

SPECIAL MEETING

WALLINGFORD INLAND WETLANDS & WATERCOURSES COMMISSION

WEDNESDAY, AUGUST 13, 2014

TOWN HALL, ROOM 205 (Bid Room)

45 SOUTH MAIN STREET, WALLINGFORD, CT

6:00 p.m.

MINUTES

A special meeting of the Wallingford Inland Wetlands & Watercourses Commission was held on Wednesday August 13, 2014, in Council Chambers, Town Hall, 45 South Main Street, Wallingford, CT.

Seated Commissioners were: Chairman Jim Vitali; Vice-Chair Ellen Deutsch; Nick Kern, Dennis Murphy; Alternate Jim Heilman; Erin O'Hare, Environmental and Natural Resources Planner; Janis Small, Corporation Counsel; Joan Molloy, Atty, Loughlin Fitzgerald; Christopher Juliano, P.E., and Certified Land Surveyor, Juliano Associates; Sharon Correll; Susan Taylor; Ron Petrucelli, Petrucelli Landscaping.

Not Present: Commissioner David Parent and Alternates Michael Caruso and Deborah Phillips

Chairman Vitali called the Meeting to order at 6:05 p.m.

- 1. #A14-6.2/91 Farm Hill Road** – Sharon Correll – (stabilization of rear yard and pool fencing)

Ms. O'Hare went over the revised plan which Ms. Correll had submitted on July 13, 2014. Ms. O'Hare noted in the Environmental Planner's Report dated August 5, 2014 that a site investigation was to be conducted on August 6, 2014, with herself, Henry McCully, Public Works Director; the Applicant/owner; the Contractor Ron Petrucelli; Roman Mrozinski, SWCD, to have a final check to ensure no activities would take place which would impact the property owner next door. Ms. O'Hare noted that originally, the plan did involve the Town's drainage easement with the property would affect not only the Correll's property, but the property next door for a few feet. She said this was not wanted, because if this occurred, the property owners next door, the Taylor's would have to come in as Co-Applicants. She also noted that in the original application, Public Works was involved to extend the pipe, which is not the case in the new application which is independent.

Ms. O'Hare said the stream is not drawn on the new site plan; it ends with a plunge pool. She said the stream should have continued on to the east. Ms. Correll said she had a map showing

the entire length of the stream. Ms. O'Hare said the area was measured to determine how many gabion baskets would be required. She said Mr. Mrozinski approved of the new plan but requested the last gabion basket be towed into the maple. He said the erosion controls were gone over on-site. She said there will be a pump on site to pump out water if necessary. Ms. O'Hare said the Contractor was present at tonight's meeting to explain how the bank would be fortified and stabilized with the gabion baskets, and in the process, the stream would be moved over several feet.

Mr. Petrucelli said he suggested the sandbags be installed to divert the water to the floodplain, and if need be, the water will be pumped clean prior to the water going into the brook. He said there will be a section of silt fencing with haybales just ahead of the maple tree, to the right of the maple, and another set will be placed further downstream and if there is any silty water, it will be caught there. Mr. Petrucelli said he will excavate back, set in the gabion baskets and fill it with rip-rap and apply membrane on the back side so any silt filtration will go into the gabion baskets, fill it with rip-rap, install membrane on the back side to keep any filtration of the silt from going into the gabion baskets, fill it and then re-seed.

Chairman Vitali asked how the rip-rap would get into the baskets.

Mr. Petrucelli said they will be filled with an excavator a little at a time, and then filled by hand. He said they will come off of Ms. Correll's driveway and come down the lawn.

Chairman Vitali said he thought it was a good idea that the work was starting upstream behind the maple tree, but continuing downstream, would this be far enough so it doesn't erode past the last gabion.

Ms. O'Hare said it was determined in the field by Mr. Petrucelli and Mr. Mrozinski, that after the fence, the stream channel becomes more stable. She said this is why the work was stopped at this point.

Mr. Heilman said in the topographical surveys, it shows it becoming much more defined, once you get passed this area. He said the northern section of this area is the floodplain area and once it gets south of this, it goes into a much more well-defined ravine shape and therefore channeled and doesn't have the opportunity to run horizontal as it does on the point of concern.

Ms. O'Hare said Mr. Mrozinski has agreed to oversee the project.

Ms. Taylor, neighbor, said she had the opportunity last Thursday to review the original submitted permit to the IWWC. She read a statement into the record which noted that according to information required by Section 7.5 of the Inland Wetlands Regulations was not included in the Inland Wetlands Watercourse Permit Application submitted on June 14, 2014 or the revised July 24, 2014 current application. She said names and mailing addresses of abutting property owners was omitted by the Applicant along with names and addresses of property owners within 500 feet within any portion of the property. Ms. Taylor listed these addresses as being 89 and 93 Farm Hill Road, 20, 22 and 18 Briarwood Lane. She said this permit appears

inaccurate and the neighbors are requesting the Commission to allow us to represent our property by law. She presented a map showing Catlyn Brook and the vicinity to the adjoining property along with copy of the original permit to the Commission, where it says "required information and N/A." Ms. Taylor said this could either mean "not available" or "not applicable."

She noted that on the second page of the application, this is the same and is signed by Ms. Correll. Ms. Taylor said the first she became aware of trying to defend her property was at the last IWWC meeting and came ill-prepared because it was here say that her property was near to something being done. She said she has spoken to the Palmers (adjoining neighbor) and noted they are distressed because they are downstream of this project and are concerned about consequences. She said the Applicants are talking about diverting this brook in the original application. She said this is all she had and asked if this had been changed. She distributed copies and said she dropped one off at the Chairman's home before the Meeting and tried to contact him, because everything is moot beyond this point. She said she will have to retain Counsel and emphasized that she and the neighbors would appreciate acknowledgement of that stream being redirected, diverted, rechanneled, they are all synonymous and this is what she is hearing from Ms. O'Hare. Ms. Taylor said she also dropped off a copy to Ms. O'Hare.

Ms. O'Hare said Ms. Taylor, at the July 16, Meeting, requested being notified of an upcoming Meeting and subsequently, was sent a copy of tonight's Meeting a copy of the revised plan by mail. Ms. O'Hare said she has contacted her a few times by phone, and noted that last Thursday, she met with Ms. Taylor for a few hours regarding her property and the application. Ms. O'Hare said the application Ms. Taylor is referring to is the original application that was submitted on June 3, 2014. She said what is attached to the copy some of the Commission received tonight, is the first two pages of the actual application plus maps and Mr. Mrozsinski's report. Ms. O'Hare said it says "N/A" and noted she always writes "N/A"- "Not Applicable" for the abutters except when it is a developer and may be a significant impact. She said on the next page, Ms. Taylor references Section 7.5 which is for significant activities. She said the Commission hasn't voted on significant activity for this application, but noted she didn't think this application would be a significant activity so she didn't have them pursue the extra \$375 fee. She said no one has to submit the names and addresses of the abutting property owners unless there is going to be a public hearing.

Mr. Kern said standard protocol is that abutting property owners are not notified until the Commission deems an application to be a significant activity. He said Ms. Taylor is upstream of the project and asked if this would affect her property.

Ms. O'Hare said this is why an on-site visit was conducted to ensure all activities stay within several feet of her property line. She said Public Work is not involved at this time and will do nothing between the easement, which is shared by the two owners. She said erosion controls will be installed several feet away from Ms. Taylor's property line.

Mr. Kern said there will be no impact on the Taylor property

Mr. Heilman noted the entire purpose is to put the stream back into its channel.

Ms. Taylor showed a map of what happens upstream. She said she has 40 to 50 foot trees in the area that will fall when the ground is unsettled. She said some trees have already fallen. She said one of the trees will fall next to her bedroom and added her home is 20 ft. from the pipe which is five-feet from the easement. She said when the Contractor installs the sand bags water will back up and take trees down.

MS. DEUTSCH: MOTION THAT APPLICATION #A14-6.2 – 91 FARM HILL ROAD – SHARON CORRELL – (STABILIZATION OF REAR YARD AND POOL FENCING) BE DEEMED NOT A SIGNIFICANT ACTIVITY

MR. MURPHY: SECOND

VOTE: HEILMAN – YES; DEUTSCH – YES; MURPHY-YES; KERN-YES; VITALI –YES

MS. DEUTSCH: MOTION TO APPROVE APPLICATION #A14-6.2 – 91 FARM HILL ROAD – SHARON CORRELL – (STABILIZATION OF REAR YARD AND POOL FENCING) SUBJECT TO THE FOUR CONDITIONS OF APPROVAL AS OUTLINED IN THE ENVIRONMENTAL PLANNER'S REPORT DATED AUGUST 13, 2014 AS FOLLOWS:

1. **WORK TO BE CONDUCTED IN THE LOW FLOW PERIOD OF THE YEAR WITH A DRY FORECAST**
2. **ALL WORK ACTIVITIES ARE TO BE RESTRICTED TO THE SUBJECT PROPERTY**
3. **EROSION CONTROLS ARE INSTALLED AND INSTALLATION APPROVED BY THE ENVIRONMENTAL PLANNER PRIOR TO INITIATION OF OTHER PERMITTED WORK ACTIVITIES**
4. **WORK TO BE OVERSEEN BY THE SOUTHWEST CONSERVATION DISTRICT AS AGREED**

MR. MURPHY: SECOND

VOTE: HEILMAN –YES; DEUTSCH –YES; KERN-YES; MURPHY – YES; VITALI – YES

2. Workshop discussion re: Proposed amendments to IWWC Regulations, pertaining to Section 4, Sections 6-11, (new) Section 12, and re-numbering of current Sections 12-19 to Sections 13-20

Chairman Vitali noted that the Commission went over these Regulations approximately two years ago, and since that time, Ms. O'Hare sent this information to Atty. Small who made some

corrections, but this information didn't get funneled back to the original team who worked on the amendments.. He said the Commission came back again and are somewhat starting the process over. He said the majority of the amendments were alright. He said he wanted to go over the amendments that were of concern.

Section 7.2

Atty. Molloy spoke about Section 7.2 which would require an actual application to be submitted. She said there are times when Mr. Juliano and she did not believe a subdivision required an application, hypothetically, there could be no wetlands or watercourses, but as the language is currently drafted, a person would still have to submit an application. She said in Cheshire, they have what is called a "request for determination."

Mr. Juliano said there are times we will do a small one lot split off of an oversized lot.

Chairman Vitali said the Commission has always favored pre-application meetings. He said he didn't see a problem with a "request for determination." Commissioner Heilman agreed saying this "request for determination" could avoid a lot of headaches.

Atty. Small said she could come up with some language.

Atty. Molloy noted that just because a "request for determination" is submitted, it doesn't mean the Commission has to agree that no permit is necessary; it is at the discretion of the Commission.

Commissioner Murphy said we should have the opportunity to do something like this and we as a Commission can always turn around and say we don't have enough information.

Section 7.4

Atty. Molloy said this was the original arrangement where someone theoretically could come in with a pre-application to conceptually speak to the Commission. She said she looked at the revisions which stated we could only come in and speak to the Commission about significant activity and this is why she made her suggestion of a pre-application meeting. She said this was discussed at the last workshop and it was agreed this should not be a determination of significance because it's a pre-application, but the Commission might want to comment just to give the Applicant some sense of how they were doing it. Atty. Molloy said she didn't want this to be limited to just looking at this from the Applicant's point of view.

Atty. Small said this language needs to be toned-down because the Commission should not be making the determination whether something is significant or not when there is no application in front of them. She said caution must be exercised and said "determination" in the sentence in the bracket, could be changed to "discuss." She said the last two sentences should also be taken out.

Ms. O'Hare suggested the word "application" be removed.

Atty. Molloy said this shouldn't be limited to significant activity. It was agreed that meeting should be called "pre-application discussion."

Section 7.5

Atty. Molloy said she had a question regarding "E" which was a list of things to submit. She said the information to be submitted should be listed. She suggested stop the wording after "mitigation measures."

On "F", Atty. Small said she agreed that maybe there should be a discussion about what has to be provided regarding these alternatives, but it is really the Commission's decision as to whether an alternative shouldn't have been selected as opposed to this one.

Atty. Molloy said the regulation states we should be presenting a proposal which has the least impact. She reads this as stating we have to submit something with less impact.

Atty. Small said she believes this regulation is meant to say you have picked the least one however, the ultimate decision as to whether or not this is the case is up to the Commission. She said if there were alternatives, the Commission would need to be aware of them.

Commissioner Heilman said most of the time, the Applicants do try to minimize the impacts and work with the people who come before them. He said maybe what is needed is language that the Applicant has looked at numerous possibilities and determined this to have the least impact. He said the Commission can then look at what they have done. He asked why should the language demand that they show us an application that has a greater impact and then build one that shows less-they are doing this.

Atty. Small suggested leaving the original language.

Ms. O'Hare said make it wetlands and watercourses if we are to keep the one we have today and there should not be a diagram, it should be drawn.

Commissioner Heilman suggested wording to the effect that if the Applicant believes this is the best they should state why.

Atty. Small said wording could always be put in that the Commission reserves the right to require further detail of alternatives rejected. She said the original language should be left to see if anything needs to be added to it.

Item G

Atty. Molloy said her question on this item revolved around defining "what is made inevitable"

Atty. Small said the point is well-taken but her inclination was to leave the language as is.

Atty. Molloy asked how Mr. Juliano could identify on a site plan, what further activities that are "inevitable." She said she is not saying this shouldn't be a discussion point.

Ms. O'Hare cited approving the hotel which has not been completed as an example of "inevitable." i.e., approving a road that will go through the wetlands and by setting the road up in that direction, it is made inevitable that we will show the wetlands.

Atty. Molloy said according to this regulation, if Mr. Juliano was doing that drawing, he would have to show that road extension across the wetland and if one talks about residential uses, would he have to show a swing set, the mulch pile, etc., because these are all potentially inevitable events. She said how much paperwork would we have to submit ahead of time because we would not know what the Commission would ask.

Atty. Small said the point of it being on a plan is well taken. She said if the information is valuable to you, maybe there should be a narrative. She said the Commission should be able to figure out the items that would be related to a particular use.

Commissioner Murphy suggested stopping the wording at "watercourses" and proposed conditions, leave it there, which gives the Commission more leeway to use our best judgment.

Section H – which focuses on the names and mailing addresses of abutting property owners based on the Assessor's records.

Chairman Vitali noted the names and addresses of abutting property owners are not always on every application. Atty. Molloy said we usually don't supply this information unless it is deemed a significant activity. Chairman Vitali asked when this is determined to be needed or not needed.

Ms. O'Hare said the bigger applications list this information. Mr. Juliano said the information is on the application itself and he puts it on a second sheet. Chairman Vitali said it just asks on the application for the name and mailing address. Atty. Small said she will go through the Statutes to ensure nothing is missing.

Section I – No changes requested.

Section J – No changes requested.

Atty. Molloy suggested notice to the property owners be given.

Atty. Small said the Commission should not be burdened this way because if a person is applying for something, you are signing off on the Commission's right to do this.

Section K – No changes

Atty. Molloy said this is the Section where we submit the DEEP form and this regulation allows the Commission or its agent to change this. She said she has difficulty as an Applicant's

attorney, with having someone change a form she filled out and then submitting it to the State without her knowledge.

Atty. Small said she checked the State Regulations which state it is the Commission's responsibility to submit this to DEEP in the correct format. She said the Commission can require the Applicant to fill out part of the form.

Chairman Vitali suggested the form be initialed off when it is changed.

Ms. O'Hare said she changes the forms all the time because the homeowners never fill them out correctly and some developers do fill it out correctly, and some do not. She said she changes the form when the square footage has changed for the impact. She said she does not initial the form because most forms she writes herself.

Section 7.6

"A" – No changes

Atty. Molloy suggested editing out one of the licenses.

"E" – Discussed earlier will be matched up.

Section 7.9

Atty. Small said with respect to amending and renewing, it is not necessary to require 65 days in advance. She said the key is that the application should be submitted before the expiration of the permit. Atty. Small said it could be left at 65 days and add a sentence that the Commission could be flexible as long as the application is timely filed in terms of the expiration

Chairman Vitali said the Commission has given extensions after the application expired so the 65 prior days is a moot point.

Ms. O'Hare said she would like some time to go out and check the site.

Chairman Vitali said if the application is in to extend the permit, whether it is five days after the expiration date or 55 days, as long as it is in the works and Ms. O'Hare is out there to inspect it will be acceptable.

Atty. Small was asked to add the wording: "prior to."

Section 7.10

Atty. Molloy questioned the timeline of the enforcement action. Atty. Small will work on the language.

Section 7.11

Atty. Small recommended not putting the State Statute in the regulation and there should be some small reference to the State Statute. She said this Statute involves someone having a preservation or conservation restriction on their property, the Applicant is supposed to give the holder of that restriction notice before the property owner files. She said when the property owner files, the land use commission is then notified. Atty. Small noted that the person who holds this restriction can give their consent to what is being done, or state it is a violation of the restriction and for reasons that mean no sense to her, the Statute is written that the Commission has to be the trier of fact as to whether the application is a violation of the restriction. She said if the person did not receive notice, they can come to the Commission after the fact and undue the action.

She said the Statute is ridiculous and no one from the Land Use bar was aware of it. She said it is worthy of a reference of some sort of a notice that if there is a restriction, it needs to be looked at. She said the goal of the Statute makes sense, but the way it was gone about was questionable. Atty. Small said this Statute is in the Deeds section of the Statutes.

Atty. Molloy expressed concern that if someone wanted to appeal her approval, did not comply with the regulations because the notice wasn't given, who would she give the notice to. She suggested if something is going to be put in, it should say subject to a named grantee.

Atty. Small wanted this to be more of a notification because when a person applies, they are supposed to give proof of notice and verification of consent.

Section 9.1

Atty. Molloy said this restricts when a Public Hearing can be held, it is either significant activity or nothing. Atty. Small will re-read and revise if applicable.

Section 9.3

Atty. Small said this section involves the five-day requirement that proof be submitted of notice to the abutters. She said having an advance requirement is important. She said there could be leeway with this, but the verification in advance is important with some flexibility to accept late-as the exception not the rule.

Chairman Vitali said the Commission has experienced situations where the Applicant has missed notifying some people and the Commission has asked the Applicant if they are willing to take that risk.

Atty. Small said the Applicant should be told to re-do the application and be tabled or postponed. She said there can be flexibility with this.

Atty. Molloy said there is some possibility to modify the last sentence and suggested "may be basis for denial" be added. She said the regulation should be kept to the five days and suggested the regulation give the Commission the ability to waive the five-day requirement.

Section 10.1

"E"

Atty. Molloy said this section appeared to prohibit public comment if there wasn't a public hearing. She said this Commission has generally allowed members of the public to speak outside of a public hearing. Atty. Small said she would delete "for an application where a public hearing is held" and keep the rest of the wording. She said the wording should be left-"public comments evidence and testimony."

Atty. Small said "B" has been removed and "E" replaced it

Section 10.2

"B" "D" & "F"

Atty. Small said these all boils down to the way it is phrased, straight out of the Statute and she recommended leaving the wording as is.

Section 10.4- No changes.

Section 10.5 & 10.6

Atty. Small suggested combining the two and putting Section 10.6 first and add the language (Wetlands & Watercourses). She said this Section is because it was added on and is based upon case law and change to the Statutes.

Atty. Molloy said this should be changed in the definitions because when she is looking at a definition, she is going to go to the definition section and not to the consideration.

Atty. Small said she will examine this section further.

Section 10.8 – No changes.

Section 10.9 – Delete because it repeats the Statute.

Section 11.1 – No changes.

Section 11.2

Atty. Molloy said this Statute is about the Applicant having to withdraw if there was an issue. She said it would make sense to have an Applicant withdrawn. She said there could be an incomplete application which would be minor in nature.

Atty. Small said if the application is not withdrawn the Commission can deny it.

Atty. Molloy suggested stating that an application deemed incomplete by the Commission may be denied by the Commission if not withdrawn by the Applicant. She said it is just the order.

Atty. Small said Atty. Molloy's language will go in. She said if the application is denied because it is incomplete, the Applicant can come back with a new application.

Section 11.6 – No change.

Section 11.8

There is a new Section 12 so that now has to say "Section 13."

Section 12.2

Approvals and Legal Notices

Atty. Molloy noted this Section states that if she gets administrative approval she must post a legal notice. She noted that administrative approvals appear as an agenda item on the IWWC's monthly agendas so it is public notice.

Atty. Small said she will double check the statute and whether there has to be a legal notice if an administrative approval. She concluded this should be part of the legal notice.

Adjournment

Chairman Vitali adjourned the Special Meeting of the Wallingford Inland Wetlands & Watercourses Commission at 8:05 p.m.

Respectfully submitted,

Cynthia A. Kleist

Recording Secretary