

Inland Wetlands Commission

Regular Meeting

MINUTES

August 12, 2020

7:00 p.m.

Via Zoom Video Conference

Members Present: Mr. Papsin, Mr. Bedini, Mr. Bennett, Mr. LaMuniere, Ms. Branson, Mr. Gendron, Alt.

Staff Present: Ms. White, Mr. Tsacoyannis

Public Present: Mr. Gawel, Mr. Hammond, Mr. Szymanski, Mr. Dismukes, Mr. Charles, Mr. Larson, Ms. Rabinowitz

Call to Order:

Mr. Papsin called the meeting to order at 7:07 pm.

Members Seated: Mr. Papsin, Mr. Bennett, Mr. LaMuniere, Mr. Bedini, Ms. Branson

Consideration of the Minutes (0:22):

Regular Meeting Minutes: 7-22-2020:

Motion: To approve the Regular Meeting Minutes of 7-22-2020, by Mr. Bennett, seconded by Mr. LaMuniere, passed by 5-0.

Special Meeting Minutes: 7-28-2020 – Site Visit Inspection Submitted by Mr. Bennett – Waldron/246 New Milford Turnpike/Application for Permit #IW-20-35:

Motion: To approve the Special Meeting Minutes of 7-28-2020 – Site Visit Inspection Report submitted by Mr. Bennett for Waldron/246 New Milford Turnpike/Application for Permit #IW-20-35, by Mr. Bennett, seconded by MS. Branson, passed by 5-0 vote.

Special Meeting Minutes: 7-28-2020 – Site Visit Inspection Submitted by Mr. Gendron - A.H. Howland for TFCPS, LLC/270 Nettleton Hollow Rd/Application for Exemption #IW-20-38 & 39:

Motion: To approve the Special Meeting Minutes of 7-28-2020 – Site Visit Inspection Report submitted by Mr. Gendron for A.H. Howland representing TFCPS, LLC/270 Nettleton Hollow Rd/Application for Exemption #IW-20-38 & 39, by Mr. LaMuniere, seconded by Ms. Branson, passed by 5-0 vote.

Subsequent Business (01:43):

There was no subsequent business to consider.

Pending Applications:

Seated: Mr. Bennett, Mr. LaMuniere, Mr. Bedini, Ms. Branson, Mr. Gendron, Alt. (for Mr. Papsin, recused himself)

Gawel for West Shore Farms, LLC/285 West Shore Rd/Application for Permit #IW-20-34/Install drainage near and into wetlands (1:46):

Mr. Bennett stated that there was a site inspection and the Commission requested and updated survey showing the proposed rock pond.

Mr. LaMuniere stated that the IWC usually requests more detail for the rain garden.

Mr. Gawel reminded the IWC that they agreed that this would not be a rain garden but a rock pond which is indicated on the revised plan that he submitted and Ms. White distributed to the Commissioners. He noted that the cross-section drawn on the plan titled "Improvement Location Survey," dated August 2015 by Samuel Bertaccini with hand-drawn additions by Mr. Gawel, indicates 2 feet of modified rip rap at the bottom, a 15-inch squash pipe coming in at about a foot above the rip rap. He stated that he visited the site today to do some last-minute measuring. He found that the rock pond could be expanded to 20' x 45' (instead of the 10' x 30' depicted on the plan) and still be 3 feet from the property line and asked if the IWC would prefer this.

Mr. LaMuniere stated that he feels the rip rap catch basin (a.k.a. rock pond) would require less maintenance than a rain garden and would be more effective. The other Commissioners agreed with Mr. LaMuniere.

Mr. Gawel stated that the expanded rock pond would increase the size of the leaching area which would then result in less water pouring directly into Ash Swamp. He added that he would submit a revised plan showing the 20' x 45' increased size of the rock pond.

Motion: to approve the application submitted by Gawel for West Shore Farms, LLC for the property located at 285 West Shore Rd for Permit #IW-20-34 to install drainage near and into wetlands per the map titled "Improvement Location Survey," dated August 2015, for West Shore Farms, LLC, by Samuel P. Bertaccini, with hand written additions to show improvements associated with the application dated 6-15-2020 and supporting documents, this permit is valid for two (2) years and is subject to the following conditions: 1. that the Land Use Office be notified 48 hours prior to the commencement of work so the Wetlands Enforcement Officer can inspect and approve the erosion control measures, 2. that the property owner give the contractor a copies of both the motion of approval and approved plans prior to the commencement of work, 3. any changes to the plans as approved must be submitted to the Commission for review, and 4. a revised plan will be submitted to the Land Use Office indicating the rock pond size increased from 10' x 30' to 20' x 45' to complete the record and prior to commencement of any work. The Commission has determined that there is no reasonable probability of significant adverse impact on any wetlands or watercourses, by Ms. Branson, seconded by Mr. LaMuniere, passed by 5-0 vote.

Seated: Mr. Papsin, Mr. Bennett, Mr. LaMuniere, Mr. Bedini, Ms. Branson

Town of Washington/11 School St/Request for Modification to Permit #IW-20-28/Add underground electrical conduit buried a minimum of 6" (12:00):

The Commissioners acknowledged that they received the forwarded copy of the letter dated August 12, 2020, from Mr. Jenks, Building Official, stating that the structure complies with the present State Building Code.

Mr. Hammond stated that Mr. Jenks did not have a problem with the proposed gravel pad and that the only requirement would be that the material removed for the gravel pad be removed from the site/flood plain. Mr. Hammond informed the IWC that that material would be taken to the Town Garage site.

Motion: To approve the application submitted by the Town of Washington for the property located at 11 School St requesting a Modification to Permit #IW-20-28 to add underground electrical conduit, buried a minimum of 6" per the application dated 6-5-2020 and supporting documentation in the file, this permit is valid for two (2) years and is subject to the following conditions: 1. that the Land Use Office be notified 48 hours prior to the commencement of work so the Wetlands Enforcement Officer can inspect and approve the erosion control measures, 2. that the property owner gives the contractor copies of both the motion of approval and approved plans prior to the commencement of work, and 3. any changes to the plans as approved must be submitted to the Commission for review. The Commission has determined that there is no reasonable probability of significant adverse impact on any wetlands or watercourses, by Mr. Bennett, seconded by Mr. Bedini, passed by 5-0 vote.

Waldron/246 New Milford Turnpike/Application for Permit #IW-20-35/to install septic holding tank within review area (15:42):

Mr. Dismukes was present to discuss this application. He noted that there was concern about the water tightness of the manhole covers on the holding tanks at the site visit. He confirmed that the manhole covers on the tank are watertight and these are indicated on the plan titled, "Sewage Holding Tank Plan," prepared for Bridget Waldron, by Dismukes Engineering with a revision date of 7-29-20. Mr. Dismukes stated that the IWC requested an operation maintenance plan and this was also included in the above-mentioned plan dated 7-29-20. He informed the Commissioners that he contacted the DEEP Marine Fisheries Department and just heard via email from Mr. Humphrey, DEEP Fisheries Biologist, today, dated August 12, 2020, stating that they have reviewed the proposed plan which, if followed, "appears that the impacts to the river will be negligible."

The Commission acknowledged that they have received both the Notices of Exception for the sewage holding tank dated 8/6/2020 and the Approval of the sewage holding tank dated 8/6/2020 granted by the State Health Department.

There were no further questions or comments from the Commission.

Mr. Dismukes stated that he would

Motion: To approve the application submitted by Waldron for the property located at 246 New Milford Turnpike for Permit #IW-20-35 to install a septic holding tank within the review area per the application dated 6-3-2020, plan titled "Sewage Holding Tank Plan," prepared for Bridget

Waldron, by Dismukes Engineering with a revision date of 7-29-20 and supporting documentation in the file, this permit is valid for two (2) years and is subject to the following conditions: 1. that the Land Use Office be notified 48 hours prior to the commencement of work so the Wetlands Enforcement Officer can inspect and approve the erosion control measures, 2. that the property owner gives the contractor copies of both the motion of approval and approved plans prior to the commencement of work, 3. any changes to the plans as approved must be submitted to the Commission for review and 4. That an engineered stamped Sewage Holding Tank Plan with the revision date of 7-29-20 be submitted to the Land Use Office for the record and prior to the commencement of any activity. The Commission has determined that there is no reasonable probability of significant adverse impact on any wetlands or watercourses, by Mr. LaMunier, seconded by Ms. Branson, passed by 5-0 vote.

Hardee/36 Juniper Meadow Rd/Application for Permit #IW-20-36/to cut down dead trees in wetlands (23:06):

Ms. White stated that she received notification from Ms. Hardee granting Mr. Charles permission to represent her at this meeting.

Mr. Charles stated that Ms. Hardee would like to cut four (4) trees; one on the edge of the stream and the others slightly uphill from the stream. He confirmed that only 4 trees are being proposed to be cut down, the head of the Condominium Association sent an email approving Ms. Hardee's request (on file in the Land Use Office), and a licensed, fully insured contractor will be doing the work.

The IWC requested that the contractor's information be submitted to the Land Use for the record before any commencement of work.

Mr. Charles noted that the logs will be stacked and branches piled on-site to avoid the need for heavy removal equipment. All work is to be done by hand with a chain saw and stumps will be left.

Motion: To approve the application submitted by Hardee for the property located at 36 Juniper Meadow Rd for Permit #IW-20-36 to cut down four (4) dead trees in wetlands per the application dated 7-14-20 with supporting documents, this permit is valid for two (2) years and is subject to the following conditions: 1. that the Land Use Office be notified 48 hours prior to the commencement of work so the Wetlands Enforcement Officer can inspect and approve the erosion control measures, 2. that the property owner gives the contractor copies of both the motion of approval and approved plans prior to the commencement of work, 3. any changes to the plans as approved must be submitted to the Commission for review, and 4. That prior to commencing work, the applicant must submit contractor identification and contact information to the Land Use Office. The Commission has determined that there is no reasonable probability of significant adverse impact on any wetlands or watercourses, by Mr. Bennett, seconded by Mr. Bedini, passed by 5-0 vote.

Arthur H. Howland for TFCPS, LLC/270 Nettleton Hollow Rd/Application for Exemption #IW-20-39E/to construct two farm buildings, subsurface sewage disposal system, well, grading, drainage system and other related appurtenances for grazing, farming, etc. (32:19):

Mr. Szymanski, P.E., was present to represent the property owners.

Mr. Papsin stated that the IWC would like to table the discussion for this application until the Commissioners have the chance to review the new applications that Mr. Szymanski submitted for the horse barn and then they would be considered together.

Mr. Szymanski explained that there are no statutory time frames on an exemption request as the Commission needs to decide either it is or is not an exemption. He noted that he did not believe that the IWC could table a request for exemption. He referred to *Agricultural Exemptions, Farming, and the Inland Wetlands and Watercourses Act Connecticut General Statutes Section 22a-40: Permitted Operations and Uses Subsection (a)(1): Farming*. Retrieved from <https://portal.ct.gov>. Mr. Szymanski added that there is a timing consideration as the property owners will need the IWC approval to order the utility buildings for the farm.

Ms. Branson stated that she did not agree with Mr. Szymanski that the IWC cannot table this application. She added that she would like to see the whole picture of what is being proposed for this property.

Mr. Bennett stated that the IWC has an obligation to make an informed decision whether it is on a permit or request for an exemption. He feels the Commissioners need more information and time to consider this request before making a decision.

Mr. LaMunier stated that he could see Mr. Szymanski's point.

Mr. Bedini asked why the Commissioners should be concerned with what type of building is going to go on there and how it is built. He does not see how this relates to the exemption criteria.

Mr. Szymanski explained that all the structures will be considered farm building per Connecticut State Statute. He read:

"Sec. 22a-40. Permitted operations and uses. (a) The following operations and uses shall be permitted in wetlands and watercourses, as of right:

(1)" Grazing, farming, nurseries, gardening and harvesting of crops and farm ponds of three acres or less essential to the farming operation, and activities conducted by, or under the authority of, the Department of Environmental Protection for the purposes of wetland or watercourse restoration or enhancement or mosquito control. The provisions of this subdivision shall not be construed to include road construction or the erection of buildings not directly related to the farming operation, relocation of watercourses with continual flow, filling or reclamation of wetlands or watercourses with continual flow, clear cutting of timber except for the expansion of agricultural crop land, the mining of top soil, peat, sand, gravel or similar material from wetlands or watercourses for the purposes of sale [.]"

Mr. Bennett stated that there is a concern that just because an applicant says they're going to build a barn to be used for farming doesn't mean the IWC should automatically say that they are exempt.

Mr. Szymanski read "7. How to proceed with determination of exemption:" Under Sec. 22a-40. Permitted operations and uses.

7. How to proceed with determination of exemption:

7.1. Agency or agent becomes aware of current activity or proposed activity for which no permit has been issued;

7.2. Agency or agent contacts actor requesting explanation;

7.3. Agency or agent requests presence of actor at next regular meeting to establish whether such activity is a regulated activity or a permitted as of right activity

-OR-

Actor files request for declaratory ruling on the agency's jurisdiction (if municipal regulations permit such a filing).

7.4. Agency finds facts which determine whether activity falls within the exemption;

7.4.1. Agency issues a jurisdictional ruling that activity is exempt; or

7.4.2. Agency issues a jurisdictional ruling that a permit be required; or

7.4.3. Agency issues a jurisdictional ruling that portions of the activity are exempt but other portions require a permit.

7.5. If actor is unwilling to cooperate with the agent or agency, and the agency finds the activity is not permitted as of right and therefore needs a permit, the agent or agency may issue, pursuant to Section 22a-44(a) of the General Statutes, an order to cease and correct such activities on the site until the actor has obtained such permit:

7.5.1. Agency must hold a hearing within 10 days of issuance of the order;

7.5.2. Duly authorized agent must offer evidence that the activity is "regulated";

7.5.3. Burden is on the agency to establish the activity is a regulated activity;

7.5.4. Agency must vote to affirm, revoke or amend the original order within 10 days of the completion of the hearing.

7.6. Agency may proceed directly to court to prevent actor from conducting activity without a permit,

-OR-

to enforce a final cease and correct order

Ms. Branson stated that she would like to see some concept plan for the entire project.

Mr. Szymanski responded that these applications for exemptions are in response to the IWC concerns as to why the applications for permits have been submitted and how they will be used as part of the farm. He stated that the utility buildings are pre-engineered and need to be ordered ahead of time which is why he submitted that application first. He noted that when a farm is being established the support infrastructure needs to be on-site before the horses are brought in.

The Commission feels that if they were to see a plan with the barn along with or before the utility buildings they would be able to see the whole picture of the farm that is being proposed.

Mr. Bennett cited Section 4.04 from the Town of Washington Inland Wetland Regulations, "prior to commencement of such operation and use, notify the IWC on an application form provided by it, and provide the IWC with sufficient information to enable it to properly determine whether the proposed operation and use is a permitted or nonregulated use of a wetland or watercourse." He explained that the Commissioners should be given all the information to make an informed decision.

Mr. Szymanski stated that this request for an exemption shows whether or not the IWC recognizes that this activity is exempt. He asked if he could continue to read the DEEP Guidance Document as to how the IWC handles an exemption request: <https://portal.ct.gov/-/media/DEEP/water/wetlands/SegmentII2008AgricExemppdf>.

The Commissioners discussed whether they had enough information after this discussion to grant the exemption. Mr. Papsin stated that he would feel comfortable granting the exemption based on the discussion tonight. Mr. Bedini stated that he did not see how they could not grant the exception. He doesn't see how you can have the animals there before the barn is built and if the Commission is concerned that if they grant the exemption and the farm is not established, then that is an enforcement issue. Mr. LaMuniere stated that he feels that they IWC has an explanation as to how the two farm buildings will be used and how it relates to an agricultural exemption but he would like to review the barn permit application. Ms. Branson feels that Mr. Szymanski's explanation of needing the infrastructure/utility buildings to build the farm helped her better understand what this request for exemption is for. Mr. Bennett stated that he plans to abstain from voting as he feels that he has not had sufficient time to review the new application for the horse barn and this application does not provide enough information for him to make a decision.

Exemption #IW-20-39E is granted with a vote of 4-0-2.

Mr. Papsin, Mr. Bedini, Ms. Branson & Mr. Gendron voted yes to grant Exemption #IW-20-39E, Mr. Bennett, and Mr. LaMuniere abstained and would like more time to review the other applications about the farm operation on this property.

Arthur H. Howland for TFCPS, LLC/270 Nettleton Hollow Rd/Application for Permit #IW-20-38/to construct 3 intermittent watercourse crossings and driveway (1:07:50):

Mr. Szymanski was present to represent the property owners for this application.

There were no further questions or comments from the Commissioners.

Motion: To approve the application submitted by A. H. Howland for TFCPS, LLC. for the property located at 270 Nettleton Hollow Rd for Permit #IW-20-38 to construct three (3) intermittent watercourse crossings and driveway per the application dated July 14, 2020, the supporting documents and the plan titled "Proposed Site Development Plan & Soil Erosion Control Plan for Utility Buildings," prepared for Edward J. Bramson, by Arthur H. Howland & Associates, dated April 13, 2020, sheet Util.1, this permit is valid for two (2) years with the following conditions: 1. that the Land Use Office be notified 48 hours prior to the commencement of work so the Wetlands Enforcement Officer can inspect and approve the erosion control measures, 2. that the property owner gives the contractor copies of both the motion of approval and approved plans prior to the commencement of work, and 3. any changes to the plans as approved must be submitted to the Commission for review. The Commission has determined that there is no reasonable probability of significant adverse impact on any wetlands or watercourses, by Mr. Bennett, seconded by Mr. LaMuniere, passed by 5-0 vote.

New Applications:

Steep Rock Association for the Town of Washington/Modification request to Permit #IW-20-31/ to increase the number of cross vanes, raise the elevation of the streambed, restore streambank (1:11:00):

Mr. Larson from Steep Rock Association was present to answer any questions regarding this application.

Mr. Papsin asked if any of the Commissioners had any questions or comments regarding this request to modify existing IWC Permit # IW-20-31. He noted the IWC could take action on this application tonight if the Commissioners were ready.

Mr. Larson explained that the modification includes an increase in the number of cross vanes from 4 to 6, raising the elevation of a narrow cross-section of the streambed at the lower cross vane and restoring the streambank on either side. He added that the linear feet of watercourse disturbed will increase from 40 to 50 feet but there will be a decrease in the width of the disturbance limit from 20 to 16.5 feet.

Motion: To approve the request of Steep Rock Association for the Town of Washington for the modification of Permit #IW-20-31 to increase the number of cross vanes, raise the elevation of the streambed, restore streambank at Old Curtis Road per application dated 7-30-2020 and supporting documents, this permit is valid for five (5) years from the original approval date of June 24, 2020, with the following conditions: 1. that the Land Use Office be notified 48 hours prior to the commencement of work so the Wetlands Enforcement Officer can inspect and approve the erosion control measures, 2. that the property owner gives the contractor copies of both the motion of approval and approved plans prior to the commencement of work, and 3. any changes to the plans as approved must be submitted to the Commission for review. The Commission has determined that there is no reasonable probability of significant adverse impact on any wetlands or watercourses, by Mr. Bedini, seconded by Mr. LaMuniere, passed by 5-0 vote.

Arthur H. Howland for Bramson/280-284 Nettleton Hollow Rd/Application for Permit #IW-20-40/ replace accessory building, septic, parking & associated appurtenances within review area (1:19:25):

The IWC accepted this application and scheduled a site visit for Tuesday, August 18, 2020, at 3:30 pm.

Arthur H. Howland for Bramson/270 Nettleton Hollow Rd/Application for Exemption Permit #IW-20-41E/Construction of a horse barn (1:21:04):

The IWC accepted this request for an exemption.

Arthur H. Howland for Bramson/270 Nettleton Hollow Rd/Application for Permit #IW-20-42/ crossing intermittent watercourses associated with farming (1:21:10):

The IWC accepted this application and scheduled a site visit for Tuesday, August 18, 2020, at 4:00 pm.

Arthur H. Howland for VanVeen/41 East St/Application for Permit #IW-20-43/construct inground pool and pool house w/associated appurtenances within review area (1:22:46):

The IWC accepted this application and scheduled a site visit for Tuesday, August 18, 2020, at 4:45 pm.

Other Business (1:23:20):

There was no other business to discuss.

Enforcement (1:23:26):**Enforcement Activity Report &****List of Files Closed by WEO – Projects Signed Off as Completed Per Approved Permit:**

There were no questions or comments from the Commissioners.

Administrative:

There was no administrative business to discuss.

Communications:

There were no communications to discuss.

Adjournment:

MOTION: To adjourn at 8:34 pm by Mr. Papsin, passed unanimously.

Respectfully Submitted,



Shelley White

Land Use Administrator

August 21, 2020