



State of Connecticut -- Dept. of Environmental Protection
Gina McCarthy, Commissioner
www.ct.gov/dep

The Connecticut Inland Wetlands and Watercourses Act:
MUNICIPAL INLAND WETLANDS AGENCY
SITE WALKS
FOR PROPOSED PERMIT APPLICATIONS

Purpose

A site walk occurs when members of an Inland Wetlands Agency visit the site of a proposed project to gather facts and review information needed to understand an application that is before the agency. The purpose of a site walk is for agency members to acquaint themselves with the site by orienting themselves to the "lay of the land" as it pertains to the proposed project. Site walks can be very important because they enable agency members to get a better understanding of existing property conditions and any issues that are not apparent from looking at plans on paper.

Site walks are simply that, a walk of the site. Site walks are **NOT** an opportunity to ask questions of, or to participate in discussions with, the applicant or any of the applicant's experts that pertain to the merits of the application or that evaluate various alternatives. Discussion needs to be restricted to *orientation* and *location* of items referenced on the plans such as the location of landmarks, streams, wetland boundaries, footprints of proposed construction and so forth.

Administration

Before conducting any type of site walk an Inland Wetlands Agency *must*:

1. Obtain permission from the property owner to enter onto the property;
2. Provide notice to all parties (the applicant, property owner, and any intervenors) so that they may have the opportunity to be present and to observe the site walk.

An agency's best approach to obtain such permission is via the inland wetlands application itself. The application should contain *at a minimum* a statement indicating that a site walk may be necessary to obtain essential information in order for the agency to make a decision on the application, and a statement that the owner may sign granting permission to enter the property. It is prudent for the inland wetlands agency to consult with their attorney in developing these statements. Sample authorizing language is as follows:

I hereby authorize members and staff of the (TOWN) Inland Wetlands Agency to conduct a site walk(s) of the property for the purposes of understanding existing property conditions, which may be necessary in order to make a decision on this application. Such site walk(s) will be conducted at reasonable times. (SIGNATURE)

The Inland Wetlands Agency should always follow the site walk with written minutes that are made part of the record and are provided to the applicant and any intervenors.

The Inland Wetlands Agency has an obligation to obtain all the information it needs to make an intelligent and informed decision on the application. If the agency determines that a site walk is necessary to properly evaluate an application that is before them, and the property owner refuses to allow access to the site, the agency will be required to process the application with the information that is available for consideration.

Strategies

There are various strategies for conducting a site walk. They are as follows:

1. ***Each Individual Agency Member Conducts a Site Walk:*** One approach to conducting a site walk is for the agency to agree that each member will visit the site individually when he or she has a chance, and after notice has been provided to all parties. In this situation a formal meeting of the agency is not being conducted and therefore notice requirements to the public under the Freedom of Information Act do not apply. However, since numerous members visiting a site on many different occasions may see different things, it is *imperative* that *each* member report, at the next regularly scheduled meeting, his or her observations. This enables all parties involved (applicant, agency, and intervenors) to know and understand the information the individual agency members obtained, and allows for the record of the agency's consideration of the application to be as complete as possible. This can become cumbersome. Further, there may be a situation in which the property owner refuses to allow a particular agency member access to the property for a site walk. In this circumstance that particular agency member will have to rely on the observations of the other agency members.
2. ***Two or Three Individuals of the Agency Conduct the Site Walk:*** One or a number of individuals of the agency, so long as the group does *not* comprise a quorum, may conduct a site walk after providing notice to all parties. In this situation a formal meeting of the agency is not being conducted and therefore notice requirements to the public under the Freedom of Information Act do not apply. It is *imperative* that *all* of the agency member(s) conducting the site walk report to the agency, at the next regularly scheduled meeting, what was observed during the site walk. This enables all parties involved (applicant, agency, and intervenors) to know and understand the information the agency is relying on to make its decision.
3. ***Quorum of the Agency:*** If a quorum of the agency attends the site walk, it is by definition a public meeting, and it *must* comply fully with the Freedom of Information Act in addition to the Inland Wetlands and Watercourses Act. The agency must provide notice to all parties *as well as* Freedom of Information Act notice to the public, take proper minutes, and allow unrestricted intervenor attendance as well as public attendance. This raises a potential conflict between public rights and the rights of the property owner. The property owner has the right to restrict access to the site and may not allow the entire agency, intervenors, and/or the public access to the property. A legally sufficient public meeting cannot be conducted if a party to the proceedings or the public is not allowed to attend such meeting (prohibited

from entering the property). Therefore, the agency will be seriously hampered in terms of its ability to comply with both the Inland Wetlands and Watercourses Act and the Freedom of Information Act. A quorum of the agency should avoid conducting a site walk, in other words a public meeting at the site, if the property owner restricts site access to intervenors and/or the public. Further, if a site walk is conducted by a quorum of the agency, it is possible that a large group of people will be in attendance. It is of the utmost importance to conduct the site walk in silence in order to avoid discussions other than those needed for orientation and location of items referenced on the plans. It is strongly suggested that all necessary discussion be handled in a controlled fashion and be directed through the chair person so that all in attendance can hear such discussion.

4. **Agency Staff:** An alternative to agency members or the entire agency conducting a site walk is to have the agency's staff, a non-voting member of the agency, conduct such site walk. This may avoid various legal issues relating to property access to the public, inappropriate discussion, meeting notice concerns, etc. as this strategy does not entail an agency meeting. In this situation the staff person conducts the site walk gathering facts about site conditions, and reports all findings back to the full agency at the next regularly scheduled meeting. It is recommended that this report be presented as a written report and should be referenced for receipt by the agency as an agenda item, and should be provided to all parties.

Whatever strategy is employed by an Inland Wetlands Agency, it is important to *remember* that site walks are no more than an opportunity for site orientation. No discussion regarding the merits of the application should take place. Discussion needs to be limited to orientation and location of items referenced on the plans. Discussions pertaining to the merits of the application are to occur at the agency's regularly scheduled meeting, and at its regularly scheduled place of meeting, where all parties have the benefit to hear and respond to such discussion, and where the public is allowed to attend and observe.