



**BY-LAWS OF THE POMFRET
INLAND WETLANDS AND WATERCOURSES
AGENCY**

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Pomfret Inland Wetlands and Watercourses Commission Effective date: March 1,
2005, Adopted at the regular monthly meeting on February 9, 2005.

TOWN OF POMFRET
By-Laws
Inland Wetlands and Watercourses Agency

Section 1. Purpose and Authorization

The objectives and purposes of the Town of Pomfret Inland Wetlands and Watercourses Commission are those set fourth in the Connecticut General Statutes Section 22a-36 through 22a-45 as amended and those powers and duties delegated to the Town of Pomfret Inland Wetlands and Watercourses Commission by the aforementioned statutes and by ordinances enacted by the Town of Pomfret.

Section 2. Name

The Town of Pomfret Inland Wetlands and Watercourses Commission hereafter is also known as “Agency”.

Section 3. Location and Records

The office of the Agency shall be the Town Office Building, 5 Haven Road; Pomfret Center, 06259 where all official Agency records, documents and maps, etc., will be kept and filed or recorded by the office of Town Clerk as appropriate.

Section 4. Membership

- A. The Agency shall consist of seven (7) members and three (3) alternate members appointed by the Board of Selectmen with terms of four (4) years or as prescribed by the ordinance as amended establishing the Agency.
- B. Resignation from the Agency shall be in writing and submitted to the Chairman and/or the First Selectman.
- C. The chairman will inform the First Selectman of any member or alternate member who misses three (3) consecutive meetings or 50 % of the Agency’s regular meetings in one calendar year, and that unless there are compelling and/or extenuating circumstances as determined by a two thirds vote by the members, that member or alternate member shall be considered to have resigned from the Agency and may be replaced by the Board of Selectmen. The member affected by this action will be notified by the chairman in writing promptly but not later than ten (10) days after such action by the Agency.

Section 4. Officers and Their Duties

- A. The officer’s of the Agency shall consist of a Chairman, a Vice Chairman, and a Secretary.

1. The Chairman shall preside at all meetings and hearings of the Agency and shall exercise those duties normally conferred by parliamentary custom and usage. The Chairman shall have the authority to appoint committees, boards of inquiry, certify expenditures of funds up to \$150.00 without prior approval of the Agency, call special meetings of the Agency, delegate signature authority to specified agency officers and generally perform other duties as related to wetlands and watercourses issues.
 2. The Chairman shall keep the Board of Selectmen informed of significant wetlands and watercourses issues and other business matters deemed by the Agency important to the Town of Pomfret and shall have the privilege of discussing all issues before the Agency and of voting thereon. The Chairman may not assume powers not granted by the Agency as executive privilege.
 3. Should the Chairman find it necessary to reclude himself or otherwise leave a meeting in progress; the Chairman shall designate the next senior officer present as Acting Chairman. If no other officer is present, the Chairman may designate a member as Acting Chairman during his or her absence.
- B. In the absence of the Chairman, the Vice Chairman shall preside and have all the powers and responsibilities of the Chairman as stated in these by-laws. However, should the Chairman arrive after the start of the meeting he or she shall be recognized by the Acting Chairman. The Chairman shall then preside over the remainder of the meeting.
- C. In the event all elected officers are absent at the start of a meeting, any member may be elected as Acting Chairman for the meeting by a majority vote of those members present and there is a quorum (4 members) present.
- D. In addition to serving as Acting Chairman when circumstances dictate, the Secretary shall be responsible for insuring that all official Agency correspondence is properly and timely executed in accordance with Connecticut state statutes, the Agency's regulations, the Agency's by-laws, written communication with the town's citizens concerning wetlands or watercourses issues and most importantly to address through the local media a public relations initiative so as to inform and educate the public concerning wetlands and watercourses concerns, regulated activities, the permitting process and the restrictions involved where wetlands anywhere may be adversely impacted. In addition, the Secretary will monitor the Agency's financial status and submit reports to the Agency as appropriate but not later than January 1 annually.

Section 5. Members, Alternate Members and their Duties

- A. For the purpose of these by-laws Agency members and alternate members are considered the same with equal responsibilities and obligations unless otherwise stated.
- B. The primary function of an Agency member is to listen, question, consider, judge and finally to decide and then vote to approve or deny an application for a wetlands permit. However, Agency members also have the following responsibilities.
 - 1. Attend all meetings and public hearings.
 - 2. Notify the Chairman or the Agency's Clerk when one's absence or late attendance at a scheduled meeting or public hearing is anticipated.
 - 3. Members are encouraged to review pending applications along with their associated documents and site plans prior to meetings or public hearings in which those applications are scheduled for review and discussion by the Agency and to participate in site walks pertaining to same when feasible. However, not more than 3 members shall be present during the site walk so as to avoid the site walk from becoming a public meeting. A special site walk may be requested by any member or alternate member and arranged by the Agency's Clerk.
 - 4. If a public hearing is not scheduled to take place, questions may be asked of the applicant or his or her representative during a site walk to clarify details not made clear in the application or site plan. However, expression of opinions, advice or other extraneous comments or any other discussion concerning the application is improper and to be avoided. Members are reminded that if the site walk is part of the public hearing process, no questions or comments are appropriate. See Section 12. Conduct of Public Hearings.
 - 5. All members should seek the knowledge needed to fully participate in meeting deliberations and to address pertinent questions to applicants and witnesses so as to make informed decisions concerning wetlands and watercourses issues. In this respect personal research, attendance at workshops, seminars and conferences dealing with land use and wetlands and watercourses issues is fundamental to meeting one's responsibilities as an Agency member.
 - 6. Use of personal knowledge is allowed when considering a pending application. Agency members are not required to accept the testimony of any witness to include staff, consultants or any so called expert witnesses. However, unless such testimony is challenged at the public meeting a member may not disregard the only expert testimony oral or written on an issue. Members who do possess expert or exceptional

knowledge derived from professional, academic or practical experience must disclose such knowledge on the record during the hearing. Members may submit a resume documenting their expertise and/or experience to the Agency, and are encouraged to do so, to be entered into the public record as appropriate in order to qualify as an expert witness or at least to be recognized as an informed member as opposed to the assumption that all laymen are uninformed.

- C. The Agency does not assume that its members must have no opinion on public or environmental matters that may impact the public interest in the Town of Pomfret. A legal challenge alleging prejudgment (predisposition) by an Agency member concerning a wetlands issue or concerns about a project's merits must be proved in a court of law to overturn an Agency decision. Members are reminded that in order to avoid the potential for legal challenge to its mission to protect Connecticut's wetlands and watercourses they must not discuss Agency business with anyone outside of the public hearing process (ex parte communications). If they do, they expose themselves, the Agency and the Town of Pomfret, and the applicant to potentially expensive and embarrassing litigation. Members must keep opinions to themselves but make every effort to know the facts concerning an issue and then act and vote using this knowledge as a matter of good conscious to decide the issue.
- D. Any regular or alternate member acting on matters where he or she was absent from a meeting or public hearing must affirm on the record that he or she has listened to the taped testimony as presented during the hearing or reviewed all documents presented at the hearing in which the absence occurred and that he or she therefore is qualified to participate and vote on the matter under discussion.
- E. Members shall not serve more than three (3) consecutive four (4) year terms, except that if the Agency agrees by two thirds vote of its regular commission members present, that the member should be reappointed for an additional term by the Board of Selectmen.
- F. Any member who feels that he or she can no longer meet the responsibilities of the appointed office due to illness, change in circumstance, or because of disinterest or for any other reason should inform the chairman and the First Selectman in writing and remove his or herself from membership. It is the noble and right thing to do, and there is no dishonor in doing so.

Section 6. Staff and their Duties

- A. The Agency shall appoint a duly Authorized Agent(s) hereafter referred to as the Wetlands Enforcement Officer or the W.E.O. to carry out specific functions and duties authorized by the Agency. Such functions include but are not limited to the following:

1. Advise the public when one must apply to the IWWC for a wetlands permit in order to conduct activities in a regulated area or to apply for a ruling in order to proceed with a project that does not involve or affect a wetlands or watercourse in any way. Requests for a ruling shall be made on a form provided by the Agency. If a wetlands permit is not required, the Agent may make such ruling at no cost to the person(s) concerned. The Agent must document the reasons why his or her ruling was appropriate and submit a written report to the Agency for its review at its next regularly scheduled meeting. Section 12.2 of the regulations shall apply, with the exception that public notice of the ruling shall not be required. The recipient of the ruling will be informed that Agency review of the ruling will occur at its next regularly scheduled meeting. Should there be a question or problem, they will be informed promptly.
2. Make jurisdictional rulings in accordance with Section 12, Pomfret Inland Wetlands and Watercourses Regulations, except in Section 12.1 any impact on wetlands or watercourses whether minimal or not at any location on or off of the applicants property must be documented and explained to the Agency at its regular meeting. By rendering a ruling in favor of an applicant the W.E.O. certifies that the conditions set forth in Section 6, of the Agencies regulations and Sec. 22a-41, inclusive of the Connecticut General Statutes have been fully reviewed and met.
3. Issue orders to cease and desist any activity found injurious to a wetland or watercourse in the Town of Pomfret. Such order will be followed with a notice of violation as set forth in Section 22a-44a, Connecticut General Statutes and Section 14.3 of the Agency's Regulations.
4. Enforce permit compliance by regular inspections at work sites with particular emphasis on conditions imposed by the Agency as a condition of permit approval. The Agency shall be informed promptly if the W.E.O. finds a condition of noncompliance. Where technical matters are involved and which are not within the W.E.O.'s area of expertise, guidance from Town Staff should be obtained. A final inspection of the site in conjunction with the Town Engineer's on site compliance review, if required, shall be made in accordance with the Agency's wetlands permit approval and the Agency so informed by written report at its next monthly meeting.
5. Respond to and investigate promptly a citizen's complaint or report of an alleged wetlands or watercourses violation. If the complaint or condition is found to be valid the chairman will be informed immediately. Section 14.3 of the Agency's regulations shall apply. All findings will be documented in writing and a report made to the Agency at its next scheduled meeting so as to be formally entered into

the public record unless the chairman calls a special meeting. If personal safety is believed a factor during the conduct of an investigation, Connecticut State Police assistance should be requested.

6. The W.E.O. shall make a written report to the members at its regular meetings. The report shall consist of a description of the circumstances and the reasons for all jurisdictional rulings made and any other matters pertaining to wetlands and watercourses issues in which the agent was involved. Any ruling or decision made by the W.E.O. is subject to approval by the Agency. The W.E.O. may be assigned other duties as determined by the Agency. It is expected that the W.E.O. will make every effort to enhance his or her knowledge concerning inland wetlands and watercourses land use issues through academic programs, workshops, seminars conferences, etc.
- B. The Agency shall have a recording staff clerk who shall attend all meetings and hearings, keep the minutes, transcribe testimony from public hearings as required or directed by the Agency and maintain the records of the Agency. should the clerk be unable to attend the meeting or public hearing alternate arrangements shall be made to insure the minutes are recorded and that other pertinent testimony and documents are preserved as part of the public record. In addition, the recording clerk shall:
1. Prepare the Agency's meeting agenda of regular, public and special meetings under the direction of the chairman or secretary and so inform the members and the public by the appropriate means.
 2. Arrange and insure mandated legal notices, meeting announcements and all other administrative matters related to the Agency's public responsibilities are served and/or accomplished at the appropriate time.
 3. Attend to Agency correspondence so as to insure that all correspondence addressed to the agency is entered into the public record as appropriate, that the conditions of the Freedom of Information Act (F.O.I) are met, and to inform the members of important issues or other significant inland wetlands and watercourses matters as circumstances dictate at any time.
 4. Arrange and insure that all required public notices of Agency decisions to include notification of the applicant, are accomplished pursuant to the Agency's regulations and the Connecticut General Statutes through appropriate correspondence and/or media channels.
 5. Collect and record permit application fees and/or deposits required by Town Ordinance and as implemented by Section 19 and Appendix A of the Agency's regulations. Fees and/or deposits not paid will be reported to the Agency at its next scheduled monthly meeting. No

permit shall be issued until all fees and processing costs have been paid, and all surety requirements have been met.

6. Represent the Agency with the public on a day-to-day basis so as to provide information concerning wetlands and watercourses issues, application for wetlands permits, and Agency procedures as to the processing of applications etc. to those individuals or parties requesting such information in a prompt and courteous manner. Inform by registered mail surety co-owners(s) when the Agency directs an account withdrawal be made in order to reimburse the Town for an expense associated with the permitting process. Notice shall be made within seven (7) days of the Agency's decision.
7. Inform the Pomfret Planning and Zoning Commission by written report within fifteen (15) days the results of all permit reviews and/or decisions by the Agency or its authorized agent(s). The report shall contain as a minimum the reasons for the Agency's decision, permit conditions if imposed, and specific reference to the site plan reviewed and approved. Perform other duties as required.

Section 7. Election of Officers

- A. The first meeting in December shall be the annual organizational meeting, at which time officers will be elected and by-laws reviewed and made part of the minutes of the meeting. All members must be notified of the annual meeting before election of officers can take place.
- B. A candidate receiving a majority vote from the entire membership of the Agency shall be declared elected and shall serve for one year beginning January 1 or until his or her successor takes office.
- C. Officers shall not serve more than four (4) consecutive terms in their respective positions unless by a two-thirds vote by the regular members and alternate members present an exception to these by-laws is deemed appropriate because of the officer's exceptional leadership to achieve the Agency's goals, his or her contribution in time and expertise to achieve such goals and most importantly, his or her clearly demonstrated dedication to upholding the principals of the state legislative finding as set forth in Sec. 22a-36 of the Connecticut General Statutes.
- D. Vacancies in office shall be filled by regular election procedure.

Section 8. Meetings

- A. Regular meetings shall be on the first Wednesday of each month at 7:00 p.m. in the Town Office Building unless otherwise scheduled by the Agency and the agenda shall be filled in the office of the Town Clerk not less than three business days before the meeting. If at any time any regular meeting falls on a holiday, such regular meeting shall be held as soon as possible thereafter.
- B. A majority of the voting membership of the Agency shall constitute a quorum, which is defined as 4 members, and the number of votes necessary to transact business shall be four (4) seated members, which constitutes a majority of the Agency. All members of the Agency shall vote and the vote by members shall be noted in the minutes. A majority vote of a quorum shall constitute a vote. The chairman has all the voting privileges of any member, which means that he or she can vote to abstain as opposed to voting to break a tie vote. A tie vote is when 50% of the members vote in favor and 50% vote against. If a tie vote, the motion fails. An abstention vote is a zero vote and does not count in the decision process. An abstention vote by a member means to disqualify his or herself for cause.
- C. All Agency meetings shall be open to the public unless closed by the two-thirds vote of the members (5) for an executive session pursuant to Connecticut General Statute Section 1-200, Freedom of Information Act. Executive sessions closed to the public shall be limited to the type of discussions specified by said act.
- D. Alternate members may be seated at the discretion of the chairman unless it is necessary to establish a quorum. If an alternate member is seated at the beginning of a meeting to replace an absent member another member who arrives late shall not replace him or her at the discretion of the chairman. Alternate members not seated may take part in the meeting discussions, ask questions and present views concerning the issue or issues under discussion but shall not vote except for the election of officers.

Section 9. Conflict of Interest and Disqualifications

- A. No member of the Agency shall participate in a hearing or vote concerning any matter in which he or she (or any member of his or her immediate family) are directly or indirectly financially involved and/or are an abutter of the property or activity under discussion. However, the abutter restriction does not preclude or limit a member's responsibility to report to the Agency seen or alleged wetlands and watercourses violations or other circumstances that may adversely impact on the State's water resources.
- B. Members may not appear for or represent a person, firm, corporation, or any other entity in any matter pending before the Agency. In addition, the real or public appearance of a conflict of interest because of social or professional association with the applicant or his or her representatives is grounds to

recluse oneself from the proceeding.

Section 10. Order of Business

A. The order of business at regular meetings shall be:

1. Open meeting and call to order.
2. Seat an alternate member or members as needed (not to exceed seven (7) members).
3. Address pending applications.
4. Solicit citizen's comments (limited to applications not pending before the Agency).
5. Review new applications.
6. Review notice of violations status.
7. Review jurisdictional rulings.
8. Review status of prior applications with conditions.
9. Conduct Agency Business
10. Solicit additional citizen's comments as indicated.
11. Comments by Agency members.
12. Move for adjournment.

B. The chairman shall have the discretion to change the order of business should circumstances dictate.

Section 11. Public Hearings

- A. All applications, maps, and documents relating to the hearing shall be open for public inspection and review when received by the Agency staff clerk. Any person may appear and be heard at any public hearing.
- B. There is an assumption that if a public hearing is held for significant impact activity, or a petition signed by 25 qualified people, or in the public interest as determined by the Agency there is or may be significant wetlands and/or watercourse issues and concerns as defined under state statute and the Agency's regulations. What this means is that if there is a public hearing for any reason there is likely a wetland or watercourse issue involved "significant impact activity" or not.

- C. Where appropriate, public hearings may be completed in a single session. However, the hearing may be continued where necessary for the full development of testimony, full participation of the parties involved, public comments, and to adequately address member's questions. Technical information to include last minute site plan updates, delayed submission of required documents or requested presentation by expert witnesses are strong grounds for a public hearing continuance.

Section 12. Conduct of the Public Hearing

- A. The hearing shall be conducted for the purpose of taking testimony and presenting documents as part of the public record so as to be considered in deliberations by the Agency at its regular meeting or a special meeting called for that purpose after the close of the hearing.
- B. Site walks should be conducted when possible before commencement of the public hearing to avoid the walk being considered as part of the hearing. However, if a site walk is requested or considered desirable after the public hearing has been opened there must be legal notice or announced continuance so as to inform the public of the date, time and location of the site visit. While a quorum (4) of members present may not be required, members should make every effort to attend the hearing. Questions and comments must be recorded on a sound recording device for later transcription and made part of the public record. Personal notice to abutters or interveners or other interested parties are not required, but such notice is considered appropriate. If an Agency member does not attend the site walk, it does not disqualify him or her where there was no testimony at the walk, and at the reconvened hearing the results of the site walk were discussed. But if testimony or comments were made during the course of the site walk Section V of these By-Laws shall apply.
- D. The Agency's clerk shall make a record of the proceedings, record the testimony presented at the hearing and enter into the record all documents submitted. In addition, each hearing will be recorded on a sound recording device [in which the Agency's decision may be appealed in the courts]. Proceedings of the hearing shall be incorporated into the minutes of the Agency in sufficient detail so as to allow a full understanding by the public of the questions raised and the testimony presented at the hearing.
- E. The chairman of the Agency shall preside at the public hearing. In the event of the chairman's absence, the vice-chairman or the next ranking member shall preside at the hearing.
 - 1. The chairman shall open the hearing and prescribe procedures by which the hearing will be conducted and provide a summary of the question or issues to be considered by the Agency. Comments by the public and testimony presented by witnesses shall be limited to the

subject advertised for the hearing; in any event the Agency will have the privilege of speaking first. It shall be made clear at the hearing that all questions and comments must be directed through the Chair only after being properly recognized. A description of documents received by the Agency at the opening of the hearing shall be noted in the public record.

2. All persons recognized shall approach the hearing table or podium if present in order to facilitate the proper recording of comments. Before commenting on the matter before the hearing, each speaker shall give his/her name and address.
3. The chairman shall first call for statements from the applicant.
4. A party who intervenes pursuant to Section 22a-19, Connecticut General statutes and whose intervention has been documented as a properly verified pleading shall be recognized by the Agency following applicant's presentation. The Agency shall permit the intervener to present testimony and evidence concerning the issue so long as the testimony is limited to environmental issues that will unreasonably pollute the air, water or natural resources of Connecticut and that there are feasible and prudent alternatives to such conduct.
5. The applicant has the option of rebutting such claims through testimony and evidence, and shall be recognized by the Chair following the intervener's presentation to comment then or request a separate hearing in which to do so. In either case the intervener as well as the applicant shall be afforded all due process by being provided copies of all meeting, publication and hearing notices, and in addition be provided the opportunity to review all testimony and documents presented as part of the public record.
6. Any member of the Agency has the right to recluse himself or herself from a public hearing at any time. Such action shall be recorded in the public record of the hearing. If the member then wishes to participate in the proceedings, he or she does so as a member of the public and not the Agency and may not be part of any future deliberations concerning the issue or vote on its outcome. As a matter of Agency policy members are strongly urged to avoid any public debate concerning a wetlands or watercourse land use issue.
7. No questions may be asked of the Agency members but the public may question witnesses. The public may comment concerning the issues presented and may express their views as to the merits of the applicant's testimony or if appropriate an intervener's pleading.

Section 13. Agency Deliberations After the Public Hearing Is Closed

- A. Testimony and documentary evidence not entered into the public record during the hearing shall not be considered in a final decision to approve, approve with conditions or deny an application after the public hearing has been closed.
 - 1. Expert testimony presented by the applicant or intervener unless questioned at the open hearing may not be disregarded.
 - 2. The Agency can consider probable or foreseeable consequences of its decision even if not shown on plans.
- B. After the public hearing has been closed a motion to approve, to approve with conditions or to deny may prepared by any member (or alternate member if he or she assumes being seated as a member during the process) before deliberations by the Agency begin, however, such motions should not be discussed with other members until presented at the scheduled meeting in which such motions would be appropriate.

Section 14. Decision

- A. An application determined not to be complete may be denied. In addition, fees not paid shall result in a finding that the application is not complete and thus a reason for application denial. The applicant and/or owner(s) of the property must pay all fees and application processing costs to the Town of Pomfret before a wetlands permit may be granted. Further, no wetlands permit may be issued by the Agency or its agent(s) until all surety requirements have been met.
- B. If the Agency finds that the proposed activity may have a significant impact on wetlands or watercourses, the application will be denied unless the Agency finds on the basis of the record that a feasible and prudent alternative to the proposed activity does not exist. The Agency, however, is not bound by the applicant's failure to identify a feasible and prudent alternative and may through its own consultants and expert witnesses determine that a feasible and prudent alternative does exist.
- C. If the Agency finds such impacts on wetlands and watercourses are not significant, the feasible and prudent test does not apply and the Agency must approve with or without conditions the application.
- D. The Agency must notify the applicant of its decision within 15 days by registered mail return receipt requested and publish notice of the decision in a newspaper having general circulation in the town.

Section 15. Employees

- A. The Town of Pomfret is the employer of staff not the Agency. Only the appointment of the duly appointed agent(s) (appointed by the Agency pursuant to state statute) may be terminated by the Agency for cause and shall require a vote by two-thirds of its members (5) at an executive session unless the agent wishes the session to be public.
- B. The chairman in conjunction with the Agency's elected officers shall review the job performance of staff on a continuing basis. The chairman shall counsel individual staff members so as to correct deficiencies and improve performance. The chairman may also inform the First Selectman of unsatisfactory staff member job performance and may recommend removal.

Section 16. Committees

- A. The chairman may appoint committees to inform the public concerning wetlands issues, to investigate complaints or to conduct inquiries to determine the facts concerning wetland and watercourses violations within the Agency's jurisdiction, to monitor legal (court decisions concerning wetlands or watercourses impacts), conditions of permit approval, or regulatory issues (DEP and state legislature) of which the Agency should be made aware.
- B. There shall be two (2) standing committees designated by the chairman:
 - 1. Regulatory Committee.
 - 2. Public Relations Committee.

Section 17. Public Relations

- A. The chairman or an appointed Agency member shall act as public spokesman for the Agency. Staff members may assist in the execution of these duties. This does not exclude any member from responding to and informing the public as to wetland and watercourses facts, or providing information concerning procedural requirements of the wetlands and watercourses regulations or state statutes as they apply to wetlands and watercourses issues. However, members are cautioned that it is not in the public's interest or the Agency's to express their opinions concerning specific wetlands or watercourses issues that may at some time need to be addressed by the Agency.
- B. As a matter of courtesy, public inquiries and complaints submitted to the Agency in writing by any person or party will be acknowledged in writing by the Agency and such correspondence signed by the chairman or his or her designated representative. Such entities must fully identify themselves and make clear their concerns on the record and are to be encouraged to do so in writing. Upon completion of the Agency's inquiry and after the facts

determined, the chairman will inform the inquirer or complainant in writing promptly as to the findings of the inquiry and a status report concerning the circumstances made to the members at their next regularly scheduled meeting.

- C. The Public Relations Committee shall prepare a series of informational articles addressing statutory, regulatory or common views concerning wetlands and watercourses requirements that may impact on the citizens of Pomfret. Agency members should review the articles when prepared and recommend staff review when considered necessary.



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