Inland Wetlands Commission

MINUTES

Regular Meeting

April 13, 2016

7:00 p.m. Main Level Meeting Room

MEMBERS PRESENT: Mr. Bedini, Mr. Davis, Mr. Papsin,

 Mr. Wadelton

MEMBER ABSENT: Mr. LaMuniere

ALTERNATES ABSENT: Ms. Cheney, Mr. McCormack

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Mr. Trinkaus, Mr. Bernard, Mr. Szymanski,

 Mr. Neff, Mr. Criollo

 Mr. Bedini called the Meeting to order at 7:00 p.m. and

seated Members Bedini, Davis, Papsin, and Wadelton.

MOTION: To include the following subsequent business not

 already posted on the agenda: VI. Other Business A.

 Mackesy/233 West Shore Road/Request to Revise Permit

 #IW-15-07/Add Retaining Wall and Steps. By Mr.

 Wadelton, seconded by Mr. Papsin, and passed 4-0.

Consideration of the Minutes

 The March 23, 2016 minutes were accepted as corrected. On page 7, in the 4th line under Palmgren, “…beyond the 100 ft. setback” was deleted and the end of the sentence changed to, “… behind the house outside the upland review area.”

MOTION: To accept the 3/23/16 Regular Meeting minutes as

 corrected. By Mr. Wadelton, seconded by Mr. Papsin,

 and passed 4-0.

Pending Applications

Town of Washington/108 New Milford Turnpike/#IW-16-11/Application of Herbicide: Mr. Bedini noted that the main issue previously raised was whether or not a DEEP permit was required for this work. Mr. Bernard, member of the Conservation Commission, thought it was clear after consulting Ms. Bodner of the DEEP that a permit was not required. Mr. Wadelton countered that a DEEP permit was, indeed, required because the herbicide would be applied to “waters of the state.” Mr. Bernard said it had been clarified that open water meant that when standing, water would seep in around your feet, but said the area in question dries up. Mr. Wadelton read the definition of “waters of the state” from the state statutes, noted it includes marshes, and asked the commissioners if they agreed the area in question was a marsh. Mr. Papsin agreed. Mr. Bernard agreed that if water collects at the time the herbicide is applied a DEEP permit was required, but said otherwise, it was not. Mr. Bernard cited the DEEP and the Conservation Commission’s contractor to support his point, while Mr. Wadelton read from section 22a of the state statutes to support his. Mr. Wadelton was not sure what information the person Mr. Bernard had consulted at the DEEP had based her opinion on. Mr. Bernard noted that if a DEEP permit was granted, the herbicide could be applied to open waters, and so thought it would be safer not to have the permit because the application would have to be more carefully done to avoid the water. Mr. Ajello stated that 1) it was clear the area in question is a drainage area through which water flows year round and 2) he would expect the contractor to carefully apply the herbicide no matter what type of permits were issued. Mr. Wadelton stated the eradication plan was a good one, but the Commission was bound to follow the state statutes. It was the consensus of the commissioners that a DEEP permit was required. Mr. Bernard noted there was a long waiting period for DEEP permits, but was advised that step #1, the cutting of the phragmites, was not regulated by the DEEP.

Palmgren/121 West Shore Road/#IW-16-12/Install Well: Mr. Neff, engineer, said there had been no revisions to the plan since the last meeting. His plan, “Proposed Well Installation Plan,” dated 3/15/16 was reviewed. Mr. Wadelton asked if there would be a problem with water flush out. Mr. Neff pointed out that erosion controls would be installed down grade of the well site and hay bales installed at the bottom of the temporary accessway to catch anything that might flow down the hill. There were no further questions.

MOTION: To approve Application #IW-16-12 submitted by Mr.

 Palmgren to install a well at 121 West Shore Road per

 the plan by Mr. Neff dated 3/15/16; 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,

1. that the property owner give the contractor copies

of both the motion of approval and approved plans

prior to the commencement of work, and

1. 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. Davis, and passed 4-0.

CS 52, LLC./52 Calhoun Street/#IW-16-13/Renovation and Addition to House: Mr. Neff, engineer, presented his plan, “Proposed Site Plan,” which he had revised to include the dimensions of the proposed deck and porch because portions of both were within 50 feet of wetlands. He briefly explained the house would be torn down, but the foundation left in place, the foundation and deck expanded, and a screened porch built. He said every effort would be made to save the maple tree near the house, but noted it was not within the regulated area. Mr. Ajello noted the only excavation required was for the footings for the deck and porch. Mr. Neff said erosion controls would be installed between the house and the pond.

MOTION: To approve Application #IW-16-13 submitted by CS 52, LLC.

 for house renovations and additions at 52 Calhoun Street

 referencing the plan by Mr. Neff, “Proposed Site Plan,”

 dated 2/24/16 and revised to 4/1/16; 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,

1. that the property owner give the contractor copies

of both the motion of approval and approved plans

prior to the commencement of work, and

1. 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. Wadelton, seconded by Mr. Papsin, and passed 4-0.

Kersten/11 Baldwin Hill Road/#IW-16-14/Excavation and Regrading: It was noted the application had been thoroughly reviewed at previous meetings and there were no further questions.

MOTION: To approve Application #IW-16-14 submitted by Mr. and

 Mrs. Kersten for excavation and regrading at 11 Baldwin

 Hill Road per the site map dated 3/18/16; 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,

1. that the property owner give the contractor copies

of both the motion of approval and approved plans

prior to the commencement of work, and

1. 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. Papsin, and passed 4-0.

Other Business

Mackesy/233 West Shore Road/Request to Revise Permit #IW-15-07/ Addition of Retaining Wall and Steps: Mr. Criollo, contractor, presented the plan, “Proposed Additional Work,” dated 4/13/16. He explained he would build the retaining wall and steps by hand and with no cement, using the old stones on site and that he would excavate approximately one foot down for the base of the wall. He circulated computer generated renderings of the proposed work. Mr. Ajello asked if a small excavator would operate from the beach. Mr. Criollo said, no, he would work from the driveway, adding that when the asphalt is removed from the parking area per the original permit it will be taken immediately off site.

MOTION: To approve the request from Mr. and Mrs. Mackesy to

 revise Permit #IW-15-07 to add a retaining wall and

 steps at 233 West Shore Road in accordance with the

 site plan, “Proposed Additional Work,” dated

 4/13/16; all other previous conditions of approval

 continue to apply.

 By Mr. Wadelton, seconded by Mr. Davis, passed 4-0.

Pending Application

Allin Cottage, LLC./217 West Shore Road/#IW-16-08/Single Family Dwelling, Guest House, Pool, Driveway, Septic System, Well, Dock, Float, Accessory Building, Parking Area: Mr. Trinkaus, engineer representing the intervener, reviewed the revised plans that had been submitted at the last meeting, going point by point through his review letter dated 4/8/16. The issues he raised included: 1) The proposed rain gardens were not appropriate for the site due to the location of hardpan and the fact that there would be no unsaturated zone to allow infiltration to take place. 2) The existence of an intermittent stream had been omitted from the plan and so a soil scientist should flag its location. 3) The area to be cleared for lawn had not been indicated. He noted this was important because lawn generates more runoff than forest. 4) A driveway with a grade of over 6% will erode and so paving was recommended so that runoff could be directed cross slope. 5) The proposed drainage swales should be wider and flatter to slow the velocity of the flow through them. 6) Adequate hydraulic modeling analysis for all of the stormwater management systems had not been provided and so it could not be determined if they would function properly. 7) Regarding the proposed parking area, no plan to handle both surface water and groundwater on the uphill slope was submitted. 8) The watershed for the rain gardens had not been correctly accounted for. 9) The 8 inch pipe to be placed under the proposed patio stones on the north side of West Shore Road is smaller than the uphill 15 inch pipe directing water to it and so flows will back up into the road system and/or flow out the top of the stones and water will not infiltrate properly. 10) Throughout the property, the perc tests done were inadequate; deep hole and infiltration tests are needed to determine infiltration rates and the effectiveness of the proposed drainage system. He concluded, saying that the proposed stormwater management system was not adequate to handle the pollutant loads, which will be generated by the proposed development and will be directed to the lake, and he added that the volume of runoff would not be reduced, and so there was an increased potential for erosion on site and that it would reach the lake.

 Mr. Szymanski, engineer, responded in detail by reviewing his 4/13/16 letter and the revisions he had made to the site development plan. Points made by Mr. Szymanski included the following: 1) He noted the 4/13/16 letter from Mr. Myles, soil scientist, which stated the area Mr. Trinkaus had referred to was not an intermittent stream as defined in the Town’s Regulations, but was actually scouring of the tracks from the excavator that had been used for soil testing on site. 2) The limit of disturbance was shown on the site development plan and any lawn installed will not be heavily fertilized, but will be maintained organically. 3) The applicant agreed to a condition of approval that no more than one acre could be disturbed at any one time. 4) The driveway winds up the hill, which allows for several points of discharge along its shoulders. 5) Plans for the septic system have been submitted to both the Commission and to the Health Department and state approval is not required in order for the IWC to approve the application. 6) Regarding the proposed swales, the plan had been revised to include specifications for the permanent matting for the swales. Although not required, stone check dams had been added to provide additional protection. It was also noted the drainage areas for the swales were all less than one acre. 7) Runoff from all of the impervious surfaces was being directed to infiltration systems. 8) The infiltration system on the north side of the road would work as designed because excess runoff will move laterally through the stone. Also, weepholes had been added to handle overflows if needed. Mr. Szymanski disagreed that the calculations presented showed noncompliance with the regulations and he questioned how any of the points raised by Mr. Trinkaus proved there would be adverse impacts to the lake as a result of the proposed development.

 Mr. Trinkaus and Mr. Szymanski debated at length about whether the proposed rain gardens would function as designed. Mr. Trinkaus pointed out the presence of hard pan and groundwater and stressed it had not been demonstrated that the runoff would infiltrate. Mr. Szymanski said that in his professional opinion they would work as intended and noted the rain gardens he had designed at 199 West Shore Road were working successfully.

 Mr. Szymanski stated his plan would rectify the pre existing drainage problems, whereas, Mr. Trinkaus said there was not enough separation between the bottom of the rain gardens and groundwater so they would not function as intended, which could result in turbidity in the lake. He proposed the placement of boulders and vegetation along the shoreline as an alternative plan for the north side of the road. Mr. Szymanski said Mr. Trinkaus had not shown how surface runoff 350 feet from the lake would adversely impact the lake.

 Mr. Bedini noted that there was a lot of new data for the commissioners to review and interpret and said an option would be to refer the application to an independent consultant. Mr. Wadelton stated the commissioners must decide which of the two experts was more credible, and if there was enough information submitted on which to make that decision, a review by a third party would not be needed. Mr. Bedini said that for the record the commissioners would also have to give the reasons for their decision.

 Mr. Wadelton noted Mr. Trinkaus had stated the proposed systems would fail, and so asked what the consequences and adverse impacts would be due to such a failure. Mr. Trinkaus stated that if the proposed drainage system failed, pollutants such as phosphorus, metals, and hydrocarbons, which are toxic at low concentrations, would reach the lake and adversely impact the water quality. Mr. Bedini stated the Commission had not experienced any rain gardens failing. Mr. Trinkaus noted examples in other towns.

 The commissioners discussed whether they thought an independent review was necessary and it was the consensus that they could review and make a judgement on their own. Mr. Szymanski and Mr. Trinkaus stated they would not be submitting any additional documentation. Mr. Szymanksi submitted a written request for a 15 day extension of the time in which to consider the application.

 Mr. Davis left the meeting at 9:10 p.m.

Activity Report: Mr. Ajello reviewed his 4/12/16 report.

Hochberg/15 Couch Road/Unauthorized Excavation of Pond and Deposition of Material: Mr. Hochberg was issued a citation in April 2011 at which time he requested a hearing. The Town did not have a hearing officer to preside over the requested hearing and still does not have a hearing officer. Therefore, it was the consensus to take this matter off the agenda. Mr. Bedini said the First Selectman had suggested using the land use attorney as the hearing officer should the need arise in the future.

 There was no administrative business or communications to discuss.

MOTION: To adjourn the meeting. By Mr. Papsin.

 Mr. Bedini adjourned the meeting at 9:18 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill

Land Use Administrator