Inland Wetlands Commission

MINUTES Regular Meeting January 9, 2019

7:00 p.m. Main Level Meeting Room

MEMBERS PRESENT: Mr. LaMuniere, Mr. Papsin, Mr. Wadelton MEMBERS ABSENT: Mr. Bennett, Mr. Davis ALTERNATES PRESENT: Mr. Kassis, Mr. Matthews STAFF PRESENT: Mrs. Hill, Ms. Hodza, Mr. Tsacoyannis ALSO PRESENT: Mr. DePerno, Mr. Fry, Mr. Perssonatti,

Mr. Ciarlone, Mr. Lasar, Mrs. Branson, Mr. Quaranto, Mr. Gugel, Mrs. Miner, Mr. Neff, Mr. Rogers, Ms. Gil-Rogers

Mr. Wadelton called the meeting to order at 7:05 p.m. and seated Members LaMuniere, Papsin, and Wadelton and Alternates Kassis and Matthews for Mr. Davis and Mr. Bennett.

MOTION: To include the following subsequent business not already posted on the agenda: V. New Applications B. Tollman/41 New Preston Hill Road/#IW-19-02/ Exemption for Tree and Vine Clearing, C. Steep Rock Assn./124 Christian Street/#IW-19-03/either 1) Revision of Permit #IW-18-36 re: Invasive Plant Removal or 2) Exemption/Invasive Plant Removal. By Mr. Papsin, seconded by Mr. LaMuniere, passed 5-0.

Consideration of the Minutes

MOTION: To accept the 12/12/18 Regular Meeting minutes as written. By Mr. Matthews, seconded by Mr. Papsin, passed 5-0.

Pending Applications

Pavilion Hall, LLC./17 East Shore Road/#IW-18-59/Install Propane Tanks, Condensers: Mr. DePerno, one of the property owners, noted that a more detailed site plan had been submitted and that the location of two proposed condensers had been added to it. The untitled plan was reviewed. It was the consensus that there were no other issues to be addressed.

MOTION: To approve Application #IW-18-59 submitted by Pavilion Hall, LLC./17 East Shore Road to install propane tanks and condensers per the untitled site plan received 1/9/19; the permit shall be valid for two years and is subject to the following conditions: 1. that the Land Use Office be notified at least 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 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 immediately to the Commission for review; in considering this application, the Commission has determined that no reasonable and prudent alternatives exist, and believes that there is no reasonable probability of significant adverse impact on any wetlands or watercourses. By Mr. Papsin, seconded by Mr. LaMuniere, passed 5-0.

New Preston Women’s Club/27 Church Street/#IW-18-61/Parking Area and Drainage Improvements: Mrs. Hill reported that Mr. Szymanski, engineer, had sent an email requesting that consideration of this application be tabled to the next meeting. He had told her that he did not yet have a sign off from the Town for the work proposed in the right of way.

Potolsky/131 West Shore Road/#IW-18-62/Rebuild Boathouse: Mr. Lasar, architect, presented his revised plan, “Proposed Lake House Rebuild,” revised to 1/3/19 and circulated photos of the site. He explained the sequence of construction had been amended and a floating boom added to the plan as the Commission had requested at the last meeting. Mr. Matthews asked what would be done with the construction debris. Mr. Lasar said debris would be placed in a dumpster and no material would get into the lake. He submitted information sheets on the type of containment boom that would be installed and pointed out the location of hay bales to be installed for erosion control. Mr. Lasar signed the revised plan.

MOTION: To approve Application #IW-18-62 for Potolsky/131 West Shore Road to rebuild the boathouse per the plan, “Proposed Lake House Rebuild,” by Stephen Lasar Architects, dated 12/11/18 and revised to 1/3/2019; the permit shall be valid for two years and is subject to the following conditions: 1. that the Land Use Office be notified at least 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 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 immediately to the Commission for review; in considering this application, the Commission has determined that no reasonable and prudent alternatives exist, and believes that there is no reasonable probability of significant adverse impact on any wetlands or watercourses. By Mr. Papsin, seconded by Mr. Kassis, passed 5-0.

New Applications

Levande/137 West Shore Road/#IW-19-01/Cut Two Trees: Mr. Ciarlone represented the property owner. He proposed to cut two trees along the lake shore. He presented photos to show they were in bad shape and had damaged trunks. Once cut, he proposed to grind the stumps, bring in top soil, seed, and mulch. Mr. Matthews asked if replacement trees would be planted. Mr. Ciarlone said there were no plans to replant. Mr. Papsin asked if erosion controls would be installed. Mr. Ciarlone said he did not think they were needed because the area is so flat, the stumps would be taken out when the ground was frozen, and the disturbed areas would be mulched until the spring when they could be seeded. There were no other questions and Mr. Ciarlone was advised he did not have to attend the next meeting.

Tollman/41 New Preston Hill Road/#IW-19-02/Exemption for Tree and Vin Clearing: Mr. Perssonatti, contractor, represented the property owner. He proposed to clean out the invasives along the brook corridor and fences on 3.92 acres and submitted photos of the areas to be cleared. Mr. Matthews asked how close to the brook would be cleared. Mr. Perssonatti said it would be very close because the vegetation was so thick along the streambank. He explained that forestry mulch mowers that would pulverize, not cut, would be used and that the resulting mulch would be evenly distributed in the cut areas. He stated erosion was not a concern due to the mulch and because the root systems would remain. He added there was already access to both sides of the stream so no stream crossing would be required and said there would be no machinery in the water. Mr. LaMuniere asked what criteria would be used to determine what vegetation would remain. Mr. Perssonatti stated non invasive plants and large trees would not be cut. Mr. Papsin recommended a site inspection and asked that any large trees to be cut be marked. He also thought the vegetation should not be cleared along the brook. Mr. Perssonatti agreed to mark any trees to be cut and said he would submit a copy of his contract, which details the exact work to be done. Mr. Matthews said he would like to review the contract prior to the site inspection. Mr. Perssonatti said he specializes in low impact land clearing and circulated photos of work he had done along Walker Brook as an example. Mr. LaMuniere asked if the cut areas would be reseeded. Mr. Perssonatti said that was not in his contract, but that the farm’s caretaker routinely seeds with pasture mix. It was the consensus this was a permitted activity that did not qualify for an exemption. A site inspection was scheduled for Wednesday, January 16, 2019 at 3:30 p.m.

Steep Rock Assn./124 Christian Street/#IW-19-03/Revision of Permit #IW-18-36 re: Invasive Plant Removal: Mr. Quaranto, licensed forest practitioner, noted although Steep Rock had applied for a revision of its existing permit, he thought the proposed work fit the guidelines for an as of right activity and so he had also filled out the application form for an exemption. Mr. Wadelton stated the harvesting of forest products was not an as of right activity. Mr. Quaranto explained the permit revisions requested: 1) a change in the start date, 2) the use of heat treatment to eradicate vegetation, and 3) a two year extension. It was noted the current permit was for the removal of invasives with mechanical brush cutters or low pressure mowing equipment and the application by hand of an herbicide. Mr. Quaranto said the heat treatment; backpack with blow torch, was a more environmentally friendly approach than the use of herbicides. In response to a questions by Mr. Kassis, Mr. Quaranto said there was a risk of fire if the torch was used during dry conditions. He submitted a harvest operability plan, which had not been included in the original file, briefly reviewed it, and stated that no heavy equipment would be used in the wetlands. Mr. LaMuniere noted the original permit clearly stated that all native plants and trees would remain and Mr. Quaranto agreed this was so. Mr. Quaranto said the wetlands and slopes would be cut by hand and machinery similar the that described by Mr. Perssonatti regarding the Tollman application would be used on the remaining areas. Mr. Matthews asked Mr. Quaranto to submit in writing the revisions requested. It was the consensus that the activity was not permitted as of right because a permit had already been issued and some of the work would be done in the wetlands. Mr. Quaranto disagreed, saying Ms. Winther of the DEEP said this was a forestry application. Mr. Papsin recommended a site inspection because some of the work would be done in the wetlands. Ms. Hodza questioned whether the Commission could conduct a site inspection when a permit had already been approved. Mr. Wadelton responded the Commission has the right to inspect when an application for a revision to a permit is submitted. A site inspection was scheduled for Friday, January 18, 2019 at 3:30 p.m. The commissioners asked the applicant to mark the areas where the proposed work would take place.

Other Business

Ingrassia/282-292 Bee Brook Road/Review of 4 Lot Resubdivision Feasibility: Mr. Wadelton explained although no activity is proposed at this time, because there are wetlands on the property, the IWC is required to review the application and provide a report to the Planning Commission. Mr. Neff, engineer, noted that a 6 lot subdivision had previously been approved and the current application proposed to combine three of those lots and relocate the right of way serving three lots. He stated these changes were to address zoning issues. Mr. LaMuniere asked why a longer right of way was proposed and Mr. Papsin noted its proposed relocation brought it closer to wetlands. Mr. Neff stated the right of way would be out of the upland review area and that the owners wanted to move it so the lower area would be undisturbed and available for planned future development. Mr. Wadelton said an IW permit would be required in the future for activities proposed in wetlands or the upland review area. Mrs. Hill explained this review was for feasibility only. It was the consensus the report to the Planning Commission should state the IWC found no major issues with this application.

Communications

Haested/52 River Road/Silviculture Exemption: The Commission had received the 12/28/18 letter from Mr. Rogers and Ms. Gil-Rogers, the 1/7/19 email from Mrs. Branson, and the 1/7/19 letter from Mrs. Miner, executive director of Rivers Alliance, all voicing concerns about the tree clearing that had occurred at 52 River Road. Mr. Wadelton said the Commission did not allow public input at its meetings, but because in this case an application was not pending, the work had been done, and much public concern had been expressed, an exception would be made.

Mr. Rogers circulated the photos he had taken of trees cut close to the Shepaug River. He noted these trees were in the recharge area of the Shepaug and provided the canopy needed to maintain the health of the river. He thought the trees had been needlessly cut, submitted documentation from Penn State in support of his views, and asked that the trees along the river be replanted.

Ms. Hodza said the owner intended to replant. Mr. Papsin stated the Commission had been unaware the cutting would take place so close to the river and suggested a letter be sent to the property owner to request replacement of the trees cut there. Mr. Matthews asked if when an exemption is granted for tree cutting, it includes the cutting of trees in the upland review area without the Commission’s permission. Mr. Wadelton explained the Commission determines whether an activity qualifies for an exemption for silviculture and if granted, the Commission then has no jurisdiction over the work done. Mr. Matthews noted the exemption had been granted based in part on the number of trees it had been told would be cut and so thought since the number of trees actually cut exceeded that number, a violation had occurred and the Commission would be within its rights to require replanting. Mr. Wadelton said there had been no condition regarding how many trees could be cut because there had been no permit. He added that property owners have rights and that the IWC must determine there will be adverse impacts in order to deny an application and also said that it cannot contradict a licensed professional without an opinion from an equally qualified professional. Mr. Rogers countered that experts say that cutting along a stream will have a significant adverse impact to the stream. Mr. LaMuniere asked if it was a violation if more work was done than what was represented would be done. Mr. Wadelton said there was no documentation to prove more work had been done than what had been represented to the Commission.

Mrs. Miner cited the governing statutes including the Ct. Forestry Practices Act and the Town’s IW Regulations and reported that while not all of the agencies she consulted agreed, most thought that the plan upon which an exemption was granted must be followed, and if not, mitigation could be required. She said there was not such agreement about whether trees could be cut along a stream under a silviculture exemption. She noted the current statutes include sweeping exemptions for non commercial tree cutting of up to 100 cords and recommended the Commission work to get statewide revisions adopted. For example, she thought the IWC could try to get the statute revised so that not every landscaping job may be considered silviculture. Regarding 52 River Road, she thought since the Commission had not realized there would be cutting along the river, it could require mitigation.

Ms. Gil-Rogers asked why the trees were cut along the river, which resulted in negative environmental impacts. She thought “looking pretty” was not a valid reason also that the Commission should admit it made a mistake.

Mrs. Branson said she had done research on silviculture practices and informed the Commission that it is within its rights to conduct site inspections for as of right applications and to require the trees to be cut to be marked for those inspections. Mr. Wadelton said the Commission had made a mistake when it did not conduct a site inspection in this case. Mrs. Branson read the definition of “silviculture” from the DEEP website and said after reading the information on the website, she questioned whether a forest products harvester was allowed to make recommendations about silviculture techniques.

Mr. Gugel stated the intent of the work had been to limit the invasives, the underbrush, and the black lotus trees and to replant next year. He said half of what had been cut had been done outside the regulated area and that 15 to 20 trees would be planted in the spring. Mr. Wadelton advised him that a permit is required to replant in the regulated area.

Mr. Quaranto agreed the plan had always been to replant in the areas where the invasives had been removed. He stated the proposed work had not been misrepresented at the time of the original application; that he had speculated 10 cords would be removed and that had been pretty accurate. He submitted before and after photos to show the work completed. He added that the black lotus had been selectively removed, all of the invasive plants had been removed, that the canopy remains, and that the vast majority of the native trees remain. Regarding as of right activities, Mr. Quaranto said he had consulted with the DEEP and was told the harvesting of forestry products and removal of invasives is as of right and once determined to be as of right, it is totally as of right. When asked how many cords had been cut, Mr. Quaranto stated 250 tons had been cut. He said while he appreciated the Commission’s concern about protecting the quality of the river, the intent had been to improve the area and there had been no deposition of material and no soil disruption. He said the owner had plans to replant. Mr. Matthews said he looked forward to reviewing the remediation plan.

Ms. Gil-Rogers again stated the disruption of the riverbank had not been necessary and questioned why the maples and yellow birches along the river were cut. Mr. Gugel said some were cut because they were too close to premium trees. Ms. Gil-Rogers thought better management of project had been needed.

Mr. Gugel stated digging to replant along the riverbank would cause more impacts, while Mrs. Minor noted that the stabilization of a riverbank with invasives was better than nothing.

The discussion continued briefly. It was the consensus of the commissioners that in the future for exemption applications the Commission will conduct site inspections, will require more information, and will consider prohibiting cutting along streams. It was also noted a licensed professional could be hired to review exemption applications on behalf of the Commission and that this would be paid for by the applicant.

Enforcement

Ms. Hodza reviewed her enforcement report dated 1/9/19. The following matters were discussed.

Funston/294 West Shore Road/Install Well: Ms. Hodza reported that silt had reached the lake due to a damaged drainage pipe and she had asked the contractor to submit a proposal to clean it out. It was the consensus that no fine was needed.

Kassis/6 West Mountain Road/Tree Cutting, Agricultural Exemption: Ms. Hodza reported that due to several inquiries she had driven by the site, but could not determine whether the tree cutting had extended to wetlands on 16 West Mt. Rd., which does not have an agricultural exemption. She noted when she receives inquiries or complaints, she is bound to investigate. Mr. Kassis said he was working according to his exemption and offered to inspect the site with her. Mr. Matthews agreed an inspection by the WEO should be conducted and asked if the Commission could request a map. Mr. Kassis thought there was no reason for this and left the meeting. Ms. Hodza noted that the wetlands had been flagged on 6 West Mt. Road, but not on 16 West Mt. Road. Mr. Wadelton said he would leave the site inspection to the enforcement officer.

There was a brief discussion regarding the procedure for receiving complaints and whether verbal complaints should be considered. It was noted that some towns have complaint forms and will not accept anonymous complaints. To date in Washington a complaint made by a person who did not leave his name or who has asked that his name not be given out has been investigated. Mr. Wadelton cautioned the commissioners to discuss complaints only with staff and not with other Commission members.

Mr. LaMuniere welcomed Mr. Tsacoyannis as the new Wetlands Enforcement Officer, but also noted his disappointment that Ms. Hodza was leaving. He said while she had inherited many problems, she had done a very good job. Mr. Matthews thanked Ms. Hodza for her energy, intelligence, and integrity and her valuable contributions to the Town. The other commissioners concurred.

Mr. Wadelton adjourned the meeting at 9:32 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill, Land Use Administrator