

**WETLANDS DEMYSTIFIED**  
**The Public Hearing & A New Review Process**  
**By Paul Hennen**

In the June issue of the *Pomfret Times* I discussed some aspects of “significant impact activity” as defined in our regulations. You will recall that if the Wetlands Commission determines that your proposed project is a significant impact activity, the Commission is required by State law to hold a public hearing. The underlying purpose of the hearing or hearings is to allow you, the applicant, to provide the Commission testimony and documents that may support your proposed project, adverse wetlands or watercourses impact, notwithstanding. A public hearing may also be called under the Connecticut Wetlands Act should the Commission believe that a public hearing would be in the public’s interest because of the nature of the project. A public hearing may be required as a result of a petition signed by at least twenty-five persons eighteen years or older who reside in Pomfret and filed not later than fourteen days after the Commission received the wetlands permit application. I would like to interject here that under State law and the Commission’s regulations and by-laws there is no legal provision that requires the Commission to inform the public that an application for a wetlands permit has been received. If an abutter or anyone else for that matter, learns that an application for a wetlands permit (which is a public document) has been submitted to the Commission and that the proposed project is of concern to at least twenty-five qualified Pomfret citizens, then a petition for a public hearing may be made to the Commission. However, fourteen days after discovery is not much time. The petition form must be obtained from the Town clerk and signatures on the petition verified as valid within fourteen days. Our meeting agenda lists new applications received. The Commission at that meeting may act upon no new application; however, the fourteen-day petition clock begins at that point. Our meeting agenda is available on our web site or may be obtained from the Town Hall twenty-four hours prior to the scheduled meeting. Unless there is a public hearing, the public, including an abutter, cannot participate in the permitting process. Basically then, and for whatever reason called, all Wetlands Commission public hearings are conducted in the same way, and the underlying reason for them all have to do with wetlands or watercourses impact concerns. In this article I will describe the hearing as part of the permitting process in more detail, explain what a *Verified Environmental Intervention Pleading* is, mention a new procedure adopted by the Commission to allow some to avoid the costs and time delays associated with our wetlands permitting process, and lastly describe in brief terms one aspect of our relationship with the Pomfret Planning and Zoning (P&Z) Commission.

Let us assume that you submitted your application for a wetlands permit, the Commission determined that your project will or may have a significant impact on a wetland or watercourse at some location and that a public hearing was required. You have a complete site plan, met all of the conditions required by Part II of the wetlands permit application and our regulations, considered alternatives to your proposal and submitted them to the Commission in a timely manner for review. A public hearing was scheduled and you are now ready to present your case to the Commission. Keep in mind that a public hearing is not the same as the Commission's regularly scheduled public meeting held on the first Wednesday of each month, or a special meeting called to address some specific issue. While all of our meetings are open to the public, the public may not directly participate in our proceedings. A public hearing is not a meeting and Commission members may elect not to attend, since a quorum to conduct the Commission's business is not required. A single member could conduct a public hearing though this is very unlikely to ever happen. In fact, a member who fails to attend the public hearing must attest on the record that he or she has reviewed the documents and listened to the taped testimony presented at the hearing before they may participate later in the decision process. This is not an easy chore, and this is one reason why the State allows up to sixty-five days for Commission review after a hearing is closed. It is also important that applicants understand that failure to provide all of the information required before the hearing is closed may result in denial of the application as incomplete, since no additional testimony or documents may be considered after that time. This does not happen often, but it happens.

So here you the applicant are with all of your representatives, expert witnesses, all other interested parties. The public is seated or standing in the halls depending on their view of your project, and the Chairman has now opened the public hearing. The Chairman will then explain the purpose of the hearing, the ground rules necessary to maintain order and how the interested parties and the public are to participate in the proceedings. The recording device is double checked by the clerk to ensure that it is working properly, and the documents received prior to the hearing are read and entered into the public record. The Chairman will then call on the applicant or his or her representative to describe the proposed project and explain why the Commission should approve it. The applicant may have an attorney present to discuss any legal issues involved. Engineers, soil scientists, and wetlands and environmental experts may be present on the applicant's behalf to express their views and opinions to support the project. After the applicant's presentation the Commission members may direct questions to the applicant to clarify points made or question any expert testimony presented. The questions and responses now become part of the public record. The Chairman then will usually ask for public comment on the proposed project. Pomfret citizen or not, anyone may attend the hearing and participate. Individuals may question the applicant or his or her representatives and experts. The applicant also has the right to remain silent or respond to rebut any statements made by a member of the public.

Earlier I mentioned a process known as the *Verified Environmental Intervention Pleading*. Under section 22a-19 of the Connecticut General Statutes any party properly documented must be granted intervener status under the Commission's by-laws. This means that anyone may oppose the wetlands permit on grounds that the project will, or is reasonably likely to result in unreasonable pollution, destruction and/or impairment of the air, water, or other natural resources of the state of Connecticut and that there are feasible and prudent alternatives available to the applicant to avoid this problem. Wow! This sounds like something the Sierra Club might like to sink their teeth into, and they could if the issue were important to them. Usually, however, it is a property abutter who is concerned that the project may adversely impact his or her land or property value in some way or a concerned Town citizen for environmental reasons. When the Commission recognizes intervener status the intervener acquires under State law the same legal status as the applicant before the Commission. In this circumstance the intervener may hire attorneys and other experts to provide testimony, studies and other documents that become part of the public record that the Commission must consider in making its decision to approve or deny the wetlands permit. The intervener also must be provided access to all matters involved in the application under the rules of due process. Commission members, the public and the applicant may question the intervener as well as his or her representatives.

Under Town ordinance and section 19 of our regulations, applicants for wetland permits may be required to obtain additional information at their expense, or the Commission has the authority to retain independent experts to evaluate or review testimony and documents submitted by the applicant at his or her expense. This review may require on site data collection and analysis in order for the Commission to obtain an independent analysis as to how the project might impact a wetland or watercourse. This does not usually happen, but it can, and an applicant should be aware that they may be required to reimburse the Town for expenses incurred in hiring independent experts to conduct a project review.

Commission members are very restricted as to what may be discussed in making their decision to grant or deny the wetlands permit. For example, if members of the Commission do not question an expert witness during the hearing and there is no other expert to represent the Commission with their findings or opinions, Commission members cannot disregard the evidence presented. However, no Commission member is obligated to believe or accept statements made by anyone, and that includes recommendations or statements made by the Commission's own staff. However, the record must reflect why a Commission member questioned such expert testimony.

On March 1, 2005, the Commission added to section 6. A.1. to its by-laws. We recognize that there are circumstances when a wetlands permit may not be required. The catch 22 has been until now, that in order to find out if an application for wetlands permit was or was not needed, a wetlands application had to be filed along with its associated fees and

time delays. Then, after Commission review of the application, if no wetlands or watercourses are clearly involved or could be impacted by the project, the Commission could authorize its agent, also known as the Wetlands Enforcement Officer (WEO); to evaluate the project on site and make a jurisdictional ruling to approve the wetlands permit. The applicant was then required to file notice of the decision and a description of the project within ten days in a local newspaper and then wait fifteen days after the date of publication (appeal period required by State law to allow anyone to appeal the agent's decision to the Commission) before starting his or her project. In an effort to address this problem, we designed a non-fee application form that should by now be on our website for members of the community to complete and submit to the WEO for evaluation. The form may also be obtained from the wetlands clerk at the Town Hall. After you complete the form and submit it to the WEO, he or she will determine if there are no wetlands or watercourses involved. If there are none, he or she may authorize you to proceed with your project. The WEO's judgment in making the decision is subject to Commission over-site and his or her decision must be justified and fully documented in each case. The recipient of the ruling is not obligated to notice the project in a local newspaper. This is a new process and there will be corrections and adjustments to be made, but we believe that it can work if executed properly and in good faith. However, it must be understood that if your project does fall within a regulated area as defined by our regulations, a wetlands permit would be required regardless of any potential impact to wetlands or watercourses. If this initiative is successful it will save us all a little time, and for the simple project without a wetlands permit needed, a few pennies as well. Help us make it work. The Commission will monitor this effort closely to see that it is correctly administered and will make corrections when indicated. If you have questions you can call our clerk, Betty Morin at 860-974-9135. For those interested, our by-laws are now on our web site ([www.pomfretct.org](http://www.pomfretct.org)) under the listing of Documents & Reports

Finally, how do we as a Commission or more accurately an Agency, relate to the Pomfret P&Z Commission? State law requires that any application to the P&Z Commission for a subdivision or re-subdivision that contains a wetland or watercourse must have a wetlands permit or a report from our Commission that wetlands are not an issue before the P&Z Commission can act on the application. In addition, the law requires that if a zoning, subdivision, special permit, variance or special exception is required, the Wetlands Commission must first act on the matter and then inform the P&Z Commission by written report within fifteen days of its decision. Further, no work on any project may begin until the wetlands permit has been issued even if it has been approved until the P&Z Commission completes its action and a building permit issued. There are other areas in which our two commissions relate, such as erosion & sedimentation control and Health Department issues. I will discuss these topics among others in a future *Wetlands Demystified* article. The only point to be made is that now that we have zoning in Pomfret, our Commissions are required to work more closely together on land use issues.

By the time this article is published the Commission will have approved a number of important changes and additions to its regulations and have a revised and more

comprehensive wetlands permit application form and wetlands permit. I will address the more important changes in the September issue. Stay tuned; we are just now beginning to scratch the surface of the wetlands and watercourse saga. There is so much more to come in our discussion of this most important topic. Let us know your concerns.

Note: My thanks to Katarina Rutkowski, a fellow member of the Commission for her comments and review of this article.