

**LEGISLATIVE COUNCIL REGULAR MEETING
COUNCIL CHAMBERS, 3 PRIMROSE STREET, NEWTOWN, CT
WEDNESDAY, NOVEMBER 16, 2022**

MINUTES

PRESENT: Jeffrey Capeci, Phil Carroll, Angela Curi, Charles Gardner, Chris Gardner, Lisa Kessler, Ryan Knapp, Michelle Embree Ku, Tom Long, Matthew Mihalcik

ABSENT: William DeRosa, Dan Honan

ALSO PRESENT: First Selectman Dan Rosenthal, Finance Director Bob Tait, Chair of the Lake Lillinonah Authority Scott Schifilliti, Treasurer of the Lake Zoar Authority Bill May; 1 public, 0 press

CALL TO ORDER: Mr. Capeci called the meeting to order with the Pledge of Allegiance at 7:30 pm.

VOTER COMMENT: None

MINUTES: Mr. Charles Gardner moved to accept the minutes of the October 19, 2022 Legislative Council Regular Meeting. Seconded by Mr. Mihalcik. All in favor. Motion passes (10-0).

COMMUNICATIONS: Mr. Capeci shared the results of the ballot questions regarding the Charter changes – question 1 was denied and question 2 was approved. The town attorney is working on incorporating these changes into the Charter. The finalized version will be sent to our Town Clerk so she can then send it to the CT Secretary of the State. We have 30 days from the time of the election to file it with the state.

COMMITTEE REPORTS: None

FIRST SELECTMAN'S REPORT: First Selectman Dan Rosenthal reported on the unveiling of the Sandy Hook Memorial. A private ceremony with the families was held on Saturday November 13th. The public was invited on Sunday November 14th. It went well and he was happy with the way the opening was held. The First Selectman said he was very thankful to everyone involved with the project. The Hawley School project has made a lot of progress. The demo is done and a lot of the duct work has been hung. At the last BOS meeting, he received an update on the pension plan. This has been a really difficult year with the market. We are down to a 6.5% interest rate. We average this in over five years. He is certain there will be some contribution that we'll have to make. He is grateful for the effort that the Pension Committee puts into their presentations. We are in beginning talks on budget season. Mr. Tait and himself will start meeting with all the departments to gather their budgets. All of the roadwork is done from the list that was put out. From a budget standpoint it was all estimated well. There are inflationary pressures surrounding fuel, oil and salt costs. As of now, it is manageable and can be handled within the confines of the existing budget. He is proposing to take up a transfer at the next BOS meeting. If things get worse, we will have to do a series of transfers. Within a department he can only transfer up to \$50,000. It will be hard to predict whether Newtown will be affected by the shortage of diesel. The source we use for fuel is a reliable one, but only time will tell if things get worse.

NEW BUSINESS

Discussion and Possible Action

Mr. Capeci proposed moving around the agenda items to discuss the Lake Authorities item first.

- \$11,157 Transfer from Contingency to Other Purchased Services (Lake Authorities)

Mr. Charles Gardner moved to transfer \$11,157 from Contingency to Other Purchased Services (Lake Authorities). Seconded by Mr. Carroll.

Mr. Capeci explained that this amount was taken from their budget during budget season and they would like to present justification for the request. (*Att.*) First Selectman Rosenthal added that the Authorities are creatures of the state, so their budgets are not actual requests, but assessments. Therefore, we do not have the luxury of denying paying these assessments. Mr. May spoke on their last spending season. He does not anticipate an increase in this year's upcoming budget. When he prepares the budget, it is not based on fixed items - it consists of patrolling the lake, fuel costs, etc. and is weather dependent. He tries really hard to reduce costs where possible. Mr. Tait replied that last budget year, the Legislative Council decreased their initial request back to the previous years amount. This transfer would be from our contingency to an out account relating to the Lake Authorities. Mr. Schifilliti spoke on the Lake Lillinonah Authority in that this year's increases surround things like equipment being in dire need of replacement and/or repairs, boat costs, staffing/wages, and a police shed that requires a generator and alarm system. They have been spending from their reserves. Mr. Knapp expressed concern on justifying this request when he feels lake traffic has decreased after covid and, most importantly, not having seen a detailed budget from the Authorities prior to finalizing the municipal budget. Mr. Schifilliti argued that the budget had been submitted early on in the last budget season but would be happy to resend it to all council members along with the last five years worth in order to see the progression from year to year. Ms. Ku and Mr. Chris Gardner feel that the responsibility to review details prior to voting on the budget is fault of the Council and having overlooked it. They do not believe we should hold up the transfer. Mr. May added that patrol hours, gas and lake treatment are the three major items that they take into account. This year, patrolling hours were greater due to the construction on I-84 which resulted in the high level of monitoring wake zones. He is happy to discuss everything that goes into the budget in great detail and welcomes the council to attend their meetings. Gas at this point is an unknown. Mr. May and Mr. Schifilliti said there has been quite an increase in lake traffic from out of state – there has been a disconnect. Mr. Knapp argued that it is not in the best interest of the taxpayers to approve this amount without going over the details of their budget first and he proposes waiting until the next meeting to do so.

Mr. Knapp moved that we postpone this action to the next meeting so they have time to review this. Seconded by Ms Curi.

The First Selectman stated that we do not have an option not to approve this. We would have to go through a lengthy withdrawal process if the Council decides not to approve. Going forward, the process will change in order to make sure everything is reviewed before going to a vote. It was agreed that Mr. May and Mr. Schifilliti will email a copy of the current 2022-2023 budget, the fund balance and the past five years worth of budgets to the Council for review.

Motion to postpone this request passes (7-3, Nays: Chris Gardner, Long, Ku).

- Hawley School HVAC Proposal to CT DAS (Dept. of Administrative Services)

Mr. Charles Gardner moved to authorize the Superintendent and/or First Selectman to apply for the 2022 HVAC/Indoor Air Quality Grant from the CT Department of Administrative Services for the Hawley HVAC project. Seconded by Mr. Carroll. All in favor. Motion passes (10-0). (*Att.*)

- Abandon Forestry Practices Ordinance as Approved by Inland Wetlands Commission

Mr. Charles Gardner moved that we rescind the Ordinance for Forestry Practices as Approved by the Inland Wetlands Commission. Seconded by Mr. Knapp. All in favor. Motion passes (10-0).

Mr. Knapp said he feels very comfortable going to the state for forestry practices. The First Selectman said that if we don't repeal, we'll have to report back to the state. Our deadline is in December. *(Att.)*

VOTER COMMENT: None

ANNOUNCEMENTS: None

ADJOURNMENT: There being no further business, Mr. Mihalcik moved to adjourn the meeting at 9:03 pm. Seconded by Mr. Carroll. All in favor.

*Respectfully submitted,
Rina Quijano, Clerk*

Attachments: Lake Authorities Transfer, Hawley HVAC Grant Proposal, Inland Wetlands Commission Info on Forestry Practices

THESE MINUTES ARE SUBJECT TO APPROVAL BY THE LEGISLATIVE COUNCIL AT THE NEXT MEETING. ANY EDITS WILL BE REFLECTED IN THE MINUTES OF THE NEXT MEETING.

Hawley HVAC Grant Proposal to CT DAS (Dept of Administrative Services)
10/21/2022 Summary

Summary:

The state of CT will be awarding \$150M for HVAC projects for public schools in early 2023. The grant application is due 12/1/22. This is a competitive grant so an award is not guaranteed. While priority is expected to be given to financially disadvantaged districts, the Hawley project meets eligibility guidelines and we would like to apply.

Rationale for the Hawley project submission:

The award will fund a maximum 50% of project cost (after all other applied state and federal funds are backed out) and requires the municipality to formally commit the balance of funds. This is encouraged to be completed for the application due date of 12/1, and required to be completed by 12/31. The grant money will be awarded and disseminated before funding for our other projects can be approved via the budget process.

Further, Hawley is the largest project and stands to bring in the largest award. With \$300,000 authorized on 3/4/20 and \$8,000,000 authorized 9/1/21 by the LC, \$2,500,000 backed out for ARPA funding, we see the potential award of up to \$2,900,000.

Requested action:

Each board to vote on a motion to pass a resolution authorizing the Superintendent and/or the First Selectman to apply for the 2022 HVAC/Indoor Air Quality Grant from the CT Department of Administrative Services for the Hawley HVAC project, as approved by the Legislative Council.

NEWTOWN CODE:

Chapter 10. Authorities

Article I. Lake Lillinonah Authority

[Adopted by the Board of Selectmen 7-20-1971 (Ord. No. 33)]

§ 10-1. Establishment.

The Town of Newtown, acting in concert with any other town or towns having a portion of Lake Lillinonah within their territorial limits, hereby establishes a lake authority for said lake, to be known as the "Lake Lillinonah Authority."

§ 10-2. Membership; terms of office.

Said Authority shall be composed of three delegates from each member town, who shall be appointed by the Board of Selectmen of each town for terms of three years, all of which such terms shall be commenced upon the date when the first such delegate is appointed; except that the initial appointments shall be for terms of one, two and three years, respectively.

§ 10-3. Powers and duties.

The Lake Lillinonah Authority shall exercise all powers granted by the Connecticut General Statutes for lake authorities, including, without limitation, powers relating to the enforcement of boating laws on said lake and such other powers as from time to time may be granted to said Authority by the legislative bodies of all member towns and the General Statutes.

Article II. Lake Zoar Authority

[Adopted 11-9-1972 STM (Ord. No. 37)]

§ 10-4. Establishment; composition; authority.

[Amended 8-22-2007 by Ord. No. 90]

Pursuant to the powers granted by § 7-151a of the Connecticut General Statutes, as amended from time to time, the Lake Zoar Authority is hereby established. Said Authority shall be comprised of the Town of Newtown and such other towns having Lake Zoar within their territorial limits as may adopt the provisions of said statute, and shall exercise all powers authorized under the statutes of this state for lake authorities, including, without limitation, the power to act as agent for the member towns in cooperating with the State Boating Commission in the enforcement of the boating laws on Lake Zoar.

§ 10-5. Powers and duties.

Upon approval by the legislative bodies of all member towns, the Lake Zoar Authority shall have the power to:

A.
Control and abate algae and aquatic weeds in cooperation with appropriate state authorities;

[Amended 8-22-2007 by Ord. No. 90]

B.
Study water management, including but not limited to water depth and circulation, and make recommendations for action to member Towns; and

C.

Act as agent for member towns with respect to filing applications for grants and reimbursements with the Department of Environmental Protection and other state agencies in connection with state and federal programs.

§ 10-6. Membership; terms of office.

Said Authority shall be composed of three delegates from each member town, who shall be appointed by the Board of Selectmen of each town; one for a term of two years and one for a term of three years. All subsequent appointments shall be for terms of three years.

STATE STATUTE:

Sec. 7-151a. Establishment of lake authorities. Withdrawal of town. (a) As used in this section, "state waters" means all waters within the territorial limits of the state except navigable waters of the United States. Any two or more towns which have within their territorial limits a body of state water may establish by ordinance a lake authority. Said authority shall act as agent for the member towns in cooperating with the Commissioner of Energy and Environmental Protection in the enforcement of the boating laws on such water.

(b) Notwithstanding the provisions of section 7-330, such authority shall be composed of at least three delegates from each member town whose term of office and method of selection shall be determined by the towns establishing the authority provided each member town may appoint up to four delegates to the authority. **Each town shall pay to the authority its respective share of the expenses of the commission prorated on the basis of its linear footage of shore line or any other formula agreed on and adopted by a majority of the legislative bodies of all member towns.** Any member town may, by ordinance, withdraw from such authority, effective upon the mailing of written notice of such withdrawal to the authority. Each withdrawing town shall be liable for its share of expenses incurred prior to the effective date of such notice. Upon the withdrawal of any town or towns, the authority shall remain in force insofar as the remaining town or towns are concerned, but the jurisdiction of the authority shall be reduced to that portion of said body of state water lying within the boundaries of such remaining town or towns. In the event of such a withdrawal, the portion of such body of state water lying within the town or towns withdrawing from the authority shall revert to the status existing prior to the adoption of the authority.

(c) In addition to the power granted in subsection (a) of this section, a lake authority may be granted by the legislative bodies of its respective towns powers to: (1) Control and abate algae and aquatic weeds in cooperation with the Commissioner of Energy and Environmental Protection; (2) study water management including, but not limited to, water depth and circulation and make recommendations for action to its member towns; (3) act as agent for member towns with respect to filing applications for grants and reimbursements with the Department of Energy and Environmental Protection and other state agencies in connection with state and federal programs; and (4) act as agent for member towns with respect to receiving gifts for any of its purposes.

(d) A lake authority shall have no jurisdiction in any matters subject to regulation by the Commissioner of Energy and Environmental Protection.

(e) Each member town of any lake authority shall protect and save harmless such town's delegates to such lake authority from financial loss and expense, including legal fees and costs,

3 Primrose Street
Newtown, CT 06470
203-270-4351
Fax: 203-270-4278
rob.sibley@newtown-ct.gov



*Robert Sibley
Deputy Director
Planning, Land Use and
Emergency Management*

TOWN OF NEWTOWN

Date: November 15, 2022

To: Jeff Capeci, Chair Newtown Legislative Council

From: Rob Sibley, Deputy Director Planning, Land Use and DD of EM

RE: Newtown Forest Practices Regulation Endorsement of dissolution

The Town of Newtown has received notice from the Department of Energy and Environmental Protection (DEEP) seeking a determination as to the Town of Newtown's intent to continue to regulate forest practices pursuant to the Connecticut Forest Practices Act (FPA).

CT DEEP recently reviewed the approved municipal FPA regulations, adopted in Newtown 1983. It revealed no record of the Town of Newtown requesting approval for such regulations nor approval being issued by DEEP. I researched this and I also found no recorded letter or requests from around 1983. CT DEEP has sent this notice to correct the oversight and ensure that the Town of Newtown is compliant with Connecticut General Statutes Section 23-65k (See attached).

I have reviewed the request and I am recommending rescinding the Newtown Forestry Regulations and Ordinance.

In its current format the CT DEEP Commissioner would not approve Newtown's regulations unless major changes were made to become more in line with current Forestry practices at the State level. The Town has issued 16 permits in the last 20 years and most of those required wetlands permits in addition. Based on this lack of need and the redundancy of Wetlands Regulations and the Forest Practices Regulations, I am recommending rescinding the Newtown Forestry Regulations and Ordinance.

Newtown Inland Wetlands Commission has endorsed the Board of Selectmen and the Newtown Legislative Council rescind of Forest Practices Regulations and Newtown Ordinance #62 supporting these regulations.

Town Municipal Center
3 Primrose Street
Newtown, CT 06470
203-270-4250
203-270-4278 Fax



TOWN OF NEWTOWN

INLAND WETLANDS COMMISSION

DATE: October 19, 2022

TO: Board of Selectmen
Legislative Council

FROM: Sharon Salling,  Chairperson, Inland Wetlands Commission

RE: Dissolution of Newtown's Forest Practices Regulation

The Town of Newtown had received notice from the Department of Energy and Environmental Protection (DEEP) seeking a determination as to the Town's intent to continue to regulate forest practices pursuant to the Connecticut Forest Practices Act (FPA).

After Rob Sibley, Newtown's Deputy Director Planning and Land Use, researched the FPA regulations that were adopted in Newtown in 1983, Mr. Sibley found no such records of the FPA regulations were filed. CT DEEP sent notice to correct the oversight and ensure that the Town of Newtown is compliant with Connecticut General Statutes Section 23-65k.

At the Regular meeting of October 12, 2022 of the Inland Wetlands Commission, the IW Commission voted unanimously to endorse the dissolution of the Newtown Forest Practices Regulations and Ordinance in pursuant to the Connecticut Forest Practices Act.

Rob Sibley
Deputy Director of Planning
Town of Newtown
3 Primrose Lane
Newtown, CT 06470

Notification of Non-Compliance Re: Newtown Municipal Forest Practices Regulations

Dear Director Sibley,

The Department of Energy and Environmental Protection (DEEP) is seeking a determination as to the Town of Newtown's intent to regulate forest practices pursuant to the Connecticut Forest Practices Act (FPA). A recent review of approved municipal FPA regulations revealed no record of the Town of Newtown requesting approval for such regulations nor approval being issued by DEEP. Therefore, we are sending this notice to correct the oversight and ensure that the Town of Newtown is compliant with Connecticut General Statutes Section 23-65k.

Moving forward please give careful consideration to the following:

- The Town's current Forest Practice Regulations must be revised or rescinded to come into compliance with CGS 23-65k.
- If the Town decides to rescind their FPA regulations, then forestry practices cannot be directly regulated under other statutory authorities (planning & zoning or inland wetlands).
- If the Town decides to regulate forest practices, the Town must submit proposed regulations for approval to the Commissioner pursuant to Connecticut General Statutes Section 23-65k (d):

“Any municipal ordinance or regulation concerning forest practices, adopted in accordance with subsection (a) of this section, shall not be effective unless such ordinance or regulation has been submitted to the commissioner for approval, and the commissioner has approved said ordinance or regulation as consistent with the purposes of sections 23-65f to 23-65o, inclusive...”

To assist the Town in deciding, please note that if forest practice regulations are approved by the Commissioner, the following will apply:

- When reviewing forestry operations in the future, Newtown's Inland Wetlands Commission would be operating under two different statutory authorities, the Forest Practices Act and the Inland Wetlands and Watercourse Act. Accordingly, the Commission must act separately under each authority when reviewing a forestry operation.
- CGS Section 23-65k (c) states that at least one member or staff member of Newtown's Inland Wetlands Commission shall complete a training program on forest practices. As additional trainings become available the Commission will be notified of their availability.
- CGS Section 23-65k (a) prescribes the process that must be taken by the Inland Wetlands Commission should it reject any application under the authority granted to it by this section:

"No municipality which regulates forest practices pursuant to the authority of this section shall reject any application without having such rejection reviewed by a forester certified by the Department of Energy and Environmental Protection retained by the agency for that purpose. Upon written request of the applicant, a forester certified by the department shall review and make recommendations to the inland wetlands agency on any application to conduct forest practices. The costs associated with any review provided for in this section shall be borne by the applicant provided in no event shall the total of fees and costs paid by the applicant in connection with an application to conduct forest practices exceed the standard fee which would be charged by the department for a similar application."

Should the Commission have any further questions concerning its authority under CGS Section 23-65k they should contact Nick Zito in the Division of Forestry at (860) 424-3837. Questions regarding the Inland Wetlands and Watercourse Act should continue to be directed to Darcy Winther in the Division of Land and Water Resources at (860) 424-3063.

Sincerely,



Nick Zito
(860) 424-3837
Nicholas.zito@ct.gov

Sec. 23-65k. Municipal regulation of forest practices. (a) Any of the towns of Berlin, Brookfield, Chester, Deep River, East Haddam, Essex, Glastonbury, Granby, Haddam, Kent, Lyme, Newtown, Old Lyme, Old Saybrook, Redding, Stafford, Somers, Warren, Washington or Willington may, acting through its legislative body, authorize its inland wetlands agency, as defined in section 22a-38, to adopt such regulations, consistent with the regulations adopted by the commissioner pursuant to section 23-65j, as are necessary to protect the forest land within its jurisdiction, except for state-owned forest land managed by the Department of Energy and Environmental Protection. For purposes of this section, the inland wetlands agency shall serve as the sole municipal agent for regulation of forest practices. Any municipality named in this subsection shall have one year from the effective date of regulations adopted by the commissioner for the regulation of forest practices to comply with the terms of this section. No municipality which regulates forest practices pursuant to the authority of this section shall reject any application without having such rejection reviewed by a forester certified by the Department of Energy and Environmental Protection retained by the agency for that purpose. Upon written request of the applicant, a forester certified by the department shall review and make recommendations to the inland wetlands agency on any application to conduct forest practices. The costs associated with any review provided for in this section shall be borne by the applicant provided in no event shall the total of fees and costs paid by the applicant in connection with an application to conduct forest practices exceed the standard fee which would be charged by the department for a similar application.

(b) Any municipality not named in subsection (a) of this section which has, as of January 1, 1998, a program of regulation for forest practices may apply to the commissioner for approval to administer a municipal program of regulation in accordance with the provisions of this section. The commissioner may approve such program if he finds that such program was in existence on January 1, 1998, and was at that time in compliance with the standards provided by the Connecticut Resource Conservation and Development Forestry Committee.

(c) At least one member or staff member of the inland wetlands agency shall complete a training program on forest practices which shall be developed by the commissioner. The commissioner shall annually make such program available to one person from each town without cost to that person or the town. Each inland wetlands agency authorized to regulate forest practices shall present a summary of the training program to the members of the agency at least once annually. Failure to have the training required under this subsection shall not affect the validity of any action of the agency.

(d) Any municipal ordinance or regulation concerning forest practices, adopted in accordance with subsection (a) of this section, shall not be effective unless such ordinance or regulation has been submitted to the commissioner for approval, and the commissioner has approved said ordinance or regulation as consistent with the purposes of sections 23-65f to 23-65o, inclusive, and regulations adopted thereunder and further finds that the municipality submitting such regulations had in effect on January 1, 1998, a program of regulation for forest practices which was in compliance with the standards provided by the Connecticut Resource Conservation and Development Forestry Committee. No municipal ordinance or regulation governing commercial forest practices which is in effect on the effective date of regulations adopted pursuant to section 23-65j shall be valid after the expiration of one year following the effective date of such

department regulations unless such ordinance or regulation has been submitted to the commissioner for approval, and the commissioner has approved such ordinance or regulation as consistent with the purposes of sections 23-65f to 23-65o, inclusive, and regulations adopted thereunder. The commissioner shall provide written notification to the municipality of the approval of a municipal ordinance or regulation or the reasons such ordinance or regulation is not approved. Such written notification shall be issued within sixty days of receipt by the commissioner of the ordinance or regulation adopted by the municipality. The commissioner may require modifications to such municipal ordinances or regulations within one hundred eighty days of any modifications to regulations adopted by the commissioner under section 23-65j.

(e) Any form used by a municipality for the registration and approval of a forest practice shall be consistent with forms approved by the commissioner.

(f) An inland wetlands agency authorized under subsection (a) or (b) of this section may require a reasonable filing fee to be deposited with the agency for any application to conduct forest practices. The amount of such fee shall be sufficient to cover the reasonable cost of reviewing and acting on applications, including, but not limited to, the cost of certified mailings, publications of notices and decisions and monitoring compliance with registration conditions or agency orders provided such fee is no greater than the comparable fee charged by the commissioner.

(g) Each inland wetlands agency authorized to regulate forest practices shall annually report to the commissioner information on registrations, orders and other actions of such agency on a form furnished by the commissioner. Such information shall include, but not be limited to, the following: (1) Registrations issued; (2) registrations denied; and (3) enforcement notices and orders.

(h) The commissioner shall regulate forest practices in accordance with the provisions of section 23-65j within a municipality which does not regulate forest practices in accordance with this section.

(i) On or after the effective date of the municipal regulations adopted under subsection (a) of this section, no forest practice shall be conducted upon any forest land within the municipality except in accordance with such regulations.

(j) If a forest practice is being conducted on a parcel of real property which extends into two or more contiguous towns, the commissioner shall have sole jurisdiction over such practice unless each such town has a program of regulation approved under this section. If the commissioner determines that there is any conflict between such programs, the state regulations shall govern such practice.