

**Inland Wetlands & Watercourses Commission
Regular Meeting
Wednesday, October 7, 2020, 7:00 p.m.
Robert F. Parisi Council Chambers, Second Floor, Town Hall
45 South Main Street, Wallingford, CT**

MINUTES

Chair James Vitali called this Regular Meeting of the Wallingford Inland Wetlands & Watercourses Commission to order at 7:00 p.m.

A. PLEDGE OF ALLEGIANCE – The Pledge of Allegiance was recited.

B. ROLL CALL

PRESENT: Chair James Vitali, Secretary Nick Kern, Commissioner Deborah Phillips, and Alternates Aili McKeen and Jennifer Passaretti, and Environmental Planner Erin O'Hare

ABSENT: Commissioner Michael Caruso and Alternate Robert Simon

Chair Vitali read a new memorandum from Corporation Counsel Janis Small regarding precautions to be taken in public meetings during the COVID-19 pandemic and asked all in attendance to comply.

C. CONSIDERATION OF MINUTES

1. Regular Meeting, September 2, 2020

MS. PHILLIPS: MOTION THAT THE MINUTES OF THE SEPTEMBER 2, 2020, REGULAR MEETING BE APPROVED AS SUBMITTED.

MR. KERN: SECOND

VOTE: MS. PHILLIPS – YES; MR. KERN – YES; MS. MCKEEN – YES; MS. PASSARETTI – YES; CHAIR VITALI – YES

2. Special Meeting, September 16, 2020 – This Special Meeting was cancelled.

D. OLD BUSINESS

1. #A18-1.2 / 801 North Colony Road & 6 Beaumont Road / Padens Brook – NERP Holding & Acquisitions Company, LLC – (commercial development) – Request for bond release

Ms. O'Hare said the Permittee is not ready for release of the bond.

2. #A20-6.7 / 17 Fritz Place – John Ricci – (two-car attached garage & swale)

Appearing was Mr. Jim Ricci for Applicant Mr. John Ricci.

Ms. O'Hare said the new plan went out in the Commissioners' packets. They cleaned some things up. The Town Engineer has said it will function. They agreed to one change to the revised plan: to make the 64-foot swale on the side closest to the river higher than on the side that's by their back yard.

Mr. Ricci said the family agreed to this change.

Chair Vitali asked for a Motion on the Significance of this Activity.

MS. PHILLIPS: MOTION THAT THIS APPLICATION BE DECLARED NOT A SIGNIFICANT ACTIVITY.

MR. KERN: SECOND

VOTE: MS. PASSARETTI – YES; MS. PHILLIPS – YES; MR. KERN – YES; MS. MCKEEN – YES; CHAIR VITALI – YES

MS. PHILLIPS: MOTION THAT APPLICATION #A20-6.7 BE APPROVED WITH TWO CONDITIONS: 1) THAT THE SIDE OF THE RIVER BE 4 INCHES HIGHER; 2) THAT SILT FENCE BE WRAPPED AROUND THE SIDE OF THE SWALE.

MR. KERN: SECOND

Ms. Phillips withdrew her motion; Mr. Kern withdrew his second.

MS. PHILLIPS: MOTION THAT APPLICATION #A20-6.7 BE APPROVED WITH TWO CONDITIONS: 1) THAT THE SIDE OF THE SWALE BY THE RIVER BE 4 INCHES HIGHER; AND 2) THAT A SILT FENCE BE WRAPPED AROUND THE SIDE OF THE SWALE.

MR. KERN: SECOND

VOTE: MS. MCKEEN – YES; MR. KERN – YES; MS. PHILLIPS – YES; MS. PASSARETTI – YES; CHAIR VITALI – YES

Chair Vitali stated that Item 3 would be taken up later.

Chair Vitali noted that Items 4 and 5, below, were both approved administratively prior to tonight.

4. #A20-7.7 / 79 Kondracki Lane – Markus Briles – (after-the-fact yard & stream bank disturbance, and proposed fence installation & plantings) - approved administratively 10/1/20
5. #A20-8.2 / 1193 Durham Road – David A.Chester – (shed) - approved administratively 10/1/20

E. NEW BUSINESS

1. #A16-7.3 / 333 Christian Street – Choate Rosemary Hall – (Request for release of bond)
This Item E.1. was heard after Items F.5 and D.3. below.

Next, Chair Vitali took up New Application Item 5.

F. RECEIPT OF NEW APPLICATIONS

5. #A20-10.3 / 5 Research Parkway / Muddy River – 5 Research Parkway, LLC – (industrial development)

Appearing was Attorney Tom Cody for the Applicant, Montante Construction. Mr. Jeff Dewey, Project Engineer, BL Companies, was in the audience but did not address the Commission.

Attorney Cody said we're asking the Commission to set a public hearing for this application at your next meeting. This was the subject of a previous application and a public hearing. You have not yet made a determination of whether this is a Significant Activity.

Chair Vitali inquired what is the difference between a public hearing for public interest and one for a Significant Activity.

Ms. O'Hare said that both trigger a public hearing. For public interest, Applicant is only required to send notice to the abutters. But if it's a public hearing relative to Significant Impact, they're required to send notice to everyone within 100 feet of the property. Typically, for Significant Impact you state why it's a Significant Impact and there are more reports required. This applicant has already done a lot of that work.

Chair Vitali said we had a public hearing for the last application and it was for Significant Activity. It's 184 acres. There are issues that people should be able to hear about. So if you're looking for a public hearing for concerns, I'd say it would not be for next month but for December.

Attorney Cody asked, if we proceed with the assumption that it would be a Significant Activity, would the Commission be able to schedule it for the November 4th meeting?

Chair Vitali said we have a lot of items for next time. We could do it after that.

Ms. O'Hare said they could do it two ways: 1) To self-declare as a Significant Impact Activity and submit the \$375 fee; or 2) The Commission could declare it a Significant Impact Activity.

Chair Vitali understood that they are ready to submit a Significant Impact Activity application. You can put it on the agenda for November and have review time.

Ms. O'Hare said that is a lot to do. We'd probably end up tabling the public hearing, with the understanding that they are pushing the statutory timeline. I know they understand that.

Chair Vitali said they want to get the ball rolling. So they want to open the public hearing in November and then have it finished in December?

Attorney Cody said we recognize that it would be opened in November and continued. We are ready to self-declare that it would be a Significant Activity.

Commissioner Kern said from what was there and what is there now, it's completely different. You'll have a lot of people asking questions. With a public hearing, aren't people going to be able to go into the site and see it?

Ms. O'Hare said, No—only if the Commission declares a Special Meeting to have a site walk, which I encourage. Then it's open to the public. If you go one by one to the site, it's not open to the public. Why does the Applicant want to do this?

Attorney Cody said they want to get the process started. We expect the public will be interested. So we'll send out notice for a public hearing, and they'll come in and ask questions. We believe we have a strong application, and we think it's been scaled back from what you saw. It's a large site and there's a significant amount of work in the URA but no direct impact.

Commissioner Kern asked, and you're willing to accept that if people come out, you'd allow them?

Attorney Cody said, if that's part of a Commission site walk, we'd do that.

Commissioner McKeen said usually we get the information to review before the public comes.

Commissioner Phillips said it was just handed out tonight.

Ms. Passaretti said she hasn't been out to the site yet.

Ms. O'Hare said we had three nights of public hearings last time; she predicted at least two nights now.

Chair Vitali said, this way, the public will be notified for next month. He predicted the public hearing would take more than one night. This is the Wetlands Commission. You have to prove to us that it's environmentally downsized—not industrially or commercially. This all comes to the impact of retention plans, etc. It's a wetlands plan, not Planning and Zoning.

Ms. O'Hare said last time we had a PowerPoint on the screen. Now, due to COVID, we probably would have it in an auditorium in another place.

Chair Vitali asked how many people can be in this place (Town Council Chambers)?

Ms. O'Hare said that isn't known yet.

Chair Vitali advised that the notification would have to go out with a question: "Do you intend to attend the public hearing?"; and you'd have to get the results back.

Ms. O'Hare said that would not be legal, to restrict people that way, but we can work it out. We'll have to put it in the biggest auditorium. I will inquire.

Chair Vitali said we'd schedule the hearing for the 4th if you're willing to agree that this public hearing is for a Significant Activity. You'll be giving the same presentation at a public hearing as at a meeting here. Keep in contact with Erin O'Hare over the next 30 days. But we're not going to review the application as you would have reviewed it in her office—those questions have to be made with her in the office before you come here.

Attorney Cody agreed.

The Chairman set the public hearing for November 4, 2020, 8:00 p.m., location to be determined.

Chair Vitali declared a five-minute recess at 7:29 p.m. Chair Vitali reconvened the meeting at 7:34 p.m. He turned to agenda Item D.3.

D. OLD BUSINESS

3. #A20-7.1 / 5 & 21 Toelles Road & Wharton Brook – Pfizer Inc. – (soil remediation project)

Ms. O'Hare said that her Environmental Planner's Memorandum of September 29, 2020, to Janis Small, Corporation Counsel, concerning Comments on EPA Review had gone out in the Commissioners' packets. She noted her third set of Comments dated October 7, 2020, in the form of a letter to the Applicant handed out to Commissioners tonight.

Appearing was Mr. Lucas Hellerich, Project Engineer from Woodard & Curran. He said this is the second meeting for this project. To update: This is an environmental remediation required by the Connecticut DEEP Remediation Division to eliminate nickel in impacted soil. Following the project, the wetland is to be restored. We are cooperating with these agencies: Army Corps of Engineers, DEEP, EPA, and FEMA. Since last time, we conducted five site walks with Commissioners. During those, we discussed various topics and answered questions. We also looked in the brook and reported in letters what we said in August: tree preservation, tree removal, topography; mitigating erosion potential, existing wetlands restoration following the work, segmentation of excavation in cells to mitigate potential for significant erosion during the project. We talked about using bank-fill gravel--it's fine sandy loam. We discussed S&E controls of silt fence and straw bales to move stormwater events around the work area site. And we talked about contingencies, should there be significant removal and root mitigation. We brought individual Commissioners to see the southwest portion. The excavation does not include the brook. Excavation is on both the eastern and western sides. And there's lower elevations on both sides, so we'd install flood mitigation measures which we described last time.

Ms. O'Hare said, on the map, there's work to be conducted below the Ordinary High Water mark.

Mr. Hellerich said the Ordinary High Water mark is not the edge of the brook. According to the Army Corps of Engineers, it defines events where higher water could be present.

Ms. O'Hare said you put the Ordinary High Water mark on the map. It's not the flood level, which is way up the slope, but it's the usual water level that comes in November. Right now we have a drought. So that water level is going to come up in November and it will be probably up against that Ordinary High Water mark. That means there would be 110 feet of activity inside the Ordinary High Water mark in the winter, just for that 110 feet on the west side.

Mr. Hellerich said that's if the water does come up into that area. Right now, it's not there. That mark was a requirement of the Army Corps of Engineers and identified by our soils engineer.

Ms. O'Hare said, because if you do the project in the summer or the winter, it's going to be different, And, I thought you would be bringing a sample of the bank-run gravel.

Mr. Hellerich said he did not remember saying that.

Ms. O'Hare said, you said that it has a significant amount of sand in it. I talked with EPA on Tuesday, and they thought bank-run gravel would be put there, but EPA had some concern. It's not what's there today, but EPA said it might provide more stability than what's there today. So if you're renovating the area, you might want to put something that's more stable. If you want to replicate what's there today, that's another thing.

Commissioner Kern asked, why do you know what's there today?

Ms. O'Hare said just from in digging about and seeing the debris on treefalls from storms. She had seen red fine sand and then more coarse solid red color with some small rounded pebbles in it. The Applicant had dug in 32 spots over the two acres, and their chart shows the different kinds of sands and soils on the site.

Commissioner Kern said "bank-run gravel" is $\frac{1}{2}$ " to $\frac{3}{4}$ ", which has no stability to it. We have it in Wallingford. If you dig under the 100-year layer that the trees are growing and thriving in there, it's bank-run gravel. Bank-run gravel is a span of probably a fine sandy/stony material that's going to fit in with what's there already. They're going to put 12" of organic material, a high-nutrition substance that is black and fibrous, in the center with 12" of bank-run gravel under that, and 6" at the sides. So is it important to replicate what was there? Or is 6" of the other material good enough?

Chair Vitali was not sure that it would function the same.

Mr. Hellerich said since last time we talked on the site walk about the restoration, invasive species and control, and the monitoring plan. This is a good time to do the work. We're awaiting approval from ACE and others. The Peer Review would focus on the engineering aspects of the project, not regulatory, which is under CT DEEP. We received reviews by other agencies and did the site walks.

Ms. O'Hare said her three reports to date have asked about flood control measures to be taken and potential cleanup with a theoretical "scour" weather event. She said we're waiting for the Applicant to agree to pay for the Peer Review, \$7,500.

Chair Vitali confirmed that the Commission is interested in the Peer Review report.

Mr. Hellerich said that Pfizer will pay for the Peer Review, and a letter will be sent to you on that.

Ms. O'Hare said she had a virtual phone call with ACE and EPA yesterday. She handed out her third set of comments tonight and noted that the FEMA information was updated in 2017.

Ms. O'Hare asked Chair Vitali to have the Commission declare this application a Significant Impact Activity. We're under the Governor's Executive Order #71 that puts a 90-day extension on any decision making or initiating a public hearing. Normally, we have to start hearings within 65 days. But we need to start a public hearing if they are declaring a Significant Impact Activity. So you would have had to act on it by September 20th. It's moot now with the Executive Order.

Chair Vitali asked, when in December could a public hearing be held?

Ms. O'Hare said we have until past the December 5th meeting. The total is 155 days—65 days plus 90 days.

Chair Vitali asked Ms. O'Hare to put it on the calendar, but we may have to ask for an extension in December. O.K., to continue to next month. Let's hope we get the Peer Review.

(The Commission made no declaration of Significant Activity at this time.)

Mr. Hellerich said, Thank you for your time.

After Mr. Hellerich had left the meeting, a letter addressed to Wallingford Inland Wetlands and Watercourses Commission, James Vitali, Chairman, dated October 7, 2020, regarding this application was presented to Ms. O'Hare by Ms. Mary Mushinsky (received for the record).

E. NEW BUSINESS

1. #A16-7.3 / 333 Christian Street – Choate Rosemary Hall – (Request for release of bond)

Ms. O'Hare said their \$30,000 bond is recommended for release.

MS. PHILLIPS: MOTION FOR #A16-7.3 / 333 CHRISTIAN STREET – CHOATE ROSEMARY HALL, THAT THEIR REQUEST FOR RELEASE OF BOND BE APPROVED.

MR. KERN: SECOND

VOTE: MS. MCKEEN – YES; MR. KERN - YES; MS. PHILLIPS – YES; MS. PASSARETTI – YES; CHAIR VITALI – YES

F. RECEIPT OF NEW APPLICATIONS

This application had been approved administratively:

- 1. #A20-9.1 / 320 & 340 Barnes Road – Rowland Technologies – minor modification to IWWC #A18-12.2 – (industrial addition) – (retaining wall, & tree trimming/removal) - approved administratively 9/28/20**

The following Applications were received by the Commission tonight and will appear on the November 4 agenda:

- 2. #A20-9.2 / 2 Northrup Industrial Park Road East & 1117 Northrup Road – 1070 North Farms Road, LLC – (industrial development)**
- 3. #A20-10.1 / 131 Pond Hill Road – Church of the Resurrection – (building addition, fire lane, stormwater facilities)**
- 4. #A20-10.2 / 1033 110 North Colony Road / Meetinghouse Brook – 7-Eleven, Inc. – (convenience store/gas station) (Note: Ms. O'Hare confirmed the address as 1033 North Colony Road.)**
- 5. #A20-10.3 / 5 Research Parkway / Muddy River – 5 Research Parkway, LLC – (industrial development)**

Note: This Item had been received and discussed above.

H. VIOLATIONS

- 1. Notice of Violation – 1245 Old Colony Road & Quinnipiac River – Jerzy Pytel –**

(unpermitted clearing & filling near river)

Ms. O'Hare said this Violation remains in effect.

2. Notice of Violation – 950 South Colony Road – 1NRSJ, LLC – carwash facility – (unpermitted filling)

Ms. O'Hare said this NOV is still in effect until the Owner complies with the decision voted on September 2nd.

3. #A20-2.1 / 12 & 16 Northfield Road – over-clearing in floodplain wetlands & URA issue

Ms. O'Hare said the Owner has not done anything more on the property. He already demolished the old house. But, since no sewer is available, the Owner is required to put in a new septic system.

4. Notice of Violation – 1152 Durham Road – William Monaco – (unpermitted clearing & grading to stream near pond)

Ms. O'Hare said she needs to go out to the property once more. Vegetation is growing, and she may have to ask the Owner to renew some erosion controls. This Notice of Violation remains in effect.

G. REPORTS & COMMUNICATIONS

1. Discussion of proposal to adopt fines for violations

Chair Vitali said that Ms. O'Hare's report from August brought up different things. Where did the sample fine schedule come from?

Ms. O'Hare said she originated the list. The statute says fines can be up to \$1,000—but it does not say whether the total amount of fines could exceed \$1,000. The Law Department is researching it, and they have not yet commented.

Chair Vitali said he would like to see both: what each fine would be for and what dollar amount could be attached to each one.

I. ADJOURNMENT

MS. PHILLIPS: MOTION TO ADJOURN THE MEETING.

MS. MCKEEN: SECOND

VOTE: THE MOTION WAS APPROVED UNANIMOUSLY IN A VOICE VOTE.

The meeting was adjourned at 8:30 p.m.

J. NEXT MEETING – November 4, 2020

Respectfully submitted,

Kathleen L. Burns
Recording Secretary