

CONNECTICUT RIVER GATEWAY COMMISSION

REGULAR MEETING MINUTES

December 4, 2014

Present/Absent: [Excused absence (E); Unexcused absence (U)]

Chester:	Margaret (Peggy) Wilson, Martha Wallace (E)
Deep River:	Nancy Fischbach, Sam Shaw
East Haddam:	Harvey Thomas, Emmett Lyman
Essex:	Claire Matthews (Arr. 7:35p), Vacancy
Fenwick:	Ethel Davies, Borough Warden (E)
Haddam:	Susan Bement (E), Derek Turner
Lyme:	J. Melvin Woody, Vacancy
Old Lyme:	Peter Cable, Suzanne Thompson (E)
Old Saybrook:	Madge Fish, Belinda Ahern (E)
Regional Rep:	Raul Debrigard (E)
DEEP:	David Blatt
Staff:	J. H. Torrance Downes
Guests:	David Brown, Middlesex Land Trust

Call to Order

Chairman **Woody** called the regular meeting of the Connecticut River Gateway Commission to order at RiverCOG offices located at 145 Dennison Road, Essex at 7:30pm.

Approval of 10/23/14 Meeting Minutes

Motion to approve minutes by **Wilson**, seconded by **Fischbach**, passed unanimously. Cable abstained.

Motion to Revise Agenda

Upon a motion by **Fischbach**, seconded by **Wilson**, the agenda was amended to allow for discussion of the Sogge land acquisition with Middlesex Land Trust Executive Director David Brown

Wilson reported on the status of the Sogge acquisition process. The “clean property” affidavit was reported to have been signed by Mr. Sogge with the document being mailed to Susan Bement, the seller’s agent. The document is being sent to Mr. Sogge’s daughter, the eventual “assignee”, as well. The latest report is that the property will be transferred from Mr. Sogge to his daughter “shortly before closing”. The affidavit was prepared by MLT Attorney Bill Howard.

David Brown of MLT was asked to discuss the letter of agreement between the Gateway Commission and the MLT. Brown discussed two approaches to the acquisition of the property, one being the “assignment” of the purchase contract to the Middlesex Land Trust while at the same time providing them a grant to complete the purchase. The second approach is that currently being followed by Gateway, which is the Gateway purchase of the property with subsequent transfer to the Middlesex Land Trust immediately afterward. Brown reported that, although MLT will abide by whatever choice is made by Gateway, the MLT attorney prefers the assignment of the contract to them prior to closing. That will succeed in removing Gateway from the chain of title, which Brown indicated is usually a desirable tactic when at all possible. The assignment will also negate any need for title insurance on Gateway’s part and simplify the acquisition by transferring the property through one closing instead of two. Further, the MLT prefers acquisition directly through a warranty deed (affording all of its “protections”) between the seller and the MLT. The purchase contract allows for such assignment which can be done very simply and with no lost time that would put Gateway in default of the contract.

Gateway raised the issue of including a reversion clause in the event that either the Middlesex Land Trust or the

Gateway Commission ceases to exist. Brown reported that the MLT policy is that language used refers to “like minded conservation organizations per the requirements of the Attorney General”. Once the agreement is worked out, GW members reiterated that the purchase agreement, the letter of agreement between the MLT and Gateway and the affidavit should be referred to Attorney Mark Branse for review. The issue of “Plan A” and “Plan B” should be reviewed by Branse as well (GW purchase followed by transfer to MLT vs. assignment of contract to MLT *prior* to purchase). Brown indicated that Howard was willing to confer with Branse directly on the legal aspects of the acquisition and transfer.

Members also agreed that Branse should review the section of the MLT by-laws which refers to dissolution to determine if that language sufficiently addresses concerns over the disposition of the property. In addition, Branse is to review the form (audited or not) of MLT accounting expenses.

Motion by **Fischbach**, seconded by **Thomas**, to allow for electronic distribution of Branse reply and electronic review and approval of the final letter of agreement. Motion passed unanimously. Also authorized is direct communication between Attorney Mark Branse and Attorney Bill Howard and/ or David Brown.

Next meetings: MLT 1/6/15 GW 1/22/15

A walk of the Sogge property will be scheduled by **Wilson**.

Treasurer’s Report

Wilson presented the Treasurer’s Report , informing members that EF will begin liquidating funds for GW to have available for the purchase of Sogge.

Bills were presented, totaling \$1,980 for RiverCOG contracted services (\$759 JHTD; \$33 PF; \$1188 Overhead) and \$133 for legal expenses for counsel regarding deeds and title insurance related to Sogge purchase. Motion by **Fischbach**, seconded by **Matthews**, to approve the payment of bills. Passed unanimously.

Correspondence and Staff Report

Letter from William Childress, Counsel for Between the Bridges, aka Marina Village, asserting that the GW “disapproval” of regulations concerning extension of time of completion for Special Permits should have no bearing on the decision of the OSZC because the proposal is “procedural”, which statutory provisions governing GW standards do not cover. The Petition proposed extending what could be a five-year time limit to a ten-year limit under certain circumstances. GW reported that it the petition would be “disapproved” as submitted, but would be “approved” if the total years of extension didn’t exceed seven (letter attached).

Special Permit Completion Regulations, Old Saybrook. As stated above, GW recently “disapproved” a petition submitted by Marina Village owners “Between the Bridges, LLC” which requested an extension for completion of a development within what could be ten years, this as opposed to the five year window which currently exists in OS regulations . **The OSZC was informed by their counsel, Attorney Mark Branse (also counsel to the Gateway Commission), that the regulation proposal was “procedural” as asserted by Attorney Childress and not within the purview of GW standards according to statute, even though GW “disapproved” the petition pursuant to Section 25-102g CGS.** The ZC was counseled, as a result, that the regulation petition *could* become “effective” even with the GW “disapproval” on record. **On November 17, 2014, the OSZC approved the Petition.**

CT River Watershed Council Annual Report, 2014.

CRWC Thank You for participation in the 18th Annual Source-to-Sea Clean-up. 19th Annual event will take place September 25th and 26th 2015 – “mark your calendars”.

Letter from CRWC Executive Director Andrew Fisk to DEEP Commissioner Rob Klee regarding the marker buoys in the CT River at Connecticut Yankee. Fisk notes several issues of concern including (1) misrepresentation by CY that the channel was “man-made”, (2) misrepresentation that NRC regulations *required* the placement of the buoys, (3) inadequate permit application information that would allow review for impacts on other various water use groups, (4) the fact that the facility in 2012 was found to be in compliance with all NRC regulations *prior* to deployment of the buoys, (5) deployment without acquiring a DEEP “structures and dredging permit”, and (6) deployment without acquiring authorization from the Army Corp of Engineers.

CRWC suggests that CY be required to reapply with a *complete* application. If they do not, CRWC suggests that the Department Rules of Practice allow the Commissioner to “reconsider, reverse or modify” the issued permit. In addition, if CY refuses to apply for a state structures and dredging permit (placement of structures in state waters waterward of the Coastal Jurisdiction Line), CRWC recommends that an enforcement action be commenced (similar to that which impacted the Sams’ gabion wall).

Governor’s Announcement on Funding to Preserve 2,250 Acres of Open Space

On October 28, 2014, Governor Malloy announced that nearly \$7.8 million in state grants was awarded to 25 communities – including four GW towns – to preserve open space.

- East Haddam (Lena Property within Eight Mile River Watershed on Tater Hill and Babcock Roads), \$487,500.
- East Haddam (Zeleznick Property which includes 1,000 feet of Burnham Brook, a tributary to the Eight Mile River), \$78,000.
- Essex (The Preserve, 70.8 acres), \$471,250.
- Lyme (Seldon Creek River Access, currently maintained as open meadow and includes 157 feet of waterfront access on the cove and the CT River), \$351,000.

Sogge Survey Progress.

The following was reported on November 25, 2014 by Doug Bonoff, Surveyor:

Hello Torrance, I'm currently working on the "back 40" where boundary evidence is sparse and intermittent, but sufficient to put it all together. I anticipate completion of the survey before the end of the year, but certainly not by 12/4; I want to have the draft double-checked and peer-reviewed before submitting an invoice. Payment can wait until everyone is satisfied.

You must have heard that Stanford Brainerd passed away last week: a butter to the Sogge property, patriarch of Haddam Neck and longtime supporter of land conservation efforts. As a land surveyor and MLT board member I've known and worked with Stanford for many years; his leadership and guidance will be sorely missed.

As a winter sportsman I'm usually in favor of early and heavy snowfalls, but I hope this upcoming storm will be lenient so that I may complete the survey with minimal delay. Happy Thanksgiving! - Doug

Tree Removal, South Cove, Essex. Baker property. To be discussed.

Barnick Property, Chester. A potential buyer called to ask about the history of the Barnick property located on the Chester riverfront immediately south of Chrisholm Marina (above the Chester Ferry). The residential structure he would build would require variances of the 100 foot river setback and possibly the 50 foot vegetated buffer standards. The anticipated structure would likely be around 3,000 square feet and not exceed the 35 foot height maximum. Due to FEMA requirements for structure elevation in a flood zone, the bottom of the supporting floor joists would be approximately 6 to 8 feet above existing grade. He was informed of the fact that large trees along the riverfront were located within the 50 foot “no cut” area and that GW would look for minimal tree cutting in general. The legal history of Gateway’s involvement in the property was discussed.

Gartwaite Access Agreement. Steve Karlson, attorney for BLP Enterprises (Platners and Chester Point Marina) contacted JHTD by email asking to resume discussion regarding an agreement to allow access to the Garthwaite parcel across the Chester Point Marina property. Commission members will remember that the parcel was recently transferred to the Chester Land Trust and that it can only be accessed through the CPM property or, less practically, by walking along the Valley RR ROW. Downes offered to sit down with Karlson and Land Trust attorney Steve Cline in January. Cline was included in the email exchange. A representative of GW would be involved because there is a 25 foot access ROW on the CPM property that is presently encumbered by stored boats and a few small structures. It was thought that an access agreement across the property, rather than strictly through the 25 foot ROW, would allow the marina the freedom to use the property within the ROW while allowing access to the land trust parcel.

Staff Actions

Haddam, 32 Gates Way. Variance application requesting relief from sideline setbacks in order to install ground level solar arrays in a location substantially set back from the river. The site, including the bank of the river, is significantly treed. The arrays will be all but invisible from the river. Letter of “no opposition” sent on behalf of the GW Commission.

Variance Applications to be Reviewed and Approved by the Gateway Commission: None.

Regulation Changes to be Reviewed and Approved by the Gateway Commission

1. Old Saybrook, Signs in Non-residential Zones. Petitioner requesting to allow for larger free-standing signs on properties that are located on a corner lot. Additionally, petition requests that regulations be modified to allow a third structure sign when a building is located on a corner and can be seen from three directions. Gateway found that they would “disapprove” the petition as proposed, but would “approve” regulations that

exclude the proposed change from any properties that fall within the Gateway Conservation Zone. Motion by **Blatt**, seconded by **Matthews** passed unanimously. **Fish** abstained.

Committee Reports

a. Outreach.

Downes reported on proposed standards review with the Old Saybrook Zoning Commission. **Fish** was in attendance. Members suggested that amending the definition of “multi-family projects” to the existence of two dwelling units vs. the current number of three will result in conflicts within the Old Saybrook Zoning Regulations. The Commission asked that GW reconsider redefining “multi-family” as proposed.

ZEO Costa raised a question regarding the process outlined in existing standards for identifying “developed areas” where the vegetated buffer regulations won’t apply. She asked if that process could be done in a pre-application format on a property-by-property basis and project-by-project basis. GW Commission members concurred indicating that they assumed such an interpretation was occurring in this manner already. Members indicated that language will be developed, similar to that allowing staff to judge whether variance applications needed to come before the Gateway Commission as a whole, to formalize the pre-application vegetated buffer protocol. Downes was asked to use the variance delegation language document as a model for the “developed area” protocol.

Downes and **Thomas** briefed the members on the Public Outreach Committee’s efforts to increase the Gateway Commission’s presence on social media. It was reported that **Ahern** was given “administrator status” on the Gateway’s Facebook page. Each member was told to go to the page and “Like” it, and tell friends to do the same. Publicity posted on Facebook should include photos such as the one produced for “The Preserve”. Other pictures and promotional information would include the Garthwaite donation and the purchase of the Sogge property.

b. Land.

Land Committee discussion and decisions were moved to the beginning of the agenda.

New Business.

Discussion regarding the position of Vice Chairman commenced. There were no nominations to fill the position. Current VC Nancy Fischbach indicated her decision to step down was because she was a proponent of term limits, although the Commission didn’t decide to include limits in the by-laws. **Fischbach** expressed that the resignation also is an effort to support “leadership development”. The resignation of the position is effective as of the end of the meeting.

Old Business.

Fish reported that the bonds for the Old Saybrook portion of the funding for “The Preserve” have already been sold. Downes reported that Sam Gold, the new Executive Director will start on Monday, December 8, 2014 but will be sharing time between RiverCOG and his former employer, the Central Naugatuck Valley COG, until the end of December. Downes is to extend an invitation to Gold to attend the January 22, 2105 Gateway meeting. **Fischbach** will endeavor to meet with Gold in the near future to discuss a formal agreement between the Gateway Commission and RiverCOG.

Adjournment

Upon motion by **Cable**, seconded by **Fish**, and passed unanimously, the meeting adjourned at 9:09 pm.