

WALLINGFORD INLAND WETLANDS & WATERCOURSES COMMISSION

WEDNESDAY, DECEMBER 3, 2014

ROBERT EARLY AUDITORIUM, TOWN HALL

45 SOUTH MAIN STREET, WALLINGFORD, CT

MINUTES

The Regular Meeting of the Wallingford Inland Wetlands & Watercourses Commission was held on Wednesday, December 3, 2014, in Council Chambers, Town Hall, 45 South Main Street, Wallingford, CT.

Seated Commissioners were: Chairman Jim Vitali; Vice-Chair Ellen Deutsch; David Parent; Alternates Deborah Phillips; Jim Heilman; Erin O'Hare, Environmental and Natural Resources Planner.

Absent: Michael Caruso; David Murphy; and Nick Kern.

Chairman Vitali called the Meeting to order at 7:05 p.m.

Voting members were: Vitali, Deutsch, Parent; Phillips and Heilman.

CONSIDERATION OF MINUTES

1. Regular Meeting, Nov. 5, 2014, 7:00 p.m.

**MS. DEUTSCH: MOTION TO APPROVE THE NOVEMBER 5, 2014 MEETING
MINUTES AS PRESENTED**

MS. PHILLIPS: SECOND

**VOTE: HEILMAN-YES; DEUTSCH-YES; PHILLIPS-YES;
VITALI-ABSTAIN; PARENT-ABSTAIN**

D. OLD BUSINESS – NONE.

E. NEW BUSINESS

1. **#A14-1.1/2 Fairfield Boulevard** – Verna Home Builders, Inc. (consent to transfer permit #A10.1.1 to 2 Fairfield Boulevard Properties, LLC)

Ms. O'Hare explained that the new owner is Peter Gavin. Chairman Vitali asked if the clock had already started on the one-year to start activity. Ms. O'Hare said Verna started. She said they put in the silt fence and dug around.

Chairman Vitali entertained a motion at this time.

MS. DEUTSCH: **MOTION TO CONSENT TO THE TRANSFER OF APPLICATION**
#A14-11.1/2 FAIRFIELD BLVD. VERNA HOME BUILDERS, INC. –
(CONSENT TO TRANSFER PERMIT) #A10-1.1 TO 2 FAIRFIELD
BLVD PROPERTIES, LLC)

MS. PHILLIPS: **SECOND**

VOTE: **HEILMAN-YES; DEUTSCH-YES; PHILLIPS-YES; PARENT-YES;**
VITALI-YES

2. **#A04-6.6/22 Masonic Avenue - Ashlar Village** – (request for bond release)

Ms. O'Hare said the bond is \$10,000. She said she went out there with the new land manager and discovered there is an erosion problem at the outlet of the large storm basin, so the bond won't be released until this is under control, per her recommendation. She also said the Applicant will have to have an engineered design to get it under control. She said the outlet failed once before and a better design is needed.

NO ACTION TAKEN

3. **#A08-4.2/930 S. Colony Rd** – Docker Drive Development – Ron DeGennaro – Lot #5 foundation bond - (request for bond release)

Ms. O'Hare said this is a six-lot subdivision. She said four of the lots required a foundation bond, (\$10,000). She said Mr. DeGennaro, who is the builder, came in and got the bond, submitted an A-2 survey and is requesting the bond be released.

Chairman Vitali entertained a motion at this time.

MS. DEUTSCH: **MOTION THAT APPLICATION #A08-4.2/930 S. COLONY RD –**
DOCKER DRIVE DEVELOPMENT – RON DEGENNARO – LOT #5
FOUNDATION BOND BE RELEASED

MS. PHILLIPS: **SECOND**

VOTE: HEILMAN-YES; DEUTSCH-YES; PARENT-YES; PHILLIPS-YES;
VITALI-YES

F. RECEIPT OF NEW APPLICATIONS

1. **#A14-11.2/Quinnipiack Street** – Town of Wallingford – Park & Recreation Department – (minor change to #A14-1.1 – less fenced-in area – administrative approval).

Chairman Vitali explained this is the area of the new dog park and they are requesting an area to be fenced in less than the original approval. He said there was a wetland area in the back of the property, and it was decided that instead of having the dogs running in and out of the wetland, they were going to fence the dogs out of that one little area.

Ms. O'Hare said this was put onto the agenda to indicate administrative approval per request of the Law Dept. and no action is required.

Chairman Vitali asked if there was a gate in the fence to access the rear of the property.

Ms. O'Hare said people would have to go around the edge which isn't fenced in.

Chairman Vitali noted this was approved administratively.

2. **#A14-11.3/549 Woodhouse Avenue** – Wallingford Conservation Commission – (modification to permit #A11-5.1 – trail boardwalk length).

Ms. O'Hare said this is the second time this has been modified. She said this is an 80 ft. long boardwalk across a wetland behind the soccer fields off Woodhouse Avenue. She said the first time it was modified, it was done so because the proposed design had eight 10-ft. long puncheon bridges, plank bridges. She said it was modified about a year ago so the planks resemble a boardwalk. Ms. O'Hare said this is on the agenda to add 12 more feet. She said it has been recently constructed and to get it through the muddy area, 12 more additional feet is needed in addition to the 80 ft. already constructed. She said this couldn't be administratively approved because it involves a wetlands.

Chairman Vitali entertained a motion at this time.

MS. DEUTSCH: MOTION THAT APPLICATION #A14-11.3/549 WOODHOUSE AVENUE –WALLINGFORD CONSERVATION COMMISSION (MODIFICATION TO PERMIT #A11-5.1 – TRAIL BOARDWALK LENGTH) BE APPROVED

MS. PHILLIPS: SECOND

**VOTE: HEILMAN-YES; DEUTSCH-YES; PHILLIPS-YES;
PARENT-YES; VITALI-YES**

G. REPORTS & COMMUNICATIONS

1. Letter to James E. Vitali, Chairman, IWWC from Joan C. Molloy, Loughlin Fitzgerald, Re: ATA Realty, Inc., 195 Chimney Hill Road – IWWC #A14-7.2 – (clarification on permit relative to submittal of final legal documents); dated 11/21/14

Appearing in front of the Commission was Atty. Joan Molloy, Loughlin Fitzgerald. She said she was here recently in front of the Commission regarding an application involving a subdivision on Chimney Hill Road in which an approval was granted. Atty. Molloy said one of the conditions of the motion made that night had to do with the timing of the filing of the legal documents associated with the subdivision, i.e., the drainage easements, conservation easements. She said she believed Ms. O'Hare's original recommendation was 30 days and there was a suggestion of an additional 30 days. She said after the motion was made, she had a discussion with Commission members stated her concern that this wouldn't be sufficient time. She said it was her recollection, and to some extent the Minutes do indicate there was some discussion of not requiring us to file in a specific time period, but before we commenced work on the property.

Atty. Molloy said the motion was never officially amended and so it was approved as originally written. She said she discussed this with Ms. O'Hare, and we thought the first step was to come in and talk and see whether or not those Commission members who were present had any recollection of what their intentions were. She said if she is wrong, she will be forced to come in and seek a modification because after IWWC approval, this application went to Planning & Zoning who is requiring the documents be reviewed and approved by the Law Dept. Atty. Molloy noted those documents had not even been brought up to the Law Dept. yet and 30 days have already passed. She said with the upcoming holidays, she isn't optimistic there will be a response by 60 days because the Law Dept. has a lot on their plate. Atty. Molloy asked if the Commission had any recollection of whether it intended to give the Applicant more time and if so, her understanding from her conversation with Ms. O'Hare who spoke with Corporation Counsel Janis Small was that this application would have to come back before the IWWC in January for a corrected motion; the alternative being she would have to file for a modification and pay a fee.

Vice-Chair Deutsch said she didn't remember the conversation but noted she didn't have a problem changing it as far as it goes that no work can commence until those documents are handed in.

Atty. Molloy said it is her intention of doing this as fast as possible, but she is worried about the timeframe.

Mr. Heilman said it is only critical in terms of having it available by the time the work begins.

Mr. Parent said he didn't believe he was here for the conversation, but for the way he is hearing it, work can't begin unless the papers are turned in. He said to say it has to be done by a certain date, when the applicant won't be building on that certain date doesn't seem to make a lot of sense, so let's extend it out or make it so that the documents are received before the Applicant builds and reviewed before work is started.

Atty. Molloy said for the record, that the documents have been submitted both to Ms. O'Hare and to Kacie Costello, Town Planner. They were submitted prior to the November meetings. She said she checked with Ms. Costello on Wednesday, and was informed the documents had not as yet been sent up to the Law Dept., but noted that Ms. Costello said she would try to move it up the priority list.

Chairman Vitali asked what the requirements were (timeframe) from Planning and Zoning.

Atty. Molloy said Planning & Zoning did not put a timeframe on it and did not tie it to the commencement of the project, but did require the Applicant to do them and noted the Applicant has the incentive to do this, because the Applicant doesn't want to convey a piece of property out that isn't subject to those and want them of record, so when homeowner's or attorneys are researching title, that is of record. She said the Applicant has preserved the right to do what needs to be done before the Applicant conveys this. Atty. Molloy said we have our own incentive in making sure this gets done. She said if it were determined that the Applicant had to apply for modification, the Applicant would have to pay, according to Ms. O'Hare, a \$50 application fee and a \$60 State fee.

Chairman Vitali asked Atty. Molloy how else this would be done if the Applicant couldn't get a modification to the conditions of approval.

Atty. Molloy said if Commission members determine the original motion did not state exactly what they had intended, and she noted she believed it was Commissioner Heilman who suggested we tie this to prior to the commencement of the work; if the IWWC agrees that was what the intent was, it is just a correction of the motion and not a formal application by the Applicant to modify a condition of approval.

Chairman Vitali said the point of interest is the Minutes which were approved as written and he believed it clearly states that condition of approval.

Atty. Molloy said the motion doesn't tie it to the commencement of the work. She said she and Ms. O'Hare talked about the Minutes and agreed this clearly was the motion which was made, but it was in the subsequent discussion that Atty. Molloy raised the point of the IWWC considering changing this, and Mr. Heilman had indicated what if we stated "prior to the

commencement”

as far as she recalled. She said the Applicant and other people connected with this application, came away that night thinking that is what the IWWC intended to do, but there was never a formal amendment to the motion that was on the floor and that is why the Minutes reflect one thing. She said Ms. O'Hare mentioned there is something in the Minutes where there is some discussion tying this to the commencement of the work.

Vice-Chair Deutsch said she looked through the minutes but hadn't found anything yet.

Ms. O'Hare said the only place she found the phraseology was in the motion which was approved. She said condition #4 says: “the timeframe for submitting of the documents will be extended another 30 days from what the Environmental Planner suggested (30 days), before works commences”. She said in other words, they have 60 days, and can't start their work for 60 days until these documents are in.

Chairman Vitali said the way it reads, it could be interpreted when you throw in the phrase, “before work commences” is what really what the discussion was about.

Vice-Chair Deutsch said the intent with this was that the IWWC was giving the Applicant 60 days to get this taken care of, that is the way she interpreted it.

Chairman Vitali said the way this reads, doesn't tie it to the date of approval, it ties it to the date of commencement.

Commissioner Heilman said as he recalls that evening, one of the primary focus was that the IWWC was in complete agreement with what the Applicant was doing and he personally spoke about liking the format of the way this was done, versus the projects have been brought before us. He said the Commission was very much in agreement with getting this going and that everyone was fine. He said he specifically didn't remember the concerns over the documents but he thinks the thrust of it was that when everything is in place, we are ready to go. He said as far as wetlands is concerned, we are ready to go, but now it appears there is some concern over the document. He asked how could this be expedited and wouldn't want this held up over poor wording. He said the IWWC's intent was to do this, but that it was fine to get it going.

Chairman Vitali said Atty. Molloy identifies the problem in the Minutes and is there a way to get this done without a fee. He said he would hate to see a fee charged over language.

Ms. O'Hare said she consulted with Atty. Small who said the IWWC can discuss it and decide what they really meant and put their intention in the record.

Atty. Molloy said Atty. Small told her that if it came to modifying the permit, one would have to wait until January because there isn't an application to act on and vote on. Atty. Molloy said Atty. Small told her the two alternatives are waiting till January to have an application to act on, (modification to permit to act on) or tonight, putting into the record what the IWWC actually

meant to say, and if the IWWC were in agreement with Atty. Molloy's premise, they could affirm this even though the wording was a little rough.

Ms. O'Hare said when the motion was being made, her concern was the opposite of Atty. Molloy's in that she was afraid that if it doesn't get built for five years, we have these dangling easement documents that are never finished who knows what iteration we are working with.

Vice-Chair Deutsch said she doesn't remember what was said at the Meeting, but had no problem giving the Applicant more time to do this. She said she goes along with the Minutes when they say the intent was to give the Applicant 60 days to get the documents completed.

Chairman Vitali said the Commissioners have to say that their intent at the last meeting was to get these documents completed before work commenced, and they believed 60 days was enough time.

Vice-Chair Deutsch said she could go along with this.

Atty. Molloy said the documents have been submitted, but not approved. She said the Commission could interpret that as we have already complied with this condition and is trying to avoid having a client in violation of a permit for something that is unclear or not within our control.

Chairman Vitali noted that if the documents have already been submitted, this has been satisfied and everything is compliant. He said this says the documents have to be submitted, not approved. He noted it doesn't say "final documents."

Commissioner Heilman said in the future the IWWC will have to say submitted and approved.

Atty. Molloy said she will submit the revised copies on Thursday. She said Planning and Zoning didn't make any revisions to the documents. Chairman Vitali said it appears the Applicant has satisfied the Conditions of Approval.

2. Regulation revisions – status

Ms. O'Hare said this is still being worked on.

3. DEEP Inland Water Resources Division – Water Diversion Permit Determination – letter to Wallingford Water & Sewer Divisions re: proposed Quinnipiac River Bank Stabilization – 155 East Street/So. Turnpike Siphon – permit not required; dated Nov. 21, 2014.

Commissioner Heilman spoke about Google Earth and the violation in East Wallingford, the Andrews situation. He noted the bike trail erosion that has taken place recently.

Chairman Vitali wondered why the Army Corps of Engineers has been so relaxed on this project and why nothing has happened.

H. VIOLATIONS

Ms. O'Hare said she and Atty. Small went to court recently on the matter. She said they asked for \$1,000 a day fine to be levied, beginning that day because no remediation had been done and the Judge stated that it is winter and gave Mr. Andrews an opportunity to come in with a consultant's opinion on whether these remediations could be done in the winter.

Chairman Vitali asked about the farm roads built through the wetlands and how currently owns the property.

Ms. O'Hare said the property was transferred about two years ago to the children.

ADJOURNMENT

Ms. Deutsch made a motion to adjourn the Meeting at 7:40 p.m. which was seconded by Ms. Phillips and passed unanimously.

Respectfully submitted,

Cynthia A. Kleist

Recording Secretary