

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

## **BROOKFIELD WATER POLLUTION CONTROL AUTHORITY**

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

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

### **MINUTES**

#### **Zoom Call-In Info:**

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

Meeting ID: 891 6369 1250

Passcode: 7757319

#### **1. Convene Meeting**

##### **WPCA:**

N. Malwitz  
L. Trojanowski-Marconi  
J. Murray  
L. Donovan  
M. Brown  
M. DelValle

##### **Others:**

C. Utschig, Langan Engineering  
Attorney S. Harding  
M. Allred, Accountant  
A. Kennedy, Operations Manager  
K. McPadden, Executive Administrator  
M. Ongaro, Collector  
R. Prinz, Chief of Maintenance  
T. Strid, Inspector

#### **PUBLIC HEARING – Proposed Amendment to Section 1.2 Treatment Capacity Management (*This hearing will reopen and constitute a continuation of a prior hearing on the same proposal that was held on 2/22/23*)**

- a. Presentation by Brookfield Village Station Road, LLC and the Town of Brookfield regarding DECD 2022 Municipal Brownfield Grant Program Application-Chairman N. Malwitz read aloud the legal notice published in the Danbury News Times regarding this public hearing. Attorney S. Harding noted that when he was a State Representative, he submitted a letter in support of the Town of Brookfield obtaining this grant. He handed out copies of this letter to the Commissioners. Attorney S. Harding said he does not believe this presents any level of conflict of interest as the letter does not reference sewer regulations. He said he is presenting this to the Commission in full transparency to give them the opportunity to voice any concern they may have in his representing the WPCA in this matter.  
*G. Dembowski, Town of Brookfield, was present.* He referenced the bullet point summary he emailed to the Commission, which he prepared in response to the Commission's request for more information. He said he also submitted the application for the grant as well as the award letter. G. Dembowski gave a brief overview of the presentation submitted. G. Dembowski noted the Town engaged a licensed professional environmental engineer, C. Koelle from Tighe & Bond, who specializes in dry cleaning remediation, and was present for this meeting via Zoom. G. Dembowski also noted that the Town's partner, who responded to their RFP to redevelop this property is the same developer of Brookfield Village, and Allan Rothman, Project Manager was also present. G. Dembowski reviewed the benefits of this project to the Town of Brookfield, and noted the Town does not see any other feasible option at this time or at any time in the future. M. Brown said he does not believe anyone on the Commission is against cleaning up pollution but noted G. Dembowski said at the last meeting that they are specifically asking the Commission to amend its regulations to allow for this one property to go over the moratorium capacity. A. Rothman said they are in contract to purchase the property, conditional on receiving approvals. He said as part of the grant they have to build at least 54 apartments. L. Donovan asked for clarification on the number of apartments. She said at a recent Inland Wetlands meeting A. Rothman said that 54 apartments were required by the grant, but she has found no evidence of that. A. Rothman said it is one of the contingencies of the grant approval. M. Delvalle asked why the Town could not just level the property and build a parking lot. G. Dembowski said the Town does not own the property and the Town would never buy the property, in his opinion, due to the

environmental liabilities. He said the plume is already larger than the property. M. Brown said he thinks the WPCA is all in agreement that something should be done about 20 Station Road, but the red flag is solely a legal flag. He said if we allow this property excess capacity, if the Commission adopts this and accepts this, is there going to be a line out the door of builders and contractors suing the WPCA. M. Brown said they will have to say no to this proposed amendment if it opens the WPCA up to being sued. M. Brown said there is a small problem at Station Road but there is a large town-wide capacity problem. C. Utschig said the Town should show the WPCA Commission the requirements of the grant, describing the development need. A. Kennedy said the grant approval requires an affordable housing component, not specifically 54 apartments. A. Rothman said it requires 54 apartments, and there is no way to make the financials work without 54 apartments. C. Utschig said that statement deals with two very separate issues, financial viability and what the grant requires in order for the Town to get the money. M. Brown said he thinks they are overcomplicating the issue and they should only be discussing the legal aspect of this proposed regulation amendment. Chairman N. Malwitz said this amendment was crafted in a way that it would only apply to brownfield projects with a grant, and at this time there is only one in Brookfield. M. Brown said last month the WPCA Attorney at that time was strongly against it. Attorney S. Harding said from a purely legal perspective, this is well within the confines of what the WPCA is allowed to do per State Statute. However, he said that it is different from a liability perspective. Attorney S. Harding said anyone could litigate against the Commission if the decisions they are making are arbitrary and capricious. Attorney S. Harding said speaking to Attorney Sienkiewicz's concern, prior to his retirement, was the openness to liability due to the Commission crafting a piece of regulation that is only going to affect one particular property in the Town of Brookfield and that does potentially open the Commission up to violating our standard of being arbitrary and capricious. Attorney S. Harding believes that is a valid concern. L. Donovan summarized aspects of the project that have been presented, noting the Commission has not yet received an application from the property owner. Chairman N. Malwitz asked C. Koelle of Tighe & Bond to comment on the brownfield and what could happen if nothing is done. C. Koelle said at this particular site there is a groundwater plume that has gone past Laurel Hill Road, as well as to the north and the south. He said it is an extension problem in town and has been a problem for 30-40 years at least. He said there is also a soil impact at the site that needs to be taken care of. C. Koelle said it would definitely be a benefit to the town. Chairman N. Malwitz asked if there are any chemical changes that could happen over time. C. Koelle explained the chemical breakdown of the dry cleaning solvent. *Attorney J. Sienkiewicz, former Attorney for the WPCA, was present.* He said when the application for the grant was submitted, the sewer moratorium had already been in effect for at least six months, and was well publicized. He said it should have been pretty easy to determine the potential maximum discharge that would be allowed under the WPCA regulations. He said there has been no explanation as to why that moratorium limitation was ignored in the application. Attorney J. Sienkiewicz said he believes under the Public Health Code the design flows would be somewhere around 12,000 GPD. He explained this would be roughly about 9,000 gallons of excess capacity for this property, and that amount of capacity could service the whole Brookfield Market Area project. Attorney J. Sienkiewicz said DEEP seems to be sitting on the WPCA Brookfield Market Area application for STEAP funds because DEEP does not believe the WPCA has capacity. He said does not know when they will have access to additional capacity or what it will cost, or whether all town bodies that must approve it will be willing to pay for it. Attorney J. Sienkiewicz said he is thinking about this in a forward-thinking manner. A. Rothman said he cannot see this project being built before 2026, due to the work that needs to be done to clean up the site. He said it looks like Danbury will be able to work out the phosphorus issue with the improvement of technology. Attorney J. Sienkiewicz said if the timing works out and in three years we have more capacity, then the entire moratorium could be lifted for everyone. Attorney S. Harding said to Attorney Sienkiewicz's point, it would be valuable for the Commission to hear what the plan is for capacity moving forward. He asked if the Town of Brookfield could provide some information on what their goals are to get more capacity. L. Donovan said she does not believe it is the Town's responsibility. She said the WPCA is a quasi-governmental agency and it is the WPCA's responsibility to seek the capacity, to decide if they can afford to pay for it, and decide what regulations are going to allow them to give it to the customers. The WPCA simply does not have any information beyond what they know today.

Attorney S. Harding said it is not that it is the Town's responsibility, but the Town is before the WPCA asking for a regulation change and it would be fair for the WPCA to ask what their plans are for capacity. Chairman N. Malwitz discussed the progress of the phosphorus system at the Danbury Plant and how that could affect Brookfield acquiring additional capacity. First Selectwoman T. Carr was present. She thanked the Commissioners for their volunteerism to the Town of Brookfield and thanked the WPCA staff for their service to the Town. She discussed the issues with capacity and her efforts to help the situation. She said they are at a stalemate at this point and asked who the higher authority is to the WPCA in regard to making exceptions to the moratorium. She referenced a press release from CT's Governor regarding brownfield grants. First Selectwoman T. Carr discussed the benefits to the Town of completing this project, including noting the charge of the WPCA to assist in water pollution issues. Attorney S. Harding explained this moratorium was put in place by the WPCA, and so they would not need permission from a higher authority to make an exception. M. Brown said T. Carr is correct regarding the WPCA's charge, but the bigger problem is the flow capacity, which far outweighs this project in his opinion. He discussed the danger of consent orders and expensive litigation. A. Kennedy asked if this proposed regulation amendment is a requirement to receive the grant funding. She said if the developer has stated the project would not need capacity until 2026, why are we not waiting until 2026 to address this issue. G. Dembowski said they have received town approval to spend the money and the next critical step is the IWC approval. If that permit is not granted the developer may walk and the project is over. If the IWC approval is granted the developer should purchase the property and close the deal. G. Dembowski said the problem is, if the developer cannot deliver the redevelopment, they have to give the grant money back to the state. He said the developer is taking the risk that if he cannot get his Zoning approval or sewer permit, that they have to return the \$1.2 million to the state. A. Kennedy said that by approving this regulation amendment, they would be transferring that risk to the WPCA. A. Rothman said they would have to have a will-serve letter from the WPCA in order to get the building permit. A. Kennedy pointed out that would be at least three years from now. A. Rothman said they could take that risk under consideration. G. Dembowski noted that they are under time constraints to get the contract signed with DECD and have already asked for extensions. M. Brown asked if they could go back to the state and tell them about the capacity issues. A. Kennedy noted that she was copied on an email in which the DECD asked about the capacity issues before the grant was awarded, and the response was that the Chairman of the WPCA will amend the regulations to allow for this project to receive their permit. L. Donovan said the Chairman doesn't have the right to make an amendment change. M. Brown said that the letter from the Chairman did not come before the Commission. K. McPadden asked how many gallons they would need for the remediation. A. Rothman said it would be about 80,000 gallons which they could discharge over a long period of time. G. Dembowski said they are trying to do this remediation during the dry season when the water table is at its lowest. C. Koelle said they would need a sewer discharge permit for the treated ground water, for which they do not have accurate estimates, but 80,000-125,000 gallons would be the worst case lasting over the course of a few weeks. C. Utschig asked if they were going to have a watertight sheeting and a fixed volume of 80,000 gallons, or would it be a continuous flow. C. Koelle said 80,000 gallons is just an estimate. C. Utschig said there are two issues: one is this discharge issue and the second is the project's discharge issue. He feels there should be a better estimate on the remediation gallonage. L. Trojanowski-Marconi asked about the timeline of deadlines for the grant. A. Rothman said they have to finish construction within five years of the grant being issued, which is about 4.5 years from now. C. Koelle said extensions are possible if there are reasonable circumstances at the discretion of the DECD. K. McPadden noted that in order to discharge the gallonage for the remediation, the applicant would need a permit from Danbury in addition to a permit from Brookfield. She noted Danbury could decline to issue a permit in light of the capacity issues, and asked if anyone has been in touch with Danbury. Chairman N. Malwitz said no, as there is no application submitted yet. Attorney S. Harding asked if this regulation amendment is needed as a pre-requisite for the grant, or to aid in the comfort level of the town. G. Dembowski said the risk is with the developer not the town. A. Rothman said there are so many risks to the developer in this deal, and this is just another risk factor. A. Kennedy suggested taking this regulation amendment off the table. She suggested that after the developer receives all other necessary permits, they come to the WPCA with an application for

remediation only, as the WPCA is concerned with water pollution issues. And then in 2-3 years when they are ready to start building, they can come back to the WPCA with an application for the development and hopefully the moratorium will be over by then. A. Rothman said she makes a good point. *J. Fisher, Aramon Circle, was present.* He spoke in favor of moving forward with the brownfield remediation.

**Chairman N. Malwitz made a motion to close the public hearing for Proposed Amendment to Section 1.2 Treatment Capacity Management. M. Brown seconded the motion and it carried unanimously.**

2. **Approval of Minutes** – 2/22/23

- a. Request by N. Edelson to publish submitted comments with the February minutes - A. Kennedy noted a request was made by N. Edelson to include his comments in its entirety in the minutes. She said although she explained to N. Edelson there was no legal requirement to do so, he insisted we were under obligation to publish his comments. If someone wants to read Mr. Edelson's correspondence, they just have to request a copy. Also, since the information he submitted is his own, the Commission does not want them to be construed as their opinion.

**L. Trojanowski-Marconi made a motion to approve the minutes from February 22, 2023 as submitted, without any additional correspondence to be added. L. Donovan seconded the motion and it carried unanimously.**

3. **Correspondence/Public Comment**

- a. Letter from Christopher Kinder, Fourth Quarry Associates, LLC dated 3/8/23, Re: Sewer Extension Permit Request (101 Laurel Hill Road) - *C. Kinder, Fourth Quarry Associates, LLC was present via ZOOM.* K. McPadden said this property was approved last year for a sewer extension and a sewer connection. She said the sewer extension expires 4/25/23 and the sewer connection expires in 2024. C. Kinder said this past year has provided some obstacles, including the tragic death of his business partner, Fran Bacon. He said they are working out their financing at this point and are close to breaking ground. He said they are requesting to extend the sewer extension permit to mirror the connection permit expiration date. Chairman N. Malwitz said in review of the sewer moratorium he thinks they should look at this request under those terms. M. Brown noted that this application was approved prior to the moratorium and L. Donovan noted capacity for this project was already allocated. Attorney S. Harding asked if the approval stated anything specific regarding obtaining an extension. C. Kinder said the approval stated a one-year extension would be available per the approval of the Commission. K. McPadden read the original permit aloud for reference.

**L. Donovan made a motion to approve the request to extend the sewer extension permit for 101 Laurel Hill Road for one year based on the contingencies and the unfortunate loss of Mr. Kinder's business partner. M. Brown seconded the motion. Chairman N. Malwitz opposed. The motion carried 5-1.**

4. **Accountant Report**

- a. Monthly Financials - M. Allred discussed the monthly financial report.
- b. Lighthouse Lockbox Service - K. McPadden said she, M. Ongaro and A. Kennedy met with Doug Hensal from Savings Bank of Danbury and a representative of Lighthouse Lockbox Service to discuss this service for payment processing. She noted the cost per transaction will be \$0.97. She explained the process involved with this service. Chairman N. Malwitz said this is an office decision and this conversation is for informational purposes only.
- c. Budget Update - Chairman N. Malwitz discussed the budget process and reviewed the proposed budget. He explained the budget gets sent to the Board of Selectmen for comment, and the WPCA does not have to make a final decision on the budget until the June meeting. K. McPadden encouraged the Commissioners to reach out to her with any questions. **L. Trojanowski-Marconi made a motion to forward the WPCA FY24 Budget to the Board of Selectman pursuant to the ordinance. M. Brown seconded the motion and it carried unanimously.**
- d. Audit Report - Discussion tabled to the next meeting.

## 5. Old Business

- a. 101 Park Ridge Rd. Parcel 3A (subdivision created this lot to be #131) – Application to Connect - Chairman N. Malwitz reviewed the discussion from the last meeting regarding this conversation. C. Utschig said in response to the Commission's questions, the applicant and their engineers put forth flow estimates based on the meter readings from their current facility. He said that was correlated to the number of employees, along with a projection of the number of employees anticipated in the new facility. C. Utschig said he thinks they were very reasonable in projecting the employee count and they applied a safety factor of 3 to that calculation, while Public Health Code only requires a safety factor of 1.5. C. Utschig says they believe the engineer has put together a reasonable analysis based on real data and there are plenty of conservative components in it to make the WPCA feel comfortable that they will be below. However, C. Utschig also recommended the WPCA require the applicant to submit quarterly reports to ensure they remain below. M. Brown asked if this application falls within the WPCA's current rules and regulations. Attorney S. Harding explained how the information in the application was calculated. C. Utschig said from an engineering perspective the application is fully compliant with our standards. *G. Steiner, Applicant, was present.* He noted the easements are an ongoing process and they are working with Eversource. He granted a 30-day extension for this application. *S. Sullivan, CCA, LLC was present.* He noted he is waiting on Langan's formal review of the connection. **L. Trojanowski-Marconi made a motion to accept the extension request pursuant to the Applicant's March 10, 2023 letter to the WPCA and table the application to the next regularly scheduled meeting with the expectation that we will have more information on the easement at that time and also any other information that may be necessary in the review of our plans by the engineer as well as any further documentation as may be necessary to document the deviation request from the Public Health Guidelines. L. Donovan seconded the motion and it carried unanimously.**

## 6. New Business

- a. To Act Upon Proposed Regulation Update  
Attorney S. Harding said the proposed amendment to the regulations was publicly noticed and was distributed to the Commissioners prior to the meeting. He noted there is no requirement to vote on this today, and this can be tabled indefinitely.

**Chairman N. Malwitz made a motion to approve the Proposed Amendment to Section 1.2 Treatment Capacity Management. There was no second to the motion. Motion failed.**

L. Trojanowski-Marconi asked Attorney S. Harding for his thoughts on this issue. Attorney S. Harding discussed various concerns. He said he is aware of Attorney Sienkiewicz's concerns regarding liability, and he concurs.

**Chairman N. Malwitz made a motion to table the Public Hearing for the Proposed Amendment to Section 1.2 Treatment Capacity Management. J. Murray seconded the motion. Chairman N. Malwitz opposed. The motion carried 5-1.**

## 7. Project Updates

- a. Candlewood Lake Area Project - No discussion
- b. Dean/Pocono Road Area Project – CDM Smith Presentation - *K. Wagner, CDM Smith was present.* She shared a power point presentation on the sewer extension alternatives for the Dean/Pocono Road project. She said there are a few options that are not being considered at this point. One is a traditional gravity sewer with all gravity connections. Another option not being considered is a hybrid system with some low-pressure mains and some gravity mains. She said STEP/STEG option is also not being considered. K. Wagner then went on to explain the options that *are* under consideration at this time, including an option for a gravity sewer main with five grinder pumps, a low-pressure system option which would give every home a grinder pump, and a third option is to keep existing septic tanks and not install sewer. K. Wagner reviewed the pros and cons of each option, along with the cost associated with each.

She also discussed possible funding opportunities. Chairman N. Malwitz said he is meeting with B. Paynter from WestCOG on Friday to discuss possible grant opportunities.

- c. Brookfield Market Area Project - No discussion.
- d. Route 133 Station Project Phases I & II - T. Strid reported the generator was scheduled to be removed today, but due to the rain they have pushed it back to Friday or next week. He said Phase II is in the design phase.
- e. Caldor Valve Bypass Project - T. Strid said all the fittings and precast will be purchased in house and they will be selecting a contractor after receiving three quotes. This work should be done at the beginning of May.
- f. Danbury Plant & Brookfield Allocation: Review updated Projected Sewer Capacity Spreadsheet - Chairman N. Malwitz said he is thinking of writing a letter to Danbury regarding a request for additional capacity. Attorney S. Harding advised N. Malwitz to make sure to word the letter to indicate that the Commission has not voted on any requests and the letter was simply a request to discuss the topic. Chairman N. Malwitz said he will draft a letter and ask Attorney S. Harding to review it.
- g. Other Engineering Matters

8. **Employee Activity Reports** - No discussion.

9. **Legal Matters**

- a. Collection Update - No discussion.
- b. Other Legal Matters - Attorney S. Harding said there are litigation matters to be discussed with the Commission in Executive Session at the next meeting.

10. **Other WPCA Matters**

- a. Nomination and Election of Officers for the 2023 Calendar Year  
**L. Trojanowski-Marconi made a motion to nominate N. Malwitz as Chairman. J. Murray seconded the motion and it carried unanimously.**  
**M. Brown made a motion to nominate L. Trojanowski-Marconi as Vice-Chairman. J. Murray seconded the motion and it carried unanimously.**
- b. Developing Regulations for Brookfield WPCA Commissioners' Authority and Conduct - L. Donovan discussed the impact of their decisions as commissioners and the need for guidance by their professional advisors. She explained the need to closely follow local, state and federal regulations, which strictly define their obligations. L. Donovan also discussed legislators in CT and other states looking at the operations of quasi-governmental agencies recently in an effort to establish statutes requiring transparency and accountability. She said while WPCA employees' work is guided by the rules in the Employee Handbook, there are no parallel standards for the commissioners. L. Donovan said they need to establish regulations for the WPCA commissioners regarding appropriate attendance and participation in public and private meetings related to WPCA activities, rules to clarify when commissioners may meet with current or potential applicants and their representatives for services as well as elected or appointed officials of Brookfield and other Towns with which it conducts business. She said they need specifics on when individual commissioners may express opinions publicly or to the media. L. Donovan discussed the need for decisions about operations, resources, and personnel to be made by the Commission as a body based upon verified facts and figures and transparent to one another and to the public. She proposed that an Ad-Hoc Committee be formed to develop regulations for the governance activity and managerial operations of the Brookfield WPCA by its commissioners. L. Donovan and L. Trojanowski-Marconi agreed to work together on this Ad-Hoc Committee.
- c. Update to the WPCA Personnel Rules and Regulations Handbook - A. Kennedy noted it was brought to her attention that the Operations Manager was not listed in the Notice Requirements section of the handbook and proposed a revision to correct that. R. Prinz commented that he does not think this revision is necessary. M. Brown noted there is a need to create a clearly defined organizational chart. **L. Donovan made a motion to amend the WPCA Personnel Rules and Regulations with the update submitted with the agenda. M. Brown seconded the motion and it carried unanimously.**

- d. Other WPCA Matters – Set PH for April 26, 2023 – New Use Charge Regulations – Personal Care, Driving Range, Dog Groomer - K. McPadden explained that no regulations currently exist for personal care businesses, dog groomers, or driving ranges. She explained the need for use charge regulations to be developed for these businesses. **L. Trojanowski-Marconi made a motion to set a public hearing on April 26, 2023 for a new use charge regulation pertaining to Personal Care, Driving Range and Dog Groomers. J. Murray seconded the motion and it carried unanimously.**
  - e. WPCA Website - Chairman N. Malwitz discussed the maintenance of the website. He explained that he had an analysis done at the cost of \$2,000 per year and he will present the information to get reimbursed by the Commission next month. He said he has a call scheduled with SEMrush tomorrow. He also discussed the possibility of using a local person, Lisa, to work on the website going forward. He said she has worked on the EDC website for the town. Chairman N. Malwitz noted that A. Kennedy has previously said the current website was too complicated, and the commission can have a discussion about this topic. K. McPadden said the biggest concern is that the website is handled solely by N. Malwitz and no one else has access to the website.
11. **Vouchers - L. Trojanowski-Marconi made a motion to accept the vouchers as presented. L. Donovan seconded the motion and it carried unanimously.**
12. **Adjournment - L. Trojanowski-Marconi made a motion to adjourn at 10:28 p.m. M. Brown seconded the motion and it carried unanimously.**

\*\*\* Next Regular Meeting April 26, 2023\*\*\*