

CONNECTICUT RIVER GATEWAY COMMISSION

REGULAR MEETING MINUTES

December 3, 2020

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

Chester:	Tom Brelsford , Jenny Kitsen
Deep River:	Jerry Roberts, Conal Sampson
East Haddam:	Crary Brownell, Joel R. Ide
<i>Essex:</i>	Claire Mathews, Misha Semenov
<i>Fenwick:</i>	<i>Newton Brainerd, Borough Warden</i>
<i>Haddam:</i>	Susan Bement, Mike Farina
Lyme:	J. Melvin Woody, Wendy Hill
Old Lyme:	Suzanne Thompson, Greg Futoma
Old Saybrook:	Bill Webb, Tom Gezo
<i>Regional Rep:</i>	Raul Debrigard
DEEP:	David Blatt
Staff:	J H Torrance Downes
Guests:	Alisha Milardo, CT Audubon Society; Kelsey Wentling, CT River Conservancy

Call to Order

This meeting was convened using the Zoom online platform. The agenda was formally posted in all eight member towns as required, with information directing interested members of the public to join the meeting online. Chairman **Thompson** called the online regular meeting of the Connecticut River Gateway Commission to order at 7:04pm immediately following the adjournment of the Annual Meeting.

The Chair presented a revised agenda to allow guest Alisha Milardo of CT Audubon's Roger Tory Peterson Center to speak first. Gezo moved to approve. **Mathews** seconded the motion, which passed unanimously.

Milardo presented a PowerPoint describing her background, the plans of the CT Audubon to acquire the former Bee and Thistle Inn in Old Lyme to house the Roger Tory Peterson Education Center. Milardo will return at the January meeting to talk about the "100 Ton Challenge" to raise funds to fight invasive species.

Approval of October 22, 2020 Minutes

Upon a motion by **Ide**, seconded by **Mathews**, the minutes of the October 22, 2020 meeting were approved unanimously.

Zoning Regulation Petition from the East Haddam Planning & Zoning Commission

East Haddam submitted five petitions proposing changes to regulations concerning minimum square footage for living units, regulations regarding site plan review, time limits and nonconformity abandonment clauses, historical parks, extension of use into late fall and winter months in campgrounds and recreational campgrounds, and regulations regarding building structure height and occupancy (provisions for cupolas). **Debrigard** suggested developing a Gateway standard setting a maximum size for cupolas, especially for cases with particularly large structures with large roofs. Current Gateway standards permit cupolas above the 35 foot height maximum by special exception as long as the cupolas are uninhabited and don't have a footprint over 10% of the area of the roof. **Ide** asked if a cupola of "infinite height" could be built, to which members commented that an unreasonable request could be denied under the special permit process.

Woody moved to approve the East Haddam petitions. **Mathews seconded and** the motion passed unanimously.

Discussion of Proposed Changes to the Rules of Procedure.

Webb guided the discussion, describing each change that was to be voted upon, noting that the changes were presented at the October 24, 2020 meeting as required in the Rules of Procedure.

Debrigard suggested that each change be presented and voted upon individually.

Decisions on the eight proposed changes were made as follows:

1. Revise language in Article III, b.1.e.iv regarding Connecticut Plan of Conservation & Development to read Connecticut "State" Plan of Conservation & Development. **Debrigard** move the change. **Semenov** seconded and the members approved the change unanimously.
2. Remove Article IV, b.2 language regarding requirement for an annual reaffirmation vote for spending of the Conservation Fund. **Bement** moved the change. **Debrigard** seconded the motion and the motion passed unanimously.
3. Revise Article V, b.1 concerning the Finance Committee as requested by committee chair **Matthews** to include language regarding budget preparation and the approval of an annual budget. **Idé** moved approval **Bement** seconded and the motion passed unanimously.
4. Revise Article V b.2 concerning the Community Relations/Communications Committee to change the committee name to the Communications and Outreach Committee and change the reference to "bylaws" to Rules of Procedure. **Debrigard** moved approval; **Semenov** seconded and members approved the motion unanimously.
5. Revise Article V b.2.b regarding language concerning the Land Committee. Changes requested by land committee. A proposal to combine language from b.i and b.iii "or to disposition of any properties or easements held by the Gateway Commission to appropriate parties." will be voted on at 1/28/21 meeting.
6. Revise Article V, Officers and Committees, B.2.c.iii to remove "Membership" expirations and contacting towns for new members from Rules & Procedure Committee. Remove "Oversight of Lower Connecticut River Land Trust, since that is no longer part of the Commission. **Webb** moved to approve, **Idé** seconded and the members approved the motion unanimously.
7. Add a new section developed by the Ad Hoc Grants Committee: Article V b.2.d establishes a Grants Review Committee, The need for the new committee is a result of the expansion of fund uses in Article III B.1.a.iii of the Rules of Procedure. **Kitsen** recommended that the section be amended to include the phrase "proposals other than those related to land acquisition and the Communications and Outreach committee actions" The amended Article will be presented for approval and the January meeting.
8. Revision of Section V C.3.c to change the second subsection from "c" to "e". The subsection was mislabeled due to a typographical error. **Webb** moved the correction; **Bement** seconded and the motion passed unanimously.

Discussion of the 2018 and 2019 CT River Land Trust Annual Reports.

Woody summarized the history of the land trust and reviewed its activities since it was turned over to RiverCOG. **Thompson** requested that the Trust's two Annual Reports be circulated to members after the meeting.

Staff Report

Downes summarized the appended report. He also asked members who visited Haddam Neck for a site visit whether the new residential development with a "switchback" driveway is far along. He reported that all representatives, including **Debrigard**, the regional representative, are covered by CIRMA (Spell out) insurance and a document so stating will be added to the Gateway Handbook.

Chairman's Report.

Thompson noted that the schedule of meetings for calendar year 2021 now appears on the Gateway Commission website. Having attended the virtual annual meeting of the Coastal Conservation District, which serves the territory of the eight Commission member towns and most of the Lower CT River COG. She encouraged Commissioners and staff not already familiar with the responsibilities of the Conservation District to review their website and materials, www.conservect.org/ctrivercoastal.

Finance Committee:

Matthews moved payment of the outstanding bills. **Bement** seconded and the motion passed unanimously.

Land Committee.

Futoma summarized the Hillside Project and discussed several maps including one of the Salmon River area.. He explained that funds that the Gateway Commission granted to the Middlesex Land Trust for purchase of Haddam Neck property in the area designated as a focus area for the Silvio O. Conte Preserve were recovered when the properties were subsequently purchased by US Fish & Wildlife Service. The Hillside effort is one that preserves highly visible land at minimal expense. **Futoma** noted that there are *other* conservation focus areas along the lower river, particularly in the Silvio O Conte's Whalebone Cove Focus Area. The Land Committee will seek to emulate the Haddam Neck model in the Whalebone Cove area.

Rules and Procedures Committee.

Webb reported that the Rules and Procedure Committee will call a meeting soon to discuss **Semenov's** inquiries about lighting issues. He suggested that the Gateway Commission needs a multi-year budget to consider funding priorities in advance.

Ide has agreed to co-chair the Rules and Procedures Committee in the future.

Grants Ad Hoc Committee of possible funding requests have made it difficult for the committee to complete its work. The draft committee will distribute a draft version. **Thompson** thanked the Ad Hoc Grand Committee for its efforts and disbanded it. Once the Commission adopts Rules of Procedure language that establishes a standing grants review committee, anticipated to occur at the January meeting, she will appoint members. **Roberts, Brownell,** and **Ide** volunteered to serve on the committee.

Communications and Public Outreach Committee.

Gezo highlighted the attached committee submitted report.

Adjournment: **Bement** moved to adjourn, unanimous vote. Meeting adjourned at 9:26pm.

Appendix
Staff Report
Staff Report
December 3, 2020

A. **Correspondence/Staff Report**

East Haddam Zoning Regulation Petitions (5 in total)

a). Minimum Square Footage, Living Units

- Deletions that remove all existing minimum square footage limit language for dwelling units, limits that were deemed illegal in Connecticut Courts. **Recommended Finding: No impact on "natural and traditional river scene".**

- b). Administration and Enforcement
Removal of nonconformity abandonment clauses (deemed illegal by CT courts); correction of administrative timing requirements for Site Plan review. **Recommended Finding: No impact on “natural and traditional river scene”.** Correction for legal purposes.
- c). Historical Parks, Time Limits
Strengthening of existing criteria to match those found in the State Register of Historic Places. **Recommended Finding: No impact on “natural and traditional river scene”.** Added language increasing consistency with State Register.
- d). Campgrounds and Recreational Camps (extended use into late fall and winter months)
Changes that allow limited campground stays during the off-season where current regulations don't. Update definition for camping units. Currently, camping is permitted during the 200-day period between April 15th and October 31st. The new language allows camping use between November 1st and the following April 14th as long as stays are no longer than 14 days. **Recommended Finding: No impact on “natural and traditional river scene”.** Regulation of a “use”.
- e). Building Structure/Height and Occupancy (provisions for cupolas)
Proposed language clarifies height and occupancy requirements and would allow construction of cupolas.
- Building Structures – Height and Occupancy.
Language for structures in the Gateway Conservation Zone continues to require that no peak of a roof shall exceed 35 feet as measured from existing natural grade, with the exception of chimneys as impacted by the State Building Code. **Recommended Finding: No impact to “natural and traditional river scene” in that the language does not alter the underlying Gateway height requirement for measuring structure height.**
 - Cupola Sizing Guidelines.
Design guidelines that do not alter Gateway requirements for allowing cupolas that exceed 35 feet. Gateway requirement is that a cupola can exceed 35 feet if it doesn't occupy more than 10% of the area of the existing roof and is uninhabitable. Exceeding the 35-foot height under these circumstances is allowed through the granting of a Special Permit by the P&Z rather than through a variance of height through the ZBA. This provision is the same in all eight Gateway towns. **Recommended Finding: No impact to “natural and traditional river scene” in that the language does not alter the underlying Gateway height requirement for measuring structure height.**

Development Update, Haddam Neck: Diane Mack, Purchaser of “Desina/Messina” Property
Staff contacted Ms. Mack, who with her partner, is developing the house site on the hillside above Injun Hollow Road (Commission members likely saw the property when visiting Haddam Neck in the recent past). The property is adjacent to the Halvorsen property, purchased as part of the Hillside Project in 2019. Although understanding the Gateway concern, Ms. Mack confirmed that they have no choice but to construct a “switchback” driveway up the hill to the construction site. She was told of Gateway's concern which is based on the Deep River hillside

tree-clearing and was asked if there was any opportunity to minimize the tree removal. Ms. Mack said, as much as they would like to keep the tree cover intact (she and her partner are members of the West Hartford Land Trust), she's afraid it's not possible, based upon her understanding of the engineer's plans for access up the hillside. They will keep minimization of tree removal in mind as they move forward.

Standards/Regulation Inquiry posed by Staff for Lighting, Max. Structure Size and Tree-Cutting.

So far, input from town staff suggests that:

- (1) Lighting Regulations (the standard "light source must be blocked from view from adjacent properties") is something they'd rather not get involved with. Much like noise regulations, such light regulations are difficult to enforce, and the zoning regulations already include those kinds of standards. It was suggested that perhaps the issue is more of design than enforcing existing outdoor floodlight regulations. The proposal that started much of the recent light pollution discussion was one that included a "wall of windows" above Hamburg Cove where interior lighting would flood the area with that type of lighting. More "traditional" house designs (e.g. fewer floor to ceiling windows across the river-facing façade of a structure) might be in order. Gateway enabling statutes *do* include the word "design", paving the way for more specific façade design language.
- (2) Maximum Structure Size is a topic that they feel will be a "non-starter" with their Commissions. As suggestion from Chris Costa of Old Saybrook was to use a sliding scale for structure coverage. Lots up to 1 acre in size are permitted 15% coverage. Lots from 1 acre to 2 acres would be permitted 10% coverage while any lot over 2 acres would be permitted 5% coverage. This avoids the concern over trying to regulate "maximum structure size". Gateway enabling statutes refer to "coverage" as a means of managing development.
- (3) Tree Clearing. Although willing to listen to ideas on how to "police" tree cutting outside of the 50 foot "required vegetative buffer", general concern was raised with respect to how to enforce such a standard.

The responders have all indicated that they would ask their respective commissions about these topics and ask if they had anything they'd like to explore at the same time. The Lyme P&Z supports the lighting initiative and the tree-cutting initiative, but has concerns over managing maximum structure sizes. No other P&Zs have weighed in.

Notice of Potential Riverfront Development: Chester, 29 Castlevue Drive (aka the "Barnick" property). A potential buyer of a riverfront property in Chester, a property that long-standing members will remember as the Barnick property, has inquired about what kind of structure can be built on the property. The property is within the Gateway Conservation Zone and is almost totally encumbered by setbacks, including the 100 foot Gateway structure setback along the river AND along the rear of the property where wetlands associated with the river pass. The property, when owned by Mr. Barnick, was the subject of an appeal by the Gateway Commission (the last such appeal by the Gateway Commission and the only one brought during the last fifteen years) of an approval by the Chester Zoning Board of Appeals. Such an appeal is authorized by Section 25-102h of the CT General Statutes (see last page 'Appendix' for expanded discussion of legalities of appeals, and specifically, the Barnick appeal).

As for the property, there is an approval on record for a residential dwelling that, in the potential buyer's opinion, is a 'box' with no character. He will attempt to come up with his own design while staying as close to the size and location of the approved development as possible. The redesign will no doubt require variances as the design will be different, even if the footprint remains the same, meaning that the application will come before the Gateway Commission for review and comment.

Staff suggested that the party come before the Gateway Commission for a preliminary discussion at its January 28, 2021 meeting, explaining his intent and to seek advice.

Mutual Exchange of Easements Agreement (this is an FYI with no decision needed)

Members will recall that an effort was made to trade easements at 1 Haddam Dock Road, the property of Alan Aronow between the Aronows and the CT DEEP. At that location, his driveway encroaches on the Valley Railroad Right of Way (owned by the DEEP), which passes adjacent to his property (if you've been to the Blue Oar Restaurant, you drive down the steep hill and over the Valley RR tracks before getting down to the parking lot – the entrance to the Aronows property is immediately on the left after the tracks). Rather than have him move his driveway off the ROW and out of the easement (which would be expensive and complicated due to a Northeast Utilities power line easement with telephone poles), the DEEP offered an exchange of easements. DEEP requested a protective easement over a portion of the Aronow's property related to riverfront protection in exchange for allowing the driveway to remain on the Railroad ROW. The riverfront easement encompassed more upland area than the Gateway 100-foot structure setback and the 50-foot required vegetated buffer and was therefore supported by members of the Gateway Commission (DEEP requested Gateway's consent in this exchange). To complete the exchange, the agreement needs to be signed by a member of the Gateway Commission. The signature block identifies Melvin Woody as the signatory as he was chairman when the easement was developed. Allyson Clarke of the DEEP indicated that Melvin's signature is adequate even though he is not the current chair. Staff will endeavor to deliver the easement document to Woody for signature so that the document can be returned to the DEEP.

Member Insurance

CIRMA, as insurer for all eight Gateway towns as well as RiverCOG, has provided a statement that all Gateway members are covered by CIRMA for activities related to their participation on the Gateway Commission. Each town's CIRMA insurance covers all town appointees including Gateway appointees. The regional members (Raul Debrigard) are covered under RiverCOG's CIRMA insurance. A memorandum based on the CIRMA email was distributed and is included further down in this Report.

RiverCOG Regional Workshops

A flyer was distributed to members on 12/2/20. Four workshops will be held on December 9th, 6p to 8pm (Changing Demographics); December 15th, 6pm to 8pm, (Regional Branding and Visioning); December 21st, 6pm to 7pm (Future Land Use Map, Part A); January 5th, 6pm to 7pm (Future Land Use Map, Part B). For more information, go to www.rivercogregionalplan.org



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Chester
Deep River
East Haddam
Essex
Haddam
Lyme
Old Lyme
Old Saybrook

MEMORANDUM TO: Gateway Commission Files
MEMORANDUM FROM: J. H. Torrance Downes, Staff
DATE: November 17, 2020
SUBJECT: Insurance Coverage of Gateway Members

The following communication was received from Alex Sarni, Underwriting Technical Associate with CIRMA:

You are correct, currently (for the 7-1-20 to 7-1-21 policy period) each of the eight member towns you mention below (Old Saybrook, Old Lyme, Lyme, Essex, Deep River, Chester, Haddam and East Haddam) are insured through CIRMA and have Public Officials Liability coverage on their policy. Per the CIRMA Public Officials Liability coverage, it is our intent to cover the appointed representatives on that Town's policy for their acts that are in the scope and duties assigned by the Town. Please see below;

Lower Connecticut River Valley Council of Governments also has Public Officials Liability coverage. Per the CIRMA Public Officials Liability coverage, it is our intent to cover the "regional" member of the Gateway Commission as long as he or she is acting in the scope and duties assigned by Lower CT River Valley COG.

Please note, coverage is contingent upon the details in the summons and complaint and the terms, conditions, and exclusions in the policy at the time of the loss.

Feel free to reach out with any questions or concerns!

Thank you,

Alexander Sarni
Underwriting Technical Associate
ASarni@ccm-ct.org
TEL: 203-946-3793

Appendix

Discussion of Statutory Language Regarding Variance Applications and Appeals

A review on the controlling language of the statutory language of Section 25-102h CGS governing ZBAs and Gateway. That section states, in part:

“[The Zoning Board of Appeals] [1] *shall submit* a copy of such [variance] application to the Connecticut River Gateway Commission and the conservation commission of the town within which such land is located not less than ten days prior to the date set for the hearing on such application. Said [Gateway] commission [2] *shall review* such application to *determine* if the action requested in such application is adverse to the protection and development of the conservation zone in accordance with the purposes of this chapter and the standards set forth in section 25-102d. In addition to its other powers and duties, the zoning board of appeals [3] *shall determine* if the action requested in such application is consistent with the purposes of

this chapter and the standards set forth in subsection (b) of section 25-102g. Said [Gateway] commission and such conservation commission shall be deemed aggrieved parties at any hearing on any such application before the zoning board of appeals and for the purpose of taking an appeal pursuant to section 8-8.

Note this language requires (1) submission of the variance application by the ZBA to the Gateway Commission within a certain time period, and (2) the review of the application by the Gateway Commission and a determination of whether approval would be adverse to the protection and development of the Conservation Zone. The assumption is that Gateway would submit the determination to the ZBA which would, in turn, wait to hear what Gateway has to say and incorporate that into the decision. Although presumed, members will notice, however, that there is NO language requiring the ZBA to wait for, receive or even consider Gateway's report even consider if the ZBA does receive it. This process works because the ZBA is willing to wait for and consider Gateway's determination because of the partnership, and the possible threat of appeal.

The ZBA is also required to [3] make its own determination of whether the application is "consistent with the proposes" of the Gateway statutes, mission, etc. ZBAs usually use the Gateway Commission determination presented in letters as *it's* (the ZBA's) determination (ZBAs seldom if ever make a specific determination of their own as a part of their decision, which they technically should). Problems can result, for instance, if Gateway reports strong opposition to the granting of a variance application, after which the ZBA makes their *own* determination and approves the application with no consideration as to Gateway concerns.

There's no specific language that requires the ZBA's determination to align with Gateway's, but one would think that Gateway's determination, as the statutory authority on impacts, would be embraced by a ZBA. If the two determinations diverge (which very seldom happens), then Gateway is in a position to determine if the divergence is critical enough to appeal an approval. That's when the last sentence comes into play. Gateway and the Conservation Commission have "standing" in the proceedings and are therefore able to appeal a decision they feel is improper.

Summarizing the Barnick case mentioned earlier, Gateway's appeal likely fell short as there is no requirement that the ZBA had to agree to the Gateway request for the ZBA to extend the public hearing to wait for Gateway review and determination to be submitted. The ZBA saw it as within their legal rights to move forward without the Gateway review/determination, and the court apparently agreed. As Gateway members know, the "partnership" nature of the Gateway compact is what results in towns agreeing when Gateway makes such requests.