

MEETING NOTICE AND AGENDA

TOWN OF MANSFIELD ■ CONSERVATION COMMISSION

Special Meeting

Wednesday, January 8, 2014 ■ 6:00 PM

or upon completion of the Presentation of the draft Definitive Agreement with the Connecticut Water Company item on the Sustainability Committee Agenda

Audrey P. Beck Municipal Building ■ 4 South Eagleville Road ■ Town Council Chambers

- 1. Call to Order**
- 2. Public Comment**
- 3. New Business**
 - a. Commission Comments on the Draft CWC Agreement
 - b. UCONN Main Accumulation Area (MAA) Environmental Impact Evaluation (EIE)
- 4. Adjourn**

**TOWN OF MANSFIELD
DEPARTMENT OF PLANNING AND DEVELOPMENT**

LINDA M. PAINTER, AICP, DIRECTOR

Memo to: Conservation Commission
From: Linda M. Painter, AICP, Director of Planning and Development
Date: **January 6, 2014**
Subject: **Draft Definitive Agreement between Town and Connecticut Water Company**

In August 2013 the Committee provided a series of comments to the Town Council with regard to issues that should be considered as part of an agreement with the Connecticut Water Company. Subsequent to receipt of those comments, the Town Council approved a non-binding Letter of Intent with CWC that set the framework for negotiation of a Definitive Agreement.

In December 2013, CWC and Town staff presented a draft of a Definitive Agreement to the Council for review (hereinafter the "Agreement"). The Council has referred the Agreement to each of the committees that provided feedback last fall and requested that comments on the Agreement be submitted to the Council by January 13, 2014. A copy of the full Agreement, including Exhibits, can be found on the Town's website (http://www.mansfieldct.gov/filestorage/1904/5366/5402/water_agreement_draft.pdf).

To assist the Commission in its review, I have identified provisions in the Agreement that respond to comments provided by the Commission. The original comment is shown in *italicized text*; a summary of the Agreement provisions is shown in regular text, and in certain areas, emphasis has been added through **bold text** to call attention to specific sections of provisions that address Commission comments/concerns.

- *The CC believes that the Town of Mansfield should insist upon an equitable agreement between the Town, the University, and the CWC. This agreement must be transparent and fair to the taxpayers of Mansfield and should provide an adequate water supply to meet the stated needs of the University and Mansfield into the future.*

Section 2.1 of the Agreement addresses water supply service. Section 2.1(a) specifies that "Subject to the terms and condition of this Agreement, beginning on the Completion Date, CWC shall have and agrees to sell and supply to Customers in Mansfield on a 24 hour per day and 365 day per year basis **all Potable Water required to meet their demands**. CWC shall fulfill its obligation set forth in this Section in strict conformance with the Law."

Furthermore, Section 3.2 addresses water supply planning and information sharing:

- Section 3.2(a): The Parties agree to cooperate in the timely exchange of reasonably available information including projected water supply and demand data, and related operations

information to facilitate required water supply planning efforts, and to minimize over-estimation or under-estimation of infrastructure capacity needs by either Party.

- Section 3.2(b): The Parties agree to reasonably cooperate to provide information to facilitate the periodic revision of water supply plans, to give timely notice and information concerning anticipated capital projects likely to affect water supply or demand volumes, and to timely provide other information regarding identified changes to the water supply or demand characteristics that may affect the operations that are the subject of this Agreement.

PLDW states that “With regard to growth management off-campus, Mansfield’s authority through its zoning regulations would be controlling.” At the September 4, 2012 Special Meeting of the PZC Regulatory Review Committee, Mansfield Director of Planning and Development, Linda Painter, stated that she would work with the EIE on a timeline to ensure that new regulations are adopted prior to the submission of permits to the DEEP and coordinated with the upcoming POCD update. As noted below, the CC recommends a moratorium on lot- and sub-division approvals along any proposed pipeline route until the proposed overlay zone, or a similar measure to prevent undesirable development along the pipeline route is a part of Mansfield’s PZC regulations.

The PZC in its September 2013 comments to the Council acknowledged its intent to amend the Town Plan of Conservation and Development and Zoning/Subdivision Regulations to address growth management concerns related to water. In their comments, the PZC also acknowledged a willingness to consider a moratorium if needed.

With respect to development controls in the Agreement itself, provisions related to approval of service connections and main extensions are provided:

- Section 2.2(a): CWC shall not permit any customer connections to the System that would violate any connection restriction set forth in the ROD (Record of Decision) except as ordered or directed by PURA pursuant to C.G.S. Section 16-20 and with timely notice of initiation of such PURA proceeding being given by CWC to the Connecticut Office of Policy and Management, UConn and the Town.
- Section 2.2(b): CWC shall notify an applicant, upon request, of the availability of water supply but shall not permit any connection to the CWC System unless the New Customer to be served by such connection first obtains any required Government Approvals.
- Section 2.2(c): CWC shall notify the Town Director of Planning and Development of any Person seeking to connect to the System and shall allow the connections as authorized by this Agreement.
 - Section 2.2(c)(i): Connection to the CWC System in Mansfield for properties that do not require a main extension shall be permitted, where such uses are consistent with zoning regulations in effect at the time of the request, after providing notice to the Director of Planning and Development, and the applicant has demonstrated that any required local approvals for building or public health or as otherwise required are secured.
 - Section 2.2 (c)(ii): Connection to the system for properties that do not require a main extension shall be permitted to allow for the existing use of properties, after providing notice to the Director of Planning and Development.
 - Section 2.2(c)(iii): Connections to the CWC System in Mansfield, whether a new use or change to existing use that require a change in zoning or approval by a local land use commission shall be permitted after (a) providing notice to the Director of Planning and Development; (b)

allowing for review by the Advisory Group, and (c) demonstration by the applicant that all required approvals are secured.

- Section 2.2(c)(iv): Any extension of the CWC system in Mansfield after the Completion Date shall be undertaken in consultation with the Advisory Board established pursuant to Section 9.5 hereof and permitted if the applicant has demonstrated to CWC that all required approvals have been secured and such extension complies with the CWC Main Extension Agreement as applicable.
- *The CC is concerned about statements made by the University's Tom Callahan at the August 8, 2013 TC meeting that the Tech Park legislation would put the University in charge of any off-campus improvements somehow related to the Tech Park: "Section 92 **The university shall have the charge and supervision of all aspects of the project** authorized under this section (as provided for pursuant to UConn 2000), as provided in section 10a-109n of the general statutes. Such **charge and supervision shall extend to any off-campus improvements** undertaken as part of said project. **The university shall work in consultation with the town of Mansfield regarding any on-site or off-site utilities** that are financed pursuant to this section." (slide 3, emphasis in original) This is an odd statement to make when the Tech Park is projected to increase water demand by about only 10% over the next 45 years – sort of like the tail wagging the dog. Also, Mr. Callahan's statement about "normalization" of the University role in Town development decisions (slide 14) is worrisome. This does not seem to bode well for an equitable governance agreement between the Town and the University. The CC recommends that the Town pursue legal opinions on the intent and extent of the powers granted to the University by Public Act 11-57. The Town's rights, or lack of rights should be established before entering into negotiations with the University and CWC.*

At the last meeting of the UCONN Water and Wastewater Advisory Committee meeting, I asked Tom Callahan to clarify his comment regarding 'normalization of the development process.' His use of the term 'normalization' was intended to reflect the removal of UCONN from the Town's development review process as it pertains to providing public water supply for proposed development projects. Currently, applicants for new projects need to demonstrate adequate infrastructure (water and wastewater) before they can submit an application to the Planning and Zoning Commission for review on the merits of the project as a whole. Since UCONN has not been able to provide water capacity for new projects, the university has ended up playing a defacto role in the development process. Under the new agreement, UCONN will no longer be responsible for providing public water to off-campus properties, resulting in their removal from the development process of off-campus properties except for projects requesting sewer connections.

Lastly, the Town retained the firm of Panone, Lopes, Deveraux and West to represent the Town during this process due to their experience with water utilities. Bruce Tobey of PLDW has drafted the proposed Agreement with CWC, researched relevant state law and reviewed the UCONN agreement to ensure that the Town's interests are protected.

- *In these negotiations, it is important to protect the taxpayers of Mansfield from unreasonable charges. No agreement should, by itself, result in assessment fees for non-users and forced hookups to the new system. The CWC is run as a profit-making business. One can only assume that the seemingly generous offer of the CWC to front the money for the pipeline and other improvements will be more than recaptured by the water-use fees charged the Town of Mansfield and the University. CWC rates may be regulated by PURA, but these rates will certainly take into account the capital*

costs of establishing the new system. How does the University plan to use the \$8 million in tech Park funding for water and the \$18 million for water in the Next Generation funding now that CWC has offered to pay these costs? An analysis should be provided to determine whether a portion of this \$26M invested into the infrastructure costs that CWC has proposed to assume might not make long-term fiscal sense (through lower water rates to the Mansfield and the University).

Section 3.1 establishes the rate structure for existing and future customers:

- (a) Customers served by UConn after the Effective Date of this Agreement shall continue to be served by and billed by UConn until the Completion Date.
- (b) As of the Completion Date all Existing Customers, including any Town Facilities and fire hydrants, shall become direct customers of CWC and shall be charged the Storrs Customer Rate by CWC. After the Completion Date, the Storrs Customer Rate shall be subject to adjustment by the same dollar amount change approved by PURA for similarly defined categories of CWC customers.
- (b) After the Completion Date, all Billed Customers that are not Existing Customers shall be direct customers of CWC (“New Customers”) and shall be charged by CWC at a rate equal to the rates and charges as approved by PURA for similarly defined categories of CWC customers as may be amended from time to time subject to PURA approval.
- (c) Notwithstanding Section 3.1(b), any Public Facility that qualifies as a New Customer shall be charged by CWC at a rate equal to the Public Authority rates and charges as approved by PURA for similarly defined categories of customers. The Town shall be charged the PURA approved CWC Fire Protection Charges for any fire hydrants in service after the Completion Date.
- (d) Customers in Mansfield, including any Public Facility, shall be subject to applicable PURA approved surcharges or surcredits at the same percentage basis as other CWC customers.
- (e) Customers shall pay PURA-approved rates and charges, including any applicable surcharges for the Potable Water received by the Customer. Customers, including the Town, shall not be subject to any form of “take or pay” charges.

Additionally, Section 5.4 addresses infrastructure development costs: : “CWC shall be solely responsible for all fees, capital costs and expenses related to the performance of the Capital Improvements obligations under the terms of this Agreement except the UCONN Campus Spur without imposing an assessment on the Town or any Customer in Mansfield for the construction of that infrastructure. The Town shall be solely responsible for its own legal and professional costs and expenses related to its opportunity for review of System Improvements under this Section 5.”

- *Footnote 2 to Table 1-1 in the ROD raises several questions:*
 - *Footnote 2 includes 0.35 mgd from the Fenton well field in their safe yield, when during the summer there are periods it is not appropriate to pump any water from the Fenton wells.*
 - *There is also reference to Well D, which has been scheduled for repairs. Have these repairs been carried out, and if not, when will they be? The CC notes that inadequate maintenance of the Willimantic River well fields resulted in over-pumping from the Fenton in the 1990s and early 2000s.*

- *The CC hopes the plan to move Pumping Station A farther from the Fenton River will be implemented at some point. This is projected to increase the yield from this portion of the Fenton River aquifer while lessening its impact upon the river itself.*

These questions relate to UCONN's operation of its wellfields and are not the subject of the Agreement between the Town and CWC.

- *The following section numbers refer to the ROD.*
 - *2.2.13 (p. 37). "UConn submits that reliance upon the Mansfield overlay zone ... addresses the need to mitigate potentially more intensive development resulting from the availability of a pipeline water supply." The CC members have no knowledge of this overlay zone. The CC recommends a moratorium on lot and sub-division approvals along any proposed pipeline route until the overlay zone, or some other form of protection, is a part of Mansfield's PZC regulations (cf. Mansfield's recent moratorium on subdivisions, while those regulations were rewritten).*

See response above regarding development controls.

- *2.12. "Any new developments in the Eagleville Brook drainage basin will need to show that there will be no net increase in storm water runoff for storm events up to and including the 1% annual chance storm event to be consistent with the TMDL and the requirements of the Floodplain Management certification." There should be a clear statement detailing just who will be responsible for the implementation of this requirement and how it will be overseen and enforced.*

This recommendation relates to the Record of Decision which was approved in fall 2013. The Town continues to work with the University to implement the Eagleville Brook TMDL.

- *2.18. MDC Statement: The CC notes that unless service connections to other municipalities were allowed along the proposed pipeline to UConn, UConn might have to own and maintain the pipeline from East Hartford. Not only would the MDC option have been more expensive to the Town of Mansfield, but the additional interconnections might have encouraged undesirable urban sprawl (induced development).*

No response needed.

- *CWC Statement: The CC was impressed with the CWC's stated support of Mansfield's interests, especially not having a "wheeling fee" for the transfer of water through the University system and support of establishing a formal governance structure and a Customer Advisory Council. As stated earlier regarding the agreement, this governance structure should be transparent and establish an equitable governance process.*

Section 9.4 of the Agreement addresses the creation of an Advisory Committee:

CWC shall commit to the establishment of a Water System Advisory Committee ("Advisory Committee") to provide local input and ensure communication and collaboration relating to the water system.

- a) The Advisory Committee shall be comprised of representatives of the Town, UConn, local health officials, representatives of adjacent towns including Coventry, Tolland and Windham, and other stakeholders as agreed upon by the Parties to this Agreement.
 - b) The Advisory Committee shall advise CWC in connection with the supply of Potable Water and the operation, expansion and integration of the CWC System. The Advisory Committee shall provide information regarding plans and regulations of local land use commissions, consistency of proposals with the Plan of Conservation and Development, and future water supply needs that should be considered in the CWC Water Supply Plan.
 - c) The Advisory Committee shall also make recommendations of best management practices, including but not limited to water conservation programs, and CWC shall work cooperatively with the Advisory Committee in the implementation thereof.
 - d) The Committee shall serve in an advisory role and shall not approve or deny specific projects or otherwise limit CWC's ability to perform their obligations under the Agreement with the Town or the University or to comply with other statutes or regulations.
 - e) The Parties shall establish the Advisory Committee with provisions governing membership and identifying the stakeholders to be represented through a Memorandum of Agreement to be completed and executed within one hundred and twenty (120) days from the execution of this Agreement.
- *The CC believes it is logical to bring the additional water by a route entering the UConn system along the to-be-constructed Tech Park road. This should minimize disturbance, if the work is coordinated with the road construction, and deliver the water more directly to the UConn storage system.*

Exhibit A to the Agreement identifies the route. A 16" water transmission main will be constructed along Route 195 from Tolland to a location near the intersection of Route 195 and Moulton Road, where a connection will be made to the UCONN water tanks. Additionally, CWC will be constructing a smaller 12" water transmission main on Route 44 between the intersection of Route 195 and the entrance to the Rolling Hills (Jensen's) mobile home community.

While the proposed route does not use the proposed North Hillside Road extension as the connection to the UCONN system, the Four Corners area will still be served by the transmission main extended west from the intersection of Routes 195 and 44.

SUMMARY/RECOMMENDATION

If the Commission is satisfied that the Agreement has adequately responded to the concerns outlined by the Commission in the fall of 2013, the following motion would be in order:

_____ MOVES, _____ seconds to authorize the Chair to report to the Town Council that the terms contained in the draft Definitive Agreement between Connecticut Water Company and the Town of Mansfield sufficiently address the concerns raised by the Commission in its August 2013 comments.

Alternatively, if the Commission feels that changes to the Agreement are needed, the following motion would be in order:

_____ MOVES, _____ seconds to authorize the Chair to report to the Town Council that the terms contained in the draft Definitive Agreement between Connecticut Water Company and the Town of Mansfield sufficiently address the concerns raised by the Commission in its August 2013 comments provided the following issues are addressed:

- **(Itemize issues to be addressed)**

Conservation Commission Recommendation regarding the UCONN Main Accumulation Area (MAA)

April 2013

The Mansfield Conservation Commission is pleased with the University of Connecticut's decision to move the MMA (formerly known as the Hazardous Waste Transfer Station) out of a Mansfield public water supply watershed that contributes water to the Willimantic Reservoir. The Commission further notes that a similar decision was reached by the University about ten years ago, but the University never followed through on the recommendation to move the transfer station. The Commission therefore requests that the Town Council assist the University in any way possible to effect the move this time.