

Inland Wetlands Commission

MINUTES

Regular Meeting

April 24, 2019

7:00 p.m.

Main Level Meeting Room

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

ALTERNATES PRESENT: Mr. Kassis, Mr. Matthews, Ms. Branson

STAFF PRESENT: Ms. White, Mr. Tsacoyannis

ALSO PRESENT: Mr. Larson, Mr. Riefenhauser, Mr. Olimpieri, Mr. Aston, Ms. Scodari, Atty. Brooks, Atty. Ebersol, Ms. Turoczi, Mr. Hrika, Mr. Hayden, Mr. Charles, Members of the public.

Call to Order

Mr. Wadelton called the meeting to order at 7:01 p.m. and seated himself, Mr. Papsin, Mr. LaMuniere, Mr. Bennett & Mr. Davis

Consideration of the Minutes

The regular meeting minutes of April 10, 2019, were considered.

MOTION: To accept the Regular Meeting Minutes of 4/10/19 as submitted by Mr. Papsin, seconded by Mr. LaMuniere, passed by 5-0 vote.

Subsequent Business

There was no subsequent business to add to the agenda.

Pending Applications

Steep Rock Association/185 Tunnel Rd/Permit #IW-19-15/SR2 Campsite Bank Stabilization:

[Beg. of discussion 1:00] Mr. Larson from Steep Rock Association submitted a revised plan indicating the location of the flat stones for the access way to the water and the rocks that will be behind the log for stabilization. The Commissioners looked at the revised map titled "SR2 Campsite Bank Stabilization," prepared by Mr. Larson, dated 4/24/19.

Mr. Larson briefly discussed the process of setting the log under the root.

The Commissioners agreed that the additional information provided in the revised plan and backup documents submitted with the application was sufficient for them to make a decision.

MOTION: To approve Permit #IW-19-15 for Steep Rock Association at 185 Tunnel Road for stabilization of SR2 Campsite river bank, per plan titled "SR2 Campsite Bank Stabilization" prepared and signed by Rory Larson, dated 4-24-2019 for two years, 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 by 5-0 vote.

[End of discussion 6:35]

New Applications

The Gunnery/22 South St/Permit #IW-19-16/Install 2 Concrete Pads for Generator and Propane Tank:

[Beg of discussion 6:40] Mr. Riefenhauser, Professional Engineer, was present to represent The Gunnery. He noted that the two proposed pads are for a generator and an above ground propane tank that will serve the water system for the school. The proposed location is on the west side of the Control Building and currently disturbed/established 100' Upland Review Area. Mr. Riefenhauser informed the Commissioners that the concrete pads will be cast in place and the lines are already in place so there will not be any excavation uphill. The distance from the above-ground propane tank pad to the wetlands is about 7 feet and the distance between the generator pad to the wetlands is about 5 feet.

The Commission questioned Mr. Reifenhauser as to whether there was a lip around the cast concrete pad in order to contain any leaks should they occur. Mr. Reifenhauser responded that he did not think so but he could look into possibly putting a lip on the edge of the concrete pad. He added that he would bring the Commission more information regarding the containment system for the generator.

[End of discussion 13:15]

CES Danbury Solar LLC (for Cole)/138 Litchfield Turnpike/Permit #IW-19-17/Ground Mount Solar Panels:

[Beg. of discussion 13:35] Mr. Olimpieri of CES Danbury Solar was present to represent the property owner at 138 Litchfield Turnpike. He informed the Commissioners that Mr. Cole is proposing a ground-mounted solar array. Mr. Olimpieri explained that the panels are brought in on a skid steer and the helical piles are driven into the ground for minimal disturbance.

The Commissioners looked at the drawing titled "Proposed Array Layout," prepared for George Cole by Ross Solar, with a revision date of 4-16-19. Sheet SP-1. It was noted that the wetlands were not shown on this drawing. Mr. Olimpieri indicated the approximate location of the wetlands on the drawing. He informed the Commission that there will be a trench from the array to the house to bury the 2-inch conduit.

The Commissioners requested that the applicant provide a survey showing the entire property with scaled drawings of where the activity will be occurring, location of wetlands and distance of the structure to the wetlands and setbacks. In addition, it was requested that the applicant

indicate the trees that were already removed and the area in which the silt fence will be installed around the area of disturbance.

Ms. White requested that the signature of the property owner is provided on the application. It cannot be the agent's signature.

[End of discussion 20:55]

Rumsey Hall/201 Romford Rd/Permit #IW-19-18/Install Swing Set:

[Beg. of discussion 13:35] Ms. Scodari, of Rumsey Hall and Mr. Aston, Civil Engineer from Buck & Buck were present to discuss the proposed upgrade to the playground on campus. Ms. Scodari noted that they would eliminate the existing swing set.

The Commissioners and Ms. Scodari reviewed the plan titled "Playscape Expansion," prepared for Rumsey Hall School, by Buck & Buck, LLC., sheet L-1 dated 4-22-19.

Mr. Aston stated that 8 inches & 5000 sf of wood chips are being proposed and the swing set would be located 15' from the edge of the pond, with a 3 on 1 grade slope and anchored 3' 6" into the ground with concrete at the base of the hole. Mr. Aston noted that approximately 10 cubic yards of material will be taken off site and stored out of the upland review area on campus. Dump trucks, a skid steer, wheelbarrows, and a small excavator will be used. The playset is made from artificial wood and will be installed by the playground company. There will be a silt sock around the proposed area and along the pond to prevent any soil from getting into the pond during a rain event.

Ms. Scodari will email the specification sheet for the playscape to Ms. White for the record.

[End of discussion 28:55]

Seated: Wadelton, LaMunier, Bennett, Allen, Kassis (for Papsin)

Other Business

Collins/323 West Shore Road/Noncompliance with Permit #IW-17-31

[Beg. of discussion 29:05] Mr. Wadelton noted that they have received a Notice of Intervention from the Lake Waramaug Association dated April 18, 2019. He noted that it meets all of the requirements.

Atty. Ebersol stated that he would like the intervenors to start the discussion and they will make necessary comments to rebut what is necessary.

Atty. Brooks was present to represent the Lake Waramaug Association.

Atty. Ebersol noted that the first intervenor is Mr. Berner and this second intervenor is the Lake Waramaug Association signed by their co-president, Mrs. Berner.

Atty. Brooks stated that she would address some of the allegations made by the intervenors and asked Mr. Hayden of the Lake Waramaug Task Force to be present as an expert on behalf

of the Lake Waramaug Association. She explained how she would like some clarity as to whether this was a permit or an order and explained the difference. She noted that a Notice of Violation was issued but not an order and if an order was issued the process would be cease, desist, restore but this it has morphed into a remediation plan. Atty. Brooks informed the Commissioners that an order is something the Commission wants to be done and a permit application is something the property owner wants to do to their property but once authorized, does not have to do it. Her main concern was that since it is not an order it cannot require anything of the property owner. She asked the Commission to take a time out and decide which way they would like to proceed.

Atty. Brooks read some excerpts from the 3-27-19 minutes. She distributed a copy of the motion made in the 10-27-18 Meeting Minutes. She stated that while the Commissioners are considering her recommendation she will have Mr. Hayden provide information that will support the intervenors' allegations. These allegations point out either compliance or noncompliance with Section 11a in the Town of Washington IWW Regulations.

Point of order: Atty. Ebersol asked Mr. Hayden to state whether he is an employee of the intervenor.

Mr. Hayden introduced himself as the Executive Director of the Lake Waramaug Task Force for two years and is a Certified Soil Scientist for the State of Connecticut. He discussed his previous employment. Mr. Hayden stated that as part of being a soil scientist he must delineate wetland soils and has been working for thirty years studying the interface of wetlands and water quality.

Mr. Bennett asked Mr. Hayden what training he has had in terms of the dynamics of a water system and wave action.

Mr. Hayden responded that he is not an engineer that predicts wave action as it affects lakes. He noted that his degree is in Natural Resource Management and Engineering and he studied a little about wave action.

Atty. Brooks asked Mr. Hayden to state for the record the kind of work he undertakes as Executive Director of the Lake Waramaug Task Force.

Mr. Hayden responded that he has always worked on how to use soil, how to use the upland review area, how to use wetlands, how to best protect these and how best to use them to protect water quality.

Mr. Hayden spoke of the shoreline environment of Lake Waramaug and how taking parts of the lake edge zone can affect the health of the lake. He distributed pictures of the shoreline before and after the patio. He noticed that the current and the proposed patio plan disregards Section 11A.04.b because most of the existing vegetation is gone. Mr. Hayden explained how the shoreline knits itself into the lake over many years. He noted the steep pitch of the proposed shoreline disregards Section 11A.03.a.

Mr. Hayden expressed an additional concern of these type of projects becoming “contagious.” He noted that whenever plants are added to the shoreline, it is a benefit but not as beneficial as the plants that have been there for decades that are in equilibrium of the lake. Mr. Hayden stated that he is worried about how long this patio will remain on the lake and the damage it will cause to the shoreline when the temperatures rise and there are more people.

It was noted that this plan must go through ZBA and Zoning and that ZBA usually recommends that an applicant gets approval from IWC before.

Mr. LaMunier gave a brief history of this application and how the approved plan was the third rendition that was submitted and approved. He noted that a start card was not submitted to the Enforcement Officer so the Land Use Office was not aware of when the construction began.

Mr. Hayden stated that there is a band area of sensitivity around the lake varies in width depending on the slope of the shoreline and location. He explained that a patio can be built as long as it conforms to Section 11A.

Atty. Brooks noted that according to Section 11A.03.a which allows existing, grandfathered walls can be repaired or rebuilt. She asked Mr. Hayden if there was an existing or grandfathered wall before the patio was built.

Mr. Hayden responded that there was not.

Atty. Brooks stated that Mr. Collins does not meet the requirements of 11A for building new walls so a restore order should be issued.

Mr. Hayden informed the Commissioners that the mission of the Lake Waramaug Task Force is to collect, use and apply science to protect water quality and watershed. He informed the Commissioners that the LWTF has given him the go-ahead to work with Washington, Kent and Warren and their officials, accompany enforcement officers, attend site visits, review site plans and proposed projects and make recommendations.

Mr. Hayden discussed some of the Commissioners concerns. It is his opinion that the proposed remediation plan is to remove a vertical wall and make it into a 1:1 slope. Mr. Hayden said that a 1:1 slope is a 46-degree angle which he believes does not meet the requirements of Section 11.A. He offered to accompany Mr. Tsacoyannis to the site if an order is issued by the Commission to remove the patio stones to the original shoreline stones and make his best judgment as to when the original grade is revealed.

The Commissioners briefly discussed the original shoreline as it is indicated on the remediation plan. Some Commissioners felt that the depiction is just a guess and the original shoreline will not be known unless the patio rocks are removed.

Atty. Brooks answered the Commissioners questions regarding whether this is a permit or an order. If the Commissioners want something done, they must issue an order because a permit

is for what the property owner wants and they can or cannot do the proposed work in the permit they are not obligated to do the work.

There was a discussion with the Commissioners and Atty. Brooks regarding letting an applicant that has violated their permit or Section 11.A come back to the Commission with a remediation plan before the Commission makes an order.

There was a brief discussion regarding previous violations and setting precedents.

Atty. Ebersol discussed the history of this project. He agreed that the wall had to come down and they came back to the Commission with a remediation plan that they believe the Commission can approve.

Mr. Hrica, PE, noted that he considered Section 11A.03.a when he created a design that took the verticality out of the wall and creating a gentle slope. He informed the Commissioners that a 1:1 slope is not vertical and they plan to use rounded large stones. There are no plans to use riprap.

It was noted that no original shoreline rocks were removed when the patio was built. There was a discussion regarding what rocks would remain.

Atty. Ebersol wanted the Commission's decision clarified. He asked whether they were saying that his client would have to remove all of the patio rocks.

The Commission responded that the rocks need to be removed to the original shoreline and what is left.

It was agreed that Mr. Hayden and Mr. Tsacoyannis will observe and supervise the removal of rocks and before the Commission authorizes anything to be built, they would have to see what remains when the preexisting shoreline is revealed (the mean seasonal high and low water lines).

Both attorneys agreed that this would be phase 1 of the process.

[End of discussion 2:07:12]

Enforcement

Activity Report:

[Beg. of discussion 2:08:35] Mr. Tsacoyannis submitted the activity report and reviewed properties with the Commissioners and how he will be following up.

The following properties were discussed:

101 Wykeham Rd, 47 West Shore Rd, 3 West Shore Rd, 169 West Shore Rd

Communications

[Beg. of Conversation 2:16:22] Mr. Wadelton informed the Commission that the suit against Permit 10-12-16 for Stiteler-Giddens, 198 Tinker Hill by Weeks. He stated that this case has been dismissed as of 05-17-18 the clock stopped when it went to court so permit goes for two years after 05-17-18. He added that the suit of Purnell and Giampietro vs. IWC has shown a little bit of movement and there will be a pretrial on Monday 4-29-19.

There was a brief discussion regarding complaints that come into the Land Use Office.

Adjournment

MOTION: To adjourn at 9:21 pm, by Mr. Wadelton, passed unanimously.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Shelley White

Land Use Administrator

*All documents are on file in the Land Use Office

**Digital recording of this meeting are available upon request