted to inspect such measures. E. Rahn adds a friendly amendment that haybales be installed along with silt fencing for erosion control. B. Lafferty seconded the motion and it passed unanimously.

**5. CLOSE REGULAR MEETING.**

R. Wesneski **motioned** to close the regular meeting at 7:10 p.m., seconded by M. French. Motion passed unanimously.

**SHOW CAUSE HEARING #1**

**1. OPEN HEARING – ESTABLISH QUORUM.**

Chairwoman S. Ryan called the hearing to order at 7:10 p.m. All members present are seated.

R. Wesneski **motioned** to open the hearing, seconded by T. Bobroske. Motion passed unanimously.

**2. PICKETT BROOK PROPERTY, LLC – 485 PLYMOUTH ROAD, EQUESTRIAN ESTATES. UNPERMITTED EXCAVATION WITHIN THE WETLANDS AND REGULATED AREA IN VIOLATION OF 4.3 OF THE HARWINTON INLAND WETLANDS AND WATERCOURSES REGULATIONS DATED SEPTEMBER 10, 2018.**

T. Bobroske acknowledges that Town Counsel Michael D. Rybak and Michael D. Rybak, Jr. are present and asks them to explain the purpose of a Show Cause Hearing which Atty. Michael D. Rybak does at this time. A Show Cause Hearing is found under CGA Chapter 440 Section 22a-44 that explains the process of the hearing if the inland wetlands agency or its duly authorized agent finds that any person is conducting or maintaining any activity which is in violation of sections 22a-36 to 22a-45, inclusive, or of the regulations of the inland wetlands agency.

Atty. Rybak explains the procedure for this hearing in that the Agent/IWZEO will state his reason why he issued a Cease-and-Desist Order, then the violators will have a chance to speak, and then any neighbors will be allowed to make comment. The hearing can then be continued or closed.

Atty. Rybak states that the Wetlands Commission can uphold, modify or lift the Cease-and-Desist Order and can impose conditions, but must give reasons for any decision that is made. If the decision is to modify the Cease-and-Desist Order, and the Order is to remain in effect, the modification should include suggested wording of “preparation and submission of a plan of remediation to be reviewed and approved by the Commission, and upon approval, to be implemented subject to the Commission’s supervision and approval.”

IWZEO Don Truskauskas gives a verbal report of the violation he witnessed and submits photos he took of the pond in its state of excavation at the water line and of excavation equipment nearby. He explains that he was out at Equestrian Estates on a separate matter and observed the violation. On September 27, 2022 he spoke with Jared Braddock, Supreme Industries/Pickett Brook Property, LLC and hand-delivered a letter advising Mr. Braddock of the violation and ordering him to stop all activity within the pond, which was honored. At the October 3, 2022 Wetlands Commission meeting where Jared Braddock was in attendance with his attorney, Timothy Furey, Furey, Donovan, Cooney & Dyer, Bristol, CT, who is also present tonight, the Commission motioned to have IWZEO Truskauskas issue a Cease-and-Desist Order to the property owner of the pond for the activity that took place but to allow for hydroseeding of the level areas and any sloping away from the pond. A Cease-and Desist-Order was issued to Pickett Brook Property, LLC on October 12, 2022 and a Show Cause Hearing notice was sent certified to Pickett Brook Property, LLC on October 31, 2022 with an order to appear at tonight’s Wetlands Commission meeting. A letter from Atty. Furey dated October 18, 2022 was received in the Land Use office, addressed to the Town of Harwinton Enforcement Officer, stating that “pursuant to Section 118 of the Harwinton Code of Ordinances, Pickett Brook Properties, LLC wishes to appeal the cease and desist order sent by the Wetlands Enforcement Officer, Don Truskauskas, dated October 10, 2022.” The letter goes on to say, “It is my understanding no fines have been levied at this time and the owner has ceased all activities, except those permitted by the order, until it can be fully heard by the Inland Wetlands Commission. It is my understanding that a hearing will take place on November 7, 2022 before the Inland Wetlands Commission.” “The purpose of this letter is to preserve our rights pursuant to the ordinance, if considered necessary.” This letter will be made part of the record.

IWZEO Truskauskas notes that the pond was lowered at the time of his visit for the repair of a dry hydrant and the installation of a second dry hydrant at the request of the Harwinton Volunteer Fire Department. Material that was excavated from the pond’s edge was deposited onto another lot within Equestrian Estates Subdivision owned by David and Natale Barrett. It is his belief that there should be a plan for remediation with fill brought back to the pond area at 485 Plymouth Road and regrading and sloping needing to be done.

At this time, it is noted that the subdivision plans for Equestrian Estates are to be made part of the record.

T. Bobroske questions IWZEO Truskauskas what the size of the pond is with D. Truskauskas stating he estimates it to be 6-7 acres. T. Bobroske asks Atty. Rybak if ponds over 3 acres in size change any regulations with Atty. Rybak stating that farm ponds of 3 acres or less, essential to a farming operation, are permitted as of right but that the Commission is still entitled to receive an application and site plan for any proposed work in them. If a pond is over 3 acres in size, the exemption, or use of right, does not apply. E. Rahn states his belief that this pond is not essential to any farming operation. LUC Redmond states that in answer to T. Bobroske’s question on the size of the pond, she refers to Planning Commission meeting minutes of June 25, 2008 where Atty. William Tracy was representing Pickett Brook Properties, LLC in their application for a 33-lot subdivision to be known as Equestrian Estates, Rocky Road West, stated “regarding fire protection, Chief Kellogg had indicated at the Board of Selectman’s meeting that the 5-acre pond on the site would be a suitable fire pond.” These minutes will be made part of the record.  
\*After researching, LUC Redmond found no minutes of the Board of Selectmen where Chief Scott Kellogg was present and indicated that the 5-acre pond would be a suitable fire pond.

T. Bobroske questions if there is a plan showing specific details of the placement of the dry hydrants. M. French questions how will remediation work if that is what the Commission asks for. IWZEO Truskauskas replies that slopes would need to be put back and answers T. Bobroske's question stating that there is no design plan for the pond because it was an existing pond put in by previous landowner Theodore Krajewski many years ago.

IWZEO Truskauskas notes that a Cease-and-Desist Order was issued to David & Natale Barrett, owners of 16 Steeple Chase Road (present tonight), where the fill taken from the pond area was deposited because there may be a need to take that soil deposited on their property and put it back onto 485 Plymouth Road property. R. Wesneski asks David and Natale Barrett whether the removal of soil at 16 Steeple Chase Road would be detrimental to other wetlands on their property with them answering, no. Bill Zampaglione, PAC Group, who is working with the Barrett's on the construction of their home, states for the record that not all of the soil taken off 485 Plymouth Road was put onto the Barrett's property.

Atty. Timothy Furey addresses the Commission stating that an existing dry hydrant required fixing and an additional dry hydrant was installed at the request of the Volunteer Fire Department. T. Bobroske points out that no plan was brought to this Commission for this work and questions why the dry hydrant was failing? Dave Bousquet, Deputy Fire Chief, explains that the material was provided for the second hydrant and that they mirrored the same specifications as the first dry hydrant. The material was ADS pipe, which over the seasons, freezes and causes separation of the pipe at the elbow. The fire department couldn't pull water one time and asked for a second hydrant system after the first hydrant was fixed.

Atty. Furey states that Pickett Brook Property did work with the fire department and noting that the pond is a man-made pond from the 1980s that has never been maintained, had weeds causing draw issues and clogging of the discharge pipe. Atty. Furey states that when the pond was drawn down, their contractor worked with cleaning out the weeds and Robert Green came out to determine the size of the pond. He provides a plan titled Map Showing Pond on Lot 21 dated 10/28/2022, prepared by Robert Green Associates, with the pond being shown as a 2.9-acre pond. This plan will be made part of the record.

Atty. Furey states that Clinton Webb was brought back to the site and asked what would be the appropriate thing to do at this point. Atty. Furey notes that the pond is part of the horse farm at 485 Plymouth Road and water is pulled from the pond to service the horses, cooling them and providing water. Clinton Webb indicated in a letter dated November 7, 2022 to Jared Braddock that no maintenance work to remove accumulated sediment and vegetation from the pond has been done for many years, since its construction in the 1980's, and stressed the importance of keeping weeds out of the pond and also providing protection of the outlet structure. Atty. Furey states that Mr. Webb discussed excavation techniques with Jared Braddock, which he outlined in his letter. Mr. Webb writes, "By lowering the water level before the excavation work started, the material to be removed was exposed above the water surface which allowed the material to be removed without the excavator bucket working in the water. This approach was accomplished by using a laser guiding survey system on the excavator bucket to prevent the bucket from entering the water column and greatly minimized the potential for introducing sedimentation into the pond. This procedure is the best way to protect the pond's water quality and aquatic habitat while conducting farm pond maintenance and it should be considered as the preferred approach for conducting routine maintenance of the pond in the future."

Mr. Webb's letter goes on to point out that "The areas immediately adjacent to the pond were hydro-seeded as part of work conducted at the pond. This work was the best course of action for this area as only grasses should be planted around the perimeter of a farm pond. A grass buffer, approximately 15 to 20 foot-wide, will provide an ease of access to the pond by livestock, farm operations, to the two hydrants by firefighters and routine maintenance of the pond. The grass should be mowed once a year, in the fall, to inhibit the growth of trees and shrubs."

Lastly, Mr. Webb's letter states that "the excavated soil should not be redeposited into the pond for ecological and water quality reasons. It would most likely lead to increased turbidity in the water, and it would reintroduce seeds and root stock from aquatic vegetation that was removed with the sediment. The material has been placed in an upland location and will be stabilized in that location." "It is my opinion

that the pond maintenance work that was recently undertaken was done in an appropriate manner and that these procedures should be utilized for any future maintenance work.”

Atty. Furey states that after the last Wetlands meeting on October 3, 2022, they felt it important to reach out to Mr. Webb for his opinion. Clinton Webb’s letter will be made part of the record.

Atty. Furey states that the activity that took place is a permitted use of right and that the Commission can ask for an application to be submitted. This activity was never done in bad faith and he agrees this should have been done with a form to the Commission before work was done.

T. Bobroske asks Atty. Michael Rybak if it would be considered a Conflict of Interest because he has hired Clinton Webb for his work-related projects with Atty. Rybak answering, no, not if he can render a fair decision. T. Bobroske states for the record that he has hired Clinton Webb in the past for three of his projects but that he can be impartial in this hearing.

E. Rahn states that he is not sure cooling of horses is a farming procedure but regardless, work was done without a permit and it should’ve been known that one was required. With the changing of the slope to the pond, the time of year the work was done, and the amount of material taken out, he can’t believe no one thought a permit should be applied for. He believes the acreage of the pond needs to be figured out since there are conflicting numbers. T. Bobroske states that there is a big difference in the acreage of the pond with what Robert Green is stating to be 2.9 acres. Atty. Furey states that the definition of a farm pond by the Department of Agriculture is very broad and includes wording for crops, cows, horses, all to promote farming. He states he can reach out to the Department of Agriculture for more information to supply to the Commission. The lot (located across from the horse barn at 485 Plymouth Road and is part of 485 Plymouth Road) is for horses and the activity conducted was the best way to maintain the pond. Yes, he says, someone should have come before this Commission to discuss but there was an opportunity to do the work with the fire department and clearing of the pond at the same time. He asks, what does the Commission recommend be done at this point.

R. Wesneski questions why the pond was cleared 300 feet at the edge with Atty. Furey answering that it was for clearing of weeds and removing sediment out of the pond to get to a solid base. The sediment would not allow water to be drawn, was clogging the pipe and the pond was overflowing. R. Wesneski states that what was done were construction activities and not something needed for the hydrants. It was work being done in a wetland with muck and vegetation and he asks, why did it need to be stripped? Atty. Furey answers that it was hard to draw water for the horses. After questioning again by R. Wesneski as to why 300 feet of the pond’s edge needed to be stripped, Atty. Furey states that it is a man-made pond with sediment of over forty years and it was needed to be done for the function of the pond. R. Wesneski states that perhaps a soil scientist is needed on clarification of it being a wetland. R. Wesneski asks if the bottom of the pond was touched with backhoes with Atty. Furey replying, not to the center of the pond. Clinton Webb’s letter refers to the “lowering of the water level before the excavation work started, the material to be removed was exposed above the water surface which allowed the material to be removed without the excavator bucket working in the water. The approach was accomplished by using a laser guiding survey-system on the excavator bucket to prevent the bucket from entering the water column and minimized the potential for introducing sedimentation into the pond.” IWZEO Truskauskas states that the edge of the pond was cut and deepened with R. Wesneski asking, when the pond filled up again, did the surface of the pond get larger? B. Lafferty states that it appears to have and believes it may have been the plan to go around the entire pond before IWZEO Truskauskas stopped the work.

T. Werner questions LUC Redmond if the pond was required to be 5 acres in size with LUC Redmond replying, no. T. Werner requests that a copy of the Long Term Leases filed in the land records in the office of the town clerk, in connection with the Modification of the original zoning application for the horse barn, be made part of the record.

Dave Bousquet, Deputy Chief, Harwinton Volunteer Fire Department, informs the Commission that the location of the hydrant was chosen at the time of subdivision application. T. Bobroske asks if removal of soil and silt was required for the hydrants with D. Bouquet replying, no.

T. Werner questions if there was any attempt made by the property owner, Pickett Brook Property, LLC, to get an expert opinion on how to handle the weed problem. Atty. Furey, replies no, but states that the pipe was being affected by the weeds and was also affecting the larger outlet structure that was failing.

E. Rahn questioned if the contractor who took the soil out was paid to do so with Jared Braddock, Supreme Industries/ Pickett Brook Property, LLC, answering, yes, they hired a contractor to remove soil from the pond. E. Rahn asks to confirm that the soils taken out were deposited elsewhere with Atty. Furey stating the soil was brought across the street to 16 Steeple Chase Road and deposited. J. Braddock states that the contractor removing the soil was working for Pickett Brook Property, LLC and also was working for the Barrett's in constructing their house. He states that they didn't think they were doing anything wrong and thought it was okay to bring the soil over to the Barrett property.

Atty. Furey refers to Clinton Webb's letter that states removing the sediment layer is an important factor for pond maintenance. E. Rahn states that that may be so but not at the edge of the pond and this activity is not improvement/maintenance of a farm pond, in his opinion, and controlling weeds is a wetlands issue.

R. Wesneski proposes that the plan provided by Atty. Furey titled Map Showing Pond on Lot 21 owned by Pickett Brook Property, LLC be enhanced for review and include:

Contours of road and the lot where the pond is located, location of excavated slopes, location of hydrants and details of the installation. LUC Redmond should research the size of the pond, what was approved and required in size, using any information provided by Pickett Brook Property, LLC at the time of the subdivision application. That a cross-section of the pond, across it, be provided to see how it relates to elevation, how deep in the middle, etc. That wetlands be delineated by a soil scientist and that they be certified as to the types defined. That a report on stabilization methods be provided of any material brought back in. Provide details of slopes and how to address replacement of them. Erosion Control measures be provided and the square footage of disturbed areas be provided showing what was prior to removal of material and what is now.

E. Rahn questions why the contractor is not present at tonight's meeting with T. Bobroske stating that he could be invited to the next meeting if the Show Cause Hearing is continued. The Commission could also ask for a third-party review on the matter if deemed necessary and that he has an issue with the delineation of the pond and its size. R. Wesneski states that the Commission should look at the original subdivision map of Equestrian Estates.

R. Wesneski questions why was the use of a backhoe required for certain elevations with J. Braddock replying it was to be able to dig at a certain elevation. He adds that the surface area of the pond was not made bigger with R. Wesneski asking if there was excavation beyond the original bank. IWZEO Truskauskas states that the excavation was done at an angle and agrees that maps should be reviewed.

J. Braddock states that the plan submitted titled Map Showing Pond was done after the work was completed at the pond. E. Rahn asks if there was a maintenance plan for the overflow with Atty. Furey stating they hope to get that information to the Commission.

Atty. Furey states that some of the work that has been asked for by this Commission may take more than thirty days and that there is nothing in the Cease and Desist Order that will cause danger or harm so he would consent to a continued date of the Show Cause Hearing to January 3, 2023.

E. Rahn states that if the Commission is asking for remediation, that it not be done before spring.

R. Wesneski questions Dave Bousquet if there is a problem with overflow now for the dry hydrant with D. Bousquet answering, no. T. Bobroske asks that IWZEO Truskauskas also look at the pond size information and if it is found to be over 3 acres that Atty. Furey be contacted.

### 3. CONTINUE OR CLOSE HEARING.

R. Wesneski **motioned** to continue the Show Cause Hearing to Tuesday, January 3, 2023 at 7:00 p.m. in the town hall. M. French seconded the motion and it passed unanimously. Atty. Michael D. Ryak is asked to attend and Dave Curtis is also to be asked to attend. Show Cause Hearing adjourned at 8:25 p.m.

SHOW CAUSE HEARING #2

**1. OPEN HEARING – ESTABLISH QUORUM.**

Chairwoman S. Ryan called the hearing to order at 8:25 p.m. All members present are seated. R. Wesneski **motioned** to open the hearing, seconded by E. Rahn. Motion passed unanimously.

**2. DAVID BARRETT – 16 STEEPLE CHASE ROAD - UNPERMITTED EXCAVATED WETLAND SOILS DEPOSITED UPON LOT AT 16 STEEPLE CHASE ROAD IN VIOLATION OF 4.3 OF THE HARWINTON INLAND WETLANDS AND WATERCOURSES REGULATIONS DATED SEPTEMBER 10, 2018.**

Mr. & Mrs. Barrett are present along with Bill Zampaglione, PAC Group, representing the builders of the home. A Cease-and Desist-Order was issued to the Barretts on October 12, 2022 and a Show Cause Hearing notice was sent certified to the Barretts on October 31, 2022 with an order to appear at tonight's Wetlands Commission meeting. Mr. Zampaglione explains that Dave Curtis, working for Supreme Industries/Pickett Brook Property, LLC, is also working for the Barretts. Fill was needed for the Barrett's lot and Mr. Curtis thought that hauling the fill taken out from the pond area at 485 Plymouth Road (across the street from the Barrett's lot) would not be an issue since the fill was not going into a wetland area. When IWZEO Don Truskauskas showed up, no more material was brought in. He states that the Barretts are innocent bystanders in this matter because there was no authorization for Mr. Curtis to deposit fill at 16 Steeple Chase Road. E. Rahn questions if the pile of dirt deposited is impeding development of the Barrett house construction with Mr. Zampaglione answering, yes, though it's not really a pile. IWZEO Truskauskas explains that the fill was put in an area of depression and is sort of spread out. T. Bobroske questions the amount of fill asking if it was three loads as was estimated. Mr. Zampaglione states that it was not 700 yards of fill and IWZEO Truskauskas states he would have estimated more but it was hard to tell and Mr. Curtis told him more. E. Rahn states that it would've been helpful if Mr. Curtis was asked to attend tonight's meeting. R. Wesneski asks if the fill brought on to the Barrett property has had other fill placed on top of it with Mr. Zampaglione answering, no. IWZEO Truskauskas states that the fill was muddy and he would suggest keeping that soil as is and wait for any possible remediation plan. E. Rahn questions if the deposited soil could be placed somewhere else until this is resolved. Mr. Zampaglione states that the amount of material brought on to the Barrett property is not being debated and he did not ask Dave Curtis the amount. If the Commission doesn't want it to remain there, the Barretts don't want it there. Mr. Barrett states that he would rather not wait until January to continue work on his house and that a trench needs to be dug right where the deposited soils were placed. Mr. Zampaglione states that the soil placed on the Barrett property could be removed and put back on to a flat area at 485 Plymouth Road and have clean fill brought back to the Barrett property. E. Rahn questioned if it is important to put the deposited soils back into the pond area.

Mr. Zampaglione states that he just reached out via text to Dave Curtis asking for the amount of material placed on the Barrett property and answered, 100 yards. Commissioners discuss the idea of replacing the fill or whether it is better to leave in place.

**3. CONTINUE OR CLOSE HEARING.**

R. Wesneski **motioned** to close the hearing at 8:40 p.m., seconded by E. Rahn. Motion passed unanimously.

REGULAR MEETING

**1. RE-OPEN MEETING – ESTABLISH QUORUM.**

Chairwoman S. Ryan called the meeting to order to re-open at 8:40 p.m. All members present are seated.

**2. DISCUSSION/POSSIBLE DECISION – PICKETT BROOK PROPERTY, LLC, 485 PLYMOUTH ROAD. SHOW CAUSE HEARING.**

No discussion.

**3. DISCUSSION/POSSIBLE DECISION – DAVID BARRETT, 16 STEEPLE CHASE ROAD. SHOW CAUSE HEARING.**

B. Lafferty **motioned** to withdraw the Cease and Desist Order issued to David and Natale Barrett, 30 Orleans Drive, Bristol, CT, ruling that deposited wetland soils can remain in place at 16 Steeple Chase Road and to allow construction of a home to continue. M. French seconded the motion and it passed unanimously.

**4. COMPLAINTS/ENFORCEMENT ACTIONS/REPORTS.**

T. Werner informs the Commission that Ralph Lago, 94 Catlin Road, had contractors out to his property to dig holes for guardrails with no permits from this Commission even though he was before this Commission in October for an after-the-fact activity and was told he needs to make application for work done in regulated areas. IWZEO Truskauskas will investigate.

**5. ANY OTHER BUSINESS.**

LUC Redmond asks if the Commission could make a decision on the application of Zachary Prenoveau at this time. R. Wesneski **motioned** to approve the application of **Zachary Prenoveau, 399 Hill Road**, application for 18' x 40' inground pool, as a regulated activity with finding of no significant activity and with the condition that water shall discharge to a suitable underground structure and that the Enforcement Officer inspects, seconded by B. Lafferty. Motion passed unanimously.

T. Bobroske suggested amending the Fine Ordinance for increases and will work with LUC Redmond and IWZEO Truskauskas on possible amendments.

**6. CORRESPONDENCE.**

A copy of CT Wildlife is received.

**7. INVOICES.**

None.

**8. ADJOURN.**

M. French **motioned** to adjourn the meeting at 9:00 p.m., seconded by T. Werner. Motion passed unanimously.

Respectfully submitted,

Polly Redmond  
Land Use Coordinator

