Inland Wetlands Commission

MINUTES Regular Meeting March 14, 2018

7:00 p.m. main level meeting room

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

MEMBER ABSENT: Mr. Davis

ALTERNATES PRESENT: Mr. Kassis, Mr. Matthews

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Mr. White, Mr. Cava, Mr. Couch, Mr. Temple, Mr. Hayden, Mr. Charles, Mrs. Solomon, Mr./Mrs. Buonaiuto

Mr. Wadelton called the meeting to order at 7:00 p.m. and seated Members Bennett, LaMuniere, Papsin, and Wadelton, and Alternate Matthews.

Consideration of the Minutes

MOTION: To accept the 2/28/18 Regular Meeting minutes as written. By Mr. Papsin, seconded by Mr. Bennett, and passed 5-0.

The 3/6/18 Regional School District #12 site inspection minutes were accepted as corrected. It was noted that Mr. Kassis did not attend the inspection, but Mr. LaMuniere did attend.

MOTION: To accept the 3/6/18 Regional School District #12 site inspection minutes as amended. By Mr. Papsin, seconded by Mr. Bennett, passed 5-0.

Pending Applications

The Gunnery, Inc./Lake Waramaug/#IW-18-03/Installation of Anchors and Cables for Race Course and Removal of Existing Anchors: Mr. Wadelton noted the Commission is waiting for a specific plan on how the existing anchors will be removed.

101 Wykeham Road, LLC./101 Wykeham Road/#IW-18-04/Inn and Appurtenances: A site inspection was scheduled for Tuesday, March 27, 2018 at 4:00 p.m.

Komisar/154 New Milford Turnpike/#IW-18-08/Drill Well: It was noted the application had been thoroughly reviewed at the last meeting.

MOTION: To approve Application #IW-18-08 submitted by Mr. Komisar to drill a well at 154 New Milford Turnpike per the plan by Berkshire Engineering and Surveying, LLC., dated 3/13/17; 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, 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. Papsin, seconded by Mr. LaMuniere, passed 5-0.

Regional School District #12/159 South Street/#IW-18-09/Ag STEM Plans: Mr. Wadelton noted that since the last meeting a site inspection had been conducted and responses from the applicant to questions that had been previously raised had been circulated. Mr. Couch, engineer, stated the responses included a copy of the comprehensive application to the DEEP for the stormwater discharge permit. Mr. Wadelton said the DEEP requires more reporting than the Commission normally requires. Mr. Papsin said most of his questions had been answered in the report circulated, but asked if there was a way to eliminate the pool backwash system. Mr. Couch responded that the surplus water had to be dealt with and the system had been designed to accommodate the current process. The map, “Erosion and Sedimentation Control Plan,” Phase I, by Kaestle Boos Assoc., dated 3/12/18 was reviewed. In response to questions by Mr. Matthews about the conduits draining to the pond, Mr. Couch stated the three existing conduits are fed by surface runoff and would be replaced with new pipes, which would also handle the surface runoff from the hard surfaced parking areas to the side and in front of the main building and would mimic the existing hydrology on the site. Mr. White said they would also accommodate drainage from the roof leaders and noted the runoff would flow through the water quality treatment system before entering the pond. Mr. Couch explained that with treatment, suspended solids and up to 80% of larger material would be “deposited out” and that no chemical treatment was proposed. Mr. Bennett asked if hydro-carbons would be removed. Mr. Couch said the state recommends using a vortex system like the one proposed to remove hydro-carbons. He briefly explained how the vortex or swirl system operates and stressed that routine maintenance is required. Mr. Matthews pointed out a conduit, which would not be connected to a separator. Mr. Couch said that was not needed in this case because there would be a treatment train where the runoff would flow over pervious surfaces such as grassed areas and swales and then to a catch basin. Mr. Matthews asked if there had been an analysis of what chemical pollutants were present and how many animals would be using the field. He objected that the application did not specify the number or species of animals that would be housed on site and voiced his concern that animal wastes that were not cleaned up would end up in the pond. Mr. Wadelton said the number and type of animals was outside the Commission’s jurisdiction. Mr. White. Landscape architect, said these issues had been addressed in his 3/13/18 letter; that per the Ct. general statutes grazing and agriculture use is permitted in wetlands and regulated areas, the pond is an essential part of the overall plan and so care would be taken not to harm it, and the proposed grassy surfaces and swales would slow and filter runoff and allow it to infiltrate. He also stated that as part of their education, the students would learn best management practices. Mr. Matthews thought the annual clean up/management system for control of manure in the fields should be specified as part of the permit because it would likely impact the pond if not maintained properly. Mr. Matthews noted there was a second system to take waste from the new building to the septic field and asked if this was a totally independent system. Mr. Couch said it was, noting it would handle the wastes from the bathrooms, animal wash areas, and floor drains, all of which were indoors and covered and so would not drain into the stormwater management system. Mr. LaMuniere asked about the three proposed catch basins into which the runoff would drain before it reaches the pond. Mr. Couch said these would be cleaned after 6 months and based upon the amount of the accumulated pollutant load found at that time, the required frequency for cleaning them out would be determined. Mr. Matthews asked if there was a plan to restore the pond to wetlands. Mr. Couch said the existing pond conditions would be maintained and noted it currently serves as a fire pond. Mr. Temple, soil scientist, stated the area had not been wetlands before the pond was created in 1973. Mr. Matthews asked if a biological inventory had been done to determine what life exists in the pond. Mr. Couch said this had not been done. Mr. Matthews noted that 3.5 acres of impervious surfaces were proposed and asked if permeable surfaces had been considered. Mr. White stated that due to subsurface conditions and the poorly drained soils in the area, permeable surfaces would not work efficiently. Mr. Couch agreed, saying that due to the subsoil conditions, a permeable surface would allow groundwater to rise up to the surface. He also stated the purpose of the pavement was to provide a safe surface for vehicle and pedestrian use, ease of plowing, etc. Mr. Matthews asked about the proposed improvements to the south side of the main building. Mr. Cava, chairman of the building committee, said demonstration crops would be grown in that area. Mr. Matthews asked where the fertilizers would drain to. Mr. Couch responded that the surface water would run in the general direction over the slope and into the woodland. Mr. Matthews asked about the cuts required on the steep slope for the installation of the driveway. Mr. Couch responded that the cut would be made in a less steep area and that the driveway would sit at the top of the slope. He added it would be pushed out 20 feet and would require regrading down the slope. Mr. Matthews asked why the driveway could not be installed at the top of the slope so that cuts were not required. Mr. Couch said the area at the top of the hill was needed for school activities and noted that only standard construction practices would be used when installing the driveway. He also stated the existing slope is in excess of what the finished grade will be; it will be a 2:1 slope from the edge of the driveway to the woodland canopy. Mr. Papsin and Mr. Bennett said they were satisfied with the plans and the answers provided. Mr. Matthews said his questions should be answered and the vote not taken until the next meeting. Mr. LaMuniere said there would be no significant impact to the fire pond and thought the questions raised by Mr. Matthews had been satisfactorily answered. Mr. Wadelton noted the Commission had received testimony that the pond was not a significant wetland resource. He asked if there were any other issues that should be addressed. Mr. Matthews said he would state his objections for the record.

MOTION: To approve Application #IW-18-09 submitted by Regional School District #12/159 South Street for the Ag STEM project per the plans, “Erosion and Sedimentation Control,” Phases 1-3, 4 sheets, by Kaestle Boos Assoc., Inc., dated 3/12/18; 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, 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. Papsin, seconded by Mr. Bennett.

A brief discussion followed. Mr. Matthews said he would vote No because he believed that based on the information submitted there was a likelihood of adverse impact to the pond due to the flow of waste into it, the plans did not consider restoration of the wetlands, and he thought the project did not qualify as a farm or as agriculture, but was a school use. Mr. Wadelton noted the definition of agriculture is very broad in the state statutes. He also stated an Inland Wetlands Commission may not deny an application due to the presence of wildlife; that it would have to show that there would be a physical change due to the proposed work that would adversely impact wildlife. Mr. Matthews said it was the applicant’s burden to prove there would be no impairment but that this had not been proven.

Vote: 4-1

New Application

Teicholz/110 Blackville Road/#IW-18-10/Treat Pond: It was noted the application had been officially received although there was no one in attendance to make a presentation. The application was briefly reviewed and it was noted the DEEP application was included in the file. Mr. Ajello was concerned that the pond had no outlet and said he would inspect the site prior to the next meeting. Mr. Wadelton stated that a representative should come before the Commission to explain what chemicals would be used, noting it seemed that a heavy load of herbicides was proposed. Mr. Ajello thought this pond might be a good candidate for dredging.

Other Business

Revision of the Regulations: Mr. Hayden, executive director of the Lake Waramaug Task Force and a certified soil scientist, had been asked to attend the meeting. He discussed the “high water line” and what line around a water body the Commission should regulate from. Mr. Hayden stated he uses an interpretive method to determine the water line because often there are either steep slopes or no wetlands soils in the vicinity. He noted there are several water lines that may be considered such as the average normal water line and the mean high water line, but said he understood the Commission’s need for a specific definition of shoreline that can be applied throughout Town. He suggested that if a water body has a normal, not an emergency, spillway with a known elevation, that could be the high water line. He also offered that in cases where the elevation of the shoreline is in dispute, the Commission could request that he make an inspection and render an impartial third party decision. A general discussion regarding shorelines followed. It was noted that weather conditions such as droughts can affect the elevation of the shoreline. It was also noted that evidence such as erosion, evidence of wave action, and discoloration of stones can be used to interpret the location of the shoreline. Mr. Wadelton stated the Zoning Regulations define the Lake Waramaug shoreline as elevation 694, but said the level of the lake is now a foot above that. Mr. Ajello thought it would be difficult to hold to a rigid line and recommended considering a zone instead that could be interpreted and might vary water body to water body. Mr. LaMuniere stated the Regulations should protect the eco zone, noting it is difficult to draft regulations that cover all kinds of environmental conditions. Mr. Papsin asked if there were tests that could help to determine the location of the shoreline in a grassed or lawn area. Mr. Hayden said he could use a hand auger to test for wetlands soils. When discussing seawalls, Mr. Hayden said Milone and MacBroom had done a manual for the homeowners around Candlewood Lake to address stewardship of the lake. He suggested the IWC might draft regulations that require adherence to the standards specified in this design manual. Mr. Kasiss asked what would happen if two experts disagreed on the location of the shoreline. Mr. Hayden responded that the Commission would then have the right to choose which expert it would believe. Mr. Wadelton noted, however, that the Commission cannot disqualify an expert unless someone on the Commission has credentials, but may choose between two experts who do not agree. Mr. Hayden asked if the Commission understood where its jurisdiction line was. Mr. Wadelton responded that it is 100 feet from the edge of the Lake or further back if there are wetlands soils. Mr. LaMuniere thought the goal of the Regulations should be to protect the natural functions of the lake to the greatest extent possible and to preserve its natural conditions. Mr. Wadelton noted this should be clearly stated in the Regulations and that any proposed language should include that this is within the Commission’s jurisdiction. Mr. Hayden said he would work on draft language. Regarding the definition of seawall, Mr. Hayden said it is a generic term to describe hard armoring and was a “structural stabilizing measure.” Mr. Bennett suggested instead, “hard vertical surface.” Mr. Hayden noted he researched porous pavements; their design, function, and installation, and offered to make a presentation to the Commission. Mr. Wadelton stated first cut and subdivision feasibility reviews are another matter that should be addressed when revising the Regulations. He noted this is a problem when an application is required, but no activity is proposed.

Activity Report: Mr. Ajello briefly reviewed his 3/14/18 report. He noted the IWC should compare applications for renewals of pond treatment permits with what was approved in the original permit and in the DEEP permit, having recently noted discrepancies in one such renewal application. Mr. Matthews asked if the Commission can require homeowners to notify their neighbors when a pond will be treated. Mr. Wadelton said, no, the Commission does not have the authority to make this a requirement, but may ask the applicant to consider doing so. He noted that in the case of a pond with an outlet, the Commission has the authority to require that it remain closed for life span or half life of the chemical.

Other Business

There was a brief discussion regarding who determines whether an activity qualifies as a farm or as agriculture. Mr. Wadelton explained the process and noted the pertaining section of the state statutes is included as the last page of the IW Regulations.

Enforcement

Angell/47 West Shore Road/Unauthorized Lake Shore Construction: The enforcement order is now in place requiring the terrace to be removed and the shoreline restored. Mr. Ajello said a reasonable time period for removal of the terrace should be set and noted a $150 per day fine would be levied if it was not removed by the deadline. Mr. Bennett said he had understood that there could be no activity while the lake level was high. Mr. Ajello pointed out that the enforcement order does not say that. Mr. Papsin noted booms could be installed to protect the lake when the terrace is removed and stabilization work is being done. Mr. Bennett said the least destructive means of removal with proper erosion control measures should be used. Mr. Wadelton said Mr. Angell should submit a plan for the required work and that that plan should be reviewed and approved by the Enforcement Officer. Mr. Ajello will write an enforcement letter for the Commission’s review at the next meeting.

Privilege of the Floor

Mrs. Buonaiuto asked how questions from the public get answered if the public is not permitted to speak at meetings. Mr. Wadelton said questions may be submitted to staff who would either answer them or who would list them under Communications on the next agenda. She also asked about guard rails. Mr. Ajello noted safety was not under the jurisdiction of the Inland Wetlands Commission, but said since the driveway that had been discussed earlier -was an emergency access road, safety would be considered.

Mr. Wadelton adjourned the meeting at 9:25 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill

Land Use Administrator