

**TOWN OF SOMERS**  
**CONSERVATION COMMISSION**  
**600 Main Street**  
**P.O. Box 308**

**REGULAR MEETING MINUTES**  
**June 7, 2023**  
**7 P. M. TOWN HALL**

**I. CALL TO ORDER**--- Meeting called to order by Chairperson Joan Formeister at 7:02 P. M. Commissioners in attendance were Vice Chairperson Drew Kukucka, Dan Fraro, Candace Aleks and alternate Lise Wood. Also present, Joanna Shapiro, Town of Somers Wetlands Agent.

Chairperson Formeister seated Lise Wood for Sydney Flowers.

**II. OLD BUSINESS** –

**1. Discussion/Possible Decision Application #790: 349 Mountain Rd.**  
Hydro-raking to control aquatic vegetation. SOLitude Lake Management

Last month we tabled the discussion about the hydro-raking proposal so that the applicant could prepare additional requested materials to present today.

The Commission received 2 resumes from SOLitude’s Senior Aquatic Biologist, Emily Vulgamore, and Dominic Meringola, Senior Environmental Engineer.

The “Petition to Intervene” on Application #790 presented at the May meeting by Attorney George Schober on behalf of his client, Kenneth Prior was determined to be in compliance with the intervenor statute 22a-19. The Town Attorney also reviewed and came to this conclusion.

Commissioner Lise Wood made the motion to grant Mr. Kenneth Prior Intervenor status. based on statute 22a-19.

Candace Aleks seconded.

All in Favor. Motion passed.

Mr. Jeff Castellani, Mechanical Director from SOLitude Lake Management provided a brief summary from last month’s meeting regarding the pond management proposal to the Commission, and explained what had been revised in the plan. The plan is to manage the

eutrophic waterbody, get control of the dense water lilies in Worthington Pond, and improve open water quality and value for aquatic life to survive and flourish.

Mr. Castellani explained that SOLitude proposes to provide restoration to the previously dredged areas around the pond using hydrosucking. The goal will be to get native submersed vegetation to reestablish. In no way will any activity in this process impair the pond. It will only improve the quality of the pond. This will be done by installing turbidity curtains around the work area and monitoring the water daily to ensure that there will not be a turbidity issue. The removed material will be moved to an upland area for repurposing.

There was a concern raised last time about how the equipment was cleaned so as to not transfer invasives from one pond to another. A new paragraph has been added to the proposal explaining how the equipment is cleaned and decontaminated.

Additionally, the use of an herbicide is needed to completely kill the rhizome of the lilies so that they do not reestablish. Following best practices widely used throughout the states of Massachusetts, Rhode Island, and Connecticut, they will topically treat the leaves of the lilies so that the root system will be reached. At that point the hydro-rake will then remove the treated lilies in the controlled area of removal.

Finally, the areas of activity have been trimmed down. They will be concentrating on areas around where it had been previously dredged.

The pond is 15 acres and the proposed areas to be managed encompass approximately 3 acres, and will be worked on only 5 days per year (over 3 years), which does not pose a significant activity.

Commissioner Lise Wood asked if the hydro-rake made a noise. Mr. Castellani said there is a muffler on it and is a little quieter than a lawn mower.

Vice Chairman Drew Kukucka asked for clarification about the number of years of the project and treatment area that would be potentially included in the permit. Joanna Shapiro, Wetland's Agent clarified that wetland permits are valid for 5 years by default, and will cover the 3 years of proposed work in application. She also explained that she references a specific plan in the written permit, so that it is clear what was permitted.

Drew Kukucka appreciated the inclusion of resumes and statements from the experts, and asked biologist Emily Vulgamore to speak on how this plan fits into the industry standard for pond management project, and to

confirm that she concurred with the findings of the plan. Ms. Vulgamore said this project is a typical, standard water management project following Best Practices. By removing the dense monoculture of lilies, which constitutes eutrophication, they will improve water quality and clarity, and decrease harmful algal blooms, and this is a standard accepted practice.

Drew Kukucka asked about guidelines and best management practices. Ms. Shapiro referred to CT DEEPs *Nuisance Aquatic Vegetation Management* guidebook (2014), and distributed copies of the page on Waterlily, which explains how it can crowd areas and make access difficult, and explains how mechanical control should include digging out the roots.

Agent Shapiro also referred to the CT DEEP aquatic treatment permit application process, and explained that CT DEEP regulates application of aquatic herbicides, and that while the Commission can choose to also regulate use of aquatic herbicides, historically, this Commission's practice is to acknowledge that DEEP and EPA have the expertise to review and permit herbicides. Mr. Castellani described the application process that they must follow for the approval of the above agencies and the public postings regarding the use of an approved and regulated herbicide.

Chairman Joan Formeister asked what the findings have been on wildlife and fish from the hydro-raking and the type of herbicide they will be using? Biologist Ms. Vulgamore responded that there have been no adverse effects found with wildlife, fish, or humans. They are registered with the EPA due to their low risk. The hydrorake is also very selective and won't affect wildlife. Managing this area will increase native plant diversity, which will increase aquatic organism diversity, and will be beneficial in the long run.

Attorney Schober asked to address the Commission on behalf of his client, Mr. Prior, the intervenor. He asked Mr. Castellani if the amount of hydro-raking was trimmed down, and to clarify the area. Mr. Castellani said the pond covered 15 acres. The 1<sup>st</sup> year the hydro-raking would cover a .65 acre and the next 2 years will be .50 acres each. Attorney Schober referred to the statutory definition of Significant Activity, and Agent Shapiro distributed copies of that section from the Commission's regulations. Attorney Schober explained that determination of whether this is a "significant activity" is important because it would require a public hearing. His client is seeking a public hearing, and his client wanted the Commission to use the town's ordinance that allows them to require the Applicant to pay for the town to hire an independent expert to review the proposal and determine if this is the best method to use. If an independent expert agreed that the project proposed was the best method to clean the pond and that the proposed areas did not constitute a "significant activity"

then his client would be fine with it. If not, this would become another court case for the town, in addition to the several lawsuits related to this property, and that they will go to court.

Attorney Schober read from the definition of “significant activity” from the regulations. He could not off-hand recall a project involving this large of an area of wetlands. This project may be good, but we don’t know that, and it is a significant activity because it flows to Gillette’s Brook. He also said that it will cause substantial turbidity, and asked about impact to fish and turtle eggs.

Attorney Schober asked Biologist Ms. Vulgamore if she had visited the site and completed a plant and aquatic wildlife inventory. She said “no.” He questioned if the herbicide they plan to use would affect the wildlife in the area if they are following Best Practices. Ms. Vulgamore said the herbicide and Best Practices they will be using are very selective towards what they are looking to manage. It is usually not necessary to do an inventory for a 15 acre pond. To accurately survey a pond they would have to do a Point Intercept System which is a grid that they would overlay the area, and on such a small area of 5 points, findings would not prove to be statistically significant. Compressing the grid would result in redundancies.

Attorney Schober asked if the herbicide would kill any other plant life other than the lilies. Biologist Ms. Vulgamore said the herbicide would be applied to only the lily bed that rises to the surface, and does not mix well with water so it will be rapidly taken up by the lilies.

He also asked if the herbicide would escape the lily bed and flow into Gillette Brook? Ms. Vulgamore said the herbicide does not bind to soil or water. It binds to the plants that it is broadcasted on rapidly, therefore it would be very unlikely that there would be any dispersal downstream.

He asked Mr. Castellani if there was any device they used to catch any dispersed herbicides. Mr. Castellani said that in cases of heavy flow or infestations of invasives, for additional assurance and containment on some jobs, they have installed a nonpermeable curtain around the work bed, but in this case, they are doing a topical treatment where the herbicide is applied to the lily leaves and is rapidly absorbed by only the leaves. The herbicide is useless once it enters the water, so other plants are very unlikely to be impacted in the pond or downstream.

Attorney Schober asked if any fish or frog eggs could be destroyed when the hydro-raking is being done. Biologist Ms. Vulgamore said the Spring is spawning season. Mr. Castellani said they plan to hydro-rake in the Fall, and the herbicide treatment would be done before, in early July or August.

Attorney Schober asked if the herbicide treatment would affect any possible endangered species. Mr. Castellani said the herbicide does not affect fish or amphibians because the herbicide they use is cleared by the EPA and only affects plant tissue. Only the lily leaves on top will be treated.

Attorney Schober asked if more native species of plant life may grow after the treatment. Biologist Ms. Vulgamore agreed and mentioned the diversity of native species that might appear.

Attorney Schober asked where the removed material will be placed. Mr. Castellani said it would be dispersed on the vineyard as soil enhancement.

Mr. Prior asked if there were any invasive species in the pond and he was concerned that they could travel to Gillette Brook which runs through his property. Ms. Vulgamore said she did not know of any, and Mr. Castellani said there would be surveys done to identify any at the time of the project. Also he and Ms. Vulgamore pointed out that boating and normal human activity can spread invasives. The curtains surrounding the hydro-raking area will provide containment to the work site until everything settles.

In conclusion, Attorney Schober representing Mr. Prior, the Intervenor, is requesting an independent expert to review the project.

Agent Shapiro referred back to the CT DEEP Nuisance Aquatic Vegetation Management guidebook, and read the section on Glyphosate, which includes Aquapro, which is the herbicide proposed for use. This section confirmed what the experts and their plan stated about the way in which Glyphosate works, and binds with plant material and not water, although it does say that it can bind with soil. It will only affect plants at the surface, and will not be effective within the water column. Drew Kukucka and Agent Shapiro reiterated how typically this commission defers regulation of aquatic herbicides to CT DEEP regardless.

Candace Aleks asked if the Somers Wetland's Agent could request that a representative from DEEP come out and observe the project so that all parties would be assured of the safety of the project. Wetland's Agent Joanna Shapiro said she could make the request but wasn't sure if DEEP would agree to the request.

Agent Shapiro also explained that in terms of endangered species, as part of the applicant's permitting process with CT DEEP, they would have to consult with the Natural Diversity Database, which would identify any known species of concern in the area.

Agent Shapiro explained the regulatory timeline for the Commission rendering a decision on this application, depending on if the Commission would like to set a public hearing, or if they are not comfortable making a decision based on the information that they have received. She recommended that the Commission first determine if the activity is significant.

Vice-Chairman Drew Kukucka stated that he felt enough information on this project had been explained to the Commission. He appreciated the concerns brought up by the Intervenor because the Commission members all have an interest in protecting and preserving the wetlands, watercourses and the environment. That is our Mission. He did not feel that this project was a “significant activity” in any way, based on the definition in our regulations. The application and discussion support that it will improve the quality of this pond and aquatic wildlife that use this waterbody. There are measures in place to ensure that sediment from hydroraking will not impact the rest of the pond or downstream of the pond. Additionally, the herbicide is regulated by industry standards and regulated by DEEP and EPA in CT. It is a small-scale application each year. He has trust that the state has checks in place to ensure that it is used properly. The concerns in the petition have been discussed, and there are good explanations for why they are not real issues.

Commissioner Lise Wood and Chairman Joan Formeister both agree that enough proper information has been presented by SOLitude and its representatives and by the Commission’s Wetlands Agent for the project to be acceptable for the pond and community. Chairman Formeister pointed out that many communities have used this method of practice.

Wetland Agent Shapiro recommended that the Commission go through each section of Mr. Prior’s Verified Petition to Intervene dated April 5, 2023, allegations 2A-2D to confirm that each of the concerns had been examined and addressed.

In addition, the Commission should determine whether a public hearing should be held for any applicable reason. Agent Shapiro read the section regarding public hearings from the Commission’s regulations. She reported that no petition from the public that would require a public hearing be held had been received, but there are two other possible reasons to hold a public hearing, significant activity or public interest.

Vice Chairman Drew Kukucka made the motion that this project is NOT a “significant impact activity” and therefore does not require a Public Hearing.

Commissioner Dan Fraro seconded. All in Favor. Motion passed.

The Commission discussed their observations and perceptions related to public interest related to this application.

Commissioner Lise Wood made a motion stating that the Commission does not find that a public hearing would be in the public interest. Commissioner Dan Fraro seconded. All in Favor. Motion passed.

Commission referred to the Verified Petition to Intervene and read through the claims:

**2A.** Vice Chairman Drew Kukucka made the motion to reject the claim, based on the information of the presentations by SOLitude Lake Management and Biologist Ms. Emily Vulgamore, and that the activity will have minimal impact related to this claim. Commissioner Fraro seconded. All in Favor. Motion passed.

**2B.** Commissioner Aleks made the motion to reject 2B, based on the presentations by the biologist and Mr. Castellani that the turbidity curtains will prevent any contaminants and/or invasives from spreading to other water sources, and visual monitoring will be done. Commissioner Lise Wood seconded. All in Favor. Motion passed.

**2C.** Commissioner Drew Kukucka made a motion to reject this claim based on lack of evidence of the claims that the herbicide will flow downstream, experts explained how herbicide will be absorbed on-site, and that Connecticut DEEP and EPA requires permits and have approved and regulated the application of this herbicide during proper weather conditions. The herbicide is absorbed only by the plant tissue and does not affect wildlife. Commissioner Lise Wood seconded. All in Favor. Motion passed.

**2D.** Commissioner Kukucka made the motion to reject the implication that herbicides would impact wildlife in the area based on the materials presented by the representatives of SOLitude demonstrating that the herbicide will be absorbed by plants on-site, demonstrating that they don't impact wildlife and will not have an adverse impact on the environment. Commissioner Aleks seconded. All in Favor. Motion passed.

Agent Shapiro asked the Commission whether they feel as though the expert testimony that they have heard is sufficient and reliable, and asked about thoughts on the intervenor's request that a third party reviewer be hired. She explained the town ordinance that would allow the Commission, with agreement from the Board of Selectmen, to find that it is a complex application, and that they don't have the expertise required to render a decision, to require the applicant to pay for the town to hire a third party reviewer.

Chairman Formeister wanted the audience to know that she did a lot of research on these methods of lake and pond restoration. She was already familiar with hydro-raking and has seen it done. Everything she read explained the same methods used throughout many communities year after year, and it is the best, accepted practice.

Agent Shapiro mentioned that typically we've seen applications for dredging ponds, which seems more impactful. She mentioned how the application and presentation went over the various alternatives already. This is not a public hearing, and the Commission does not have to find that no feasible and prudent alternative exists, but alternatives are always required.

Drew Kukucka explained that if the Commission thought this was a significant activity, it may entertain requiring a third party reviewer, but this is a standard practice, and he does not find it necessary to put that burden on the applicant. The intervenor could have hired their own third party reviewer as well.

Vice Chairman Drew Kukucka made the motion to approve **Application 790, 349 Mountain Road**. Hydro-raking to control aquatic vegetation. SOLitude Lake Management, based on the following:

1. The Commission finds that the Applicant has submitted all necessary application materials pursuant to Section 211-7 of the Wetlands Regulations, including but not limited to, Section 211-7(E)(5) "Alternatives considered and rejected".
2. The Commission did not find the proposed activities "significant".
3. The Commission finds that the criteria set forth in Section 211-10B have been met by the Applicant.

Commissioner Lise Wood seconded. All in Favor. Motion passed.

2. **Discussion/Possible Decision application #791** 46 Harvest Hill Dr. Construction of in-ground swimming pool in the Upland Review Area. Amber Wilhelm, Vernon Poolman.

A new plan shows the pool will be 10 feet closer to the house, as close as possible, and sediment precautions will be used, and details were given regarding the patio and how the slope will be permanently stabilized. Agent Shapiro visited the site, and the proposed pool area is currently lawn, and her main concern was preventing erosion down the slope toward the wetland. Drew Kukucka asked if the filter will have to be backwashed, but the property owner explained that it will not, and that the pool will use minimal chlorine.

Commissioner Fraro made the motion to approve the application #791, based on the following:

1. The Commission finds that the Applicant has submitted all necessary application materials pursuant to Section 211-7 of the Wetlands Regulations, including but not limited to, Section 211-7(E)(5) “Alternatives considered and rejected”.
2. The Commission did not find the proposed activities “significant”.
3. The Commission finds that the criteria set forth in Section 211-10B have been met by the Applicant.

Commissioner Lise Wood seconded. All in Favor. Motion passed.

### **III. NEW BUSINESS -**

1. **Application #792:** 573 Hall Hill Rd. Construction of detached garage in the Upland Review Area. Christopher Williams.

Tim Coon from J. R. Russo explained that there will be disturbance in the Upland Review Area and there will be no disturbance of the wetlands. Joanna wanted to know if the swale that was previously installed at the downspout, leading to the wetland, would be affected. He said it will not be impacted. No alternative locations for the garage are possible due to the septic system and other setbacks.

2. **Use of Conservation Funds**

Discussion involved using \$500.00 to provide financial assistance to Dr. Martin for further testing of the water in the Scantic River. We want to request from the Town \$650.00 for the current fiscal year to supplement the \$500 in the Commission’s budget, but going forward we are going to request \$1200.00 each year for continued testing, in addition to the \$500 budgeted for conservation projects.

Commissioner Aleks made the motion to use \$500.00 from current conservation funds plus \$650.00 from the town to the University of Saint Joseph for, and going forward we will request \$1200.00 each year after, for the purpose of water testing in the Scantic River.

Commissioner Lise Wood seconded. All in Favor. Motion passed.

### **IV. AUDIENCE PARTICIPATION ----**

None.

## **V. STAFF/COMMISSION REPORT---**

Wetland Agent Joanna Shapiro issued 2 minimal impacts permits for a shed (372 Mountain Rd) and deck on an above ground pool (52 Therese Dr). She reviewed and inspected the E&S for a crumbling foundation at 62 Franklin Woods Dr, which contains wetlands. She signed off on an application at 120 Watchaug Rd. for a new hanger, and required plan revisions to include a construction entrance. She also walked 42 Hallie Lane with the zoning officer to inspect final grading and stabilization. She also inspected the required planting along the stream at 47 Horseshoe Lane. She also reached out to the property owner of 144 Watchaug, to alert him that any work on this property will require consultation and/or permitting with the Conservation Commission. A mailbox has been installed at the road for this undeveloped wetland property.

Vice Chairman Drew Kukucka made the motion to accept the Wetland's Agent report.

Commissioner Dan Fraro seconded. All in Favor. Motion Passed.

## **VI. CORRESPONDENCE AND BILLS---**

Ms. Shapiro presented a bill for \$47.22 from the Journal Inquirer.

Commissioner Wood made a motion to pay the bill presented.

Commissioner Fraro seconded. All in Favor. Motion passed.

## **VII. MINUTES APPROVAL:** for May 3, 2023

Commissioner Wood made the motion to accept the minutes as written.

Commissioner Fraro seconded. All In Favor. Motion passed.

## **VIII. ADJOURNMENT**

Commissioner Wood made the motion to Adjourn.

Commissioner Fraro seconded. All in Favor. Motion Passed.

Meeting was adjourned at 9:28 P.M.

Respectfully Submitted,  
Commissioner Candace Aleks

MINUTES ARE NOT OFFICIAL UNTIL APPROVED AT A SUBSEQUENT MEETING