

**WETLANDS DEMYSTIFIED**  
**Criteria For Decision**  
**By Paul Hennen**

In our July article in the *Pomfret Times* [see Wetlands Demystified Vol.2, No.7, *The Pomfret Times*, Vol.11, No.5, August 2005 or visit our web site at [www.pomfret.ct.org](http://www.pomfret.ct.org)] I discussed the public hearing process in some detail. This article will address what happens next after the hearing has been formally closed. You will recall that once the public hearing is opened, it must be closed within thirty-five (35) days unless the applicant requests or agrees to an extension. That extension may not exceed a total of sixty-five (65) days. Once closed, the Commission has sixty-five (65) days to make its decision to approve a wetlands permit with or without conditions or deny the permit. You may also recall that once the hearing is closed no new testimony or evidence may be presented. The Commission or Agency to be more correct under State law, may consider only the testimony and arguments made at the public hearing. Additionally, Commission members are reminded not to discuss the issues with anyone else or among themselves except at a public meeting. However, Commission staff may continue to advise the members as they discuss the project. You may also remember that Commission members who have missed any part of the public hearing must attest on the record that they have reviewed and listened to the taped testimony presented at the public hearing(s) before they may participate in the decision process. The Commission is a group of volunteers, most of whom have full time jobs, that is no easy chore. Nonetheless, the law requires us to make informed decisions as to whether the project is appropriate based on the evidence presented. By law, the Commission's job is to protect our wetlands and watercourses and those creatures and plants that depend on them. How do we do that, and what criteria must we consider in making our decision?

Section 22a-41 of the Connecticut General Statutes is specific in defining what Commission members must consider before we as a Commission make a decision on any application for wetlands permit. Our Regulations under Section 10.2, as required by the Connecticut Department of Environmental Protection (DEP) follows the statutory language verbatim. "In carrying out the purposes and policies of Section 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes [Environmental Protection, Title 22a], including matters relating to regulating, licensing and enforcing of the provisions thereof, the Agency shall take into consideration all relevant facts and circumstances, including but not limited to:

- a. the **environmental impact** of the proposed regulated activity on wetlands or watercourses;
- b. the applicant's **purpose** for, and any **feasible and prudent alternatives** to, the proposed activity which alternatives **would cause less or no environmental impact to wetlands or watercourses**;

- c. the **relationship between the short term and the long term impacts** of the proposed regulated activity on wetlands or watercourses and the **maintenance and enhancement of long-term productivity of such wetlands and watercourses;**
- d. **irreversible and irretrievable loss of wetlands or watercourse resources which would be caused by the proposed regulated activity,** including the extent to which such activity would **foreclose a future ability to protect, enhance or restore such resources,** and **any mitigation measures which might be considered** as a condition of issuing a permit for such activity including, but not limited to, measures that (1) **prevent or minimize pollution or other environmental damage,** (2) **maintain or enhance existing environmental quality,** or (3) in the following order of priority: restore, enhance and create productive wetland or watercourse resources;
- e. the **character and degree of injury** to, or **interference with, safety, health, or reasonable use of property** which is **caused or threatened by the proposed activity;**
- f. **impacts** of the proposed regulated activity on wetlands or watercourses **outside the area** for which the activity is proposed and future activities associated with or reasonably related to, the proposed activity which are **made inevitable** by the proposed regulated activity and **which may have an impact on wetlands or watercourses;** and
- g. for the purposes of this section, (1) **‘wetlands or watercourses’ include aquatic, plant or animal life and habitats in wetlands or watercourses,** and (2) **‘habitats’ means areas or environments in which an organism or biological population normally lives or occurs.** The Agency [Commission] may **consider whether wetlands or watercourse habitats contain certain endangered or threatened species or any other species determined at risk,** or whether such habitats or species are listed in the Connecticut Department of Environmental Protection’s Natural Diversity Data Base.”

Connecticut law also requires that if an application was judged to be a significant impact activity on a wetlands or watercourse [see Wetlands Demystified Vol. 2, No.6, *The Pomfret Times*, Vol. 11, No.4, July 2005 or visit our website at [www.pomfretct.org](http://www.pomfretct.org)] the Commission may not issue a wetlands permit unless it finds on the basis of the record that a feasible and prudent alternative to the project does not exist. The applicant or his and/or her representative may claim that no alternative exists for them to do what they want to do; consequentially they argue that we as a Commission have no alternative but to approve the regulated activity. This is simply not the case. Land can be used in a variety of ways that would meet the State mandated criteria listed above, and thus avoid

damage to a wetland or watercourse. I have never found a land use attorney that disagrees. There are always alternatives to any proposed activity regulated. It is the Commission's responsibility to make a decision based on the information presented to us and that is no easy task. This is one reason for the Commission to retain its own consultants and experts to ensure that the record upon which we make decisions is as balanced and accurate as possible. We as a Commission with land use authority understand and can certainly empathize with applicants who have plans and dreams for the use of their land. We as a Commission do our best to find ways to avoid damage to any of our wetlands and watercourses and still approve an application. Usually that means conditions of permit approval, and when we do set conditions for permit approval we fully expect those conditions to be met. On occasion, however, we may have to say no to a permit. That is a tough call indeed. We must show on the record why and give the specific reasons for that decision. Our job as a wetlands and watercourses protection Agency is to take our sworn responsibilities of office seriously and, to the best of our ability, safeguard this all important and vital natural resource within our jurisdiction, the Town of Pomfret.

In my next article, we will have begun a new year, and volume 3 of our "Wetlands Demystified" series of articles will have begun. In the February 2006 issue of the *Pomfret Times* I will discuss the problem of enforcement and why it is necessary. Enforcement of the rules is always a sticky endeavor, but our Board of Selectmen are on public record in support of the need and have voiced their commitment as our elected representatives to hold those responsible for environmental misdeeds accountable for their actions even if the Town must pay a price to achieve that end. No one likes enforcement, especially violators, and no one likes to be the enforcer, especially the Inland Wetlands And Watercourses Commission. It can be very expensive to all concerned; however; enforcement is an absolute necessity to ensure that all proposed regulated activities are satisfactorily settled to the extent allowed by law. It is not fair to those Pomfret citizens who abide by our Regulations for the Town to turn a blind eye, whatever the cost, to those who fail to meet permit conditions or consider themselves outside our laws or regulations and take actions that harm our valuable and non-replicable wetlands and watercourses resources. It is our wish that all of our citizens will support us and share in helping us achieve that most important goal.

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