

INLAND WETLANDS AND WATERCOURSES COMMISSION

TOWN OF WALLINGFORD

REGULAR MEETING

WEDNESDAY, JANUARY 8, 2014

MINUTES

The Regular Meeting of the Wallingford Inland Wetlands and Watercourses Commission was held on Wednesday, January 8, 2014 in Council Chambers, Town Hall, 45 South Main Street, Wallingford, Connecticut.

Seated Commissioners were: Jim Vitali, Chairman; Nick Kern, Secretary; Dennis Murphy, Commissioner; Dave Parent, Commissioner; Michael Caruso, Alternate; Jim Heilman, Alternate; Erin O'Hare, Environmental and Natural Resources Planner.

Absent: Ellen Deutsch, Vice-Chairperson and Deborah Phillips, Alternate.

Chairman Vitali called the meeting to order at 7:02 p.m.

Voting members were: Commissioners Vitali, Kern, Murphy, Parent and Caruso

CONSIDERATION OF MINUTES

December 4, 2013 – Regular Meeting

**MR. PARENT: MOTION TO APPROVE THE REGULAR MEETING MINUTES OF
THE DECEMBER 4, 2013 MEETING**

MR. KERN: SECOND

**VOTE: HEILMAN-ABSTAIN; MURPHY – ABSTAIN ; CARUSO - YES;
KERN – YES; VITALI – YES; PARENT – YES.**

OLD BUSINESS

1. **#A10-5.3/803 North Farms Road** – Estates at Wallingford – Toll Brothers – (request for bond release) - WITHDRAWN

Ms. O'Hare said because some plantings are involved, the Applicant withdrew the request and will re-apply in the Spring to have their bond released.

2. **#A08-4.1/30 Thurston Drive** – (request for retroactive extension of one-year commencement date).

Owner/ Applicant, Robert Thurston, and Christopher Juliano, Licensed Surveyor, and P.E., of Juliano Associates, presented.

Mr. Juliano said he came before the IWWC at the December 4, 2013 Meeting requesting a retroactive commencement start date for the one-year portion of the permit. Because of economic considerations, Mr. Thurston was not able to proceed with the approved plan at the time. Mr. Juliano noted that Mr. Thurston did not realize he would have to return every year to the IWWC to request the one-year commencement date be continued.

He said two particular items were discussed at the Dec. 4 IWWC meeting: the mandatory retrofit of the detention basin and the stockpile area to the south of the building. Mr. Juliano said, the retrofit of the approved existing storm water management area has been included in the new plan along with the elimination of the stockpile area.

Mr. Juliano said the initial water quality swale on the west side of the interim parking area has been increased to a more formal temporary detention area. He said if the parking area is expanded, this temporary detention area would be removed and replaced with the more formal stormwater management area on the east. He said he believes that everything being proposed falls under the permit that was already approved. He said Ms. O'Hare feels that it is a modification, so another permit (IWWC #A14-1.2) was taken out just to cover all of the bases. He said the work being proposed currently, is much less that what was first proposed in 2008. He said 25% of the truck parking will be constructed and will not be paved at this time. He said the Applicant needs extra parking when quarterly meetings take place. He said the topsoil and underlying soils will be removed and gravel and processed stone will be installed to make the parking area a drivable surface.

Ms. O'Hare, citing from her Dec. 4, 2014 Environmental Planner's Report, said the IWWC should consider tonight the Applicant's original request to do a retroactive extension of the original one-year commencement date. She said this brings the 2008 permit alive.

Chairman Vitali asked if this were the case, would the new Application modification have a 30-day waiting period.

Ms. O'Hare said this application has not been sent around to staff and was received on Monday. She noted that with Applications, there is typically a month waiting period. She said requests are dealt with immediately.

Mr. Heilman expressed concern with the resurrection of something that is no longer in existence. He said this Application had a legal expiration date and is under the assumption that it had some legal meaning.

Mr. Kern said he believed after the December 4 meeting, that the Applicant was under some sense of direction to what the IWWC wanted completed, namely getting the retention pond up and running and functioning the way it was originally intended when it was installed. He said the Applicant did not have to spend monies removing the soils from the property and suggested a sedimentation fence be installed around the soils.

Mr. Parent asked if the Applicant could begin work on the retention pond if the old Application was brought back to life.

Mr. Juliano said if the one-year commencement date is done retroactively, the Applicant can begin work on the detention basin weather permitting.

Ms. O'Hare responded that in that case, the Applicant could begin work on the retention pond. She noted the IWWC could order the Applicant to repair the detention basin which has not been working for many years. She said if the IWWC decides to treat this Application as a new Application, not as a Modification, the Applicant loses the benefit of over a 14-year period – being able to expand the building on both sides and put in additional parking.

Chairman Vitali suggested incorporating the new plan onto the old Application.

Mr. Thurston said if a new Application had to be submitted, the plan would probably be changed in its entirety because over the past four or five years, ideas have changed of what is actually needed. He said he made a mistake in 2008 and looked 10 years down the road, but because of the economy, there was no need at that to add on, but now we are at the point now where we could add-on, the warehouse is full. He noted the plan would be completely redesigned.

Mr. Thurston said he would prefer to keep the stockpile on-site for the time being to be used for the parking lot. He wanted to level the stockpile out so it would be easier to mow.

Mr. Juliano said he would then have to work with Ms. O'Hare and Town Planner Kacie Costello on this issue because he had encountered resistance regarding the stockpile from Planning & Zoning.

Mr. Heilman said it appeared the Applicant had missed the mark for this season and suggested giving the IWWC the current plan or the old plan, or put the two plans together.

Mr. Juliano said he could submit the old plans to Ms. O'Hare by next week.

Chairman Vitali requested the Applicant withdraw the request, tie the two plans together and the existing permit will still be in effect .

Ms. O'Hare said by this action, the 2008 permit is null, goes away, and by February the Applicant will have a new 2013 permit.

3. **#A13-12.1/3A North Plains Industrial Road** – Keith Devit – (after-the-fact shed)

The Applicant Keith Devit, appeared before the IWWC.

Mr. Devit said he had submitted a map he had drawn. He said he installed the shed five-feet back from cement blocks located at the end of his driveway. He said the plan was approved by Planning & Zoning and the shed was installed where they approved it. Mr. Devit said he did not submit a plan to IWWC because he did not believe he would be near any wetlands.

Chairman Vitali told the Applicant that the property is near wetlands and in the floodplain.

Ms. O'Hare went over her Environmental Planner's Report dated January 2, 2014. She said this issue came to her attention because the Applicant had a Change-of-Use Application in front of Planning & Zoning. She said the Application had a surveyed site plan drawn by Juliano Associates. She said there was a violation years ago. She noted when she visited the site, she noticed the industrial storage shed was located in the Upland Review Area so a permit is required.

Ms. O'Hare said when she reviewed the plan, referred by Planning, the shed was not shown to be in the upland review area and this is why she was not alerted to this situation by Planning & Zoning and this is why they had initially approved the plan. Ms. O'Hare said the shed was moved back a few feet by the company that installed the shed, so it would not be located in the driveway.

Ms. O'Hare said she recommended the IWWC approve the Application because the shed is located on the edge of the URA and there is a gravel base under the shed which extends 11 feet behind the shed towards the wetlands, but the shed is 34 feet away from the flagged wetlands.

Chairman Vitali noted that Ms. O'Hare made reference several times in her EPR that such sheds have been approved in other areas, but as is well known, such sheds have been denied in other areas, under the same conditions. He asked Ms. O'Hare why she makes references in her EPR that sheds have been allowed in upland review areas, when a month ago, she indicated strongly that sheds should not be in the upland review areas.

Ms. O'Hare said those situations that the Chairman was referencing, where the sheds should not be in the upland review areas, had language written into their deeds that they would need a permit.

Chairman Vitali noted that such statements as this could be used against the IWWC at a later date with other people coming in.

Mr. Heilman said it would be important to highlight the differential between the two situations – one is a unique precedent, while the other is truly an accidental circumstance in an area that is quite different with a different circumstance. He said he agreed with Ms. O'Hare to approve.

Mr. Kern asked the Applicant if the original permit to build the site allowed him to disturb the area the shed is located in.

Mr. Devit said there is a plan that shows a turn to the right that goes into the parking spaces.

Mr. Parent wanted it noted for the record that there is a difference between this shed and the shed at "The Willows" and that the circumstances are different. He said the IWWC is making it clear that any approval is done as a result of completely different circumstances.

MR. PARENT: **MOTION THAT APPLICATION #A13-12.1/3A NORTH PLAINS
INDUSTRIAL ROAD –AFTER-THE-FACT SHED
BE DEEMED NOT A SIGNIFICANT ACTIVITY**

MR. MURPHY: **SECOND**

VOTE: **VITALI – YES; KERN –YES; MURPHY – YES; CARUSO – YES
PARENT – YES.**

MR.PARENT: **MOTION THAT APPLICATION #A13.12.1/3A NORTH PLAINS
INDUSTRIAL ROAD – AFTER-THE-FACT SHED BE APPROVED**

MR. MURPHY: **SECOND**

Mr. Kern commented at this time that he is voting in this particular way because he has seen the site, which is a disturbed site, and the shed, and asked the Applicant about the original Application and how much disturbance was allowed and this wasn't the after-the-fact shed as much as it fit the scenario of the scenery that is out there and this is the reason he is voting yes in this matter. It is not a "Willows" case and has its own merit which weighs strongly on our decisions.

VOTE: **VITALI – YES; KERN – YES; MURPHY – YES; PARENT – YES
CARUSO – YES.
UNANIMOUS**

NEW BUSINESS

1. **#A11-8.1/135 Fawn Drive** – Fawn Drive Associates, LLC – (request for extension of one-year commencement date)

In her Environmental Planner's Report dated January 2, 2014, Ms. O'Hare said that on December 5, 2012, the IWWC acted to extend the original permit commencement date, February 1, 2013, one-year to February 1, 2014. A site investigation conducted 12/24/13 indicated no changes to the property.

She said that, given there are no changes to the property and no enforcement action against this property, she recommended that the request for a one-year extension to the commencement date be granted.

Chairman Vitali entertained a motion to extend the one-year commencement date

MR. PARENT: **MOTION THAT APPLICATION #A11-8.1/135 FAWN DRIVE ASSOCIATES, LLC –REQUEST FOR EXTENSION OF ONE-YEAR COMMENCEMENT DATE BE APPROVED**

MR. MURPHY: **SECOND**

VOTE: **KERN – YES; PARENT – YES; VITALI – YES; MURPHY – YES CARUSO – YES**

RECEIPT OF NEW APPLICATIONS

1. **#A14-1.2/30 Thurston Drive** –Thurston Associates, LLC – (modification to permit #A08-4.1) – (Taken up above).

EXECUTIVE SESSION

1. **Executive Session pursuant to Connecticut General Statutes Section 1-225 (f) and Section 1-200 (6)(B) to discuss pending litigation: *Inland Wetlands and Watercourses Commission v. Lynn Cooke Andrews, et. al.***

MR. PARENT: **MOTION TO ENTER INTO EXECUTIVE SESSION PURSUANT TO CT GENERAL STATUTES SECTION 1-225(f) AND SECTION 1-200 (6) (B) TO DISCUSS PENDING LITIGATION: *INLAND WETLANDS AND WATERCOURSES COMMISSION V. LYNN COOK ANDREWS***

et al.

MR. MURPHY: **SECOND**

VOTE: **MURPHY – YES; VITALI –YES; PARENT – YES, CARUSO - YES**
KERN – YES.

The IWWC entered into Executive Session at 7:45 p.m.

The IWWC came out of Executive Session at 8:29 p.m. and continued with the Regular Meeting agenda.

REPORTS & COMMUNICATIONS

1. Northeast Utilities System – CL&P – notice re: scheduled maintenance on selected Rights of Way – (tree removal herbicide applications), dated 12/23/13

Ms. O'Hare said this correspondence from Northeast Utilities Systems was received on December 27, 2013 and entails routine maintenance of their right of ways throughout town and involves herbiciding of certain species and cutting down certain species. She said this is a maintenance activity and no permit is required.

VIOLATIONS – Nothing to report.

Chairman Vitali mentioned the Minutes of July 24, 2013 and suggested this issue be discussed next month with Ms. O'Hare either in Executive Session or in the public forum. He directed Ms. O'Hare to inform the Chairman of her decision in that regard and put it on the agenda.

ADJOURNMENT

Mr. Parent made a motion to adjourn the Meeting at 8:31 p.m. Mr. Murphy seconded the motion which passed unanimously.

Respectfully submitted,

Cynthia A. Kleist

Recording Secretary