

WALLINGFORD INLAND WETLANDS & WATERCOURSES COMMISSION

WEDNESDAY, MAY 2, 2018

7:00 P.M.

ROBERT F. PARISI COUNCIL CHAMBERS, SECOND FLOOR, TOWN HALL

45 SOUTH MAIN STREET, WALLINGFORD, CT

MINUTES

PRESENT: Vice-Chair David Parent (acting as Chair); Nick Kern, Secretary; Commissioners Michael Caruso; Daryll Porto (Alternate).

NOT PRESENT: Chair James Vitali; Commissioner Deborah Phillips; Aili McKeen, (Alternate).

Acting-Chair Parent called the Meeting to order at 7:04 p.m. and the Pledge of Allegiance was recited.

CONSIDERATION OF MINUTES

1. Regular Meeting, April 4, 2018 – **TABLED**
2. Special Meeting, April 25, 2018

MR. KERN: MOTION TO APPROVE THE APRIL 25, 2018 SPECIAL MEETING MINUTES AS SUBMITTED

MR. CARUSO: SECOND

VOTE: PORTO – YES; CARUSO – YES; KERN – YES; PARENT – YES

OLD BUSINESS

1. **#A18-4.1/291 Hall Avenue – Community Lake Park** – Wallingford Parks & Recreation Department – (tree thinning & vegetative removal).

Appearing in front of the Commission was David Gelo, President, Parks & Recreation Commission, and Jason Michael, Parks & Recreation Commissioner.

Mr. Gelo said that back in April 2016, the Parks & Recreation Commission had begun to look at the thinning of the woods between the Linear Trail and the Community Lake area. He said a meeting took place between the Wallingford Environmental Office, the Parks & Recreation Commission, the Conservation Commission and the Linear Trail people. Mr. Gelo noted that Community Lake is one of the most used parks in town. He said their idea was to have a passive view of what was once Community Lake, noting the lake cannot be seen from the Pavilion during the summer. He said they are trying to thin the dead, dying, invasive, trees and bushes. Mr. Gelo said in late December 2016, the first 300

hundred ft. of the area was thinned. He said he is now looking to thin out the remaining 600 ft. which goes to the original boat launch area closer to Hall Avenue. He said he and Mr. Michael had marked the first 300 ft. with yellow tape of the trees and bushes that were to be saved. He emphasized they have not gone in to do the last 300 ft. because of the difficulty of entering the site, and if the application was not approved, this effort would be a waste of time. He said the remaining 300 ft. will be marked if approval is granted.

Mr. Gelo noted that on April 24, the IWWC performed a Special Meeting site walk. He said the Town is seeking approval to complete the remaining 600 ft. Ms. O'Hare went over the map of the plan which she said came into her office this past Monday. Mr. Gelo said the southern, central, and northern pond access are depicted as reference points only. He said the paths that are there for canoes and kayaks will not be touched until after the clearing is completed. He said currently, the existing path is dangerous and long for someone to put a canoe or kayak in that area. He said there is a central path, but noted they don't want to do anything with any path, until the thinning process is completed. Mr. Gelo said every tree that is marked with the yellow tape is to remain. He said when this will be done depends upon approval. He said he would have to get three bids again, so this project may not start until the fall.

Ms. O'Hare read the highlights, noting that maintenance will be provided by the Dept. of Public Works and Parks & Recreation, part-time, on a monthly basis. She noted the birds have begun nesting and the leaves are starting to come out. She suggested doing this project either in March or April or in the Fall, September or October. Ms. O'Hare said she favored having the work done in the fall.

Ms. O'Hare noted the canoe and kayak trail was installed and was a Natural Resources Conservation Service, (NRCS), funded activity. She said the Wetlands Commission approved this in 2010. Ms. O'Hare said people found out this trail drops off too steeply into the water and the erosion has caused the black tar paper to stick out of the ground making the trail slippery. She said this will have to be addressed. Ms. O'Hare pointed out there is another erosion spot south of the Pavilion and the lake where the hill has eroded. She said the sediment is carried down when it rains across the Linear Trail into the Lake. She said both are fairly easy fixes and could be completed by Public Works.

Ms. O'Hare noted that on the plan it states "no 20 ft. buffer from shoreline". She said she is by and large, in favor of this project, except for this, the buffer, riparian area. She said the wave action of the lake, the wind and the flooding, eat away at the shoreline. She said people come right down to the water's edge and is a heavily trafficked area. Ms. O'Hare said she would like to see some vegetation left in this area within 20 ft. because this would help with erosion and trafficking along the edge of the lake.

Mr. Gelo noted that by the time he gets bids and goes through the entire process, it will be fall before the project can begin.

Commissioner Kern noted that this plan was not what was talked about. He said clearing to the edge of the pond and planting plants that were not invasive species was discussed. He said the IWWC never agreed to stop 20 ft. from the water's edge and is opposed to the 20 ft. buffer. He said he wasn't under

the impression at the site walk, that this is what was being discussed. He said the two ramps that need to be corrected was also discussed. He said if the Public Works Dept. said this will be repaired, the Commission asked they be repaired because they are a liability and aren't safe. Commissioner Kern said a member of the Conservation Commission was going to flag trees that were to be saved. He said the trees saved will not have grass underneath them. He suggested planting pachysandra to prevent erosion. Commissioner Kern asked what type of plantings could be installed for stabilization during the wintertime after the area is clear-cut. He asked if there would be enough time during the fall for vegetation to take root during the winter or would there be erosion like what occurred this past winter. Mr. Kern suggested thinking twice about the time frame and suggested some of the project be done when they get through the bidding process.

Ms. O'Hare said she agreed with having some of the project done now. She said all the invasives, including the vines and shrubs, should be removed, even if it is at the water's edge. She said some invasive trees should be removed, but wanted some natural plants left by the water's edge, even if it is just 10 ft. from the water. Commissioner Caruso said he had no problem with the presented plan and the 20 ft. buffer. He said he was fine with this going down to the water's edge. Commissioner Porto agreed and noted the trees tagged to be kept were acceptable. Commissioner Porto said it was acceptable to continue to do this for the remaining 300 ft.

Mr. Michael said the Parks & Recreation Commission had the idea to create a passive place for people to sit and look at the water. He said this is viewed as a gem body of water that no one sees. He said there would be 40 ft. to 50 ft. total before we are at mowable grass again. He said he believed the original vision was to leave the vegetation spotty and leave open clear paths to the water, similar to what is seen on the north side which he said has already been thinned out. He said we are trying to avoid anything that grows knee high.

Mr. Gelo said that within the 300 ft. the Commission looked at during their site walk, there are 45 to 50 trees being saved. He emphasized that nothing is being clear-cut and a tremendous amount of trees are being saved and within the first 300 ft. it amounts to a tree every six ft. Commissioner Kern asked Ms. O'Hare if she was comfortable with going right to the edge of the pond if a few plants are planted and garbage and branches lying inside the pond will be removed. Ms. O'Hare said all of this will be removed. Commissioner Kern said some clubs in town may be able to donate shrubs to put some stability back in here. He said we need to go from the edge of the water up. He asked Ms. O'Hare if this replanting would require more permitting.

Ms. O'Hare said more plants can be installed without additional permitting and is a good idea if funding can be found. Mr. Gelo noted that the center section is approximately 25 ft. from the edge of the water to the edge of the trees. He said it is a no brainer to clear this all the way down. He said he is being charged with going to the water's edge. Ms. O'Hare said the distance is more like 60 ft.

Acting-Chair Parent entertained a motion on significant activity.

**MR. KERN: MOTION THAT APPLICATION #A18-4.1/291 HALL AVENUE – COMMUNITY LAKE PARK
WALLINGFORD PARKS & RECREATION DEPARTMENT – (TREE THINNING & VEGETATIVE
REMOVAL BE DEEMED NOT A SIGNIFICANT ACTIVITY**

MR. CARUSO: SECOND

VOTE: KERN – YES; CARUSO – YES; PORTO – YES; PARENT – YES

Acting-Chair Parent entertained a motion to approve or deny the application.

**MR. KERN: MOTION THAT APPLICATION #A18-4.1/291 HALL AVENUE – COMMUNITY LAKE PARK
WALLINGFORD PARKS & RECREATION DEPARTMENT – (TREE THINNING & VEGETATIVE
REMOVAL) BE APPROVED WITH THE FOLLOWING STIPULATIONS:**

- 1. THE ENVIRONMENTAL PLANNER BE NOTIFIED PRIOR TO COMMENCEMENT OF WORK**
- 2. ON THE PRINT PROVIDED TONIGHT, THE 20 FT. BUFFER WILL BE TO THE SHORELINE AND THERE WILL NO LONGER BE A BUFFER THERE**
- 3. MS. O’HARE CAN PROVIDE WETLAND PLACARDS ALONG THE WATER’S EDGE**

MR. CARUSO: SECOND

VOTE: PORTO – YES; CARUSO – YES; KERN – YES; PARENT – YES

NEW BUSINESS

- 1. #D18-4.1/528 South Cherry Street – Wallingford Industrial Improvement Company, LLC – Request for determination that proposed sand extraction and sand processing facility and proposed warehouse and office development to be located on proposed lot (to be known as 10-20 Toelles Road), does not require permitting**

Appearing in front of the Commission was Atty. Joan Molloy, Loughlin Fitzgerald, and Richard Couch of Martinez Couch Associates, Project Engineer.

Ms. O’Hare said at the Feb. 8, 2018 IWWC meeting, the Commission entertained a request from the developer to render a determination that a wetlands permit was not required on the two-lot subdivision. She noted on the Allnex property, a 26-acre lot would be divided. She said the IWWC decided a wetlands permit on the sub-division was not required. Ms. O’Hare said the IWWC is now looking at the sand processing project and the warehouse/office development proposal. She said these two proposals will be discussed tonight. Ms. O’Hare said Atty. Molloy submitted a letter on April 26 and

after conferring with the Law Dept., it was determined a request should be submitted for determination that a wetlands permit would not be required for these two proposed developments.

Atty. Molloy explained she submitted a letter to Ms. O'Hare requesting to be placed on the agenda. She noted that when her client was preparing applications for the subdivision, the sand excavation and the development of the property, she met with Ms. O'Hare for a considerable period of time. Atty. Molloy noted the purpose of these meetings was to discuss whether any Inland Wetlands approval was required. Atty. Molloy said the subdivision, the sand processing and final site development was explained. She said the reasons why no permit would be required were presented at that time, noting the edge of the property is 500 ft. from the nearest watercourse and 1,300 ft. from the nearest wetlands. She noted the area is entirely composed of sand, so drainage is staying on-site.

Atty. Molloy said she wrote Ms. O'Hare a detailed letter in January going through all the sections of the regulations which state when a permit was needed. She said she asked Ms. O'Hare whether or not she agreed that no permit was required. Atty. Molloy cited Ms. O'Hare's February Environmental Planner's report which stated that Ms. O'Hare agreed that there were no wetland impacts and no permit was issued. Atty. Molloy pointed out that Ms. O'Hare qualified this by stating she hadn't seen the final plans, which she noted weren't substantially different from what Ms. O'Hare saw when she met with her in November.

Atty. Molloy explained that the Applicant appeared in front of this Commission in February at the request of Ms. O'Hare. She said the Applicant is in front of Planning & Zoning because it was believed it was not necessary to appear in front of Inland Wetlands. Atty. Molloy noted that now Ms. O'Hare has raised the issue that the trucks entering and leaving the site could track some sand onto the streets and the sand could enter into one of the catch basins and not be captured by the sumps, travel down the stormwater sewer systems and eventually get into the Quinnipiac River. Atty. Molloy said the Applicant is required to have detailed S&E controls. She said she described some of these controls in her letter to Ms. O'Hare. She said these controls include anti-tracking pads, silt sack installation, maintenance, and street sweeping. Atty. Molloy said there will also be a wash rack so the tires of the vehicles exiting the site will be washed. She said this is an S&E control, not a regulated activity. Atty. Molloy said she wasn't aware of any vehicle leaving a construction site having to get a wetlands permit because some sediment might get onto the road.

Atty. Molloy said there were discussions with Corporation Counsel Janis Small who stated she could not as a matter of law state that it was not a regulated activity and this would have to be a determination this Commission would have to make. Atty. Molloy noted that Atty. Small's memo seems to indicate that she questions whether or not this really is a regulated activity. Atty. Molloy said she hasn't seen any substantial evidence that indicates this is a regulated activity. She said in accordance with what Atty. Small recommended, she said she was asked to come before this Commission. Atty. Molloy expressed her frustration having spent considerable time trying to determine whether her client had to come in front of the IWWC and at the last minute being faced with having to come in front of the Commission.

Acting-Chair Parent said his understanding is to determine whether or not the sand excavation and the building on the property requires a wetlands permit. Mr. Parent said he understood the sand problem on the road can be handled by Planning & Zoning. Atty. Molloy said she believed the sand issue was covered by S&E controls anyway. Acting-Chair Parent noted that Atty. Small is stating that this particular issue should be with Planning & Zoning. Ms. O'Hare pointed out that Atty. Small states in her memo that the Applicant appear in tonight so the Commission can decide on the sand deposition that is expected on Toelles Road. She said this activity is expected to last for five years, with 500 trucks entering bringing in course sand and 1,000 trucks taking the finished sand off the site, and that some sand will get onto Toelles Road. She noted the sub-division map the Commission saw on Feb. 8, did not include catch basins and the storm sewers. Ms. O'Hare said since then the plans do show the catch basins and storm sewers. She said the Applicant is planning to install erosion controls in the road and Planning & Zoning will be looking into this aspect.

Ms. O'Hare asked Atty. Molloy what section her client is applying under tonight. Atty. Molloy noted her client is not applying, but is here because Atty. Small said only the IWWC could make the final determination on whether or not a permit was required. Acting-Chair Parent noted that it seems that Ms. O'Hare is asking this Commission to impose some conditions where there is no application. He said if there is no impact from the excavation and no impact from the construction on a wetland, he didn't see where the IWWC has jurisdiction. He said that to ask an Applicant to submit a permit puts this Commission in a place where they don't have any jurisdiction and maybe we shouldn't do this.

Ms. O'Hare said this is a rather unique situation compared to other projects. She noted w the warehouse facility will be 300,000 sq. ft. of surface area which is way over the 20,000 sq. ft. surface area trigger in our provisions. Ms. O'Hare said what is different with this application is the runoff, which she noted during construction, will not go off-site to a Town storm sewer. Ms. O'Hare said in this case, there is no pipe going from the sand site into the brook directly. She said the water when it rains, is going straight down because it is sand. She noted there are very few sites in town that don't use storm sewers and don't pass their storm flows into a drainage basin, or a wetlands, or into a town sewer or stream.

Ms. O'Hare said this is a 26-acre site, with a lot of in and out traffic. She noted the site will be brought down 14 ft. and construction will continue for three to five years and the sand will get into Toelles Road and then into the Quinnipiac River even with the best of maintenance. She asked how we would get a handle on this sand because when sediment and flows come out into a stream or into a bank, she can request a check dam or haybales. She noted that if it is a direct outfall, she doesn't know how this can be caught.

Ms. O'Hare said if the day comes when sand is actually coming from the outfall, she could issue a Cease & Desist order and ask the Applicant to do something about the sand. Ms. O'Hare said this was an attempt to prevent the inevitable from happening; the potential for the introduction of sand into the Quinnipiac River.

Acting-Chair Parent noted that Atty. Small who would have to defend us in any action, said this is not enough. He said Ms. O'Hare has made the case that this project is unique; can't do 20,000 sq. ft. without impacting some water. He said he wasn't really seeing the need for any permit.

Commissioner Kern said the catfighting should have gone outside these chambers and not at tonight's meeting. He said he was disappointed with Atty. Small whom he said should have rectified this between the legal representatives of what needed to be done. Commissioner Kern told Ms. O'Hare that S&E control goes to Planning & Zoning, and if there is issue, the PZC should address this. Commissioner Kern noted that the IWWC's jurisdiction is with wetlands. He said Ms. O'Hare is talking about a fragile down the road scenario that is almost impossible. He noted that Ms. O'Hare stated that when it rains, there could be three inches of rain and in an hour, because of the sandy soil, be walking on dry ground. He said he has more confidence in the PZC with the S&E plan that they have all of this covered.

Commissioner Kern noted there was a project approved across the street by the IWWC and it went fine. He noted that project had sand in the road, which a street sweeper removed. Commissioner Kern said he was sure the developer was qualified and would do whatever it takes to keep the street clean and the catch basins empty. He noted sand will not be stockpiled at the end of the road so when it rains it will go out the road and down the street. Commissioner Kern said the product produced is valuable and will be watched closely. He said he didn't believe this Commission had any jurisdiction to tell the Applicant to come in here in front of us to give a permit. He noted the IWWC was not involved in S&E control.

Ms. O'Hare pointed out that when she spoke with Atty. Small. She noted that Planning & Zoning is not supposed to act on something until they get a report out from the IWWC. She said that if the Commission decides there is no application necessary and determine wetland permitting is not required, she will note this in her report to the PZC. Ms. O'Hare suggested that the IWWC take the opportunity to put into the report to the PZC, that you are concerned about the Quinnipiac River, and the potential of sand to be transported into the Quinnipiac River and it is important that the PZC implement strict erosion control measures.

Commissioner Kern told Ms. O'Hare that she is our Environmental Planner and it is her job to write the report to the PZC. He said the IWWC isn't here to suggest that Ms. O'Hare write this into the letter. Commissioner Kern said there is no jurisdiction here tonight and the IWWC doesn't need to come in front of us for an application. He said he is disappointed this had to go this route and it could have been resolved a lot quicker than to drag these people in here tonight. He said the IWWC is comfortable with the project the way it is. Ms. O'Hare said she was talking about what the IWWC would act on tonight, and suggested a condition that there be dialogue with the PZC and that erosion controls should be in place so the Quinnipiac River is not degraded.

Acting-Chair Parent told Ms. O'Hare why the IWWC would not do this. He said this is not the IWWC's job to tell the PZC how to do their job. He wondered how to put a condition of approval or recommendation

on a determination if there is no impact. Ms. O'Hare said Atty. Small suggested had this. Acting-Chair Parent said a clear determination that no application is required is sufficient.

Ms. O'Hare said the IWWC must make two separate motions on the sand processing proposal and warehouse.

Acting-Chair Parent entertained a motion on the determination for 528 S. Cherry Street for sand extraction and sand processing.

MR. KERN: MOTION THAT #D18-4.1/528 SOUTH CHERRY STREET – WALLINGFORD INDUSTRIAL IMPROVEMENT COMPANY, LLC – IS NOT REQUIRED TO NEED AN APPLICATION IN FRONT OF INLAND WETLANDS FOR SAND EXCAVATION AND SAND PROCESSING

MR. CARUSO: SECOND

VOTE: KERN – YES; CARUSO – YES; PORTO – YES; PARENT – YES

Acting-Chair Parent entertained a motion regarding a proposed warehouse and office development.

Commissioner Kern asked about the paving and impervious surface. Atty. Molloy said there will be more than 20,000 sq. ft. of impervious surface, but because all of the storm water will be infiltrated, there will be no Inland Wetland impacts because the storm water will be contained within the site.

MR. KERN: MOTION THAT #D18-4.1/528 SOUTH CHERRY STREET – WALLINGFORD INDUSTRIAL IMPROVEMENT COMPANY, LLC DOES NOT NEED AN APPLICATION FOR THE ERECTION OF THE BUILDING OR THE WAREHOUSE OFFICE DEVELOPMENT ON THE SITE AT 10-20 TOELLES ROAD

MR. CARUSO: SECOND

VOTE: CARUSO-YES; PORTO – YES; KERN – YES; PARENT – YES

RECEIPT OF NEW APPLICATIONS – NONE

ELECTION OF OFFICERS - TABLED

VIOLATIONS - NONE

ADJOURNMENT

Commissioner Kern made a motion to adjourn the Meeting at 7:55 p.m. Mr. Caruso seconded the motion which passed unanimously.

Respectfully submitted,

Cynthia A. Kleist

Recording Secretary