

**FARMINGTON LAND TRUST POSITION STATEMENT
RE: SEPARATION OF INLAND WETLANDS & WATERCOURSE
COMMISSIONS FROM PLANNING AND ZONING COMMISSIONS**

BACKGROUND

In 1972, the state legislature passed the Inland Wetlands and Watercourses Act (hereafter referred to as “the Act”). The Act states: *It is hereby declared to be public policy of the state to require municipal regulation of activities affecting the wetlands and watercourses within the territorial limits of the various municipalities or districts.*

The Act also required each town to establish an inland wetlands agency or to authorize an existing board or commission to carry out the provisions of the Act by 1988. Most towns either established a separate commission or assigned the responsibility to the conservation commission. A very small number assigned the responsibility to the Planning and Zoning Commission. Currently there are approximately 105 separate inland wetlands commissions and 65 combined wetlands commissions in Connecticut’s 169 towns. (One town has two commissions, one within a city district). Of those 65 combined agencies, only five are combined with the planning and zoning commission.

Under the Act, **Inland Wetlands and Watercourse agencies** are responsible for:

- (1) regulating the activities that could impact wetlands and watercourses within the community;
- (2) establishing a process to amend or change (redefine) boundaries of wetlands and watercourses within the town;
- (3) defining a permit application process (including application form, notice and publication requirements);
- (4) establishing criteria and procedures for the review of applications;
- (5) administration and enforcement.

Because of the technical and legal complexity of inland wetlands regulation, IWW agencies are required, by state statute, to participate in a training program (CGS 22a-42 (d)). At least one member of the inland wetlands agency or agency staff must be a person who has completed the comprehensive training program developed by the DEP. Each inland wetlands agency must hold a meeting at least once annually at which information is presented to the members of the agency, which summarizes the provisions of the training program. There is no statutory requirement for training for P&Z commissioners.

A Planning and Zoning Commission is “responsible for guiding the physical growth of the community principally through the administration of the Subdivision and Zoning Regulations, which provide standards for land use and development consistent with the needs of the community. The Commission further provides recommendations for future

land use throughout the Town through the Plan of Conservation and Development”.
[From Farmington Town Website]

It is obvious that the duties of planning / zoning and inland wetlands agencies are, by their very nature and statutory requirements, distinctly different. This difference serves as a “check and balance” in local land use decision-making. The two-commission approach is “best management” structure adopted by towns that want to provide an equal playing field in the protection of their inland wetlands as an important natural resource, while considering development within their boundaries.

POSITION OF THE FARMINGTON LAND TRUST, INC.

It is the opinion of THE FARMINGTON LAND TRUST, INC. (FLT) that separate commissions should perform the planning & zoning and wetlands & watercourses functions. We recommend that the town council establish a separate appointed inland wetlands and watercourse agency to regulate the inland wetland and watercourse permitting process.

RATIONALE

1. Combined commissions cannot give adequate attention to each of their component functions. The wetlands function is time and energy consuming. It requires review and interpretation of technical data in order to properly rule on applications. Commissioners need to make site visits to form valid opinions, and this task is often omitted. Furthermore, combined TPZ/IWW commissions often require prolonged agendas causing meetings to go long into the night.

The Planning and Zoning function suffers as well. Statutory TPZ duties, including review of individual development proposals, maintenance of regulations and the update every 10 years of the Town’s Plan of Conservation and Development, compete for attention with IWW matters. Our TPZ is tasked with planning functions such as updating our Plan of Conservation and Development. In fact, to deal with the volume of work, the Farmington TPZ delegated IWW review to the Conservation Commission, which holds formal hearings on each wetlands application.

2. Different land use agencies require different kinds of expertise. As stated by the Connecticut Association of Conservation and Inland Wetlands Commissions [CACIWC] in their position paper: “An inland wetlands commissioner must have a working knowledge of Connecticut’s Inland Wetlands and Watercourses Act and the town’s inland wetland regulations. Inland Wetlands commissioners must be knowledgeable about the processes and functions of the wetlands and watercourses they are asked to protect. They must also have a broad understanding of soil science, hydrology, non-point source pollution controls, storm water management “best management practices”, and soil and

erosion controls. A wetlands commissioner must also be able to understand and consider court actions that shape the legal boundaries of the Act”.

Even the best volunteers for commissions may come to this work without specific training or experience, and need to learn on the job. Some may be skilled in either TPZ or IWW functions, but to have both skills may not be possible. In any case, there may be a long learning curve - and to force commissioners to “learn more, learn it faster and apply it sooner” is not good for the community.

3. A commission with the combined functions of planning, zoning, and inland wetlands is less likely to be fully effective in meeting the town’s responsibility to carry out the intent of the Inland Wetlands and Watercourses Act. Having a single knowledgeable commission that knows its own regulations and understands the science involved can result in a more effective and efficient application and decision process. A combined TPZ and IWW must operate under three sets of town regulations derived from Connecticut General Statutes that define their respective powers and duties. (CGS Chapters 124, 126 and 440). Care must be taken by commissioners to distinguish between their planning & zoning functions and inland wetlands functions. The combined agency must ensure that the functions are treated separately and distinctly. (*Ref. Michael A. Zizka, What’s Legally Required? A Guide to the Legal Rules for Making Local Land-Use Decisions in the State of Connecticut; 7th Edition, DEP Bulletin 39, 2004*). A separate IWW commission will use a single set of regulations in making decisions on an application. It will also avoid potential bias and the potential for a legal challenge.

An additional legal issue is that of prejudgment and/or conflict of interest. There is a risk that general statements made about conservation topics could be viewed as an indication of predisposition for or against a particular application. This situation may become the basis for a challenge to its decisions.

4. Conservation Commissions have their own municipal powers and duties that can be compromised by requiring their review of inland wetlands applications. Conservation Commissions have statutory responsibility for conducting land use research, and providing leadership in identifying and protecting critical open space and important natural resources within the community. These duties have increased due to the Town’s aggressive acquisition of open space. The TPZ Commission’s procedure of out-sourcing inland wetlands reviews to the Conservation Commission significantly impacts the Conservation Commission’s ability to focus on these duties. Over the last two years, eight towns have established new conservation commissions specifically because of the need to research and advise the municipality and the community on protection of natural resources and open space.

Further, the TPZ procedure of requesting review of inland wetlands applications from the Conservation Commission can be confusing. Which TPZ function is the Conservation Commission responding to? When wearing its “inland wetlands hat”, the TPZ is limited

to consideration of impacts on wetlands and watercourses and aquatic, plant, or animal life and habitats therein. But under its “planning and zoning hat”, the TPZ can consider broader environmental impacts, such as loss of meadow habitat for an endangered bird species in the area, loss of a wildlife corridor, or loss of a parcel that might serve as a greenway connecting two open space parcels. Comment from the Conservation Commission in this capacity responds directly to the Conservation Commission’s statutory duties. The role of the Conservation Commission in providing information on these broader environmental considerations to the TPZ is critical to the community, and should continue for applications to TPZ that may impact a natural resource.

5. The Inland Wetlands and Watercourse agency should be appointed, not elected.

IWW reviews require a good deal of technical training and an appointed agency allows the Town the opportunity to recruit residents who have the training but who are not interested in running a campaign for office. Freedom from biennial campaigns for office would likely result in greater longevity for commissioners and maintain core expertise on the IWW Commission. This would free commissioners from political pressures, and from the time and energy required for biennial campaigns for office. Greater longevity and expertise would likely result, and would benefit the wetlands commission. The Planning and Zoning Commission is elected on a rotating basis, and the election process may motivate commissioners to compete for the greatest number of votes. This may lead to frictions which could interfere with good IWW decision-making.

6. Separating TPZ and IWW commissions would lighten the burden of overworked commissioners and make this volunteer work more attractive. Many people have an interest in protecting the environment. We believe that establishing a separate commission that focuses on protection of wetlands and watercourses, critical natural resources to the community, will attract volunteers.

7. Trends in developable land availability and development pressures have changed the tasks undertaken by TPZ and IWW agencies. In 1986, when the combined TPZ/IWW was created, developable land was less scarce, and building sites were not as likely to contain or abut wetlands or watercourses. Today however, developers are looking for creative ways to fit their projects into the dwindling landscape. Critical wetlands and watercourses and adjacent buffer areas are increasingly under development pressures. The result is an exponential increase in complexity of issues that need to be addressed, and a corresponding increase in the time and knowledge base that is required to address them. We are in fact dealing with 21st century problems with an inadequate 30-year-old mechanism.

8. It is the unanimous opinion of experts in conservation and planning that TPZ and IWW functions should not be combined. Vigorous statements to this effect are the position paper of CACIWC, and DEP Commissioner Gina McCarthy’s recent letter to Waterbury IWW Commissioners. Attorney Zizka’s publication [see #3 above] also supports this view. There are current efforts in three of the five towns that have combined

TPZ and IWW commissions to separate these functions. The opinions of experts should not be ignored, nor should contemporary trends in municipal “best practices”.

IN SUMMARY

The Farmington Land Trust recommends that the Farmington Town Council establish a separate appointed Inland Wetland and Watercourse Agency.

The Farmington Land Trust, Inc. [FLT] is a private voluntary organization, which protects by conservation easement or fee ownership 270-plus acres of open space in our Town. Our mission includes “stewardship practices that restore biological diversity and promote wildlife habitat; education of the public, government and business community about the importance of open space; and advocacy at local and state levels for policies and actions that ensure long term protection of Farmington’s natural resources”. FLT was founded in 1971 and has a membership of approximately 600 households. We issue this position statement pursuant to our mission, and in hopes that if implemented, the separation of IWW and TPZ will enable our Town to better protect its dwindling natural resources.

Approved by the Farmington Land Trust Board on February 15, 2007