

**TOWN OF SOUTH WINDSOR
INLAND WETLANDS AGENCY / CONSERVATION COMMISSION
VIRTUAL Regular Meeting 2/22/2022 7:00pm**

MEMBERS PRESENT: Barbara Kelly, Adam Reed, John Blondin, Jack Phillips, Paul Cote, Richard Muller, Arthur Jennings.

ALTERNATES PRESENT: Daniel Katzbek

COUNCIL LIAISON PRESENT: Steven King, Jr.

GUESTS: Peter DeMallie- President of Design Professionals, Attorney Peter Alter, Glen Martin- Landscape Architect, Daniel Jameson Design Professionals

STAFF PRESENT: Gina Saccente, Recording Secretary

THE FOLLOWING ARE MOTIONS MADE DURING THE REGULAR MEETING OF THE INLAND WETLANDS AGENCY/ CONSERVATION COMMISSION:

Chairperson Kelly called the meeting to order at 7:02 p.m.

PUBLIC PARTICIPATION: None

PERMIT EXTENSIONS: None

CORRESPONDENCE AND REPORTS: None

BONDS: None

MINUTES: 12/15/2021- Approved

The minutes of 12/15/2021 were approved by consensus.

CONSERVATION COMMISSION: N/A

WETLAND OFFICER: N/A

NEW BUSINESS: Appl. #22-02P- Appl. 22-02P, Hartford Truck Equipment LLC, 542 King St –
Conservation Commission application to construct an earthen berm in association with a zone change application to the PZC, on property located at easterly of King St and westerly of John Fitch Blvd. GC (General Commercial) and RR (Rural Residential) zones.

Attorney Peter Alter introduced the project and displayed the project slide of Hartford Truck property. Mr. Alter and Design professionals represent Derrek and Blake Brannon owners' of Hartford Truck Equipment. Hartford Truck business continues to grow and expand, as part of expansion there is need for additional facilities. The subject of the proposal that was presented only involve area outlined in red which is zoned Rural Residence, balance of property is General Commercial zone out to John Fitch Blvd. Filed application with PZC to change the zone on the balance of property, to General Commercial zone. Blake and Dereck had taken consideration in addressing the needs of the residents along the King St established neighborhood.

He presented a report from Ian Cole, Soil Scientist, after reconnaissance on site states no Wetlands occur on the site. Mr. Alter asked the Commission to act only as Conservation Commission the site proposal plans to create a berm along residential area on King Street. A heavily landscaped berm with a 6-8 foot fence on the top to screen residential properties

from commercial properties. A permanent private conservation easement presented to PZC that will encumber 3.3 acres of the parcel where they seek the zone change, which will be a permanent buffer established in its relationship to King Street. Additionally, a current driveway that connects King Street through property to commercial properties on McGuire road, as it serves commercial properties will be abandoned. A partial portion of the driveway will be left in place to accommodate the residential neighbor to the north who uses it to access the rear of his property. Beyond his property the driveway will no longer exist. Mr. Sunderland owner of property on McGuire road, with rights to use the driveway has agreed to release those rights in response to a request from Blake and Derrek Brannon. Mr. Alter asked Glen Martin, Landscape Architect of Design Professionals, to walkthrough design of berm.

Mr. Martin reviewed the design of berm with slides via WebEx. The easement will include an 8ft high earth and berm. Berm is approximately 1140 ft. long with a 3 to 1 slope and a 6-8 ft. high chain link fence, with privacy slats running along top of the berm. The fence will provide screening and security for the property. Evergreen trees will be planted on both sides of the berm, to provide additional screening of the property from King Street and the adjacent properties.

Three rows of evergreens will be planted along the entire Berm. Large trees along King Street have been tagged and will remain and help provide additional screening. The dense brush and invasive species will be removed in the same area along King Street, the area will be maintained.

The Evergreen Trees and the purposed berm will include a mixture of Spruce and White Pines. The White Pines will be located in the center of the plantings- running down the center of the berm. Spruces will be planted on both sides of the White Pines, dense branches will enhance the planting screen. The trees will provide screening for the property and nesting habitat for birds and other wildlife. The Client will maintain the berm plantings. Mr. Martin moved to section views of the berm. The view shows Evergreens after 5 years of growth, shows shielding of the property. It also showed a proposed storage building on the property which is a planned addition for the future. The lower cross sections 2 and 3 show the nearest adjacent homeowner building which is 510 King Street, and the relationship to the berm.

The next slide is the grading plan and E&S plan which follows best practices of the latest CT guidelines for soil, erosion, and sedimentation control. Proposed infiltration basin design based on web soil survey and filtration rates for this soil type. Points to infiltration area on map. Infiltration area at base of the berm.

He introduced Daniel Jameson, professional engineer, for any questions on the basin design, silt fence at the base of the berm along King St. and inlet protection for the basin around King Street. All disturbed areas with no tree/shrubs will be seeded to lawn. Mr. Jameson asked if there are any questions on the berm or berm plantings.

Chair Kelly asked what the berm will be constructed of. Type of Soil? Will it provide enough stability for the trees at maturity to hold them against wind throw?

Mr. Martin: Yes, They will make sure the design of the berm is sufficient to be stable in the long-term. Native soils.

Chair Kelly asks if Daniel Jameson can address E&S measures on the plan.

Mr. Jameson speaks about E&S measures. Proposing silt fence, a downhill portion of the berm to collect runoff encroaching into King St to adjacent property owners. Temporary stock pile areas proposed, to protect infiltration basin area from heavy equipment driving through that area. The proposed construction access off of King Street and tree protection measures for existing trees to remain. Standard catch basin inlet protection for the catch basin along King St. All E&S measures proposed were done so in accordance with the 2002 CT erosion and sedimentation control guidelines.

Chair Kelly: Asked if there are notes about seeding on included somewhere in the plan?

Mr. Jameson: A fescue seed and temporary seeding any exposed areas will be treated 7 days as required per the 2002 CT guidelines and if winterization is needed, to add a tackifier to hold onto soil. There is an erosion and sedimentation control sequence notes on a different page in the plan set. He displayed the seeding notes via WebEx screen.

Commissioner Phillips: "When building this Berm, are you planning on working the entire 1100 ft. at once or start at one end and sequentially work around so that it can be stabilized behind you?"

Mr. Jameson responded, stating they will be starting at one end and work so not too much is exposed, providing the proper compaction would be one of the focuses as well to make sure the berm is fit to hold those trees through maturity. They will limit construction activity so they don't leave work exposed.

Commissioner Muller comments he was at the site and it looks like material has been prepositioned to make this berm. "What is the soil type that they're proposing to use?"

Mr. Alter responds "Commissioner Muller is referring to the temporary berm that was created with respect to screening parking area for vehicles through P&Z approval that was secured several months ago. That is not the material that will be used to construct this berm. That material is woodchip that was secured from a landscape contractor. Permanent berm will not be utilizing that material."

Mr. DeMallie concurred with Mr. Alter. There are no stockpiles of materials on site- the soil will be excavated on site or brought in from offsite. It'll be native material from the general area.

Chair Kelly asked Mr. Alter if there is any further presentation.

Mr. Alter emphasizes the proposal contemplates about 157 new trees on this berm and Brannon brothers have gone the extra mile to create an appropriate screen for their residential neighbors.

Commissioner Muller commented on the berms by Orchard Hill school- planting trees on top, the tree is starved for water. They are going to have to maintain some kind of regimented way of getting trees established.

Chair Kelly notes on Easement to allow for maintenance of the plantings. E&S measures as presented are appropriate for intended use on site. If installed and maintained properly will be adequate to do the job of containing. Good idea to use tackifier on any loose soil. Asks if any Commissioners would like to make motion on the application.

Commissioner Phillips moved to approve application 22-02P standard terms and conditions. He asked if Mr. Folger had recommended bonding.

Chair Kelly responded that Mr. Folger did not recommend bonding.

Commissioner Phillips asked Chair Kelly if she has a recommended amount.

Chair Kelly recommended looking at the square footage.

Mr. Alter suggested leaving the bonding to Mr. Folger to make recommendation and carry it forward to the PZC if indication of bond needs to be set.

Commissioner Phillips stated that bonding to be determined and approved by town staff. Bonding for E&S and planting, should include information as to how long that should be held to assure planting is "still good."

Chair Kelly states there should be separate bonds for the two. Separate bond for infiltration and planting which is "typically 3 growing seasons."

Commissioner Phillips Agreed and asked if Commissioners have other conditions they think should be placed upon this application.

Commissioner Blondin seconds the motion.

Chair Kelly asked if there is any discussion.

Commissioner Jennings commented on the plantings made at the school and agrees it's a valid point. He asked what time period looking at to make sure trees are thriving and in place?

Commissioner Phillips responded that it's normally "3 growing seasons, would be held to assure the establishment of the plantings"

Chair Kelly remarked that PZC would look at the landscape plans and look for bonding, they would be bonding the E&S and infiltration basin.

Commissioner Phillips comments the PZC will be bonding the plantings.

Commissioner Jennings asks to make that part of what the IWA/CC is asking for, whether done now or by PZC. Commissioner Phillips responds since it's "Bonding to be established by staff"- Mr. Folger would be able to work with PZC staff to make sure one group or the other is bonding the plantings.

Chair Kelly states that it's best to be consistent with other bonds that are set. She knows there is a calculated rate that Mr. Folger uses to set them and decides final number should rest with Mr. Folger.

Chair Kelly asks if all in favor of the motion as presented to approve application 22-02P.

The motion carried. The vote was unanimous.

OLD BUSINESS: Modification Request to Appl. #21-36P – 25 Talbot Lane – 25 & 5 Talbot Lane, 475 & 551 Governors Hwy – IWA/Conservation Commission application for re-alignment of impervious cover on the site plan previously approved on 11-03-2021 on property located southerly of Governors Highway and easterly of Talbot Lane - Industrial (I) Zone.

Attorney James Conner with Updike, Kelly and Spellacy law firm Represents UW vintage Lane 2 LLC. Mr. Conner presents his information. "This Commission approved with conditions my client's application to conduct regulated activity, at 25-5 Talbot lane and 475-551 Governor's Highway at November 3, 2021 meeting. This Commission determined none of the persons filing petitions under CT statue to intervene had met their burden to prove a reasonable likelihood of unreasonable pollution, such of the air, water or other natural resources of the state as are within this Commission's jurisdiction. Notice of the decision was given to the applicant and published in a Journal Inquirer legal notice.

The appeal period of 15 days passed after the publication without any appeal, hadn't been brought to superior court with regard to any aspect of the Commissions actions.

This Commission submitted its final report to the PZC and at that time the PZC had a site plan application before it. Pursuant to section 83G1 of general statutes required it to receive this report before making its decision. The PZC denied that application without voting on a resolution stating a reason for the denial. Following the denial my client prepared an alternative site plan that is materially different with respect to the vehicular circulation system it employs on the west side of the building. This alternate system locks in the location of the building, the storm drainage system at all places where all soil materials will be disturbed in any wetlands, watercourse or uplands review area. The new site plan has slight differences in the placement of impervious paved surfaces with the net change being reductions in the amount of impervious surface.

The section of the general statutes referred to requiring the PZC to await the report of the IWA/CC agency before rendering its decision on the site plan showing activity regulated under the IWA/CC regulations section 83G1, also requires an applicant or such a site plan to follow an application for a permit with the IWA/CC not later than the day it files its site plan application with the PZC.

This statute requires the PZC to give due consideration to your report and to state on the record its reasons for any terms and conditions it establishes for an approval that are not consistent with your decision, however there is no provision of this statute that makes a decision or report of a IWA/CC agency stale for purposes of being received by the PZC, further court decisions make clear that the statute can be satisfied by an earlier Wetlands approval, even when the applicant's plan is different.

The CT Appellate Court addressed this issue in case *Irwin vs. PZC* in the town of Litchfield, CT case cited in 1997. Explains case details and similarities. Agrees with the plaintiff that given the circumstances the letter from the Conservation Commission is adequate to satisfy the requirements of general statutes section 83C and 826. Explains the 2010 *Vine vs. PZC* of the town of Wallingford a case where the applicant pursued and obtained its Wetlands approval while working through conflicts between its original zoning plan and the zoning regulations, resolving them by eliminating a proposed building. The court held that section 83G1 doesn't require any new application to or report by an IWACC agency. "My client's application is clearly within the holdings of *Irwin & Vine* furthermore, regulations in provision section 7.6 prohibiting granting applications in which there are no significant changes from an application submitted less than one year previously."

Although the applicant had submitted an application on December 20, 2021 to both this Commission and the PZC, the application to this Commission was withdrawn on January 4th, 2022 in light of this regulation and discussions with Senior Environmental Planner indicating that it was his opinion as well as that of the Chair and Vice Chair that the new plan did not differ in any significant way from the plans in which the November 3rd approval was based. Although it withdrew its new application, in addition to confirming UW Vintage Lane 2's objective of complying with the requirements of proper sequencing of its IWA and site plans applications it also wishes to verify the new configuration of the site improvements to the Commission to satisfy condition # 8 of the approval given on November 3, that condition provides this approval is based on a specific design, size building and specific arrangement of impervious surface area as presented, if any changes are proposed to the site design the applicant must come before this Commission to verify that the changes do not alter the findings that were made on this application.

Mr. Connor introduced Mr. DeMallie, who will screen share in order to highlight the plans presented for the Commission's consideration, the overall changes in the plan, and differences in impervious coverage and the remoteness of those changes from any wetland, watercourse or regulated upland area."

Mr. DeMallie introduced himself and added brief remarks and showed the exhibit. "Wetlands disturbance areas are unchanged from prior application. The wetlands mitigation area is unchanged and the storm water drainage is unchanged from what was previously approved, no new activities proposed within wetlands or upland review area. Beyond upland review area adding a small amount of pavement 1408 sq. feet to provide access to an expanded truck queuing area with 30 trucks. Northerly of access drive, goes from east- west position connecting the site with Talbot Lane which is the only access point for trucks. Additional pavement more than offset by expanding a landscaped island of 1470 sq. feet. The impervious coverage percentage is mathematically unchanged. Going from 109 trailer spaces down to 59, other changes are mostly striping on the pavement basically same plan that was previously approved by this Commission."

Mr. Connor requested that the Commission verify that the revised plans do not alter the findings that it made in November 3rd, 2021 decision and that applicant is in compliance with condition 8 of that decision, in addition applicant asks a communication be made to the PZC that its report of the November 3rd decision stands with equal force with regard to the revised plan. The applicant's letter of January 4th, 2022 asking to have this matter placed on the Commission's agenda- more specifically requests 1. The finding that the Commission verify that these

changes to the site design do not alter the findings that were made in approving the permit pursuant to application 21-36P subject to the continuing requirement that any further changes be brought before the Commission in accordance with condition 8 of the permit approved. 2. To direct the Chair or Senior Environmental Planner to advise the PZC in writing that the report and final decision of the IWACC with respect to application 21-36P on November 3, 2021 also constitutes its report and final decision for purposes of section 83G1 of the CT general statutes for activities regulated under the IWA watercourses act involved in the new site plan application submitted to the PZC on December 20, 2021."

Chair Kelly asks if the Commission has any questions.

Commissioner Muller asks if the impervious coverage isn't changing does all the storm water analysis and all that will stay the same.

Mr. DeMallie answers that's correct no changes in that regard.

Chair Kelly addresses Commission stating she needs to hear from Commission on whether or not we feel like the changes really which is a net reduction of 62 sq. ft. of impervious surface in any way alters our findings on the original application.

Commissioner Phillips: Moves a finding that the proposed modifications does not change the conclusion of the impacts on Wetlands and Watercourses of the approval of application 21-36P.

Secretary Reed seconds the motion.

Discussion.

Commissioner Jennings comments he would like to take a look at court findings, expects some "push back" feels more comfortable having some of the Attorney information, to look it over before moving forward.

Chair Kelly disagreed and felt that the Commission needs to focus on the application that came before the Commission that was approved and the proposed changes here. "We should be dealing with any continuing conditions, if we want any to remain in effect."

Commissioner Phillips remarked that this is not the first time the Commission has seen modifications and have voted on the modifications in the past. He finds no reason why the Commission can't decide again whether the modification are significant enough to warrant a new application, voiding out the old permit and going for a new application or whether it is just done. "In most cases if we had not put condition 8 in the initial permit approval this would've been handled strictly as a change order in the field because there's no significant impact on the conclusions or material that was presented during the application process".

Chair Kelly felt that a lot of the legal decisions related more to PZC and to whether or not they could rely on what was done. She agreed that this is to answer a condition this Commission put on the original approval and "we should to speak to that."

Commissioner Muller commented that looking at 7.6 reg- is "like doing normal business, if you look at every plan that came before us probably something that was changed. The word we use is if it's significant or not. This is something that addresses truck parking idling issue, really no impact to any of our metrics that we use, wetlands or the upland review area, We're concerned with all the storm water management and they seem to have been able to make the changes with minimal impact or no impact in the impervious coverage increase, seem to cover with a grass strip that negated that of the opinion that this is insignificant change."

Commissioner Katzbek agrees with Commissioner Muller, doesn't see anything significant to make the Commission "go backwards"

Secretary Reed agrees with Commissioner Muller

Commissioner Jennings agrees with discussion and comments brought up by Commissioner Muller.

Chair Kelly Votes on the motion as presented.

The motion carried. The vote was unanimous.

Commissioner Muller comments when the Commission redoes the regs should look at 7.6. And add a little more info to it.

OTHER BUSINESS: Election of Officers and discussion and vote of a nominee for Open Space Task Force.

Chair Kelly moves on to other business election of officers and open space task force vote.

Commissioner Phillips moves to nominate Barbra Kelly as Chairperson.

Secretary Reed seconds the motion.

The motion carried. Vote was unanimous.

Commissioner Blondin moves to nominate Jack Phillips for Vice Chairperson.

Commissioner Cote seconds the motion.

The motion carried. Vote was unanimous.

Commissioner Phillips moves to nominate Adam Reed for Secretary.

Commissioner Muller seconds the motion.

The motion carried. Vote was unanimous.

Chair Kelly discusses that the Open Space Task Force members had approached Chair Kelly about being the representative from IWACC. The mayor is asking for a formal vote from the commission designating the representative from IWACC to the Open space Task Force.

Commissioner Phillips comments before the commission can vote on needs to be added to the agenda. Moves to add a discussion and vote of a nominee for Open Space Task Force to the agenda.

Commissioner Muller seconds the motion.

The motion carried. The vote was unanimous.

Commissioner Phillips moves to appoint Barbra Kelly as the IWACC representative to Open Space Task Force.

Secretary Reed seconds the motion.

The motion carried. The vote was unanimous.

APPLICATIONS RECEIVED: Appl. 22-06P, Peoples Bank, 251 Buckland Rd – IWA/CC application to construct a commercial development, parking, storm water management and associated utilities, on property located westerly of Buckland Rd and southerly of Cedar Ave. GD (Gateway Development) zone.

Commissioner Cote moves to adjourn the meeting at 8:08pm

Commissioner Jennings seconds the motion.

The motion carried. The vote was unanimous.

Respectfully Submitted:

Gina Saccente, Recording Secretary