

BROOKFIELD WATER POLLUTION CONTROL AUTHORITY

53A Commerce Rd., Unit 1, Brookfield, CT 06804

Wednesday, February 22, 2023, 7:00 p.m.

MINUTES

Minutes not yet
approved. Approval
and any edits made in
succeeding minutes.

Zoom Call-In Info:

<https://us02web.zoom.us/j/89163691250?pwd=eXVvS2ZsMXA3anJvaU5oREhBbFA4dz09>

Meeting ID: 891 6369 1250

Passcode: 7757319

1. **Convene Meeting**-Chairman N. Malwitz convened the meeting at 7:00 p.m.

WPCA:

N. Malwitz

M. Brown

J. Murray

L. Donovan

L. Trojanowski-Marconi

M. DelValle

Others:

C. Utschig, Langan Engineering

Attorney J. Sienkiewicz

M. Allred, Accountant

A. Kennedy, Operations Manager

T. Strid, Inspector

PUBLIC HEARING – Proposed Amendment to Section 1.2 Treatment Capacity Management-

Chairman N. Malwitz read aloud for the record the proposed amendment to the Brookfield WPCA regulations. He said this has to do with allowing more capacity for property development if it involves a brownfield. He explained the definition of a brownfield and noted that Brookfield has two brownfields, one of which was the BJ's property which has already been remediated. He explained the remediation process used at the BJ's property. Chairman N. Malwitz said the only other brownfield site in Brookfield is 20 Station Road. He explained the Town, in connection with a developer, was awarded a \$1.2 million grant towards the remediation process for this property. Attorney J. Sienkiewicz said he drafted this proposed amendment without any input or formal request for the WPCA to provide an exception. He said it is his understanding that the Town received a grant for 20 Station Road for \$1.2 million and the property owner was looking for up to 60 bedrooms in 1 and 2 bedroom apartments. He said under the current regulations the property owner might be entitled to 20 bedrooms. Attorney J. Sienkiewicz said he has not seen the grant award but he understands that it might require the developer to develop the property for affordable housing, which could be done even with 20 bedrooms. He said the WPCA's current problem with capacity affects everyone in Brookfield who may want to use the sewer. He said creating an exception for one property owner can create a perception that there is favoritism over another property owner who does not get that special exception. He said in order for the WPCA to determine whether the applicant has considered other feasible alternatives, they would probably have to spend more than \$2,500 for an appraisal of the property to determine if the use being proposed is the most consistent with the regulations and the least amount of exception to be required. Attorney J. Sienkiewicz also noted this amendment does not address the remediation process of the property, but only addresses the ultimate use of the property. He said if there is a large amount of water on site to be pumped and remediated, this draft does not address that, and would be something else for the WPCA to consider outside of the regulations. He also discussed another financial penalty built into this proposed regulation amendment is in regards to the capital cost connection fee, which would be increased based on the amount of capacity exception provided. Attorney J. Sienkiewicz said the WPCA did not discuss this amongst themselves prior to the public hearing and the public hearing should probably be continued. G. Dembowski said he could make a presentation at the next meeting about this grant and partnership for the remediation of 20 Station Road. He said he can send the WPCA the grant application for their review. He said the grant is a DECD grant and the Town was required by the rules of the grant to submit a redevelopment plan. He said the grant also requires affordable housing (20% of the units will be affordable housing and the rest will be market rate). G. Dembowski said they want to do the remediation in the dry season (August, September, October) and chances are it will not happen this year due to all the permitting requirements from the State. He explained the next steps involved in permitting. He said the site has monitoring wells and the Town has spent \$80,000 for the assessment. He said the hot spot is

under the foundation of the existing building and soil will be removed down to a 15-foot depth. He said unfortunately some of the dry-cleaning fluids are 600 feet down in the bedrock and that is not practical to remove. He said that will require a chemical treatment put into the fissures of the bedrock according to the DEEP standards. He said there will then be 4-5 years of monitoring by the developer, including quarterly testing submitted to the state. He said they are estimating while this work is being done during the dry season that they will capture the ground water into tanks and the most cost-effective thing will be to discharge it, with a permit, into the sewer system in a slow rate. He said the Inland Wetlands Application has been submitted. Attorney J. Sienkiewicz asked if a plan for this project has been made, what are the design flows for the sewer. G. Dembowski said that has not been done yet. G. Dembowski said the developer has agreed to buy the property after receiving the Wetlands permit and once he makes the purchase they will move forward with the remediation RFPs and planning process. He noted the town will never own the property. G. Dembowski noted benefits of the project including the town collecting over \$100,000 in blight fees in arrears, the town will collect several years of taxes that have never been paid, the last brownfield site in town will be cleaned up and the town will get 20-25 parking places on that parcel of land that is needed in downtown. G. Dembowski noted the Board of Selectmen is in full support of this project. Attorney J. Sienkiewicz said the project is great but how do you deal with the sewer capacity other than to put in a design that requires under 2,000 GPD. Chairman N. Malwitz said the development has to be attractive enough for the developer to clean up the brownfield. He said the WPCA's overarching charter is to deal with pollution problems and this is one that can be addressed. He said the economics of cleaning up the brownfield has to work for the developer. L. Donovan noted that originally all the work going on in the four corners was mixed use. She understands that this development is proposed to be just residential. She asked why they are not planning to have commercial on the first floor. G. Dembowski said when the grant application was first submitted, the DECD denied the request to waive the requirement of affordable housing. He explained with that denial, the developer said the numbers do not work for them. They are requesting a ZBA variance to waive the requirement for commercial on the first floor. G. Dembowski said they were very transparent about the sewer moratorium and the affordable housing moratorium in the grant application and state said they had to work through these issues. He said the state allowed no exceptions. C. Utschig noted this proposal is a decision to be made by the Commission and the Commission can amend the proposal as they see fit. G. Dembowski said if they are not successful with this application and project then that site will just sit there and no one will buy it. He said the plume is bigger than the site. M. Brown said this amendment is not for abatement. He said this amendment is to allow someone to break the moratorium and build what they want so it can be lucrative for them. He said this is a land use problem, not a pollution problem. C. Utschig said he thinks M. Brown is right and these are two separate issues that the WPCA is grappling with. **Chairman N. Malwitz made a motion to close the public hearing for Proposed Amendment to Section 1.2 Treatment Capacity Management. J. Murray seconded the motion and it carried unanimously.**

2. **Approval of Minutes** – 1/18/23-**J. Murray made a motion to approve the minutes from 1/18/23. M. Brown seconded the motion and M. DelValle abstained. The motion carried 5-0-1.**
3. **Correspondence/Public Comment**-*Norman Edelson, 116 North Lakeshore Drive, was present.* He discussed and distributed a page entitled "Comparative Sewer Project Costs."
4. **Accountant Report**
 - a. Monthly Financials-M. Allred discussed the monthly financial report.
 - b. ICS Account Update (signature card)-A. Kennedy noted signatures were needed for these accounts.
 - c. Budget Update-A. Kennedy said the staff submitted the draft budget to Chairman N. Malwitz on 2/17/23 for his review. She noted K. McPadden said the 2% CCRCC will be ready by the March meeting. M. Allred asked that the draft budget be forwarded to him when we are done with it so they can work on the accounting accruals pages.
5. **Old Business**
 - a. 101 Park Ridge Rd. Parcel 3A (subdivision created this lot to be #131) – Application to Connect-S. Sullivan, CCA, LLC was present. G. Steiner, Property Owner, 2 Parklawn Drive, was present. G. Straiton, Amphenol, was present. G. Straiton said the business is currently located at 4 Old

Newtown Rd in Commerce Park, in about 45,000 sq ft. building. He said they do manufacturing for military and instrument grade RF connectors. He said they have been there for 20 years and are looking to move to a more attractive setting. G. Straiton said they will have offices and manufacturing. He said he currently has 60 office employees and at a maximum will have 100. He said in the manufacturing space he currently has 17 employees and at a maximum will have 25. He explained the type of equipment used in this manufacturing and additional details about the business. S. Sullivan said based on the description of the business they believe the best way to calculate the sewage flow was by employee. He said they thought it was more appropriate to utilize 20 gallons per day, due to this not being a true factory. Attorney J. Sienkiewicz said they need to calculate the flow based on the Public Health Code. S. Sullivan said they did use the Public Health Code. Attorney J. Sienkiewicz and S. Sullivan discussed the application of the Public Health Code criteria. Chairman N. Malwitz asked if the applicant knows their water usage from the current location. G. Steiner said they do not, due to the water meter at their current location handling multiple tenants. C. Utschig said from an engineering perspective, the Commission can use known usage and known flows instead of the old Public Health Codes which were typically written for septic system sizes and were conservative, in order to evaluate this application, if they are given specific and reliable information. Attorney J. Sienkiewicz said the regulations state that you do not deviate from the Public Health Code. S. Sullivan said he disagreed, and read aloud "Design flows may be reduced if documentation, building floor plans, statement of use, etc. supports the reduction." Attorney J. Sienkiewicz asked S. Sullivan to submit this request in writing. C. Utschig said the applicant should submit an engineer certified letter that provides the rationale by which they established the flows, and it should be specific. C. Utschig also suggested the Commission may want a way to monitor the flows. M. Brown said as a Commissioner, he would want to see the Engineer and the Attorney to be on the same page. Attorney J. Sienkiewicz noted an easement is still needed. A. Kennedy noted they also need to receive the \$3,750 in escrow from the applicant. Attorney J. Sienkiewicz asked if the applicant could get a pro-rated version of the water bill with the respective breakdowns for the other tenants and give this to the Commission in order for them to get a general idea of the applicant's current water usage.

6. New Business

- a. To Act Upon Proposed Regulation Update-Chairman N. Malwitz said it seems that they should have a better understanding of the project. M. Brown said they need to make sure that every Commissioner is clear on what this means. Chairman N. Malwitz said they are being pressed upon because of the grant. G. Dembowski also noted they wanted to get the approvals in place and hire a contractor to get the work done when the water table is at its lowest. M. Brown said the Commission has a much larger problem than the pollution at 20 Station Road, which is capacity. He said he believes Attorney J. Sienkiewicz's legal opinion is clear that this is going to be a problem. M. Brown recommended they table this for more discussion. M. Brown said whatever the benefits are to the town, they all agree on that, but they should not appease a builder by allowing them to break the moratorium. He said the WPCA is not a Land Use Authority it is a Sewer and Pollution Authority. M. Brown said with litigation pending, everyone will line up to sue us because we are playing favorites. M. Brown said they have to forget about the state grant and look exactly at what it is. He said there is no reason this builder cannot produce something that is under 2,000 GPD, and it is not our problem to make it lucrative. M. Brown said it would be dangerous and irresponsible to allow this to go through. L. Donovan said she would like to piggyback on M. Brown's comments and discussed the WPCA's responsibilities and said they must play their roles clearly and within the regulations. Chairman N. Malwitz said this is a complex problem which is getting the attention of the First Selectman. He said to him it seems to make sense to make an accommodation and the exception is narrowly written to handle brownfields only. Attorney J. Sienkiewicz said the developer doesn't have to build a project that loses money, but they also don't have to build something that makes the maximum amount of money either. M. Brown asked Attorney J. Sienkiewicz what his legal opinion is regarding the other applicants that have been turned down if the Commission were to adopt this amendment. Attorney J. Sienkiewicz said this is only a regulation change, not

an application. He also said the developer should come before the Commission to make a presentation. Chairman N. Malwitz discussed either re-opening the public hearing or scheduling a new public hearing in order to hear a presentation from the developer. **L. Trojanowski-Marconi made a motion to table Proposed Amendment to Section 1.2 Treatment Capacity Management and instruct the staff to re-notice the public hearing for Proposed Amendment to Section 1.2 Treatment Capacity Management for the March 22, 2023 meeting. L. Donovan seconded the motion and it carried unanimously.**

7. Project Updates

- a. Candlewood Lake Area Project-Chairman N. Malwitz said this project is under engineering review.
- b. Dean/Pocono Road Area Project-Chairman N. Malwitz said this project will be presented to the WPCA staff by CDM Smith prior to the March WPCA Commission meeting. Attorney J. Sienkiewicz noted some suggestions for next steps for this project. He said once the report is received from CDM Smith, the WPCA should make a tentative decision on what direction to go in, before going to public hearing.
- c. Brookfield Market Area Project-Chairman N. Malwitz said this project went out to bid and will cost about \$900,000. He discussed the STEAP Grant, and said the state is taking a second look at this due to Danbury's commitments to other municipalities. A. Kennedy noted that there is another issue with the grant regarding eligibility. She said in her last conversation with Ivonne Hall at DEEP, I. Hall said Brookfield may have negated their eligibility for the grant by going out to bid at this point.
- d. Route 133 Station Project Phases I & II-T. Strid said for Phase I they are waiting for T. D. & Sons to remove the old generator and fix the wall. T. Strid said for Phase II they are in engineering design. C. Utschig said they will have a sketch for T. Strid and R. Prinz to review in a few weeks.
- e. Caldor Valve Bypass Project-T. Strid said they are getting three quotes for this work and the work should take place in the spring.
- f. Danbury Plant & Brookfield Allocation-Chairman N. Malwitz said he received some news from Chuck Michaels. He said Danbury is applying to the state to reinstate the full plant capacity and they prepared a 200-page white paper to defend that decision which is not public yet. He said the state is asking them to have a year's worth of operation under their belt, which will be up in October. He said their hope is to restore their full capacity and then Brookfield could ask for up to one million gallons. Chairman N. Malwitz also discussed the new First Selectman in Bethel possibly negotiating to give Brookfield some of their excess capacity. M. Brown said his company is running the plant in Danbury and it is operating very well with phosphorus removal.
- g. Other Engineering Matters-Chairman N. Malwitz discussed C. Utschig's upcoming retirement in September and suggested a meeting with Langan to meet other senior staff in the White Plains office.

- 8. Employee Activity Reports**-Chairman N. Malwitz said employee reports were sent out and he reviewed them. He said the staff is working with Loretta on a goals plan.

9. Legal Matters

- a. Collection Update-No discussion.
- b. New Attorney Update-Chairman N. Malwitz discussed the recent Request for Proposals for a new attorney, and subsequent interviews. He said they interviewed two attorneys and one other attorney did not respond to communications to set up an interview. Chairman N. Malwitz said they met with attorneys at Pullman & Comley and requested a letter of engagement to review at this meeting and they did not supply one. Chairman N. Malwitz discussed the interview with Stephen Harding and noted they did receive the letter of engagement from him, which will be discussed in Executive Session.
- c. Other Legal Matters-Attorney J. Sienkiewicz noted he visited the pump station newly named in his honor and it looks great.

10. Other WPCA Matters

- a. Other WPCA Matters-A. Kennedy discussed a bill before the Senate which would allow municipalities to post legal notices online only as opposed to having to post them in newspapers.

11. **Vouchers**-L. Trojanowski-Marconi made a motion to approve the vouchers as submitted. M. Brown seconded the motion and it carried unanimously.

M. Brown made a motion to go into Executive Session at 9:07 p.m. Chairman N. Malwitz invited A. Kennedy and Attorney J. Sienkiewicz to attend Executive Session. L. Trojanowski-Marconi seconded the motion and it carried unanimously.

12. **Executive Session** – To discuss legal matters-No motions were made in executive session. **L. Trojanowski-Marconi made a motion to end Executive Session at 9:25 p.m. L. Donovan seconded the motion and it carried unanimously.**

M. DelValle made a motion to authorize Chairman N. Malwitz to sign the Retainer Agreement from Stephen G. Harding, Esq. and engage him as the new WPCA Attorney. L. Trojanowski-Marconi seconded the motion. Attorney J. Sienkiewicz said he would like the record to reflect that he thinks Stephen Harding is a suitable candidate to replace him and his hope is that he will do a bang-up job for the WPCA and he thinks he will. **The motion carried unanimously.**

13. **Adjournment**-L. Trojanowski-Marconi made a motion to adjourn at 9:28 p.m. M. Brown seconded the motion and it carried unanimously.

*** Next Regular Meeting March 22, 2023***