Inland Wetlands Commission

MINUTES Regular Meeting January 10, 2018

7:00 p.m. main level meeting room

MEMBERS PRESENT: Mr. LaMuniere, Mr. Papsin, Mr. Wadelton

MEMBERS ABSENT: Mr. Bennett, Mr. Davis

ALTERNATE PRESENT: Mr. Matthews

ALTERNATE ABSENT: Mr. Kassis

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Mr. Angell, Mr. Sabin, Atty. Kelly, Mrs. Branson

Mr. Wadelton called the meeting to order at 7:03 p.m. and seated Members LaMuniere, Papsin, and Wadelton and Alternate Matthews.

Consideration of the Minutes

MOTION: To accept the 12/13/17 Regular Meeting minutes as written. By Mr. Matthews, seconded by Mr. Papsin, and passed 4-0.

Pending Applications

Angell/47 West Shore Road/#IW-17-39/After the Fact Application to Remove Part of Terrace, Extend Terrace Back into Slope, Construct Stonewall: Mr. Sabin, landscape architect, stated the current application goes back to the 9/26/17 submission, which includes a sequence of construction and plans to pull back the edge of the terrace to create a more organic and naturalistic shoreline. He reiterated his statement made at a previous meeting that in his opinion the proposed work would not have a significant negative impact on the water resource. Mr. Angell circulated photos taken in September and said that modifications to the current application were a result of the Commission’s August discussion. He again explained the proposal, said the terrace would be pulled back to bring it into the bank, and noted the proposed work was in the regulated area. Atty. Kelly stated the Commission had not made a determination regarding where the shoreline is located and said the IW Regulations are not clear on this matter because they do not define “shoreline.” He complained that even so, the Commission had determined the existing terrace extended beyond the shoreline and had denied the previous application, but had not advised the applicant where the shoreline is. Using the 694 elevation definition of shoreline as defined in the Zoning Regulations was discussed. Mr. Angell said this is what he had used, but Mr. Wadelton noted that while on the last site inspection it had been observed that the water level was half way up the 694 elevation stakes put in by Mr. Alex, surveyor. Mr. Angell said he thought he had been directed to use the 694 elevation, but Mr. Wadelton responded that it had not been the Commission who had brought that up. Atty. Kelly stated the IWC would be in direct conflict with the Zoning Regulations if it made an alternate finding re: the location of the shoreline. The water level of the lake as controlled by the spillway was discussed. Mr. Wadelton noted that regardless of the location of the shoreline, the site was in the regulated area and the IWC’s interest was to protect the water resource. Mr. LaMuniere stated that Section 11A of the Inland Wetlands and Watercourses Regulations deals with shoreline protection and the location of the shoreline is where it was when the Regulations were first adopted in 1974. Mr. Angell said he owns 600 ft. of frontage on the lake and the area covered by the terrace is only 5% of that frontage. He agreed with Mr. Sabin that there would be little impact to the lake if the terrace on this small area was pulled back, adding that he thought pulling back the terrace was what the Commission had recommended. Mr. LaMuniere responded that the Commission had not made any recommendations. Mr. Angell said he understood the time limits for consideration of the current application. Referring to a photo of 47 West Shore Road taken on 9/12/17, he asked if it would be acceptable to cut into the bank and push back the front of the terrace. Mr. Wadelton said the Commission could consider such an application if the proposed work was out of the lake and if complete and detailed plans, which included a specific construction sequence and erosion and sedimentation control measures, was submitted. Mr. Angell said a revised proposal would be similar to the current proposal, but moved 2 feet farther back from the lake. Mr. Matthews said he thought the discussion about the exact location of the shoreline was irrelevant, noting that section 11A.01 of the Regulations defines the shoreline not as a line, but as an ecotone transition area between the land and the water. He said this area could extend many feet beyond the location of the terrace and that it is the IWC’s job to ensure this area is left undisturbed in its natural state. Although Mr. Angell objected, Mr. Matthews said the terrace acted as a wall retaining dirt behind it and said the Regulations prohibit retaining walls in this area. Referring to photos in the file, Mr. Matthews stated the top of the original natural rip rap was along the line of the interior edge of the existing terrace and therefore, compliance with the enforcement order meant the complete removal of the terrace and the reinstallation of the rip rap as it was prior to the work being done. Mr. LaMuniere referred to the 11/21/17 minutes, which recorded him as saying that the terrace had been built out into the lake and that the disturbed area must be restored to exactly what it had been. Mr. Angell noted the restoration order was pending the outcome of the two applications he had submitted and that if the current application was denied, the order would be in effect, but the water level was not low now so that the restoration work could be done. Mr. Ajello stated the order did not require the restoration to be done during low water levels, but Atty. Kelly said it did. Mr. Angell thought it would be less detrimental to the lake not to dismantle the terrace now during high water if there was a chance the Commission might approve a subsequent application; that disturbing the area twice could result in greater impact. Mr. Matthews and Mr. LaMuniere again briefly explained what restoration they thought was required. Mr. Wadelton clarified that the question was whether if the current application was denied, would the IWC delay enforcement until a subsequent application could be acted on. Mr. Matthews said that question was difficult to answer because he did not know exactly what would be proposed. The terms of the enforcement order were debated by Mr. Ajello and Atty. Kelly, who stated Mr. Angell was now in compliance with the order because an extension, which stated the restoration work must be done during low water, had been granted. Atty. Kelly questioned Mr. Matthews several times regarding whether he thought the area where the terrace had been built had been in its natural state prior to its construction. Mr. Matthews stated that as the defined by the Regulations as being the state of the shoreline at the time the Regulations were adopted, he believes that it had been in its natural state. Atty. Kelly then asked if Mr. Matthews thought the same area had evidence of spawning, wetlands plants, etc. prior to construction. Mr. Papsin, Mr. LaMuniere, and Mr. Matthews stated this was not relevant. Mr. Wadelton stated that any extension into the water body was clearly contrary to the Regulations. Atty. Kelly asked per section 11A.03, if the applicant proposed a stone terrace that in the opinion of the Commission was not a retaining wall, did the Commission agree that would not be prohibited. Mr. Wadelton stated it is the intent of the Regulations to prohibit vertical seawalls, but also that any extension out into the lake is prohibited. Whether the IWC would insist on the immediate removal of the terrace was discussed again. Mr. Wadelton proposed to deny the application due to insufficient information because there was no detailed plan, but to delay compliance with the enforcement order until a new application with a detailed plan and written consent from the Lake Waramaug Assoc., holder of the conservation easement on the property, had been submitted. Atty. Kelly disagreed that the Lake Waramaug Assoc. holds an easement on the property and a brief discussion about the easement and the state law regarding conservation easements followed.

MOTION: To deny Application #IW-17-39 submitted by Mr. Angell to remove part of the existing stone terrace, extend the terrace back into the slope, and construct a stonewall at 47 West Shore Road for lack of information and to delay compliance with the enforcement order until the applicant submits a complete and detailed application within 30 days. By Mr. Papsin, seconded by Mr. LaMuniere, passed 4-0.

Cornelio/101 West Shore Road/#IW-17-51/Raise Deck, Rebuild Stairs, Replace Windows: It was noted the commissioners had no concerns about the proposed work and the applicant had been advised it was not necessary to attend the meeting.

MOTION: To approve Application #IW-17-51 submitted by Mr. Cornelio/101 West Shore Road to raise the deck, rebuild stairs, and replace windows per the hand written plan, “Sketch of Proposed Exterior Work Cornelio Residence,” dated 12/13/17; the permit shall be valid for 2 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, and 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. LaMuniere, seconded by Mr. Papsin, passed 4-0.

New Application

Johnson/19 East Shore Road/#IW-18-01/Repair Septic System: Mr. Neff, engineer, explained the approximate quarter acre property’s western boundary is the middle of the East Aspetuck River and that the existing cesspool would be replaced with a modern septic system. He said that due to the small size of the cesspool, the existence of ledge, the slope of the land toward the river, and cracks in the retaining wall along the river, he suspected the cesspool drains into the Aspetuck. He presented his plans, “Soil Erosion and Sediment Control Plan,” dated 11/21/17 and revised to 12/24/17 and “Septic System Replacement Plan,” dated 11/16/17 and revised to 12/23/17. Mr. Neff referred to a cross section on the plan and stated an area 37 ft. X 16 ft. X 6 ft. deep would be filled with sand for the new system. Prompted by questions from Mr. Matthews, Mr. Neff discussed the soil types and ledge at the site, the depth of the soil testing, and the adequacy of the proposed system. Mr. Wadelton noted that the state Dept. of Public Health and subsequently, the Town Sanitarian, had approved the proposed system. Mr. Matthews voiced his concern about whether the new system would protect the watercourse. Mr. Neff replied the new system would be a great improvement over the cesspool that is there now. Mr. Matthews recommended that when the machinery is on the site, that the test hole is dug 3 feet deeper to make sure acceptable soil types continue down to that level. Mr. Neff briefly discussed the erosion control plan and sequence of construction, which, he said, provide for the protection of the river. He also noted that if the contractor encountered problems when installing a pipe behind the wall, that either he or the Town Sanitarian would be consulted. Mr. Neff said the commissioners could inspect the site at their convenience.

Other Business

The Gunnery, Inc./22 South Street/Soccer Fields/Release of Performance Bond: Mr. Ajello noted this matter was fully addressed in his 1/10/18 activity report. Mr. Allan, environmental consultant, had inspected the site, but could not determine whether the disturbed areas were completely stabilized due to snow cover. It was noted that only half an acre of the 12 acre site was in question. Mr. Allan and Mr. Ajello recommended the return of $70,000 of the $75,000; retaining $5000 to ensure the remaining half acre is stabilized.

MOTION: Regarding The Gunnery, Inc./22 South Street/ #IW-11-40: to return $70,000 of the performance bond; the remaining $5000 to be held until written confirmation is received from Mr. Allan, environmental consultant, that the disturbed areas are completely stabilized. By Mr. Papsin, seconded by Mr. LaMuniere, and passed 4-0.

Activity Report: Mr. Ajello stated all construction sites were in good shape.

The meeting was adjourned at 8:38 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill Land Use Administrator