Inland Wetlands Commission

MINUTES

Regular Meeting

November 8, 2017

7:00 p.m. Main Level Meeting Room

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

ALTERNATE PRESENT: Mr. Matthews

ALTERNATE ABSENT: Mr. Kassis

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Atty. Kelly, Ms. Collins, Mr. Neff, Mr. Kalur, Mr. Charles, Mrs. Silk, Atty. Olson

Mr. Wadelton called the meeting to order at 7:03 p.m. and seated Members Bennett, Davis, LaMuniere, and Wadelton and Alternate Matthews for Mr. Kassis. He noted there was no subsequent business to add to the agenda.

Consideration of the Minutes

The 10/25/17 Regular Meeting minutes were accepted as corrected. In the bottom line on page 2, “surface” was changed to “shoreline.”

MOTION: To accept the 10/25/17 Regular Meeting minutes as corrected. By Mr. LaMuniere, seconded by Mr. Davis and passed 5-0.

Pending Applications

Collins/113 Bee Brook Road/#IW-17-40/Addition to Existing Dwelling: The revised plan, “Site Plan for Proposed Addition,” by Berkshire Engineering and Surveying, LLC., dated 8/1/17 and revised to 10/30/17 was reviewed. The route of the stormwater drainage had been added. The roof runoff would be picked up by gutters and directed to the infiltrators through a 4 inch pipe. Mr. Ajello stated he had reviewed the revisions and had determined they were OK. Mr. Matthews asked how the existing roof runoff was handled. Mr. Ajello said currently there was no drainage system for the roof runoff, but that the proposed system would handle runoff for the entire building. The proposed system was discussed and the locations of leaders and the dry well were noted. Ms. Collins requested a 5 year permit.

MOTION: To approve Application #IW-17-40 submitted by Ms. Collins for an addition to the existing dwelling at 113 Bee Brook Road per the site plan prepared by Berkshire Engineering and Surveying, LLC., dated 8/1/17 and revised to 10/30/17; the permit shall be valid for 5 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. Davis, and passed 5-0.

Harpel/26 Parsonage Lane/#IW-17-48/Resurface Tennis Court, Install Temporary Access: Mr. Wadelton noted the applicant had been advised that it would not be necessary to attend this meeting if there were no further questions from the commissioners.

MOTION: To approve Application #IW-17-48 submitted by Mr. Harpel to resurface the tennis court and for a temporary access at 26 Parsonage Lane per the “Tennis Court Improvement Plan,” by Jason Dismukes Consulting Engineers, LLC., dated 10/24/17; 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. Davis, seconded by Mr. LaMuniere, and passed 5-0.

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: Atty. Kelly represented Mr. Angell. He submitted his 11/8/17 letter questioning the legal status and applicability of Town Ordinance #1401. This letter had 17 attachments, which included a transcript of the Angell portion of the 10/25/17 meeting. He then asked Mr. Wadelton to either recuse himself due to what he called Mr. Wadelton’s conclusory remarks made at the last meeting or to retract those statements. Mr. Wadelton refused to recuse himself and asked what exactly what Atty. Kelly was asking him to retract. Atty. Kelly read from the 10/25/17 transcript and said he thought what Mr. Wadelton had stated was incorrect and showed prejudice. Mr. Wadelton explained that what he had meant at the last meeting when he had said that the Commission could not vote on the application was that it needed time to review the new information that had been submitted. He then submitted a written statement dated 11/8/17 in which he stated it was his opinion that the Commission should continue to determine the shoreline by using the average seasonal high water line. Mr. Kelly thanked him for this clarification. Atty. Kelly noted that today was the deadline for acting on the two applications. Mr. Bennett noted commissioners had not yet had time to read the 11/8/17 letter and attachments. Atty. Kelly said he no longer thought the information in the letter was relevant and offered to either read it to the Commission now or to grant an extension. He added that he would not withdraw the applications. It was the consensus that the commissioners needed time to review all of the materials submitted. Atty. Kelly recommended the Commission request an exhaustive legal review on behalf of the land use commissions regarding the legal status of Town Ordinance #1401, “Shore Line of Lake Waramaug,” what to do in cases where the Ordinance conflicts with other regulations, whether the Ordinance was ever amended or superseded, what is the definitive shoreline elevation of Lake Waramaug, etc. Mr. Wadelton said he considers the Ordinance to be superseded by the Inland Wetlands and Watercourses Act. Atty. Kelly stated that if the Commission agreed the Ordinance was not applicable, he would grant a 65 day extension so that the commissioners would have time to review all of the information just submitted. Mr. LaMuniere asked if the Commission’s Regulations override the Ordinance. Atty. Olson said she thought this was so, but said she had not researched the issue. Mr. LaMuniere noted that Mr. Angell had carried out a regulated activity without a permit, that there had been a show cause hearing on the violation, and that the fine had been paid. He thought the Commission should proceed under its Regulations. Atty. Olson agreed the Commission should review the two applications with regard to both its Regulations and state law. Mr. Wadelton stated the information submitted must be reviewed because there was still a disagreement about whether or not the terrace had been built out into the lake. Atty. Kelly submitted a written request for a 65 day extension for the consideration of both applications. Mr. Matthews asked when the Commission would discuss what it should do to deal with the issues raised. He asked 1) In Section 11.A.1 of the Regulations the importance of the undisturbed natural shoreline is noted, but how is the undisturbed shoreline defined without knowing its elevation? 2) How should the Commission resolve the conflict between the Ordinance and the Zoning Regulations? He thought the IWC should get legal advice now rather than later in the process. Mr. Wadelton asked the commissioners to review all of the materials submitted and to put their questions in writing to be forwarded to counsel. Mr. Matthews asked if the Ordinance was the determinant document. Mr. Wadelton said he did not think so. He said the question to be resolved was whether the 964 elevation was the shoreline or whether it was just a nominal reference point. Mr. LaMuniere noted the level of the shoreline varies, questioned whether it was relevant in this matter, and reminded the Commission that it had requested the terrace be removed when the water level was low, but this had not been done. Discussion continued regarding the purpose of the Ordinance and what authority establishes the level of the shoreline. Mr. Davis agreed with Mr. Matthews that a legal opinion was needed. Mr. Wadelton noted the Commission has the authority to regulate activities in the upland review area as long as it applies the Regulations in a consistent and impartial manner. He also said he believes the Commission has the authority to determine for its own purposes where the shoreline is. He asked Atty. Olson to research the questions already raised and said he hoped the Commission would be ready to act at the next meeting.

New Applications

Columbia and Farmer/55 Rabbit Hill Road/#IW-17-49/Addition to Dwelling: Mr. Kalur, agent, presented the topographic survey map by Smith and Company Surveyors and Engineers, Inc., dated 7/29/17 and revised to 5/30/17 and floor plans entitled, “Proposed Footprint Increase,” by F&H Architectural Design and Consulting, LLC., dated 9/25/17. He pointed out that the Washington-Warren town line runs through the existing dwelling. He proposed to enclose an existing patio area between two existing sections of the dwelling within 100 feet of wetlands on the property. A frostwall will be constructed, but it will be no closer to the wetlands than the existing house. Mr. Kalur stated the proposed addition would expand the footprint to include the patio and would be a 56 sq. ft. increase. Mr. Davis asked if any fill would be brought in. Mr. Kalur responded, no, that the material excavated would be used for the back fill. Mr. Wadelton asked if the line of silt fence was the limit of disturbance. Mr. Kalur said it was and noted the immediate area around the house was pretty flat. Mr. Ajello noted that silt fence would be required for the stockpile as it would be located on a slope above the pond. When Mr. Kalur advised the Commission that the project would start in late March, Mr. LaMuniere recommended the silt fence be backed up with staked hay bales for protection during the spring thaw. He asked Mr. Kalur to add the staked hay bales to the plan. Mr. Ajello said this could be made a condition of approval. There were no further questions and so Mr. Kalur was advised he would not have to attend the next meeting.

Bol/44 Slaughterhouse Road and Christian Street/#IW-17-50/Single Family Dwelling, Septic System, Driveway: Mr. Neff, engineer, noted the location of the property at the corner of Christian Street and Slaughterhouse Road and presented his plan, “Soil Erosion and Sediment Control Plan,” dated 11/2/17. He stated there is a regulated area on the property due to a watercourse that flows along the eastern boundary on the adjacent property. Mr. LaMuniere noted part of the proposed dwelling would be located in the upland review area. Mr. Neff said the property had a gentle slope and was pretty much cleared; the only trees to be cut would be for the installation of the driveway. An aerial photo of the property was reviewed. Mr. Neff said the soil excavated for the foundation would be reused on site and that the stockpile would be located on a level area. He pointed out the proposed silt fence and limit of disturbance line and said there was low erosion potential. It was the consensus a site inspection was not necessary. Mr. Ajello advised the Commission it could not legally act on the application at the next meeting because it would not be 14 days from the receipt of the application. Mr. Neff noted he had already advised the applicant that the Commission would not act until December.

Enforcement

Activity Report: Mr. Ajello briefly reviewed his 11/8/17 report. In addition, the following matter was briefly discussed.

Allin Cottage, LLC./220 West Shore Road: When he had recently driven by, Mr. Matthews had observed that dirt had been piled on top of the silt fence, which had not been backed by staked hay bales. Mr. Ajello said when he had made an inspection, staked hay bales had been installed and said he would inspect this site regularly.

Mr. Wadelton reminded the commissioners of CACIWC’s annual meeting/seminar to be held on November 18.

Mr. Wadelton adjourned the meeting at 8:27 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill, Land Use Administrator