

WALLINGFORD INLAND WETLANDS & WATERCOURSES COMMISSION

WEDNESDAY, MAY 7, 2014 – 7:00 P.M.

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, May 7, 2014 in Council Chambers, Town Hall, 45 South Main Street, Wallingford, Connecticut.

Seated Commissioners were Vice-Chairperson Ellen Deutsch; Nick Kern, Secretary; David Parent, Dennis Murphy; Deborah Phillips; Michael Caruso, Jim Heilman, alternates; Erin O'Hare, Environmental and Natural Resources Planner.

Absent: Chairman Jim Vitali.

Vice-Chairperson Deutsch, acting as Chairperson, called the Meeting to order at 7:00 p.m.

Voting members were Commissioners Deutsch, Kern, Parent, Murphy and Heilman.

CONSIDERATION OF MINUTES

1. Regular Meeting, April 2, 2014

**MR. KERN: MOTION TO APPROVE THE REGULAR MEETING MINUTES OF
APRIL 2, 2014 AS PRESENTED**

MR. MURPHY: SECOND

**VOTE: KERN-YES; PARENT –YES; HEILMAN – YES; MURPHY – YES;
PHILLIPS – YES; CARUSO – YES; DEUTSCH – ABSTAIN**

OLD BUSINESS – NONE

NEW BUSINESS

1. **#A05-9.3/1092, 1094 & 1096 North Colony Road** – Lowe's Home Improvement Center, Inc. – (Request for release of bond).

Ms. O'Hare said the bond is not ready to be released because the wetlands placards have yet to be installed.

2. **#A11-8.1/135 Fawn Drive – Fawn Drive Associates – (Request transfer of permit to Stratton Properties, LLC)**

Ms. O'Hare said the new owner requested a transfer permit. She said the regulations state the IWWC must consent to this transfer unless there is a property issue –it involves a fee which the new owner has submitted.

MR. PARENT: MOTION THAT PERMIT #A-11.8.1/135 FAWN DRIVE – FAWN DRIVE ASSOCIATES – (REQUEST TRANSFER OF PERMIT TO STRATTON PROPERTIES, LLC) BE APPROVED

MR. KERN: SECOND

VOTE: DEUTSCH – YES; KERN – YES; MURPHY – YES; PARENT – YES; HEILMAN – YES

3. **#A11-8.1/135 Fawn Drive –Stratton Properties, LLC – (Request for reduction of bond)**

Ms. O'Hare said two letters with the heading "Stratton Properties" both which address reduction of the bond, were distributed to the IWWC at the Meeting. She said one letter came in on Monday regarding the request for the bond, and the other letter was just given to her today by the Permittee.

Commissioner Kern said the bond was partially about sediment and erosion control and the other part of the bond was because of the fragile infrastructure. He said the IWWC put the higher bond into effect because if there was damage, the price of the bond would be used to repair the damage. He said he did not feel comfortable reducing the bond and it can stay in place where it is to protect the fragileness of the wetlands.

Commissioner Parent said the \$15,000 bond is still inadequate to address any concerns we may run into. He said he also could not support the bond reduction.

Commissioner Heilman said the cost of the bond is not for the cost to install sediment and erosion controls, it is for protecting what might happen as a result of things not working as expected, not just on the property, but also on the wetland area.

MR. PARENT: MOTION THAT APPLICATION #A11-8.1/135 FAWN DRIVE – STRATTON PROPERTIES, LLC., (REQUEST FOR REDUCTION

OF BOND) BE APPROVED

MR. MURPHY: **SECOND**

VOTE: **HEILMAN –NO; KERN – NO; MURPHY – NO; DEUTSCH – NO;**
PARENT – NO.

MOTION FAILED-BOND NOT REDUCED.

4. **#A11-4.1/404, 408 & 412 Main Street, Yalesville – Verna Properties, LLC.,**
(Request for transfer of permit).

Ms. O'Hare said the #A13-4.1 is a typo on the letter submitted and should be #A11-4.1. She said the permit is being transferred from DeAntonio Construction to Verna Properties, LLC.

Commissioner Kern asked Ms. O'Hare if there was any return input that was requested at the preliminary meeting where snow removal was discussed and the decks in the back along the river.

Ms. O'Hare said approximately two months ago, the IWWC approved a modification to the plan for Verna Properties, which was at that time, still owned by DeAntonio Construction, but it was Verna Properties which came in and applied, and it was approved and the changes were made that were discussed at the meeting.

MR. PARENT: **MOTION THAT APPLICATION #A11-4.1/404, 408 & 412 MAIN**
STREET, YALESVILLE - VERNA PROPERTIES, LLC, (REQUEST
FOR TRANSFER OF PERMIT) BE APPROVED

MR. MURPHY: **SECOND**

VOTE: **HEILMAN – YES; KERN – YES; PARENT – YES; MURPHY –YES;**
DEUTSCH – YES

RECEIPT OF NEW APPLICATIONS

1. **#A14-4.1/1024 Durham Road – Fun Properties, LLC – Frank Cotrona – (after-the-fact upland area filling) – Received by Acting-Chairperson Deutsch.**

Ms. O'Hare said she visited the site after receiving a complaint from a neighbor about possible drainage issues. She said the upland review area had been filled in but the Applicant has put in for an after-the-fact application.

2. **#A14-5.1/14 Grieb Trail** – Daryl DeMarco - (deck stairs) – Received by Acting-Chairperson Deutsch.

Ms. O'Hare said these decks stairs are close in proximity to Spring Lake so the Applicant knew he had to apply for an application.

3. **#A14-5.2/73 North Plains Industrial Road** – KW Paving & Concrete LLC – (after-the-fact industrial improvements) – Received by Acting-Chairperson Deutsch.

Ms. O'Hare said Commissioner Kern said this matter to her attention. It is an after-the-fact application.

4. **#A14-5.3/59 & 65 North Plains Highway** – Wallingford Group, LLC – (after-the-fact modification to permit IWWC #A13-8.2) – Received by Acting-Chairperson Deutsch.

Ms. O'Hare said this is a modification to permit #A13-8.2 for 59 & 65 North Plains Highway, which was approved by the IWWC on December 4, 2013. She noted there is a Cease and Desist Order on this property which will be discussed under "Violations."

5. **#A14-5.4/69 North Plains Highway** – 69 North Plains Wallingford, LLC – (after-the-fact concrete storage yard installation) – Received by Acting-Chairperson Deutsch.

Ms. O'Hare said this property abuts the property in the previous application and will be discussed under "Violations."

6. **#A14-5.5 /11 Terrell Farms Way** – Omar Lopez – (tree removal in wetland) – Received by Acting-Chairperson Deutsch.

7. **#A14 -5.6 /136 Cheshire Road** – Fresh Meadows open space property – Wallingford Conservation Commission – (Eagle Scout project – installation of two trails & two picnic tables) – Received by Acting-Chairperson Deutsch.

Ms. O'Hare said the Conservation Commission is proposing an Eagle Scout Trail project in this area.

ELECTION OF OFFICERS – Tabled to the June 4, 2014 Meeting.

REPORTS & COMMUNICATIONS

1. U.S. Army Corps of Engineers Notice of Enforcement Investigation re: 59 & 65 No. Plains Highway; to Erin O'Hare, Environmental Planner (with copies to Town Planner, Town Engineer, Director of Public Works, and chairs of IWWC, PZC and Conservation Commission) with several regulatory attachments; date 4/2/14; received 4/7/14.

Taken up under "Violations."

2..U.S. Army Corps of Engineers Notice of Violation to Jonathan Gavin, Wallingford Group, LLC, c/o United Concrete, from Jennifer McCarthy, Chief, Regulatory Division, dated April 1,2014; copy to Erin O'Hare, Planning Office, received 4/8/14.

Taken up under "Violations."

3.Letter to Erin O'Hare, Environmental Planner, from Cori Rose, Sr. Program Manager Regulatory Division, Dept. of the Army, dated April 27, re: 59 & 65 North Plains Highway, Wallingford Group, LLC.

Taken up under "Violations."

4.DEEP Permit Application for the use of Pesticides in State Waters – 5 Research Parkway, Bristol Myers Squibb – herbicide treatment to control filamentous algae and Western waterweed.

Ms. O'Hare said the IWWC is required to be notified anytime there is a permit application for the use of pesticides in State waters.

5.DEEP Permit Application for the Use of Pesticides in State Waters – Ashlar Village Pond, Cheshire Road – herbicide treatment to control Curly-leaf pondweed and filamentous algae.

Ms. O'Hare said this is the same as above. She noted if the IWWC has any questions on the DEEP application, they are forwarded to the DEEP.

6. CACIWC newsletter, "The Habitat", Spring 2014 - distributed to Commission

7. Southwest Conservation District newsletter, Spring 201 – "Soil & Water" – distributed to Commission

VIOLATIONS

1. CEASE & DESIST hearing: **#A13-8.2/59 & 65 North Plains Highway –** Wallingford Group, LLC-(Significant Impact – stream crossing & excavation & filling activities for industrial use – concrete storage yard) – noncompliance with Notice of Violation issued 3/31/14 re: permit noncompliance, unpermitted filling on site and on Town property, unpermitted clearing & other activities
2. **North Plains Highway Town Right of Way/Padens Brook –** Wallingford Group, LLC, Notice of Violation re: unpermitted, unauthorized activities on Town property within wetlands, watercourse, and upland review area.

Appearing in front of the IWWC was James Sipperly, certified soil scientist; Christopher Juliano, Juliano Associates, Professional Land Surveyor, Registered Professional Engineer; George Cotter, Professional Engineer, OCC Group.

Ms. O'Hare said this is a Cease & Desist hearing relative to a Cease & Desist order that was issued to the Permittee, the Wallingford Group, on May 5, 2014. She said this issue was first

addressed at the April 2, 2014 IWWC meeting. Ms. O'Hare briefly went over the chronology of this issue. She said the concrete storage yard permit which is now in violation, was approved on Dec. 4, 2013. She said on March 24, 2014 she was visiting another site and went down North Plains Highway, when she noticed the culvert crossing had been installed and there was no silt fencing anywhere on the site.

She said work was ongoing in the Town Right-Of-Way which is a separate issue. Ms. O'Hare said on March 31, 2014, a Notice of Violation was issued to the Permittee and on April 2, 2014, the IWWC determined the Notice of Violation would remain and issued directives to provide survey information on a plan and staked in the field regarding the edge of the permitted storage yard because that had been exceeded; and survey information on a plan and in the field, regarding the clear-cut area on the southern edge of the property. She said a turbidity curtain was also required to be installed because this was an open construction site.

Ms. O'Hare said as an as-built plan of the culvert crossing was to be submitted if elevations for that culvert crossing were found in the file to have been submitted. Ms. O'Hare said on April 10, 2014, the IWWC had set a one-week deadline to submit the survey information which the Permittee agreed to at the April 2, 2014 IWWC Meeting. She said the submittal never came in and she contacted Jon Gavin, who was representing the Permittee, who indicated this would not be done. Ms. O'Hare said Mr. Gavin also indicated that a Michael Klein, soil scientist and ecologist, was in the process of re-mapping the wetlands, as there was a new expansion plan to be submitted. Ms. O'Hare said on April 14, she forwarded elevation information from the permit file prepared by Mr. Juliano to Mr. Cotter for his response.

Mr. Kern asked if the elevation was correct.

Ms. O'Hare said she has yet to see elevation information submitted. She said Mr. Cotter handed in a letter on Tuesday, but it did not declare an elevation. Ms. O'Hare said she is still waiting for the as-built, and a determination of the elevation in the field as installed. Ms. O'Hare said on April 17, 2014, a Notice of Violation was issued at the request of the Law Dept. to the Permittee relative to work conducted on Town property without permission and in violation of the regulations. She said the directives included submittal of survey information depicting before & after picture of the configuration of Padens Brook and the wetlands on Town property and provisions of the impact figures in term of the aerial extent of the disturbance and cubic yards of fill deposited or removed. Ms. O'Hare said this has not been submitted.

On April 21, Ms. O'Hare and Commissioner Heilman conducted an on-site investigation without the required survey information, to determine the extent of the unpermitted work conducted within the jurisdictional area and to observe site conductions. On May 5, 2014, a Cease & Desist order dated May 2, 2014, was issued for non-compliance with the original Notice of Violation directives. Ms. O'Hare said she and Commissioner Heilman conducted another site investigation on May 5, 2014 at the request of Mr. Gavin, who was on-site with Mr. Juliano and Mr. Cotter. She said the new wetlands flagging was completed by Mr. Sipperly, and the silt fencing was

installed at the boundary of the proposed improvement area an application for which was received tonight by the IWWC as a new application.

On May 6, 2014, the new after-the-fact modification to the permit application was received with a soil report by Mr. Sipperly but without the field sketch which was submitted by Mr. Sipperly on May 7, 2014.

Ms. O'Hare said also on May 7, 2014, a letter was submitted by Mr. Cotter which addresses the crossings elevation but does not provide elevations or elevation figures and there is still no as-built. Ms. O'Hare said also on May 7, 2014, she conducted another site-investigation with Henry McCully, Director of Public Works, to determine how many trees were cut on Town property. She also observed the wetlands flagging and took photos of ongoing work which has not ceased in the jurisdictional area. Ms. O'Hare said the as-builts, the elevations, the survey of the original concrete storage yard on Town property, and the impact information for Town property, remain outstanding.

Commissioner Kern said it appeared that everything was satisfied except for the elevation, and asked Mr. Cotter if it were correct.

Mr. Cotter said the elevation was 43.3 at the inlet and 43.19 at the outlet. He said what was done, in his estimation, is six inches as called for on the plan, six inches below the original streambed on the inlet, and on the outlet end, it is not entirely clear, but the box culvert is in place and the water flows through it. He said there are no issues from the placement of the box culvert. He said the material has not been put back into the box culvert for two reasons: a high water level in the brook since the process began with the Town. He said plans have been submitted to the Army Corps of Engineers for their review of the box culvert which is an ongoing. He said a plan was submitted last month, of what was built, along with the request for rip-rap. He said as far as work within the Town Right-Of-Way, the issue is that in the original plan, there was call for work to be done around that area on Town property for a swale; there were grades established on the north side; on the south side, there is an AT & T line that runs close to the brook. He said no tree stumps have been removed as of yet from Town property so there is original ground adjacent to this. He said there are two access ways that come off of Town property, which were shown on the original plan and are still intended

Mr. Cotter noted that the access way on the north side of the property has been modified in this plan to move it away from the area of the brook, which is further away from what was approved by the IWWC. He said since the last meeting, the Applicant requested and advised staff of their intentions which was to bring in a soil scientist to flag the wetlands. He said the wetland flags that were already in place, came from wetland maps of which Mr. Juliano was unable to find the original source. He said they were a replication of where the flags were on the map. He said the Applicant has since flagged the property. Mr. Juliano has gone to the site, located all the wetland flags and put them back on the plan that was submitted tonight. He said the Applicant has a plan, given the site circumstances, especially at the inlet of the box culvert. He said there is more undermining of the slopes, around the area between the Town's triple

pipes and the actual entrance to the box culvert that is not stable because the area is a sand plain and there is continual movement of sand after a major storm event. He said this is why at the last meeting, the Applicant submitted a plan to rip-rap the slopes at the inlet between the triple pipes on Town property on the road and the box culvert.

Ms. O'Hare said Chairman Vitali authorized the Cease & Desist on the Town's jurisdictional area of the property. She said Corporation Counsel Janis Small directed her to issue a separate Notice of Violation for work that Mr. Gavin had conducted within the Town Right-of-Way.

Mr. Cotter said the Applicant is installing the rip-rap on the slope because he wants to make sure the slope is stabilized because it is near the AT&T line. He said the Applicant is awaiting word from the Army Corps of Engineers on what the permitting level is and whether one is required. He said plans have been submitted to the Army Corps.

Mr. Kern said this issue with the rip-rap needs to be addressed now and not wait for the Army Corps response which could take two years.

Commissioner Heilman said he visited the site. He said this is a huge project but in the scope of all the projects, it is a pin dot. He said the Army Corps will not be there quickly. Mr. Heilman said more pipes have been added than he originally thought. He said where the water comes through under the road, significant velocity is achieved because the water has create a plunge pool out in front of it, 30 to 40 feet beyond the roadway. He said the water depth there is six to eight feet, scouring the sidewalls creating high flows.

He said there is absolute evidence of scouring. He said the water needs to be slowed down and controlled. He said no sediment will exist in that box culvert until big rip-rap is installed. He said at the far end where the water comes out of the extensive box culvert, long enough to require a skylight, there are problems with the velocity of water coming out of the slide which need to be addressed. He said the box culvert is not functioning in the intended way because it has not been finished. Mr. Heilman said until the velocity is slowed down within that chute, there are going to be problems at the outport, this entire area has to be rip-rapped. He said another scour hole is being created and blowing the sediment down to Paden's Brook. Mr. Heilman said the area where the utility lines are located should also be stabilized. He said the box culvert cannot go for two years without impeding the velocity.

Commissioner Heilman spoke about the clear-cutting which had taken place around the wetlands boundaries affecting the glacial sand deposits.

He said construction has gone right to the very edge of the wetland boundaries. He said he would have liked the Applicant to have kept away from the wetlands, and even though the Applicant is not in the wetlands, but the buffer area has been significantly pushed to the limits.

Acting-Chair Deutsch asked about the outlet pipe being six inches different from where it was and where it was supposed to be located.

Mr. Cotter said there is a change in elevation from the bottom of the streambed of at least six inches which would allow the material to be placed in the box culvert. He said at the inlet end, the box culvert is where it is supposed to be; at the outlet end, the Applicant will put in six inches of material in the box, and install a plunge pool instead of just a rip-rap extension that was on the original plan. He said if this is done, the velocity of water coming out of the box culvert will be slowed. He said what Ms. O'Hare found in the file was the hydraulic analysis that Mr. Juliano did to show the box culvert was sufficient for hydraulic capacity. He said on the plan, there were no spot elevations at the location of either ends of the box culvert in the stream bed. He said they took an elevation and the box culvert was dropped so six inches of material could be put back in and be at the stream bottom elevation. He said hydraulic calculations are not used to go out to the field to determine site specific elevations and it is quite common to recheck the construction and to check the elevation to be site specific. He said this is the note that Mr. Juliano put on the plan that the bottom of the culvert was to be set a minimum of six inches below the streambed. He said the stream will function and there will be no impacts upstream. He said if the plunge pool is installed downstream, there will be no impacts downstream.

Mr. Cotter said the turbidity curtain was noted on the plan to be installed during construction of the box. He said everything is stable and there has not been any material washed off-site. He said the water is running clean coming into the site, and going off the site through the box culvert.

Commissioner Kern asked Ms. O'Hare if there are plans showing the elevation of the box culverts. Commissioner Kern said the Applicant needs to have an as-built showing where the box culvert will be located.

Ms. O'Hare responded that the elevation on the approved plan is between 40 and 45 on the cross section. She said she has requested an as-built, but one has not been submitted.

Commissioner Kern told Ms. O'Hare there are other issues that need to be addressed, and the as-built will be submitted, but that she has to be patient.

Mr. Cotter said the Applicant put in the as-built of the box culvert showing the additional areas where we requested, the rip-rap, to be placed around. He said this as-built was submitted last month. He said what wasn't submitted last month, were the elevations which were submitted tonight for the box culvert that Mr. Juliano located.

Ms. O'Hare said what was submitted was not an as-built. She said this was a proposal.

Mr. Cotter said what was submitted (box culvert), was an as-built and what is the proposal is the rip-rap on it. The elevations that were submitted tonight are the as-built.

Ms. O'Hare requested from the Applicant, an as-built showing the rip-rap as it is today or a month ago.

Commissioner Kern said we are leaning towards putting the rip-rap in place tonight to stabilize the area out there.

Ms. O'Hare said she met with the Law Dept. today and was told the work proposed on Town property by the Applicant is not being authorized by the Town. She said the Town is not a co-applicant at this point, so if the IWWC proposes anything, it cannot include work on Town property.

Commissioner Kern said if Town property is being disturbed because of work on this site, he believed the IWWC had the jurisdiction to prevent any further scouring or undermining of the AT & T line. He said the IWWC can give the Applicant permission to install the rip-rap. He said he was concerned about preserving what is already out there, instead of having a disaster over a technicality.

Commissioner Heilman said the IWWC can give permission for work to be done, upon the approval of the person who finally has to do this. He said the Applicant has the IWWC approval.

Mr. Juliano noted the original plan approved by the IWWC had grading within the Town Right-Of-Way because the Applicant had to tie back into the grade. He said the only activities pending would be the approval of the rip-rap. He said the Applicant has spoken with the Engineering and Public Works Dept. He said they would not approve any action until the IWWC approved.

Mr. Sipperly said this is under an enforcement action and the IWWC has the ability to direct the Applicant to stabilize the site. He said there has been no encroachment into the wetland proper around the edges, when this cleared several years ago for a soccer field, top soil was removed and they went right to the edge. He said the silt fence installed now is new, but there is also a row of silt fencing into the woodline in several locations which is still lying on the ground, which was probably placed there when the topsoil was stripped to place the soccer field. He said he found some light blue flagging on shrubs and trees which he believed are the remnants of what was done several years ago. He pointed out these discrepancies on the site map. He said an old access road could have blocked the water access. He said there already has been soil disturbance and the silt fence is right on the line. He said to the left side of the installed silt fence, is natural wetlands soil; on the right side of the installed silt fence, soil has been scraped away but it is impossible to determine whether this is recent activity. He said there is no soil profile, so he installed the wetlands flag close to the silt fence stakes and that is the only discrepancy. He said the IWWC has to determine whether there has been significant impact because there is no significant impact to any of the wetlands on or off the site.

Acting-Chair Deutsch requested a list from the Applicant of what has to be done.

Commissioner Kern asked Ms. O'Hare what would have to be done to get rid of the Cease & Desist in order for the Applicant to stabilize the area.

Commissioner Heilman said this would be called a directive - requesting the Applicant stop what they are doing, in order to determine what should be done next. He said a plunge pool would be a perfect solution to resolve any minor variations in elevation.

Mr. Sipperly said he would contact Cori Rose of the Army Corps who has the jurisdiction to make a decision on this issue and will recommend to her installing material for 20 to 30 ft. in the inlet and outlet parts, and in the middle of the culvert, installing check dams of rip-rap and stone. He noted this work should be done in low flow conditions. He said he would notify the IWWC of her decision.

Commissioner Kern said the IWWC has a letter from Ms. Rose dated April 29, 2014 in which she states what her jurisdiction is and that she would add the Applicant's request and review it. He suggested Mr. Sipperly speak with Ms. Rose and inform Ms. O'Hare. He said he is concerned about Town property which has been altered. He asked if this area has to be tended to because of erosion. He asked the Applicant if they would also have permission from Public Works to work on this area to stabilize the property if the IWWC granted permission tonight to do so. He said the IWWC would recommend the stabilization be put into place, and that the Applicant check with the Engineering Dept. and Public Works to ensure they agree with this, and allow the Applicant to expedite what needs to be done.

Ms. O'Hare clarified there is no Cease & Desist on Town property; it is on the 59 & 65 North Plains Highway property.

Mr. Cotter asked permission from the IWWC to finish the grading work and get this job completed. He said the IWWC granted approval on its previous application for 59 & 65 North Plains Highway. He said the entire area was to be lowered on the original plan. He said removal of material has ceased because of Town actions. He requested on this portion of the property, to be able to move material to its final location and be able to stabilize and finish the process. He said the only area in question is a small piece of land located at 69 North Plains Highway. He said the Applicant is proposing a berm along the edge of the property and grade away from it so runoff does not go into the wetlands. He said the water will go along the grass swale into the brook at the location of the rip rap pad at the outlet structure.

Commissioner Heilman said he didn't believe there would be any runoff. He did not believe it would be big enough to contain anything, but would create stability.

2.CEASE & DESIST hearing: **69 North Plains Highway** –69 North Plains Wallingford, LLC – noncompliance with Notice of Violation issued 3/31/14 re: unpermitted clearing.

Ms. O'Hare said this property was a subject of a "Notice of Violation." Certain directives were given at the April 2, IWWC meeting, i.e., a survey, has not been submitted, so a Cease & Desist was issued on the property on Monday, May 5, 2014. She said this is subject to a new application which was submitted on Tuesday, May 6, 2014 and was distributed to the IWWC at tonight's Meeting.

Ms. O'Hare referred back to the crossing in which she said the proposal is a different configuration of what was submitted tonight. She asked the Applicant to address why the shape of the river and the extent of the rip-rap in that proposal is different from the proposal which was handed in tonight. She noted that when there is a Cease & Desist, one of the options is to order remediation. She said that remediation can be ordered on the 59 & 65 North Plains Highway property, and it can be suggested on the other property, but the Town would have to grant permission to install rip-rap on its part of the property.

Mr. Cotter said the plans submitted tonight are the representation of where Mr. Juliano plans to install the rip-rap. He said the Applicant will provide an as-built photo of the box culvert and put the elevations on either end of the box culvert.

Ms. O'Hare said the new application plan handed out tonight by the Applicant, expands their storage yard which involves $\frac{3}{4}$ of an acre of the upland review area. She said this is a new regulated activity. She said the IWWC needs to determine significant impact and if it is a significant impact, a public hearing must be held or if the application is not deemed a significant activity, then Ms. O'Hare recommended the IWWC wait until June or set a Special Meeting because statutes dictate a 14 day waiting period. She said she has not had a chance to closely review this application.

Mr. Cotter said the fill to be removed was always on the original plan and the only area not shown on the plan was the little triangle piece on 69 North Plains Highway. He said the Applicant is proposing to grade it with the rest of the adjacent parcel – 59 & 65 North Plains Highway.

Ms. O'Hare said the Applicant has submitted two new applications - one for 69 North Plains Highway, (the little triangle) and the other for the larger piece (which will be discussed at the June IWWC Meeting).

Mr. Sipplerly said the Applicant was not requesting these two new applications be approved. He said under the Cease & Desist order, what the Applicant is looking to do is to receive approval to stabilize the plunge pool off the road going into the box culvert with rip-rap and stabilize the outlet of the box culvert where the plunge pool is with rip-rap on the sides, and spread loam around the perimeter of the site to establish grass growth, and be allowed to finish grading the area to spread in the central part of the area which was already part of the original approval. He said the Applications can be processed next month.

Ms. O'Hare said the Applicant has come in with a new application to address the expanded area which is $\frac{3}{4}$ of an acre of new territory in the upland review area.

Mr. Cotter said this is an area that is already within the silt fence but needs to be loamed and seeded.

Commissioner Murphy said the rip-rap should be installed; loam and seed a 10-foot wide strip around the edges to add stabilization; and rip-rap at the inlet/outlet to stabilize the area. He said the rest of this application would be addressed next month-(the $\frac{3}{4}$ acre new application).

Commissioner Parent said it appears the actions of the Applicant have resulted in an ecological or wetlands gun behind held to our heads. He said the IWWC has to take action whether we like it or not. He said this was caused solely by the Applicant who could not construct a structure solely within the approved plans. He said he had no problem introducing a motion to take care of this.

Commissioner Kern said he would like to see the topsoil spread around for soil erosion control, and the rip-rap that was presented last month with the print given to Ms. O'Hare as an as-built, and hold off on the $\frac{3}{4}$ acre parcel because 30 days is needed by statute for approval. He specified the rip-rap, the plunge pool and the topsoil around the perimeter be acted upon right away.

Ms. O'Hare said the silt fence was fine and there was no erosion going on around the perimeter; it has been contained by the silt fence at the edge of the violation and there is no need for loam. She said she is confused over the Cease & Desist and asked if the Applicant is allowed to drive over the Cease & Desist area to deposit the loam. She asked if the Applicant is not allowed to install more dirt and millings over the $\frac{3}{4}$ - acre area.

Commissioner Kern said the Applicant is not allowed to disturb the $\frac{3}{4}$ acre area. He said this is a new Application which cannot be acted upon for 30 days by State statute. He said the Applicant can drive over the violation area to install the loam. Commissioner Kern asked Ms. O'Hare what the reason would be to shut down the entire project the way it is now. He asked if work can continue only in the areas that she has addressed for the Cease & Desist. He asked her to tell the IWWC why they need to still enforce the Cease & Desist order in this area.

Ms. O'Hare said there has been a significant violation of the permit issued in December, 2013.

Commissioner Heilman said this has been addressed tonight and the IWWC has come up with some remediation to address these concerns, so when these issues are resolved, this would eliminate the Cease & Desist order.

Mr. Sipperly suggested the Cease & Desist order stay in effect with the condition that the directives be implemented. He said by next month, the work would have been completed with a report and inspected by staff and then the two applications can be processed.

Mr. Cotter noted on the interior portion of the plan, there are materials that need to be moved from the northwest corner down to the southern part of the property in the central area. He said if the areas in question are not gone into, the Applicant should be able to work within those areas and do the conditions with the rip-rap and the loam and seed. He said if this is done now, it will be grass because this is the growing season. He said the Applicant should be allowed to do the work within the limits of the original permit.

Commissioner Kern said if the Applicant does the as-built portion of the rip-rap and the loam, the Applicant should be able to finish the center part of the project. He noted the Cease & Desist on the ¾ acre sliver of property will stay in effect. He said the other Cease & Desist will be released when the rip-rap on Mr. Gavin's property and the Town property is installed and the loam is spread.

Ms. O'Hare asked what would happen if the Town did not approve of the Applicant installing the rip-rap.

Commissioner Kern said he was positive Mr. Cotter could obtain a letter from Corporation Counsel which allowing the Applicant to install rip-rap on the Town-owned portion of the land.

Ms. O'Hare said the IWWC should write a letter to the Law Dept. telling them they want the rip-rap installed on Town property.

Commissioner Kern said he would meet with the Law Dept. to request the letter.

Mr. Sipperly said the Applicant will also try to obtain a letter from the Town granting them permission to install the rip-rap on Town property and if the letter is not obtained, the work will not be done.

Commissioner Kern said if the Applicant does not do the work, the Cease & Desist order will stay in effect. He emphasized this will resolve the issues except on 69 North Plains Highway.

MR. PARENT: **MOTION WITH RESPECT TO PERMIT #A13-8.2 /59 & 65**
NORTH PLAINS HIGHWAY, WALLINGFORD GROUP, LLC,
NOTICE OF VIOLATION THAT THE COMMISSION DIRECT THE
APPLICANT TO INSTALL RIP-RAP ON TOWN-OWNED
PROPERTY SUBJECT TO THE APPROVAL OF THE TOWN

MR. MURPHY: **SECOND**

VOTE: **HEILMAN – YES; KERN – YES; PARENT- YES; MURPHY – YES**
DEUTSCH – YES

MR. PARENT: **MOTION WITH RESPECT TO PERMIT #A13-8.2., 59 & 65**
NORTH PLAINS HIGHWAY, WALLINGFORD GROUP, LLC, BE
DIRECTED TO INSTALL RIP-RAP AT THE INLET SIDE OF THE
OF THE CULVERT AS SHOWN ON MAP #A14-5.3 DATED MAY

5, 2014

MR. MURPHY: SECOND

VOTE: HEILMAN – YES; KERN –YES; PARENT – YES; MURPHY – YES;
DEUTSCH – YES

MR. PARENT: MOTION WITH RESPECT TO PERMIT #A13-8.2/59 &65
NORTH PLAINS HIGHWAY, WALLINGFORD GROUP, LLC,
DIRECTING THE APPLICANT TO INSTALL RIP-RAP ON THE
OUTLET SIDE OF THE CULVERT AS DEPICTED ON MAP
#A14-5.3 WITH THE PLAN DATED ON MAY 5, 2014

MR. MURPHY: SECOND

VOTE: HEILMAN – YES; KERN – YES; PARENT – YES; MURPHY –YES;
DEUTSCH – YES

MR. PARENT: MOTION WITH RESPECT TO PERMIT #A13-8.2/59 & 65 NORTH
PLAINS HIGHWAY, WALLINGFORD GROUP, LLC, NOTICE OF-
VIOLATION, THAT THE COMMISSION DIRECT THE PERMITTEE
TO SPREAD LOAM AND SEED AS REFERENCED ON MAP #A14-
5.3 RECEIVED MAY 5, 2014

MR.MURPHY: SECOND

VOTE: HEILMAN – YES; KERN –YES; PARENT – YES; MURPHY – YES;
DEUTSCH – YES

Commissioner Heilman said he believed it was important that something be done in the chute at low water, get some rocks in the box culvert so the water velocity can be controlled. He said if this had to be moved, it would make a huge impact.

Mr. Juliano said, as referenced earlier, he would be following up with Cori Rose of the Army Corps of Engineers in this matter. He said Ms. Rose would be submitting something to him and he would forward it along to the IWWC for approval. He noted this would be included in the punch list. Mr. Juliano said he would speak to Town officials and get a decision in writing.

Mr. Sipperly suggested the Commission Chair also contact Town officials and have Ms. O'Hare send a memo to Town officials based on tonight's decision.

Commissioner Kern directed Ms. O'Hare to write such memo.

Acting-Chair Deutsch said the Cease & Desist Order will stay in effect until the work is completed.

4. NOTICE OF VIOLATION – 252 Main Street, Yalesville/Quinnipiac River Raceway- Brother's Pool, L & J Partnership LLC –unpermitted improvements & depositions within upland review area of Quinnipiac River Raceway and violation of 2009 Remediation Plan.

Appearing in front of the Commission were John Gable of CT Consulting Engineers, P.E., and Lisa Morgillo, owner, Brother's Pool, and member, L & J Partnership.

Ms. O'Hare said a "Notice of Violation" went out on April 16, 2014 and a copy was distributed to the IWWC in tonight's packet. Ms. O'Hare also distributed photos of the violation to the IWWC. She said the Planning Dept. brought to her attention that something was occurring at the site which also has a Zoning violation. She said the Applicants received Zoning approval approximately one-year ago to do major modifications to their showroom. Ms. O'Hare said according to the P & Z plan, the back of the building was supposed to be gravel. She said the Zoning Officer found fill and six-inches of poured concrete for a parking area.

Ms. O'Hare there was no permit for this issued by P & Z and no wetlands permit issued. She said this concrete parking area is within the 50-foot upland review area. She said another issue was that it also was in the FEMA floodway. She said in 2009, the DEEP got involved with Stream Channel and Encroachment Line violations at this site and wetlands violations in the floodway. She said now this is handled by Flood Management, a Planning Department function, and FEMA. Ms. O'Hare said in discussions with the violator and engineer, their premise is that the FEMA floodway is incorrect and will apply to FEMA to correct that line. Ms. O'Hare said whether or not the floodline is corrected, this is unpermitted work within 50 feet of the river which was conducted without a permit and why a Notice of Violation was sent out.

Commissioner Kern asked how this Notice of Violation can be corrected.

Ms. O'Hare said the IWWC has no authority over floodways. She said this comes under the Planning Dept. She said the IWWC has to worry about activity within 50-feet of the wetlands. She said the Applicant could submit an after-the-fact application for the concrete parking area in the back and replant bushes. She said the bushes were killed off during snow removal and is suggesting, if the IWWC sees fit for an after-the-fact, it could be incorporated in the application a section for snow removal to include no bushes and an area just for snow removal which has rip-rap down the bank. She noted the drainage pattern will be changed if the concrete parking area is kept.

Mr. Gable said in the past two meetings with Town staff, they were proposing some sort of water treatment system to be installed, i.e. an oil separator or a hooded catch basin with a deep sump prior to the water discharging into the swale area that goes to the raceway. He said in light of the concrete parking area, this will help make the water treatment that would not exist with the gravel in place.

Commissioner Kern said with the concrete decking in place, maintenance-wise it will be clean. He said the roof runoff water, anything more than four inches of processed stone, water will not percolate through. He said the wetlands area has been encroached into prior than what we discussed when we were at the site approximately three years ago. He said there needs to be a snow shelf and a designated area to push the snow into along the river. He said he would like to see some shrubs put into the back area and doesn't see that the expense of an oil and water separator because there is a concrete area.

Mr. Gable said something should be installed for treatment. He said the roof runoff now runs underground to the front. He said the CT DOT allowed the owner to connect into the front through the State system. He said along the bank would be kept free and clear and designated a snow shelf area.

Commissioner Kern suggested the IWWC go out to the site to see what has been done. He said it is a top- shelf operation which is very unique.

Ms. Morgillo said she was holding up on installing curb stops until the IWWC hearing.

Commissioner Heilman said the Applicant should come in with a formal plan regarding the concrete parking area.

Mr. Gable asked the IWWC if they would grant the after-the-fact application to proceed with the new plan. He said he would abide by the previously approved plant species to be planted. He said a planting plan will be sent to Ms. O'Hare and presented to the IWWC at the June meeting.

Commissioner Kern directed the violator to put in an after-the-fact application and do what needs to be done as far as the snow shelving, re-directing the water and planting of bushes .

Adjournment

Mr. Parent made a motion to adjourn the meeting at 9:10 p.m. The motion which passed unanimously, was seconded by Mr. Murphy.

Respectfully submitted,

Cynthia A. Kleist

Recording Secretary