Inland Wetlands Commission

Regular Meeting MINUTES November 21, 2017

7:00 p.m. Main Level Meeting Room

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

ALTERNATE PRESENT: Mr. Matthews

ALTERNATE ABSENT: Mr. Kassis

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Atty. Kelly, Mr. Sabin, Mr. Charles, Mr. Towne

Mr. Wadelton called the meeting to order at 7:02 p.m. and seated Members Bennett, Davis, LaMuniere, Papsin, and Wadelton.

MOTION: To include the following subsequent business not already posted on the agenda: VI. Other Business: A. Straw Man, LLC./135 Bee Brook Road/Site Development Plan Review per 2010 Condition of Approval. By Mr. Papsin, seconded by Mr. LaMuniere, and passed 5-0.

Consideration of the Minutes

The 11/8/17 Regular Meeting minutes were accepted as corrected. On page 1, it was noted that Mr. Papsin was absent. At the bottom of page 5 under Allin Cottage, LLC., line #2, “driven by” was changed to “rode by.”

MOTION: To accept the 11/8/17 Regular Meeting minutes as corrected. By Mr. Papsin, seconded by Mr. Davis, and passed 5-0.

Pending Applications

Angell/47 West Shore Road/#IW-17-38/After the Fact Application for Stone Terrace and #IW-17-39/After the Fact Application to Remove Part of Stone Terrace, Extend Terrace back into Slope, Construct Stonewall: Mr. Wadelton gave the commissioners time to read the two documents that had recently been submitted; the 11/18/17 memo from Atty. Olson and the 11/21/17 letter from Atty. Kelly. He explained that although Mr. Matthews was not seated, he could participate in the discussion until a motion was made and deliberations began. Mr. Wadelton made several observations regarding Atty. Kelly’s letter, which included: 1) He had made no claims he was an expert. 2) The notice of violation (NOV) did not order the removal of the terrace, but the enforcement order did and is still in effect, 3) In June the applicant had agreed the base of the terrace was below water level, that he would wait until the shoreline was dry at the base to remove it, and the Commission agreed to defer action until 9/15/17. 4) Dr. Kortmann had previously made general statements regarding techniques on how to protect the lake, but had not acted as a consultant on this matter. Mr. Wadelton and Atty. Kelly disagreed about the facts of the case.

Mr. Ajello reviewed the purpose of the NOV and said Atty. Kelly was correct that it did not order the terrace to be removed. However, he stated that the enforcement order, a cease and restore order, required Mr. Angell to submit an application to restore the site to its pre disturbance conditions, which would require removal of the terrace. Mr. Davis said that Mr. Angell had agreed the terrace would be removed, but noted this had not been accomplished. Atty. Kelly then gave a brief history of what had previously transpired and of the applications submitted. He stated that the terrace had been built when the water level was such that the shoreline was dry and that the shoreline was not natural, but was manmade due to shoreline reconstruction work by a previous owner. He noted, too, that the applicant had disagreed with the Commission’s view that the terrace had been built out into the lake and so had reserved the right to return before 9/15 with an after the fact application to retain the terrace. He said the Commission had approved a motion to extend the time period in which the terrace had to be removed and that during that extended time the applicant had submitted a professional survey and the applications now under consideration. Atty. Kelly thought consideration of the two current applications had been waylaid due to discussions about the violation. He said his client agreed the terrace was in an upland review area, had been built without a permit, and is a regulated activity. He said the map with surveyed points that he had submitted demonstrated that the terrace had not been built out into the lake and was not a retaining wall. Mr. Wadelton pointed out that water covered the terrace base. Atty. Kelly noted he had submitted many photos, which showed that except for April and May, water never touches the terrace. Mr. Ajello said the stairs were under water.

Atty. Kelly said the shoreline must be defined using a reasonable standard in a way that can be applied to all of the properties around the lake. He said surveys matter and that he had submitted an updated survey, which showed the terrace was off the shoreline. He then described the two pending applications; the first to allow the terrace to remain and to put additional rip rap along the lakeside slope down to the water and the second to scale back the lakeside edge of the terrace and move it farther from the shoreline, sliding it into the bank and to add rip rap along the slope to the lake. He asked the Commission to review these applications as if they had been submitted before the terrace had been installed. Mr. Wadelton agreed that was what the Commission would do. Atty. Kelly noted the terrace comprised only 4% of the shoreline and asked the Commission to consider the property in its entirety when making its decision.

Mr. Wadelton stated that if part of the terrace sits in the water for a portion of the year, then it extends into the lake. Atty. Kelly stated that the water level is controlled by engineering and so noted the water level could not go higher than the height of the spillway; 693.58. He said since the IW Regulations do not define the shoreline, the applicant had provided information to help the Commission to do so. He added that even if the Commission used the 694 elevation to define the shoreline, per the survey by Mr. Alex, the terrace still did not extend past the shoreline. Mr. Bennett referred to the photo, Exhibit #5. Atty. Kelly said it showed water over the rip rap at the base of the terrace, but not over the terrace. Mr. Bennett stated that the shoreline was where the water meets the shore and pointed out the water was up against the base of the terrace and there were water level marks on the face of the terrace. Mr. Wadelton and Mr. Papsin agreed these were visible. Mr. LaMuniere stated that water had lapped against the platform. Atty. Kelly stated the location of the shoreline does not allow the Commission to usurp Mr. Angell’s property line.

Mr. Ajello said the enforcement order was to restore the area to its pre disturbed condition, but he had not seen an application to do so. Atty. Kelly said that permit was granted in May. Mr. Wadelton noted the Commission had agreed to suspend the order until the two current applications had been considered.

Mr. LaMuniere referred to Section 11A of the Regulations and read from 11A.01 that undisturbed shoreline left in its natural state is critical to the long term ecological health of large water bodies. He noted that rip rapped shoreline barriers facilitate the interface between land and water. He then read from past minutes that the terrace had been built on loose rip rap that had been in place. He said he thought the terrace had been built out into the lake and that the disturbed area must be restored to exactly what it had been.

The conservation easement was briefly discussed. Mr. LaMuniere said the entire length of the property was in the easement area, while Atty. Kelly said the easement document defined the easement as a much smaller area only 25 ft. in width. Mr. LaMuniere read the 11/7/17 memo from the Lake Waramaug Assoc. (LWA), the holder of the easement. Atty. Kelly stated this memo acknowledged receipt of the notice of the application, but did not say the LWA determined the work done had been in violation of the easement and so the Commission could proceed and process the applications.

Mr. Sabin, landscape architect, urged the Commission to look at the functions and values of the resource. He said there had been a loose rubble stone rip rapped sloped shoreline down to the lake whose elevation fluctuates. He said the work done was the installation of a 10 ft. X 20 ft. terrace built with flat stones that had been reworked within that rip rap and did not constitute the construction of a retaining wall. He noted the shoreline had not been natural prior to the installation of the terrace, but it had been stabilized with the rip rap to attenuate the wave action. He thought the primary question to consider was, what was the character of the face of the structure where it meets the rip rap. He said the applicant maintains it is not a vertical wall and has proposed to reinstate the boulder rip rap shoreline. He said if he had been asked to design a terrace that would not disturb the functions of the lake and would not have a visual impact, this is the terrace he would have designed. He stressed that the terrace built did not significantly adversely impact the functions and values of the wetland.

Mr. Bennett returned to the discussion about photo Exhibit 5. Mr. Papsin stated that prior to the construction of the terrace, the rip rap rubble was under water. Mr. Bennett thought that if additional rip rap was added, it would be submerged and would not serve the purpose intended.

Mr. LaMuniere noted that in the past the Commission has been very careful to protect the shoreline. He noted a recent denial for a similar structure and feared that approval of the terrace would set a precedent. He thought it was important to restore the site to the pre existing rip rap line. Mr. Wadelton presented photos dated 1/23/17 and Nov. 2015 to show the pre existing rip rap compared to what had been built. Mr. LaMuniere and Mr. Papsin thought the discoloration of the rocks was a good indicator by which to define the shoreline. Mr. Davis agreed. Mr. Matthews stated the undisturbed shoreline was critical to the health of the lake, the problem being that the shoreline was not defined. He thought then, that the Commission was not bound by definition, but by the facts of each case. He referred to Section 11A. He said he had observed water lapping against the vertical wall when he had driven by. He thought it was important for the Commission to do what was necessary to protect the transition area between the lake and the land. He noted that although he was not sure what the natural undisturbed shoreline was, it did legally exist because it was altered without a permit.

Mr. Wadelton said the Commission would deal with one application at a time, the first being #IW-17-38 to allow the terrace to remain as is. Atty. Kelly noted the application had been revised to include the addition of rip rap to provide a sloped rock surface down from the terrace. Mr. Sabin said this revision to add rip rap would provide a natural irregular edge. The plan dated 10/2017 for application #1 was reviewed and Mr. Sabin read his 10/24/17 memo, which accompanied the application. The Commission again reviewed exactly what was being applied for.

Mr. Davis noted the Commission had dealt with an application for the Collins property and had denied a similar structure. Mr. Matthews asked, was it not true that the stone terrace and rip rap both disturb the shoreline and alter its natural state. Mr. Sabin again stated that that shoreline here was not natural; it was manmade. Mr. Ajello thought “pre existing” shoreline was a more accurate term. Looking at the above referenced photos, Mr. Matthews said it was clear the terrace and rip rap do disturb the natural shoreline and so it would violate Section 11A.01 if the Commission were to approve the application. He found no basis for approval. Mr. LaMuniere said the photos show that with the construction of the terrace, the interface area disappears. Mr. Papsin said he would not approve the application based on the proposed deposition of material.

Mr. Wadelton noted that the Commission usually considers feasible and prudent alternatives and these was briefly discussed. He said while it may be good to install rip rap to attenuate wave action, depositing additional material into the lake was not good.

MOTION: To deny Application #IW-17-38 submitted by Mr. Angell to permit the existing stone terrace and installation of rip rap at 47 West Shore Road. By Mr. Bennett, seconded by Mr. Davis.

Mr. Bennett said the proposed activity was to place additional rip rap in front of the existing terrace having been constructed with a vertical face and he had not heard any evidence that the placing of the rip rap would have a positive or negative impact on the ecology of the lake and therefore there was no basis for a decision. He noted the existing structure with its vertical face had been constructed on top of rip rap and that the water laps up against the vertical face. He noted Section 11.A.03 prohibits the erection of new shoreline retaining walls and that Mr. Sabin’s 9/26/17 letter referred to the vertical face as a retaining wall. He concluded that the vertical face was the same as a retaining wall for the purposes of the Commission.

Mr. Wadelton agreed with Mr. Bennett, said he was concerned about the deposition of material into the lake, and said it had been determined there was at least one feasible and prudent alternative.

Mr. LaMuniere stated approval of the application would approve the modification of the pre existing shoreline, which the Commission has in the past been consistently careful to protect.

VOTE: 5-0.

Mr. Wadelton noted the Commission must still deal with the second application, #IW-17-39 and said the Commission should consider it on its own merits as a new application.

MOTION: To table consideration of Application #IW-17-39 until the next meeting when the Commission will have had time to properly vet all of the application material. By Mr. Davis, seconded by Mr. Papsin.

Mr. Matthews asked if another site inspection could be scheduled. Mr. Bennett also thought this would be beneficial. A site inspection of 47 West Shore Road was scheduled for Monday, December 4, 2017 at 3:30 p.m. Mr. Wadelton recommended the commissioners review the file prior to the next meeting.

Mr. Wadelton noted there were two other pending applications which could not be acted on this evening due to the state requirement that the Commission must wait 14 days from the date of receipt of an application before acting on it.

Other Business

Straw Man, LLC./135 Bee Brook Road/Site Development Plan Review per 2010 Condition of Approval: Mr. Wadelton said he has recused himself from discussion of this matter in the past, but noted the Commission would not be acting tonight and so asked Mr. Charles if he would object to him remaining at the table. Mr. Charles did not object. Mr. Charles read condition #7 of the 2010 Straw Man approval and presented the plan, “Proposed Sanitary Disposal System Plan,” dated 10/24/17, by Arthur H. Howland and Assoc. He pointed out what had originally been approved and the location of the single family dwelling, driveway, and septic system now proposed. Mr. Ajello noted the lower part of the driveway had not yet been completed. Mr. Charles explained that neighbors had not been happy with the proposed retaining wall because they feared it would impact their septic system so the driveway had been moved to the left so that the wall was no longer needed. As for the wall on the other side of the brook, he explained the driveway grade was not as steep as he had thought it would be and so the wall would probably not be necessary. He said he would apply for a revision to the permit if it will not be built. The proposed grassed swale with evenly spaced stone weirs to slow the velocity of the runoff was discussed. It was noted the house would have gutters to direct runoff to a recharge system. Mr. Matthews asked if trees would be cut to install the driveway. Mr. Charles stated that most of the clearing required had already been done. He noted the owner had retained Mr. Branson, forester, to do a baseline ecological report and that he was developing a stewardship plan. Mr. Charles said that only a few more trees would have to be removed for the driveway. Mr. Matthews noted the steep slope and recommended he keep as many trees as possible. The area proposed for stockpiles and the location of the seepage envelope were noted. Mr. Wadelton explained the reason why he had recused himself.

Enforcement

Mr. Ajello briefly reviewed his 11/21/17 activity report.

The meeting was adjourned at 9:05 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill, Land Use Administrator