

**WALLINGFORD INLAND WETLANDS & WATERCOURSES COMMISSION**

**WEDNESDAY, FEBRUARY 3, 2016**

**ROBERT F. PARISI COUNCIL CHAMBERS**

**45 SOUTH MAIN STREET, WALLINGFORD, CT**

**7:00 p.m.**

**MINUTES**

The Regular Meeting of the Wallingford Inland Wetlands & Watercourses Commission was held on Wednesday, February 3, 2016 in Council Chambers, Town Hall, 45 South Main Street, Wallingford, CT.

Seated Commissioners were: Chairman Jim Vitali; Vice-Chair David Parent; Nick Kern, Secretary, Dennis Murphy; Deborah Phillips; Alternates Jim Heilman, Daryll Porto and Michael Caruso and Erin O'Hare, Environmental and Natural Resources Planner.

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

**CONSIDERATION OF MINUTES**

**1. Regular Meeting, Jan. 6, 2016, 7:00 p.m. – TABLED**

Chairman Vitali said he believed the Cariati Applicant mentioned that out of the two oil water separators, one had water in it and one didn't. He said if this is the case it should be reflected in the Minutes. He said if one looks back at the application, it was for the parking lot in the front of the building to sell used cars. Ms. O'Hare said it was that and the millings in the back. Chairman Vitali said he didn't want to get the two projects put together, because the front parking lot doesn't drain into the oil/water separator that is being talked about in the back parking lot.

Chairman Vitali asked if there was a 1,500 gallon oil/water separator, or sediment separator in the front of the building. Ms. O'Hare said there is one, facing North Plains Industrial Road.

Chairman Vitali asked if that was a different one or the one being referred to by the Applicant.

Ms. O'Hare said this is the one the Applicant was referring to because it exists today and was inspected last week. Ms. O'Hare said the Applicant is also going to install a new separator for the sanitary sewer.

Commissioner Porto noted that on page 8, the second from the top paragraph, it states "there is water in them" which makes it plural.

Chairman Vitali said his experience with true oil/water separators is that they have to be full of water to function properly.

## **MINUTES TABLED TO THE MARCH MEETING**

### **OLD BUSINESS**

- 1. #A15-11.3/1303 Durham Road** – Henry Woronick – (pond dredging, tree removal & yard grading)

Ms. O'Hare said she recommended this be tabled as noted in her Environmental Planner's Report which went out. She said she received permission from Mr. Woronick, who submitted a letter, granting the Commission permission for an extension until the next meeting or 65 days. The Commission agreed to the request and received permission from Mr. Woronick for an extension.

- 2. #A15-12.1/70 North Plains Industrial Road** – Cariati Developers – (additional surface area-parking)

Ms. O'Hare said she received a fax from the Applicant's Attorney this afternoon, and noted she distributed a memo tonight from the Town Engineer. She said the Attorney indicated that her memo to the Town Engineer, and all of her comments, including her Environmental Planner's Report, and the Town Planner's comments, will be taken into consideration. She said the Applicant will attend the March meeting with a plan which she said hopefully addresses everything. She noted the Applicant granted approval of an extension in advance. The Commission agreed to request an extension on this application which was granted by the Applicant in letter form.

- 3. #A14-7.2/195 Chimney Hill Road-** Sunwood Development – (Request for bond reduction)

Ms. O'Hare said this request came in a few weeks ago. She said she performed a site visit and a thorough inspection of the erosion controls. She noted the Permittee has a \$50,000 bond and is asking for a reduction. Ms. O'Hare noted the road has been installed and the two big basins are functioning. She said the Permittee is working on four lots and noted there are some minor things which need to be tweaked, i.e., some silt fencing which is down. Ms. O'Hare said mud was tracked onto Chimney Hill Road on Monday and said more stone needs to be installed in the construction entrance.

Mr. Kern said the lots that were a concern haven't been developed yet and noted there were some lots down in the wetland areas. He suggested returning \$10,000 of the \$50,000 bond and

keeping the other \$40,000 on hand. Ms. O'Hare said Mr. Wiedemann indicated the sewer line will be installed next week on the two lots on New Cheshire Road.

The Commission agreed to a \$10,000 bond reduction.

**NEW BUSINESS** – None.

### **RECEIPT OF NEW APPLICATIONS**

1. **#A16-1.1/18 Jodi Drive** – Thomas Duffy – (after-the-fact installation of shed with porch on a gravel base – administrative approval request) – received by Chairman Vitali.

Ms. O'Hare said this application has been around for a while and noted this was approved administratively and the letter sent out. The Commission had no negative comments regarding Chairman Vitali granting administrative approval for this after-the-fact installation.

2. **#A16-2.1/530 Church Street** – TWLC, LLC – (residential subdivision development – 7 lots) – received by Chairman Vitali.

Commissioner Kern said this is the other part of the estate which was considered by the IWWC. Ms. O'Hare said she handed out the engineering and wetland reports and the site plan tonight.

3. **#A16-2.2/5 Northfield Road** – 5 Northfield LLC – (replace fencing & striping of parking space – administrative approval request) – received by Chairman Vitali.

Ms. O'Hare said the Applicant is requesting Administrative Approval and noted only two copies are received when it is an Administrative Approval and this is why it is not distributed to everyone. Chairman Vitali said he had no opinion on this application noting he had only received the information tonight. He said this is a construction type company who originally handled contaminated fill which was either processed, worked its way back into the system, or taken to another location.

Chairman Vitali took the agenda in the following order:

### **REPORTS & COMMUNICATIONS**

1. Notice of Tentative Determination to Approve an Application for Diversion of Water Permit and Intent to Waive Public Hearing – Tilcon Connecticut – Diversion of Water from onsite water collection pond, onsite water supply pond, and open water pond for various industrial uses; dated 12/28/15; received 1/6/16.
2. DEEP Notice of Application – Renewal of Diversion Permit regarding diversion of waters of the State – Traditions Golf Club at Wallingford – 37 Harrison Road, Wallingford – Allen Brook; dated 1/8/16; received 1/19/16.
3. DEEP – Copy of letter forwarded to Wallingford Group, LLC, Attn: Jonathan Gavin, from Michael Sullivan, Deputy Commissioner, DEEP, re: DEEP waiver of Section 401 Water

Quality certification for "after-the-fact" action regarding box culvert crossing of Padens Brook; dated 1/27/16; received 2/1/16.

Ms. O'Hare said she previously faxed the information to Chairman Vitali who said this is where the box culvert was installed and it was a little high and there were other issues. He said the Army Corps of Engineers as well as the DEEP investigated and said they will not take any action.

Ms. O'Hare explained the DEEP is waiving the need for a Section 404 Water Quality Certification which is for water quality/erosion control. She said the application was waived because the culvert has already been installed.

## **VIOLATIONS**

- 1. 3 Powers Road** – Notice of Violation – Dave Woronick, Greene D.H. Woronick – unpermitted, unauthorized clearing in upland review area

Mr. Parent noted this violation has been coming up every month for at least six months and noted Mr. Woronick doesn't want to do anything about this and wanted to know why this is not being acted upon.

Ms. O'Hare said a Notice of Violation could be put on the deed. Chairman Vitali and Commissioner Parent agreed this was a good idea. Chairman Vitali said for this to be put up in the legal system would bog this issue down, so the violation on the deed is a viable alternative. Ms. O'Hare said she would check with the Law Dept.

- 2. 640 South Elm Street** – Notice of Violation – Michael Crocker – (removal of vegetation and soil from wetlands, stream channelizing, deposition of soil, stone, and materials in stream, wetlands, and upland review area)

Chairman Vitali said Roman Mrozinski of the Southwest Conservation District, prepared a report on this property. He asked Ms. O'Hare about the final summary. She said the report, which she discussed with Mr. Mrozinski, addressed the large area of crushed processed stone near the river, and not the other area which was the channel/swale with the crushed stone. She suggested tabling this violation until the next meeting, noting the owner was not in attendance.

Ms. O'Hare said the Public Works Dept. installed stone at her request, to fortify the large concrete drainage pipe and to fortify approximately 30 to 35 ft. of the eroded riverbank with 8 to 12 inch rip-rap, which took care of the immediate situation. She said Mr. Mrozinski in his report, also addressed a planting plan and the removal of remaining log/mulch pile and anything placed there. She said she argued against Mr. Mrozinski's suggestion to remove the stumps from the bank, stating the roots were holding the bank. Ms. O'Hare said she goes into detail regarding the planting plan in her Environmental Planner's Report which went out in the packet. She pointed out the planting would take place in the spring.

Chairman Vitali asked Ms. O'Hare to discuss the report with Mr. Crocker in advance of the next Commission meeting to see if the issue can be resolved. Ms. O'Hare said she would visit the site and discuss the report with Mr. Crocker. She recommended some of the processed stone be brought up and asked for input from the Commission noting that no vegetation can grow in that area. She also asked for direction regarding the planting. Chairman Vitali said this needs to be decided among her, Mr. Mrozinski and Mr. Crocker.

**3. 22 Masonic Avenue – Cease & Correct Order – Masonicare at Ashlar Village, Inc., - (uncontrolled erosion and introduction of sediment flows into unnamed watercourse on Town property)**

Appearing in front of the Commission was Tom Daly, P.E. of Milone & MacBroom; Alan Zakrzewski, Director of Residential Services and Vernon Grant, Maintenance Manager, both of Ashlar Village.

Mr. Daly discussed the plans to remediate the area in question. He said a site investigation and plan was done and submitted to the Commission. Mr. Daly noted the area has a large detention basin which serves Ashlar Village along with a 24 inch pipe which comes out of the detention basin and goes down a long rip-rap swale which terminates down below. He said the investigation determined the rip-rap swale is in excellent condition with no erosion and no sedimentation. He said as the swale comes to an end, there is a plateau and beyond that, after-the-fact, Ashlar Village extended the swale approximately 20 ft. which continues to be stable.

Mr. Daly said after this, the water needed to go somewhere, so it established its own channel with is approximately 4 ft. wide and 2 ft. deep but is down to bedrock so there is no additional erosion; it is down to bedrock. He noted there is no more erosion on the channel bottom, but the side slopes continue to have erosion. He said that swale goes down approximately 80 ft., but somewhere around 60 ft., there is the Town property line which becomes Town open space and 20 ft. later, it is a steep ravine which goes down approximately 60 ft. Mr. Daly said he did an after-the-fact site investigation and provided photos to the Commission. He said as the swale comes out, there is a 4 ft. drop which appears to be a ledge profile and after that it is ledge all the way down.

Mr. Daly said the proposal is to install a plunge pool at the tail of the existing large rip-rap. He noted there are check dams along the way, but noted the water comes down and turns along the way. He said the plan is to scoop this out so when the water comes down, it settles out into the pond and climbs over a berm, which will take out any velocity coming from the swale on the way down. He said the existing swale will be matched along the way and peel back the vertical side slopes and rip-rap the swale, similar to the size of the existing swale extension which goes about 60 ft. He said at the tail end of the rip-rap slope, a gabion basket with rip-rap is planned. He said the weight of the basket will prevent the rip-rap from going over the edge. Mr. Daly said filter fabric will also be installed for separation, which will slow the velocity down.

Mr. Daly said no trees will be taken down and small equipment will be used to accomplish this work. He critiqued the letter from the Southwest Conservation District noting the Commission requested Ashlar to focus on the area above the slope. Mr. Daly said in his opinion, that nothing physically could be constructed on that slope and noted if anything was done, more damage could occur. He said after the site investigation, it was already ledge. He said if the plan is endorsed by the Commission, there is a small leg of the swale which enters Town property. He said Masonicare is committed to do the work, but must obtain permission from the Town.

Chairman Vitali asked if the retention pond had any storage room left on it. Mr. Daly said he didn't know because Milone & MacBroom were not the original engineers. He noted the basin has a long travel pattern and is slow moving. He said he would have to re-analyze. Chairman Vitali asked if anyone had seen this up to the top of the retention pond. Mr. Daly said the water hasn't gone up to the emergency spillway. Chairman Vitali asked if the outlet was being widened because everything seems to be the size of it. He said the water is coming down as a confined channel and is going over the bank, taking it out.

Mr. Daly said consideration was given to modifying the detention basin and slowing the water down. He said even if the water is slowed down at the detention basin, the water would get back into its natural velocity, because the rip-rap channel is long. He said this is why the plunge pool idea was considered. He said he is not looking to make the swale the width that is currently in place. He said he will mimic the bottom of the existing eroded swale and come up with side slopes. He noted the gabion basket will not be dead flat; it will be bent to come up on the side slopes.

Mr. Kern asked about the plunge pool being put in the hard pan.

Mr. Daly said the plunge pool won't be deep and noted there is a berm on the backside and said there is probably bedrock two or three feet down and they don't intend to blast rock.

Mr. Kern asked if there would be future development because they possibly would be back in front of the Commission with another problem of the water not being able to be handled from above. Mr. Grant said there are no plans for expansion and if there were, the entire detention basin would have to be modified in other areas.

Mr. Heilman asked if water flowed freely above over the surface of the rock.

Mr. Daly said the water travels down the check dams at a normal flow.

Mr. Heilman asked about the frequency of the check dams. Mr. Daly said they are about 100 ft. on center. Chairman Vitali asked if there would be further development, would the watershed cross over and head west. Mr. Daly said he believed there was a grade break and noted a lot of the water drains to the pond which is in the bowl, and the pond ultimately comes down to the

same watershed but it goes to the ravine, not the detention basin. He said this is the natural drainage pattern.

Chairman Vitali said the correct channels were gone through to develop this plan originally, including the Army Corps of Engineers. He said it was interesting the Army Corps was the one who promoted the huge retention pond in the area and noted if there wasn't the retention pond; the water would be running down in the bottom of the brook. He said the plan was approved, and Ashlar Village is willing to assist tweaking this plan and is a positive note.

Ms. O'Hare said the plan came in on Tuesday and noted she was still waiting for a detailed plan of the proposed mattress. Mr. Daly said it is a proprietary mattress, but a plan can be submitted for the record. Ms. O'Hare said she didn't see any erosion control on the plan for the proposed plunge pool. Mr. Daly said this is a one-day event and stone will be applied the same day. He noted it is a plunge pool with a high point all around it and ledge below it. He said he didn't see an opportunity to put a silt fence in and be successful. Ms. O'Hare said the silt fencing was drawn in on one side but not the other.

Mr. Daly said currently, the swale comes down and water leaks off and skips out of the swale in one area and the intent is to get in and out of the area quickly. He said the project has to go out to bid, but work is expected to begin in the spring but added this work in the spring might want to be delayed. Chairman Vitali said if the plunge pool is dug in a muddy environment, it will be tracked everywhere and more reason to have an erosion control plan. Mr. Daly said it might be better to wait until July to commence work.

Ms. O'Hare asked about the ravine. She asked Mr. Daly if there was any evidence that the water was crashing down when he was at the bottom of the ravine. She said she wondered if there was erosion at the bottom. Mr. Daly said there are exposed faces of dirt and loose soil even where there are no discharges. He said one could walk by this and never see it. He said the base of the ravine is down to bedrock so it is stable. Mr. Grant also said the basin is checked annually and cleaned. Ms. O'Hare said she would like to see a report back to the Commission possibly within a year. She said Mr. Mrozinski believed there would be an ongoing problem in this area. Chairman Vitali said what he read in the report was unrealistic unless one had a crane lowering stone down one by one. He noted that one condition of approval would be to include an additional channel stabilization plan which would be in the annual inspection of the retention pond.

Chairman Vitali said this is an issue which needed to be addressed and emphasized this was not a violation because nothing was done that Masonicare at Ashlar Village didn't have a permit for.

Chairman Vitali entertained a motion to accept the stabilization plan.

**MR. PARENT: MOTION THAT THE STABILIZATION PLAN OFFERED BY MILONE**

**AND MACBROOM TO CORRECT A UNCONTROLLED EROSION**  
**SITUATION AT 22 MASONIC AVENUE BE APPROVED SUBJECT TO**  
**INCLUDING THE NEW WORK IN ASHLAR VILLAGE'S MAINTENANCE**  
**PLAN**

Commissioner Heilman noted this is an important activity to get done, however, it is being done because of activities which have occurred in this area and corrective measures have to be made at this point. He noted it was no one's fault and this is what we are addressing.

Chairman Vitali said he would just as soon wait for the drier weather to begin the project.

**MR. MURPHY:       SECOND**

**VOTE:               KERN-YES; PARENT-YES; MURPHY-YES; PHILLIPS-YES;**  
**VITALI-YES**

**REGULATION REVISIONS**

- 1. Draft proposed Revisions to Regulations, Sections 7-20 – workshop discussion

Chairman Vitali said the Commission asked some developers and attorneys in Town to come and listen and give their opinions. He said this was done, because too many times, when the Regulations are made, there is never any opinion from the opposite side.

Appearing in front of the Commission was Atty. Joan Molloy, Loughlin Fitzgerald, and Robert G. Wiedenmann Jr., of Sunwood Development Corp., here on behalf of the development community.

Ms. O'Hare noted that at the Jan. 6<sup>th</sup> meeting, she handed out several documents; one the Environmental Planner's Report, dated Jan. 6, which summed up what the two lengthy documents were; the proposed revisions to the Regulations which are in draft form for the Commission's consideration. She said one of the proposed documents had red marked throughs and highlights which were done by Corporation Counsel Janis Small, which Ms. O'Hare noted, were Atty. Small's final comments.

Ms. O'Hare said she handed out copies of a letter dated Nov. 20, 2015 from Atty. Molloy and those were her comments on a previous iteration. She said she has not received any direct comments from Mr. Wiedenmann Jr.

The Commission discussed Section 7.2b which is the request for the new language. On page 4, Chairman Vitali noted Atty. Small crossed most of the language out which he stated was acceptable. On Letter "H", which pertains to the Assessor's Records and Names, Atty. Molloy noted in her letter, she suggested additional language in sub-section "E". She said Atty. Small didn't agree. Atty. Molloy said the way the language was phrased was confusing.

Chairman Vitali noted the proposed change by Atty. Small was to drop proposed activity and erosion and control and proposed.

Atty. Molloy said this is a list of conditions the Commission wants people to submit and noted one should not be talking about conditions when telling people what to submit. She said on the third line after "mitigation measures" and starting with the word "which may be considered as a condition of issuing a permit for the proposed regulated activity, including but not limited to", those words should be crossed out. Atty. Molloy said "measures" is repetitive.

Ms. O'Hare said she couldn't think of any application where the Applicant right out of the gate gave us mitigation measures with their initial application filing. She said we don't ask for them out of the date and sees the wisdom of Atty. Small's verbiage. Atty. Small emphasized she isn't saying don't require the Applicant to submit the mitigation measures; but the way it is being phrased, the Commission is asking for items which may be considered a condition of a permit and wondered if they don't have to be given if they might not be made a condition of the permit.

Ms. O'Hare said then it is a done deal and the mitigation measures would have to be installed. Atty. Molloy disagreed stating it would be the information the Applicant has to give to the Commission with the application; what should the application include.

Commissioner Parent asked if it was the intention of having the application submitted once and without any modifications or later requests for additions. Atty. Molloy said ideally all her Applicants prefer this, but admits that an item may not have been explained as clearly as it should have been. She said didn't believe the Commission could eliminate additional requests for information.

Chairman Vitali agreed with Atty. Molloy stating one would be asking for something when one doesn't know what the requests are and are only submitting the application. He said it becomes staff's responsibility to work on environmental quality and productive wetlands and watercourses. She said the Applicant submits in their application, the best practices at that time. Atty. Molloy said the Applicant would give mitigation measures.

Mr. Wiedenmann said the list of A through M in this section are all items which are supposed to be submitted with the application, and assumes that all of those items will be considered by the Commission in determining whether the application is complete and whether it is appropriate. He asked why one item would be singled out this one item which states this would be

considered as a condition of approval, when all of these items will be considered. He said it is confusing. He said the section is basically a list of items the Applicant thinks they can provide the Commission in assisting them in making a good decision.

Chairman Vitali asked Ms. O'Hare if 1, 2, or 3 was needed. He said this could be summarized. Ms. O'Hare said she believed that language was in the wetland act and was amended to have this in there and wasn't negotiable. She said she believed this was case law. Chairman Vitali suggested this language be left in. Atty. Molloy said she had no objections to 1, 2 and 3 being left in; she suggested the wording from "mitigation measures" to Number 1 be removed. Commissioner Parent agreed. Ms. O'Hare asked what was wrong with this being a condition of a permit. Atty. Molloy said she had no objection to the Commission ultimately deciding it becomes a condition of approval, but noted the Commission is tying a condition of approval into the list of things that an Applicant has to submit. She said she is suggesting this doesn't belong in the list of documents and materials that the Applicant should submit. She said that wording is inappropriate.

Ms. O'Hare said the Commission will go with what was suggested in Atty. Molloy's letter and will take the suggested changes to Atty. Small for her review. Mr. Wiedenmann asked about "F" and noted the language was being changed from why the alternative was chosen to why it's the best alternative. He noted that the Applicant is proposing an idea because the Applicant believes it is the best alternative based on what we want to do. He said he wasn't sure how this language could be responded to in a practical sense. Mr. Kern pointed out there are two ways of looking at this statement; the Applicant's way which is financial way and the Commission's way which is preserving the wetlands. Chairman Vitali said the alternatives are not the plan the Applicant is presenting, it is the part of the Regulations which state the Applicant has to have an alternative which is close to the best.

Regarding "J", Atty. Molloy noted she had no objections to visits on the property, but believed the property owner should have notice. Chairman Vitali asked how the property owner would be notified. Atty. Molloy said because the wording states "for the life of the permit" this visit could be years from now. She suggested a phone call or letter be sent to the property owner from staff or the Commission before a site visit takes place. Chairman Vitali asked if Atty. Molloy was talking about the Commission not staff, because the staff usually doesn't provide notification. Atty. Molloy said both parties should contact the property owner. Chairman Vitali said Atty. Molloy may have a point with the Commission giving notice, but not staff for the duration. Commissioner Heilman suggested a courtesy call be made in advance of any visitation and a message be left. Atty. Molloy suggested this be made a policy, not part of the Regulations.

Commissioner Kern said he was informed that if the Town Planner introduced herself or left a business card, she would be allowed to come on the premises. Atty. Molloy said she knew some property invited staff to vacate the property, but had not researched this.

On Section 7.9, Atty. Molloy spoke about the current language requesting the Applicant request an extension at least 65 days prior to the permit expiration. She wondered if the Regulations should require such a hard date and said Atty. Small noted the 65 days was not statutory. Ms. O'Hare noted in "E" the wording states the Commission may accept an untimely application. Atty. Molloy said this also was limited to on-going activities, and if she obtained a permit and didn't begin the activity because of financial reasons, that doesn't come under this provision because it isn't an on-going activity. Chairman Vitali said he didn't have problems with less than 65 days, noting there have been times things have been granted after the permit expired. Ms. O'Hare said this was allowed under the new "E". Chairman Vitali disagreed with Ms. O'Hare saying he agreed with Atty. Molloy. Ms. O'Hare suggested 35 days if Atty. Small says the Statute allows this. Atty. Molloy said she prefers that no time be put into the Regulations, stating that someone has the right to renew or amend an existing permit if they submit it to the Commission. She said her preference would be prior to the expiration, even if it is the day before it expires, she is still covering her bases. Chairman Vitali said he liked this idea.

It was asked what if the Regulations changed in the period between the time the Applicant got the first permit and is now coming back for an extension or a renewal. Atty. Molloy said a request for an extension doesn't mandate the Commission agree to this, noting it still would have to come before the Commission. She said either way, this doesn't address what happens if there is a Regulation change.

Chairman Vitali said a permit is a permit, and it makes no difference whether there is a rule change on the other end. He pointed out if the expiration date is missed by a day, the Applicant may have to go back and meet the new Regulations. Ms. O'Hare mentioned page 16 of the Regulations which note the permits last for 10 years. Atty. Molloy said those were the 14 year extension, noting that anything which was valid as of July 1, 2009, changed from a five-year extension to a 9-year extension with the option of requesting an additional five-year extension for a total of 14 years. Chairman Vitali said this didn't exist today.

Atty. Molloy stated that approvals which were valid in 2009, the 14 years applied to and anything after that was 10 years. She said she believed this might have been extended to 2011. Chairman Vitali said this may have been because of the economy. Ms. O'Hare asked if everyone agreed that on page 16 if something is approved it is good for 10 years as long as Planning & Zoning approve it also. Atty. Molloy noted the Commission usually does five-year approvals and an individual has the right to come in an request an additional five-years. Ms. O'Hare asked Atty. Molloy to look at the proposed new language on Section 11.6. Chairman Vitali said we are dealing with the expiration of the permit.

Commissioner Parent said it is in the Applicant's best interest to get everything in within 65 days so it can be approved, but as long as it is submitted beforehand, this is alright, but the process is going to start running from the time it was submitted.

Chairman Vitali said this is no different than our applications for a permit and noted they are accepted right up to the night of the meeting, noting they don't get approved that night. He said the change to 7.9 will be changed to instead of the 65 days, to any time prior to the expiration of the permit.

On Section 7.11, Atty. Molloy said this section deals with the Conservation Easement Restrictions, with notice and prior approval having to be obtained. She said she noted in her letter she believed at the last workshop, the Commission had decided against adopting the provision requiring notices. She said this Regulation has language that states there has to be compliance with a statute. She said the only difference is instead of spelling it out in the Regulation, the State Statute is referenced. Chairman Vitali said there isn't a State Statute that deals specifically with this; the State Statute is how to notify. Atty. Molloy noted the original proposal stated the Applicant had to contact the holder of the easement owner and obtain their permission to submit an application before one could be submitted. She said she can't even come in the door to make a presentation or appeal. Chairman Vitali asked Atty. Molloy if she knew what State Statute 47-42D states. He noted the second part states the Applicant has to notify the holder of the restriction and that the holder of the restriction must notify the Commission that the application is in compliance with the restriction. He wondered if the holder of the restriction doesn't answer the application request, whether the application would be dead.

Atty. Molloy stated this just adds another layer of complications. Chairman Vitali said this was a new paragraph, not a re-write.

Ms. O'Hare explained the act was amended by the State Legislature which grew out of the CT. River issue in which she believed the Town of East Haddam wetlands commission approved, resulting in someone cutting down trees on the CT. River, and later learning the Nature Conservancy had a conservation easement on all the trees. She said what should have happened is when permission was requested to cut these trees; the Nature Conservancy would have gotten notice.

Chairman Vitali asked Atty. Molloy if she would title search a property for a conservation easement on an application. She said didn't believe this was normal practice, but noted typically, if there was an A-2 survey, most surveyors would note a conservation easement. She noted that "D" which was crossed out, had the original language about authorization from the holder. She asked the Commission if they wished to impose upon an Applicant an obligation to determine anything which fits the definition of a conservation or preservation restriction is on the land records determine the holder and then have to give notice.

Commissioner Murphy said this was a State Statute-citing "no person shall file a permit application with the State land use etc., etc., on a property that is subject to a conservation restriction or a preservation restriction unless the Applicant provides proof of notification".

Chairman Vitali asked Ms. O'Hare to do more research on this item. Mr. Wiedenmann asked if only notification was required. Commissioner Murphy noted that the Statute stated "in lieu of such notice, the Applicant may submit a letter from the holder of such a restriction or from the holder's authorized agent, verifying the application is in compliance with the terms of the restrictions". Commissioner Kern said the Applicant has to do their homework before coming before the Commission and asked why the Applicant would want to put in a permit knowing these restrictions exist. Mr. Wiedenmann rebutted that the Applicant may not be working in the conservation easement area, but in some other area of the property, but as he interprets this, it states that if any part of the property has an easement, approval must be obtained.

Commissioner Parent interpreted this to read there are two alternatives; one to send a certified letter, return receipt requested and be done, and now they are saying something different, that if the holder gives the Applicant a letter, that is also acceptable, but only one has to be done.

Atty. Molloy suggested she, Atty. Small and Ms. O'Hare discuss this issue and get back to the Commission.

On 8.2, Subsection A., Atty. Molloy said the language was modified to read on any portion of the property affected by a decision of the Commission within 500 ft. of the boundary of an adjoining municipality, where before it read "500 ft. of the location of the activity". She said if she was doing work on a stream and seeking permission, but that stream flows to another Town, could that Municipality be affected by the Commission's decision, do they need to be notified. Commissioner Kern pointed out the Commission notifies as a courtesy and as far as the decision, it would be the Commission's decision to decide whether our side of Town would have impact on the other Town. He cited the Cheshire reservoir as an example.

Mr. Wiedenmann cited Section 11. 7 which deals with transfers of permits which currently requires a written request to the Commission. He wondered if this was a statutory reason or just a requirement by the Commission noting that most land use approvals, the permit goes with the property. He suggested a possibly requirement that staff be notified there was a new permit holder. Chairman Vitali said these regulations were out of DEEP in Hartford. He said the value would be in knowing who ends up with an active permit.

Mr. Wiedenmann asked how a permit would be denied being transferred from one to another. Mr. Kern said his decision is based upon the quality of workmanship either through the contractor or excavator. He said there have been past problems where a permit was issued to one contractor, and another contractor took over and problems arose. He said this also happened with engineers. Mr. Heilman also said it is the merit of the work. Ms. O'Hare said as staff, she needs to know whom to send the letter to, noting that many times, she has sent the letter to the permit holder and it has turned out that person doesn't own the property anymore.

Mr. Parent suggested the wording to be "which permission shall not be unreasonably denied".

Chairman Vitali asked Ms. O'Hare to check into this issue and to confer with Atty. Small and to put the findings into her report.

On Section 12.2, Atty. Molloy pointed out the way this section is phrased, it imposes upon the Applicant to do the publication or perhaps pay the fee. She said if Town staff is publishing notice of some approvals, why are they not publishing all of the approvals. Ms. O'Hare explained she is not required to publish the administrative approvals. Atty. Molloy said the Regulations state all of them have to be published. Ms. O'Hare said it would be more work for her and she would have to charge more money. She noted the Legal Notice now reflects all of the votes of the Commission and said now she would have to do a separate Legal Notice on its own date. Atty. Molloy said she wasn't aware of administrative approvals being published in other towns. Commissioner Heilman said maybe administrative approvals should be taken out of the permit category. He said it if falls within our jurisdiction and is something we are required to do, it should be published. Mr. Kern said he considers an administrative approval an application but it is approved through the administration and doesn't have to go through the permit process.

Chairman Vitali said he didn't believe most administrative approvals come before the Commission; they are designed for staff or the Chairman. He said he chooses to have the Commission informed. He said most administrative approvals, which are not a rubber stamp, fall within minute activity or minute impact. He said instead of a 60 day window, they can be acted on in a 15-day window. Commissioner Parent said he wouldn't see any harm in a person not receiving notification of this de minimus action and didn't see a reason to publish. Chairman Vitali suggested eliminating section 12.2 citing the prevention of abuse by notifying in the paper. Commissioner Murphy said the current statute addressed possible appeals of administrative approvals. Chairman Vitali asked if this section was eliminated, how would anyone know this occurred and they lost their right to appeal. Commissioner Murphy said this is published on the internet and available for review. He asked if the appeal portion of the statute was available in another section.

Atty. Molloy said possibly eliminating this section could be discussed with Atty. Small. Ms. O'Hare said she would consult with Atty. Small on the fee.

End of Workshop at 9:03 p.m.

Chairman Vitali suggested no public hearing be scheduled at this time until all issues are resolved.

Commissioner Heilman said attaching a violation to a notice to a deed was an outstanding idea and suggested not just wanting to isolate one violator but look at the record of all violations.

## **ADJOURNMENT**

Commissioner Parent made a motion to adjourn the Meeting at 9:06 p.m. Commissioner Caruso seconded the motion which passed unanimously.

Respectfully submitted,

Cynthia A. Kleist

Recording Secretary